

# Mentally ill people in our prisons are suffering human rights violations

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*“The true measure of any society can be found in how it treats its most vulnerable members”*

*Mahatma Gandhi*

## The prison population increase in Aotearoa New Zealand

Successive governments have ignored the effect that rapid growth in the prison population has had on health and equity in Aotearoa New Zealand. The clinical directors from all the regional forensic services consider this an unacceptable health equity and human rights crisis, requiring an urgent Government response. This editorial is based on the authors' direct experiences of providing clinical care in Aotearoa New Zealand's prisons over many years and analysis of key epidemiological data.

The New Zealand prison population has more than doubled since 2000<sup>1</sup> despite little change in serious crime over that period.<sup>2,3</sup> The population sits at just over 10,000. Māori are overrepresented in the criminal justice system, and Māori women especially so. Over 50% of prisoners and 60% of female prisoners are Māori, despite Māori being 16.5% of the total population.<sup>1</sup> The majority of prisoners (93%) are male, but in the five years to 2017, the female prison population increased by just over 56%, rising nearly three times as fast as the male population for the same period.<sup>1</sup> Rates of incarceration in Aotearoa New Zealand are the fifth highest among 36 Organisation for Economic Cooperation and Development (OECD) countries, and are about 30% higher per capita than Australia.<sup>2</sup>

In 2018, the New Zealand Justice Minister described prisons as “stretched to breaking point”.<sup>3</sup> The Government has targeted a 30% reduction in the prison population by 2030. To meet this target, New Zealand's justice system will need to be rebuilt.

Growth in the prison population has far exceeded resources to manage the wide and complex range of health problems common in this population. It leaves prisoners with acute health needs far worse off than the rest of the population, especially those suffering from serious mental illness. The growth has contributed to a serious—arguably scandalous—mental health crisis with few options for relief in sight.

## Prisoners' health needs: a vulnerable population

Most people in prison have been exposed to childhood trauma and other adverse childhood experiences. Prisoners also experience poor physical health, and while their physical health typically improves in prison,<sup>4</sup> excess morbidity and mortality extends well beyond prison release.<sup>5</sup>

Two important prison studies conducted 15 years apart in Aotearoa New Zealand show rates of mental disorder and substance use disorder are very high and climbing, with over 90% of the prison population having a lifetime diagnosis of a mental health or substance use disorder.<sup>6,7</sup> These studies also show that psychotic symptoms are far more common in prison than in the general community.<sup>6</sup>

The rise of methamphetamine<sup>8</sup> has also strained mental health services in our prisons. One in eight prisoners has a current dependence on stimulants.<sup>6</sup> Since methamphetamine increases the risk of psychosis,<sup>9</sup> remand prisoners who have been using methamphetamine heavily are often acutely mentally unwell, and some need psychiatric hospital admission.

While the public may not see prisoner welfare as a national priority, there are important reasons to promote the health of people in prison. First, the Government has an obligation under Te Tiriti o Waitangi to

protect the rights of Māori. As described, rates of imprisonment are particularly high for Māori.<sup>1</sup> The disproportionate incarceration, and the added barriers to adequate healthcare and dislocation from whānau for Māori in prison, are in blatant breach of Te Tiriti o Waitangi. In The third article of Te Tiriti o Waitangi, the Principle of Equality constitutes a guarantee of legal equality between Māori and other citizens of Aotearoa New Zealand, and assurance of equal access to social rights. The right to equal healthcare has been ratified in international human rights frameworks (such as the Convention of the Elimination of all forms of Racial Discrimination and the Declaration on the Rights of Indigenous People), of which Aotearoa New Zealand is a signatory. Te Tiriti o Waitangi also established a partnership, which imposes on the partners the duty to act reasonably and in good faith.

Second, The Government has the responsibility under the Bill of Rights Act 1990 to protect prisoners' rights, including the Right 23 (5) to be treated with humanity and dignity, and Right 9 not to be subjected to cruel treatment.

Furthermore, as a signatory to the 2008 United Nations Convention on the Rights of Persons with Disabilities (CRPD), the Government has a duty to enable access to healthcare services for people with a disability, including serious mental illness, in custody.

Third, health outcomes and offending outcomes are inextricably linked. Good quality healthcare is an essential component of rehabilitation and it leads to lower re-offending.<sup>2</sup> Most stays in prison are short, therefore improving the health of people in prison benefits the population in general.

Finally, providing mental healthcare is particularly important for this vulnerable group since suicide rates among people in prison are high<sup>10,11</sup> and they remain elevated after release.<sup>12</sup>

### Prison mental healthcare has not kept up

The Department of Corrections has increased resources to provide additional support and treatment to prisoners with mild to moderate mental distress/illness

and addictions, including with the projected building of a 100-bed mental health facility in Waikeria Prison.<sup>13,14</sup> However, these beds will not meet the needs of prisoners with serious mental illness and will only service the Waikato area. So far, the increase in the prison population has been met by little increase in prison capacity or funding for specialist mental health services in prisons. For example, 610 extra prison beds have been planned in Christchurch (a potential 50% increase in prisoner population) by the middle of 2020 with no extra specialist mental health resources.<sup>15</sup>

Forensic psychiatric services' ability to meet the demand for acute psychiatric care for those with serious mental illness has become unsafely stretched. This has resulted in forensic services throughout the country placing prisoners needing immediate psychiatric inpatient treatment on waitlists, rather than admitting them to hospital—as would occur if they were in the community. Involuntary treatment cannot legally be enforced in prison. It is the authors' clinical experience that not infrequently this leads to acutely unwell prisoners, including those with a severe acute psychosis, waiting untreated for weeks under 23-hour per-day solitary lockdown in Intervention and Support Units (ISU). Those prisoners often cannot keep up even basic self-care, they pose risks to themselves and others from symptoms of their illness, and some show extremely disturbed or aggressive behaviours. This is more than lack of access to healthcare while in custody—in the language of the CRPD, this is inhuman and degrading treatment.

An unannounced inspection of Christchurch Men's Prison by the Office of the Ombudsman in 2017 found serious human rights breaches.<sup>16</sup> It described the ISU (then known as the At Risk Unit, or "ARU") as lacking even basic amenities such as furniture, adequate toilets and access to natural light or fresh air. The austere conditions were felt to breach United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules<sup>17</sup>). The Ombudsman also noted that the average waiting time for transfer from the ARU to a Forensic bed was four weeks. Most concerning, despite the Ombudsman

pointing out these human rights breaches, there has been no meaningful change in the two years since the Ombudsman's report; in fact, if anything the situation has worsened.

### How to fix the prison problem

Prisoners lack an effective public voice—currently sentenced prisoners cannot vote. A planned amendment to the Electoral Act 1993 (The Electoral Amendment Bill) will give voting rights to those serving sentences less than three years, but it is yet to be seen whether this will help alter the dire state of our prisons. Furthermore, political opposition to this amendment suggests it may not survive a change of government.

The main determinant of criminal behaviour is inter-generational social disadvantage including effects of colonisation on Māori. Institutional racism and cultural insensitivity are some of the root causes of the overrepresentation of Māori within prisons.<sup>18</sup> A 2014 United Nations Working Group on Arbitrary Detention found that systemic bias existed against Māori at all levels of the criminal justice system.<sup>19</sup> Proximal causes of serious crime include poverty, inequality, exposure to family violence and trauma, substance use and destabilising peer influences. At a population level, none of these risk factors can be easily removed in the short term. However, in the long-term the common underlying risk factors might be addressed via programmes which support the health and wellbeing of vulnerable children and their families.<sup>20</sup> This will require a consistent all-of-government approach, free of the forces of partisan agendas.

Many other processes play a role in determining how many people are in prison. A systematic political agenda of “tough on crime” has led to substantially longer sentences. At the same time, the Bail Amendment Act 2013 has contributed to a 50% increase in the number of people remanded in custody comparing the 2013/2014 and 2018/2019 fiscal years, yet no new services or funding have been provided for this high-needs group, even though

this outcome could have been foreseen. Coherence between law, policy and funding decisions is vital.

Specialist Mental Health Courts (as run successfully, for example, in South Australia<sup>21</sup> and other Australian states) do not exist in Aotearoa New Zealand. However, they make sense as a response to the increasing number of people with serious mental illness who are remanded to prison on minor charges. In many cases offending in this group can be traced to general adult mental health services' lack of resources to assertively treat these people or provide the level of care necessary for successful diversion, as a result of decades of decay from under-funding.

Likewise, there is good evidence to support Drug Courts,<sup>22</sup> which have been piloted successfully here since 2012 but have not yet been rolled out throughout the country. While these specialised courts are more expensive to run, they provide more flexible sentencing options for people who have offended, including alternatives to prison.

Finally, the Government Inquiry into Mental Health and Addiction<sup>23</sup> was a chance to put forward solutions to some of the problems mentioned in this article. However, the Inquiry did not focus on the needs of those with serious mental illness, instead laying out plans to expand mental health services to cater for a much larger and less severely unwell group of people—a shift in ideology which has alarmed leading academic psychiatrists.<sup>24</sup> The Inquiry's comparative neglect of people with serious mental illness is hard to understand while Aotearoa New Zealand is still failing in its obligations to this group.

We urge the Government to act now to protect the human rights of people in prison with disabilities including serious mental illness. A strong and immediate government response is needed to end the serious human rights abuses which are being inflicted on vulnerable people in this country's prisons.

**Competing interests:**

Nil.

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