

# ANZSOG CASE PROGRAM

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## Considerations in consultation and co-design: An assessment of Hāpaitia te Oranga Tangata Safe and Effective Justice Programme in Aotearoa New Zealand

An ANZSOG Teaching Case & Epilogue by Dr Sarah Roth Shank

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### ANZSOG Case Development Statement

This case was recommended to be developed following ANZSOG's 2023 First Nations Public Administration Conference on the theme of 'First Peoples to all Peoples'. The case has been developed in close collaboration with critical justice scholars, external peer review and internal review by a First Nations Senior Advisor at ANZSOG.

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## Acknowledgments

As tauwi (an outsider who is non-Māori and from a settler colonial nation) – I recognise the privilege I carry as a White person and the dissonance that comes with writing about a criminal justice system that has not personally impacted me yet has harmed tangata whenua (Indigenous people of the land) for generations and continues to do so. I believe tauwi and Pākehā (White New Zealanders of European descent) – have a duty to speak to criminal justice issues to begin undoing some of that harm. I am grateful for the leadership of Ināia Tonu Nei (a group of Māori thought leaders articulating a ‘new direction for the New Zealand criminal (in)justice system’) and Māori presenters at the Summit whose korero (discussion) – I have looked to for this piece. I wish to thank the reviewers for their thoughtful feedback, especially Adjunct Professor Michael Roguski for his graciousness in wisdom and time. Thank you to the ANZSOG Case Library staff for this opportunity and for their patience during this process. I would also like to thank Haley Farrar for helping to make this possible in so many ways, and to my partner, Ben, for unwavering support and his commitment to working towards equity and decolonisation.

## Abstract

This case examines the consultation and design phases of Hāpaitia te Oranga Tangata Safe and Effective Justice Programme (hereafter Hāpaitia Reform Programme) convened in Aotearoa New Zealand in 2018. The Hāpaitia Reform Programme was designed to ‘provide a foundation for enduring change of the criminal justice system’ (Ministry of Justice, 2023) and was initiated as a result of rapidly rising incarceration rates in the adult sector with a disproportionate effect on Māori. Input into the reform and consultation was gathered through 2018 and into 2019, with findings and reports published in 2019. An expert advisory group convened gatherings with specific stakeholder groups, including survivors and victims of crime. A nation-wide Criminal Justice Summit and an online mechanism for public submissions served as other means of consulting with interested parties. Furthermore, a separate *hui* (gathering or meeting) — was held by Māori to address larger, enduring change by decolonising the justice system.

On one level, the Hāpaitia Reform Programme serves as an example of the significant undertaking required to pursue criminal justice reform through a whole-of-government approach, meaning cross-ministry and cross-sector input into the reform design and eventual implementation. On another level, from an Indigenous worldview, the initiative was criticised as upholding the dominance of a colonial criminal justice system, failing to disrupt mechanisms underpinning the overrepresentation of Māori in the system, and camouflaging partnership-informed discourse, namely the use of ‘co-design’ when there was little evidence of true power-sharing between Māori and the Crown. The ongoing consultation and transformational impact of the programme remains in question as government priorities continue to change. However, the information-gathering stage of the programme serves as an example of how the voices of those most impacted by government policies could be incorporated in the development of such policies.

## Te Reo Māori/English Glossary

<i>Hāpaitia</i>	Means to lift up, elevate, raise.
<i>Hāpaitia te Oranga Tangata</i>	A Māori phrase that translates to ‘a response to improve the experience of people in contact with justice system’.
<i>Hāpaitia te Oranga Tangata. Safe and Effective Justice Programme (Hāpaitia Reform Programme)</i>	Established by the New Zealand Ministry of Justice in 2018 to ‘provide a foundation for enduring change of the criminal justice system’. See <a href="https://www.justice.govt.nz/justice-sector-policy/key-initiatives/key-initiatives-archive/hapaitia-te-oranga-tangata/initiatives-archive/hapaitia-te-oranga-tangata/">https://www.justice.govt.nz/justice-sector-policy/key-initiatives/key-initiatives-archive/hapaitia-te-oranga-tangata/initiatives-archive/hapaitia-te-oranga-tangata/</a>
<i>Hui</i>	Gathering or meeting.
<i>Ināia tonu nei</i>	Means ‘we lead, you follow’.
<i>Ināia Tonu Nei Advisory Group</i>	A group of Māori thought leaders and movement formed and born out of Māori resistance to the lack of Māori voice at the Crown’s Criminal Justice Summit in August 2018, united to see change in New Zealand’s (in)justice system. See <a href="https://www.inaiatonunei.nz/">https://www.inaiatonunei.nz/</a>

<i>Ināia Tonu Nei: Hui Māori Report (2019)</i>	<i>Ināia Tonu Nei: Hui Māori Report (2019)</i> is a 31-page report that summarises what was heard at the hui (gathering) held in Rotorua on 5-7 <sup>th</sup> April 2019. See <a href="https://www.justice.govt.nz/assets/d8s653-Inaia-Tonu-Nei-Hui-Maorihttps://www.justice.govt.nz/assets/d8s653-Inaia-Tonu-Nei-Hui-Maori-English-version.pdf">https://www.justice.govt.nz/assets/d8s653-Inaia-Tonu-Nei-Hui-Maori-English-version.pdf</a>
<i>Mamae</i>	Pain.
<i>Mana Ōrite</i>	Equality and equal status of Māori knowledge.
<i>Mana whenua</i>	Indigenous people of Aotearoa New Zealand who have territorial rights and sovereignty of the land.
<i>Pākehā</i>	White New Zealanders of European descent.
<i>Rangatiratanga</i>	Māori chiefly authority as Indigenous people of the land.
<i>Tauwi</i>	An outsider who is non-Māori and from a settler colonial nation.
<i>Tamariki</i>	Children.
<i>Tangata whenua</i>	Indigenous people of the land.
<i>Te ao Māori</i>	Māori worldview values.
<i>Te Uepū Hāpai i te Ora</i>	Māori phrase that translates to 'safe and effective justice'.
<i>Te Uepū Hāpai i te Ora Advisory Group</i>	An independent advisory group consisting of former politicians, lawyers, academics, Māori community leaders, social justice and victims' rights advocates, charged with the task of compiling recommendations for improving the criminal justice system to the Minister of Justice.
<i>Te Tiriti o Waitangi</i>	The Treaty of Waitangi.
<i>Tikanga Māori</i>	Māori customs and practices.
<i>Waka</i>	Canoe.
<i>Whānau</i>	Families.
<i>Wāhine</i>	Māori women.

## Introduction

On a cold winter's evening in 2018, Prime Minister Jacinda Ardern addressed a diverse crowd of onlookers, each with specific interest and investment in New Zealand's<sup>1</sup> criminal justice system. At this event launching the reform programme, the Prime Minister appealed to the sector stakeholders, academics and experts in attendance to use the reform opportunity to redirect the course of history, away from the trajectory of one of the highest incarceration rates in the Western world: 'Everyone in New Zealand deserves to feel safe, to be safe, and to be free to experience a future full of opportunity. That is, after all, the New Zealand we probably think we already are – now let's try and make it a reality' (Ardern, 2018).

In attempting to reconcile the disconnect between New Zealand's carceral tendencies and its perceived identity, the Prime Minister opened the door to consider systemic change through the Hāpaitia Reform Programme; change intended to be collaborative, holistic and transformative, and a response to what was deemed an urgent problem at the time.

Two voices, however, undergirded the reform programme in Aotearoa New Zealand. One being the government's, which framed the reform agenda. The other was an Indigenous voice, that had been calling for ongoing transformation of the criminal justice system long before the Hāpaitia Reform Programme was formally launched. Recognition of the critical voice is fundamental when undertaking such a consultation exercise.

*'As a child I used to go visit my aunty in Mt. Eden Women's Prison. Ten years later that same aunty was visiting me in that same prison. However, in 2017 I graduated [with] my bachelor's in social work.*

<sup>1</sup> I choose to use Aotearoa New Zealand when referring to the land and its people, and New Zealand when referring to the colonial government and its entities, like the criminal justice system or Ministry of Justice.

*The cool thing was that the son that I had in jail, he graduated alongside me. There is hope'* (Safe and Effective Justice, 2018a, Carmen Manuel, Summit participant and keynote speaker).

On one hand, the Hāpaitia Reform Programme provided the opportunity for the participant above, and numerous others like her, to share their personal stories and experiences of the criminal justice system to a room full of policymakers; a unique opportunity that signalled the start of a consultation process to reimagine and redesign the system. Government officials heard from people who 'want the system to work better for everyone affected by crime' (Safe and Effective Justice, 2018a). They collected themes about what was not working well and suggestions for change.

On the other hand, Māori who felt frustrated at the lack of Māori representation in that same room and who grieved the harm they had experienced over generations, held other *hui* to share stories of the impact of the justice system on *whānau* (families) and to identify ways forward. As one participant from the East Coast stated, 'the justice system has been used as a blunt tool of colonisation ... it has been used to harm whānau' (Te Uepū Hāpai i te Ora, 2019a, p. 24). This perspective reflected the purposes of a separate Māori that included the necessity to 'recognise and advance the critical space that Māori must hold, which is central to any justice reform and, indeed, transformation' (Ināia Tonu Nei, 2019, p. 4).

### Why the need for reform?

In the years leading up to the reform, New Zealand's Prime Ministers, from competing parties and representing different political perspectives, shared concern, calling the prison system 'a moral and fiscal failure' (English, 2011; Ardern, 2018). In 2017 and 2018, political commentators, academics and those working in the sector stated that the New Zealand criminal justice system was 'widely considered to be at a crisis point' (Fisher, 2018); a crisis most compellingly shown through incarceration rates and trends.

At the time of the reform, New Zealand was incarcerating approximately 199 adults per 100,000 of the population, a figure well above average of 147 per 100,000 in the OECD (World Prison Brief, 2019). At this rate of incarceration, the prison population was expected to increase to over 12,000 by 2026, well above previous projections and would require building a new prison every five years to keep up with demand (Fisher, 2018). Moreover, recent legislative amendments specifically affecting sentencing, parole and bail meant that approximately 3,485 people, nearly one-third of those in prison, were on remand, awaiting trial or sentencing (Department of Corrections, 2020).

Separate from the government's motivation to decrease the prison population and to ensure all New Zealanders '[felt] safe' and '[were] safe' (Ardern, 2018), Māori interacted with the justice system more than any other group in Aotearoa. For this reason, Māori who were involved in the reform programme 'reminded the Crown that any change to the justice system must be led by Māori' and that Māori have 'advocated to decolonise the justice system over generations' (Ināia Tonu Nei, 2019, p. 3; p. 9) but had not seen that happen. Because of this personal impact, Māori representatives claimed that 'tinkering' – arguably what would be done through the Hāpaitia Reform Programme – was not sufficient and that more fundamental change was needed (Ināia Tonu Nei, 2019, p.12).

Wider consequences of a criminal justice system heavily reliant on incarceration included significant impact on children and *whānau*. In 2018, an estimated 20,000 children had a parent in prison (based on the prison population of nearly 10,000) in a country of 4.9 million people (Gluckman, 2018a). It was a statistic that did not bode well for future life trajectories, as children with a parent in prison were themselves *ten times* more likely to end up incarcerated than those without a parent in prison (Gluckman, 2018b).

Furthermore, Māori made up 51% of the male prison population and 63% of the female prison population, while comprising only 15% of the general population (Te Uepū Hāpai i te Ora, 2019a). Given the inextricable cultural ties linking Māori to their *whānau*, land, and histories, an independent advisory report claimed that the high proportion of incarcerated *wāhine* (Māori women), in particular, contributed to the 'intergenerational reach of imprisonment' (Te Uepū Hāpai i te Ora, 2019a, p. 23); a reach that extended because of the various forms of social harms that *wāhine* had experienced, including 'racism, bias, abuse and colonisation that the justice system ha[d] created, enabled and continue[d] to deliver' toward Māori (Ināia Tonu Nei, 2019, p. 2).

The damaging rate of incarceration on *tamariki* (children), their *whānau* and wider communities, could, as one study noted, result in collective grief and anger, significantly impacting wellbeing (Te Uepū Hāpai i te Ora, 2019a, p. 13). A report resulting from a Hui Māori specifically stated, 'every time a whānau member is sentenced to prison, this creates

further trauma on their whānau that can last for generations. Continuing to send whānau to prison is enabling intergenerational trauma that affects more than the justice system; it affects whole communities' (Ināia Tonu Nei, 2019, p. 22).

In 2018, Māori were the second highest incarcerated group of people in the Western world after African Americans; incarcerated at a rate of 660 per 100,000 of the general population (Parahi, 2018; NZ Stats, 2017). If Māori were imprisoned at the same rate as non-Māori, the prison population would have been reduced by 44% (Gluckman, 2018a). Furthermore, Indigenous scholars claimed that Māori mass incarceration was a mechanism of ongoing colonisation – through the loss of land, language, rights, and the perpetuation of bias, racism and trauma – and enlargement of the prison estate continued that legacy of colonisation (Webb, 2017; Ināia Tonu Nei, 2019). Many other commentators highlighted systemic racism in the criminal justice system in a similar vein and the perpetuation of harm for Māori and their whānau (Te Uepū Hāpāi i te Ora, 2019b).

### The Hāpaitia Reform Programme and public engagement

In response to this daunting reality, the government in 2017 made a goal of reducing the prison population by thirty percent over fifteen years. It embarked on a criminal justice reform agenda that included various ways of gathering input through cross-sector engagement – between the public and private sphere – and multiple government agencies with the intention of implementing solutions through a unified strategy, known as a whole-of-government approach. The primary vehicles for this engagement were through a nation-wide justice Summit and the creation of an advisory council. Stark contrasts existed between the government's framing of the engagement and that experienced by Māori participants, as noted below.

First, participants gathered at a two-day Criminal Justice Summit in August 2018, an interactive event which launched the Hāpaitia Reform Programme (Ministry of Justice, 2023). This brought together 600 New Zealanders who were invited by the organisers or who registered their interest and then were approved to attend. Attendees included whānau of incarcerated individuals, those formerly incarcerated, victims and survivors of crime, academics, government officials and public policy advisers, international experts, and those supporting people responsible for or impacted by crime. They shared their personal stories of the impact of crime, the impact of incarceration, the state of the justice system, and ideas for reform.

The Ministry of Justice stated that the Summit was designed to promote collaboration and that it 'signalled a new approach and partnership with Māori to address the over-representation of Māori in the criminal justice system' (Ministry of Justice, 2023). However, of the 600 participants, 200 were Māori. 'Māori who attended were frustrated by the lack of Māori voice at the Summit. The programme spoke about Māori without clear input from Māori. Further, non-Māori were speaking about Māori and telling Māori what the issues were with the criminal justice system' (Ināia Tonu Nei, 2019, p. 3). This frustration led to the creation of a separate Māori *hui* held the following year, where 200 Māori with criminal justice experience gathered for an 'intentional space to discuss a Māori response in reforming the (in)justice system' (Ināia Tonu Nei, 2024).

The second key part of the government's initiative was the creation of *Te Uepū Hāpāi i te Ora* (*Te Uepū*), an independent advisory group consisting of former politicians, lawyers, academics, Māori community leaders, social justice and victims' rights advocates, charged with the task of compiling recommendations for improving the criminal justice system to the Minister of Justice at the time.

All facets of the reform programme relied heavily on participant input. For example, as previously mentioned, at the Summit, government officials heard from those with first-hand experience of incarceration, who implored those in decision-making roles to take their concerns to heart:

*'If our justice system is leaking, we are the plumbers. As people who have experienced the prison system, we are the plumbers; the people who have lived inside this broken system and still continue to carry the mamae, [or] pain'* (Safe and Effective Justice, 2018a, Billy Macfarlane, Summit participant and keynote speaker)<sup>2</sup>.

<sup>2</sup> Macfarlane was previously incarcerated and later worked in community and social services, providing reintegration support and cultural learning for Māori.

Not only were former inmates active participants in the Summit, but those impacted by crime as well. As one mother shared, 'The killer of my daughter isn't here today. But who's going to say to me, I'm really sorry that that happened to you?' (Safe and Effective Justice, 2018b). In one powerful exchange, a fellow participant stood up and said to this mother, 'I just want to say to you first that I am really sorry that that happened to you...it's awful'. That same participant went on to suggest how the stories and accounts shared should contribute to an integrated response. One of the main takeaways I'm getting from this hui [gathering] is that this system ultimately isn't working for anyone. It's going to be really important for the mental health inquiry, for the welfare working group, for the justice working group, for all of these different things to come together for a cohesive strategy. Not just for the justice system, but for the transformation of our society, because that's what people have been calling for for a long time and that is ultimately the solution (Safe and Effective Justice, 2018b).

As this participant implied, the multi-faceted impact of harm in turn required a multi-faceted, whole-of-government response. Many other first-hand stories of hardship shared at the surfaced this need.

Māori who attended the Summit critiqued the government for not implementing solutions that have been presented by Māori in the past, and for this reason also called for a more integrated response, stating 'the Crown alone does not have the capability or capacity to undertake this work' (Ināia Tonu Nei, 2019, p. 11). Attendees at the 2019 Hui Māori also called for a whole-of-government approach with the specific intention of improving 'the wellbeing of Māori and those affected by the justice system', because the government does not have the 'cultural capability or capacity to deliver a justice system that can respond to this crisis alone' (Ināia Tonu Nei, 2019, p. 2).

Public input was also a driving force behind the Te Uepū Advisory Groups' recommendations for reform. The working group convened regional *hui* across the country listening to public opinion and stories from concerned and affected citizens, and from various government institutions. Specifically, the Ministry of Justice held a victims' workshop hosted by the government's Chief Victims Advisor, a Pasifika *fono* (meeting) – hosted by the Minister for Pacific Peoples and Associate Justice Minister – and members of the Te Uepū Advisory Group attended the 2019 Hui Māori. Te Uepū Advisory Group stated this of the consultation process:

We wanted to hear from people with direct experience of the criminal justice system – those who have been victimised, who have been prosecuted for offending, and who offer services within the system. These have been our experts. We tried to reach people from all parts of Aotearoa New Zealand... We met with tangata whenua [Indigenous people of the land], local councils and non-governmental organisations (NGOs), as well as Police, Courts and Corrections staff. We visited prisoners, victims' groups, businesses and business associations. We travelled to rural communities and metropolitan districts, and we talked to judges and politicians, as well as to some of our newest New Zealanders from among our migrant and refugee communities. We heard many diverse views and experiences. (Te Uepū Hāpāi i te Ora, 2019a, p. 9).

Furthermore, the Te Uepū Advisory Group received public feedback and submissions through a website and social media. 'Overall, we estimate we have attended over 220 hui across 13 regions, talked directly with many hundreds of people and received over 200 online or emailed submissions. Effectively, we have heard from thousands of New Zealanders' (Te Uepū Hāpāi i te Ora, 2019a, p. 9). While specific suggestions for change varied, the group determined that consensus suggested the justice system was not working well for any stakeholder group.

### **Findings and responses from the consultation process**

The public consultations from this reform programme resulted in several reports that conveyed the extent of the problem and specific recommendations for desired change. The reports included one published by the Te Uepū Advisory Group with ambitious recommendations for transformation (Te Uepū Hāpāi i te Ora, 2019b), a report that summarised the themes of the 2019 Hui Māori and about the impact of the criminal justice system specifically on Māori (Ināia Tonu Nei, 2019), and a report addressing victims' concerns submitted by the government's Chief Victims Advisor (2019b).

Te Uepū Advisory Groups' recommendations in its final report, *Turuki! Turkuki!* (a Māori call for collective, urgent movement, traditionally to gain forward momentum in a *waka*, or canoe), were a clear call for action (Te Uepū Hāpāi i te Ora, 2019b). The recommendations fell under three categories: commit, empower, and transform. The report contended that 'committing' to transformation included the need for collaboration across the government, and specific commitment to Māori by establishing a Māori governance model and making *tikanga Māori* (customs and practices)

and *te ao Māori* (worldview) values ‘central to the operation of the justice system’ (p.8). The ‘empower’ recommendations called for increased attention to those most impacted by harm. The report recommended the government do this by transferring ‘resources and decision-making powers’ to communities so that they could determine the most appropriate responses to respective social, justice and wellbeing needs, which admittedly, would require the government to fundamentally alter its approach to community outreach (p. 39). Recommendations to ‘transform’ included acknowledging and addressing an inherently racist justice system, and increased focus on trauma, mental health, therapeutic and drug-related needs, and rehabilitation.

*Ināia Tonu Nei*, the Hui Māori report was released in 2019. ‘*Ināia Tonu Nei*’ translates to ‘we lead, you follow’. The report identified an equal power governance model between Māori and the Crown known as *Mana Ōrite* (equality and equal status of Māori knowledge) as a fundamental recommendation (*Ināia Tonu Nei*, 2019) and called for the decolonisation of the justice system in order to ‘provide instant relief to processes that continue to harm Māori’ (p. 19). Furthermore, in addition to Māori-led solutions and central integration of *tikanga Māori* and *te ao Māori* values, the respective recommendations published in *Ināia Tonu Nei* (2019) consistently discussed addressing harm in the context of wellbeing and within communities rather than through punitive, stateimposed responses that isolate offenders from their community context.

The Government’s Chief Victims Advisor (2019a) compiled feedback for reform considerations based on a survey of 620 New Zealanders – of which over 90% were victims of crime – and the themes from a separate two-day workshop on victims’ interests. The report suggested that victims of crime feel that the ‘ideology’, or function, of the justice system is wrong: it is built on principles that serve the needs of the Crown instead of those impacted by crime (Chief Victims Advisor, 2019a, p. 7).

In sum, the recommendations called for transformative changes that would require a coordinated effort and partnership in its delivery. The consultation process showed that criminal justice issues had a wide-reaching impact on individuals, *whānau* and the community at large. Therefore, engaging individuals, *whānau* and the community in the policy design was an important part of ensuring that their voices be part of shaping the policy that will, in turn, affect them.

### Co-design?

The government hailed the Hāpaitia Reform Programme as exemplary for what collaboration and public engagement could look like in the early, story-telling and brainstorming phase of the process, according to the literature on co-design described below. As the consensus-building continued, key considerations around partnership and implementation surfaced as well.

Continuing the collaborative nature of the Hāpaitia Reform Programme meant policymakers working together with those most impacted by the policy in shaping the policy and, ultimately, its implementation. This is to say, policymaking that is citizen-centric through *co-design*, in which the citizen is a ‘determinant’ in policies that affect them (Eppel, 2013).

The Te Uepū Advisory Group attempted to reach all segments of society in Aotearoa New Zealand, an ambitious yet realistic goal because of the ‘unusual’ degree to which citizens have access to policymakers in the public sector and, subsequently, the law-making process (New Zealand Parliament, 2017).<sup>3</sup>

The Indigenous critique of the Hāpaitia Reform Programme suggested that firstly, it was not radical because Māori had long been calling for transformation of the justice system, specifically recommending a parallel system of justice designed by and for Māori (Jackson, 1988); and second, that Māori were not given adequate voice at the Summit in particular. Māori stated they must lead in the reform of a criminal justice system that directly affected their *whānau*. A contrasting read on co-design suggests that it makes claims to “goodness”...in relation to co-design with communities that experience marginalisation and structural oppression’ (King & Cormack, 2023). Through this perspective, the Hāpaitia Reform Programme itself could perpetuate harm if the consultation process only rested with the government; therefore, wider constitutional reform and the urgent decolonisation of the system that caused harm

<sup>3</sup> Blomkamp (2018) cites an unrelated but useful example from the Auckland Co-Design Lab. In this vignette, public sector employees partnered with members of the public, particularly from Māori and Pacific communities, to learn more about the participants’ experiences with the driver licensing process in New Zealand through stories, interviews and a brainstorming process. The public sector employees then drafted policy in consultation with the participants whom, as the ‘end users’, would experience the outcomes resulting from policy changes to driver licensing.

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was deemed necessary. 'The Crown must let Māori lead in true partnership. If this does not take place now, Aotearoa will lose the opportunity to reform the justice system, and another generation will be affected. Māori have said they cannot wait any longer' (Ināia Tonu Nei, 2019, p. 9).

The Te Uepū Advisory Group considered what true partnership looks like in a context like Aotearoa New Zealand, where *Te Tiriti o Waitangi* (the Treaty of Waitangi) upholds the recognition of *rangatiratanga* (Māori chiefly authority as Indigenous people of the land) and self-determination.<sup>4</sup> Ruth Money and Carwyn Jones, two members of the Advisory Group, discussed the need for partnership that arose from their consultation process:

One thing that came through loud and clear...is the need for genuine and authentic partnership. And when we're talking about partnership, we're not just talking about 'codesign' and 'co-governance.' We really need more than that. This is something that came through...very clearly from Māori communities that we talked to about the need to have codetermination. So that really means being part of the decision-making process, taking responsibility. And these communities told us they are the ones who know their people best and have the solutions to be able to address these issues (Safe and Effective Justice, 2019a).

As the Advisory Members indicated in their reflection, building upon the consensus and momentum gained during the consultation phase of the Hāpaitia Reform Programme led into the next step of the reform programme: Implementing solutions.

Ruth Money and Carwyn Jones went on to state, 'We've heard the opportunities are there. The solutions are there. We've heard that very strongly from communities. So it's a matter of being able to pick that up and work with those' (Safe and Effective Justice, 2019a).

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<sup>4</sup> Te Tiriti o Waitangi, the Treaty of Waitangi, signed in 1840, served as a 'covenant' that, in theory, was meant to represent Māori partnership with the British Crown (Liu, 2007). However, this covenant was disregarded by the Crown forces as Māori were subjugated and their authority over processes, like designing and implementing preferred justice practices, severely undermined. The Waitangi Tribunal – an inquiry commission established in 1975 to provide a legal process to investigate Te Tiriti violations – has since concluded that the chiefs who signed the Māori-language version of Te Tiriti never ceded sovereignty to the Crown and, therefore, retained authority to make and enforce law for their own people (Waitangi Tribunal, 2020; Webb, 2017). The history behind the sovereignty of Māori has led to persistent calls for Māori-led solutions in the area of crime, justice and punishment, cautioning that any institutional actions adopted will be 'inappropriate if they do not recognise the wishes and mana of tribal tangata whenua who may be affected by their decisions' (Jackson, 1988, p. 170).

## Epilogue

Significant changes and challenges occurred since the Hāpaitia Reform Programme was launched in 2018 that slowed next steps of the programme. The COVID-19 global pandemic spread and, like much of the rest of the world, Aotearoa New Zealand was hit with resulting economic challenges that took focus and resourcing away from the developing justice policy. An additional impact distinct to Aotearoa New Zealand are three-year election cycles. The Labour government that initiated the Hāpaitia Reform Programme in 2018 is, as of 2024, the opposition. A coalition government of National, New Zealand First, and the ACT Party have taken a tougher stance on criminal justice than the previous government, with a promise to 'restore law and order' (Goldsmith, 2024; Radio New Zealand, 2024).

Changing government priorities were also reflected in the prison population. The prison population was 10,649 (out of a total population of 5 million) when the Hāpaitia Reform Programme was initiated in August 2018. By December 2021, it had decreased to a low of 7,700, before continuing upwards to 9,115 at the end of 2023, a rate of 170 people incarcerated per 100,000 of the population (Department of Corrections, 2023; Ministry of Justice, 2023).

While the prison population is one indicator of changing government priorities, it is difficult to determine exactly how the Hāpaitia Reform Programme affected the prison population since there was no evidence of a direct impact from the reform on imprisonment. Rather, there appeared to be a collection of initiatives, mostly in the form of specialised court pilots – some of which existed *before* the Hāpaitia Reform Programme was convened<sup>5</sup> – that together fall under its legacy (Ministry of Justice, 2023).

Two specific changes under the new government have included discarding the previous prison population target decrease of thirty percent over fifteen years – though the Labour government allowed that target to expire in a previous election cycle – and eliminating funding for cultural reports, sometimes referred to as 'Section 27' reports.

Section 27 of the Sentencing Act allows an offender to call on a person or family member to explain their cultural or societal background; it provides opportunity for the court to learn more about cultural influence, familial context or the socioeconomic factors that might have contributed to wrongdoing. However, in 2024 Prime Minister Christopher Luxon stated that cultural reports have become 'professionalised' and announced their defunding as well as elimination of the prison population target amongst the top priorities as part of the new Government's first 100-day plan in early 2024 (Radio New Zealand, 2024).

Such moves represented a direct pivot away from the grassroots' approach to gathering input that shaped the Hāpaitia Reform Programme. For instance, the 2019 Hui Māori report, *Ināia Tonu Nei* (which means 'we lead, you follow'), stated that *te ao Māori* must be central to any reform efforts and that doing so requires constitutional reform and increasing the use of Section 27 of the Sentencing Act was one specific way of doing so (*Ināia Tonu Nei*, 2019). However, this point has not been acted upon and instead reversed.

While the energy behind the Hāpaitia Reform Programme has diminished in the face of several externalities, the consultation that occurred during the brainstorming phase opened important avenues for dialogue and an understanding of the depth and breadth of criminal justice policies. The consultation surfaced a desire for integrated solutions that span government departments and social services, co-governance with Māori, and implementing policies within the communities themselves through devolved resources, power and decision-making.

## Conclusion

In recent times, reform advocates have criticised the government for near 'radio silence' on the progress of the reform agenda in response to the reports' findings (Walters, 2020). However, for their part, the Ministry of Justice listed several 'significant lessons' on their website that addressed their learnings and spoke to the gap from consultation to implementation that emerged:

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<sup>5</sup> Many of the courts are solution-focused courts, like the Alcohol and Other Drug Treatment Court, and initiatives that aim to partner with Māori. Some, like Te Pae Oranga, iwi community justice panels, and the sexual violence courts, started in full or pilot form before Hāpaitia was launched (New Zealand Police, 2024; Doogue, 2016).

1. Opening a conversation makes room for people (from inside and outside of Government) to step up as leaders for change – sometimes in surprising ways
2. True collaboration is harder than people think – it is frequently necessary to give up things in order to get a benefit, and this can lead to resistance to what is perceived as loss
3. While it is not possible to solve a problem with the same thinking that caused it, shifting thinking is challenging, takes time and requires open, honest, bold and ongoing communication and dialogue
4. There is a lot of good will to change, but current capability gaps, particularly in regard to the Crown's ability to partner effectively with Māori, will mean that progress may be slower than many would like – at least until these capability gaps can be actively closed
5. It is highly likely that solutions needed for criminal justice problems have been identified before – the voice of the past can be as important as the voice of the present
6. There is still a long way to go but a shared sense of direction is powerful motivation to take the series of steps required to get to a better future (Ministry of Justice, 2023).

On one hand, the Hāpaitia Reform Programme displayed a unique level of public engagement and a multi-faceted approach to eliciting input that can serve as an example for other reform initiatives. The government first initiated a reform programme in response to an urgent need, specifically unsustainable prison rates and the over-incarceration of Māori in particular. Then, the government designed the programme and gathered input by engaging stakeholders across the public sector and civil society through various means and in various contexts, exemplifying a grassroots and powersharing process.

On the other hand, those at the 2019 Hui Māori raised the critique that the Crown had yet to enact previous recommendations for reform and that the Hāpaitia Reform Programme was set up to be no different if it did not adequately partner with Māori to enable 'meaningful and enduring reform' to occur (Ināia Tonu Nei, 2019, p. 9). This raised the question about what authentic co-design looks like from an Indigenous perspective, and who articulates and frames the reform agenda.

The consultation phase of the Hāpaitia Reform Programme attempted to gain consensus around the 'need' for reform and surfaced important first-hand narratives about the impact of harm delivered directly to those in decision-making roles. However, while citizens and politicians appeared to share the same goal, opinions on how to achieve it were varied. For instance, in one video where the Ministry of Justice canvassed the public, several people agreed that crime responses needed to change, but in response to the question, 'should Māori take the lead on criminal justice solutions for Māori?', one person paused and said, 'I guess I agree.' Another said, 'absolute yes'. A third person said 'I think we should all be treated the same. So, no' (Safe and Effective Justice, 2019b).

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