THE RELEVANCE OF CULTURAL INFORMATION AT SENTENCING FOR MĀORI IN THE CRIMINAL JUSTICE SYSTEM OF AŌTEAROA

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ABOUT

Te Puea Matoe (Te Roroa) is studying a Bachelor of Laws at AUT. As part of a legal research internship award, she has researched the provision of cultural information in the sentencing process, including the use of speakers and reports (pursuant to s27 of the Sentencing Act 2002), and how this can fit within sentencing principles and practices.

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I. INTRODUCTION

We currently have the highest incarceration rate of Māori the country has ever seen. For every Māori person in prison, there is a family in prison. The burden of imprisonment is carried disproportionately by Māori. Māori make up just 15% of the population yet account for over 50% of the male prison population, 60% of the female population and 70% of the youth justice facilities. The burden of structural racism shows that Māori are three times more likely to be arrested and are three to four times more likely to be charged. Māori who are charged are eleven times more likely to be remanded in custody, and four times more likely to be convicted. And if convicted, Maori are seven times more likely to be imprisoned.

The purpose of this paper is to review current information, including case-law and commentary in relation to the presentation of "cultural" information at sentencing in Aōtearoa, particularly in regards to Māori offenders. The ability to provide cultural information at sentencing has only existed in law since 1985, but has had a reputation for being under-utilised. In the past three or four years there has been an increase in the use of cultural information, as some practitioners and judges attempt to breathe life into these enactments, although there is little synthesised commentary on the matter, or resources to explain and enable its effective use. Over the past few months, information has been gathered and analysed in an attempt to form the basis of a resource kit to assist judges and practitioners who are tasked with commissioning "cultural reports" at sentencing and how to respond to this information. This report and attached booklet "Te Puka Aromatawai Ahurea" are a product of the research.

For ease of reading, the paper has been split into different sections. It begins with a brief over-view of Māori participation in the criminal justice system. This will include an in-depth discussion regarding some key reports, obligations that stem from te tiriti o Waitangi and a discussion in relation to traditional Māori concepts. Following on from this will be a summary of sentencing practices in New Zealand including a history of section 27 of the Sentencing Act 2002. The final section will contain a case analysis of relevant case-law and end with some concluding statements.

II. SPOTLIGHT ON MĀORI OFFENDING

a. He Whaipaanga Hou

In assessing the context of Māori in the criminal justice system, a helpful starting point is Moana Jackson's 1988 report *He Whaipaanga Hou*. *He Whaipaanga Hou* is a useful resource that presented an approach to research on Māori people which was specifically grounded in Māoritanga. The report was not aimed at blaming or condoning behaviour but rather understanding the issues of Māori in the criminal justice system. Nevertheless, the report critiqued the ways in which Māori offending was being dealt with in our western systems, which, it suggested largely prioritised individuals over the community. A core argument put forth in the report was that institutional racism pervaded the criminal justice system and that the historical, socio-economic, and cultural bases of Māori offending were inseparable from their position in this system. Jackson notes that from a te Aō Māori perspective, a communal rather than individualistic approach prevails and in order to ensure justice for Māori, a parallel system would be necessary. [1]

In the first section of *He Whaipaanga Hou,* the report contains a more specific history of the social and legal disenfranchisement of Māori. It begins with a pre-1840 ideology which confirmed that early Māori recognised rules as binding. It acknowledged that Māori had their own systems of rights and duties including concepts of *muru* and *tapu* which gave rise to a unique performance-based legal system. The report goes on to say that when Pākehā first arrived, Māori had optimistic expectations for western law. However, the ensuing violence eventually challenged Māori faith in Pākehā law. Furthermore, having signed te tiriti, Māori confidence in the law was again misplaced by a number of legislative provisions such as the Māori Prisoners Act 1850 which allowed for Māori sanction without trial. Following the disenfranchisement of Māori, confiscation of land, consequent dislocation and popular perceptions of Māori lawlessness, Donna Hall and John Pratt suggest that Māori did not feature disproportionately in criminal statistics.[2] They argue that it was the disintegration of Māori

[1] Moana Jackson *He Whaipaanga Hou: Māori and the Criminal Justice System – A New Perspective* (Ministry of Justice, Wellington, 1988).
[2] Donna Durie Hall and New Zealand Māori Council "Restorative Justice: A Māori Perspective" in Helen Bowen and Jim Consedine (eds) *Restorative Justice: Contemporary Themes and Practice* (Ploughshares Publishers, Lyttelton, 1999) at 27; see also John Pratt *Punishment in a Perfect Society: The New Zealand Penal System 1840-1939* (Victoria University Press, Wellington, 1992).

social fabric, the acceleration of urbanisation, poverty and excessive rates of unemployment which came about after World War II that eventually led to Māori crime rates superseding Pākehā.

In the year that followed *He Whaipaanga Hou*, a second report was released, *Te Ara Hou: The New Way,* by the Ministerial Committee into the Prison System, then chaired by Sir Clinton Roper. The report specified that New Zealand prison systems had failed not only as a rehabilitative measure but also as a deterrent and recommended that the role of prisons in the criminal justice system should be displaced. The report went on to make over 200 recommendations that suggested a number of fundamental changes to the criminal justice sector as a whole which it deemed necessary in order to better balance the criminal justice system's dual roles of reform and secure containment. It would appear that the situation has not changed much in the last 30 years.

b. Te Tiriti Obligations & Tu Mai Te Rangi

Just last year, the Waitangi Tribunal released its report *Tu Mai Te Rangi!* on the Crown and disproportionate reoffending rates and imprisonment. The initial inquiry was brought about by retired senior probation officer, Tom Hemopo on behalf of himself and his iwi Ngāti Maniapoto, Rongomaiwahine and Ngāti Kahungungu who claimed that the Crown had "failed to make a long-term commitment to reducing the high rate of Māori reoffending relative to non-Māori."[3]

With regards to imprisonment the report summarised the relevant data underpinning the claim, revealing that as of June 2016 the total prison population was approximately 10,000 with a further 30,000 serving a community sentence or order. Of this, Māori make up 50.8% of all sentenced prisoners despite comprising just 15.4% of the population. Māori men account for 50.4% of the male prison population, Māori women 56.9% of sentenced females, and young Māori account for 65% of youth imprisonment. The report indicated that in 2017 roughly 5,000 Māori would be imprisoned and 10,000 Māori children would have a parent in prison.[4] Crown

[3] Waitangi Tribunal "Tū Mai Te Rangi! Report on the Crown and Disproportionate Reoffending Rates" WAI2540 (April 2017) at ix.
[4] Above n at 2.3.

representatives acknowledged that the current situation was a serious issue that is significantly prejudicial towards Māori.[5]

On a number of occasions the Court of Appeal has discussed obligations which flow from te tiriti o Waitangi.[6] Notably, and quite often referred to, are principles of partnership and the Crown's duty to actively protect Māori interests. Another significant principle which is often cited as the principle of 'equity' requires that the Crown act fairly between Māori and non-Māori. The equity principle, which, derives from Article 3 may require that the Crown intervene to address disparities.[7] These treaty obligations were discussed at some length in the Waitangi Tribunal Report *Tu Mai Te Rangi!*

With regards to principles of active protection and equity, the Tribunal considered the Crown's obligations to be one and the same. Due to the longstanding and substantial inequity shown by statistics regarding imprisonment rates and re-offending of Māori in contrast to non-Māori, the Tribunal found that the Crown had breached its duty to protect Māori interests. It was the Tribunal's view that by failing to make an appropriately resourced and long-term strategic commitment to decrease the disproportionate Māori statistics, the Crown was insufficiently prioritising Māori interests. Due to this breach, the Tribunal asserted that the Crown had an obligation to remedy the situation and restore balance.[8] Recommendations followed which suggested that Corrections work alongside Māori to design and implement a Māori strategic framework which would include targets aimed specifically at reducing imprisonment and reoffending rates. Further recommendations suggested that a dedicated budget should be allocated to allow for adequate resourcing for an appropriate framework. Presiding Officer Judge Savage insisted that urgent priority must be given in precise and convincing ways in order for the Crown to act consistently with its obligations to protect Māori interests and act equitably.[9]

[5] At 2.3.
[6] See the likes of *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA) at 664 [Lands Case].
[7] Waitangi Tribunal "Tū Mai Te Rangi! Report on the Crown and Disproportionate Reoffending Rates" WAI2540 (April 2017) at [4.1.3].
[8] Above n, at [5.1.2].
[9] Waitangi Tribunal "Tū Mai Te Rangi! Report on the Crown and Disproportionate Reoffending Rates" WAI2540 (April 2017) at x.

The Tribunal did, however, have some positive feedback for the Crown regarding the principle of partnership. The Tribunal found that due to the Crown's good faith attempts to engage with iwi and hapū, it was not currently in breach of its partnership obligations. Nevertheless, the tribunal acknowledged that there was some risk in breaching this obligation should the Crown fail to commit to further development of partnerships with iwi and hapū. The next section will address some traditional Māori concepts and its relevance to cultural information at sentencing.

c. Māori concepts

A short summary of *Te Ao Māori* (the Māori world view) is necessary in discovering what tikanga Māori has to say about the criminal justice system. Te Ao Māori is a holistic and cyclic world view, one in which every person is connected to every living thing. Customary concepts are interconnected through *whakapapa* (genealogy) that links *te taha wairua* (spiritual aspects) and *te taha kikokiko* (physical aspects). Primary cultural concepts are layered and intertwined based on these relationships. The language is also central to the Māori world view, it is the life blood of Māori culture and forms a link between knowledge and meaning. In addition, it is woven into Māori landscapes and is expressed through *whakapapa* providing people a link to their origins. Māori interpret the landscape differently from Pākehā and bestow importance on places and geological features in different ways. Māori also have a strong sense of connection to *papatūānuku* the earth mother and believe themselves to be *kaitiaki* (guardians) of her.[10] Noticeably, Te Ao Māori world views where people, land, water and non-human occupants - which Māori must protect and respect are radically different from the western societies in which we now find ourselves minorities.

In Te Aō Māori, the traditional world existed in a natural state of balance. The principles of *mana* (authority) and *tapu* (sacredness) are the foundations for which all interactions are navigable between differing aspects of the universe. When one human commits an offence against another, the balance between the community is upset. Hence, reciprocal actions and/or words are necessary to restore equilibrium between the offender and their whānau or community, and the victim/s and their whānau or community.[11] This is in vast contradiction to our now Pākehā-dominated criminal justice system that focuses solely on an individual and

[10] Tania M. Ka'ai and Rawinia Higgins "Te Ao Māori" in Tania M. Ka'ai and others *Kitewhaiao* (Pearson Education New Zealand, 2004) at 13.
[11] Khylee Quince "Māori disputes and their resolutions" in *Dispute Resolution in New Zealand* (Oxford Press, Auckland 2007) at 8(I)(d).

punishment of their crimes rather than the victim, their whānau and community, and an offender's whānau and community seeking restorative justice resolutions. The stark difference between how things were done traditionally and how things are done nowadays, finds Māori in a system that is overly formal, inflexible and geared towards retributive justice, which is ultimately damaging to individuals and their communities.[12] Interestingly, the penalty options of our current legal system, specifically imprisonment, were traditionally an unknown concept to Māori.[13]

With regards to Māori well-being, *Te Whare Tapa Wha* (four cornerstones of health) is an innovative health model developed by Māori health workers in the early 1980s as described by Dr Mason Durie. The holistic model of health encapsulates a Te Aō Māori perspective of *hau-ora* (well-being). The four pillars of *Te Whare Tapa Wha* consist of *Te Taha Tinana* (the physical aspect), *Te Taha Wairua* (the spiritual aspect), *Te Taha Whanau* (the family aspect) and *Te Taha Hinengaro* (the psychological aspect). This model suggests that when these four aspects are aligned a person is able to achieve a healthy sense of well-being.[14] In contrast, an imbalance or deficiency in one/any aspect is likely to manifest in negative ways such as confusion over loss of culture, loss of identity, and the defeat of self-esteem. This in turn may then lead to mental illness, impaired decision making, social dysfunction and problematic conduct.[15] When applying this knowledge to other factors such as low socio-economics, poverty, cultural disenfranchisement and other ongoing impacts of colonisation that Māori are still facing, it is easy to see where the phenomenon of Māori offending stems from. The following section will address sentencing practices in Aōtearoa.

III. SENTENCING

a. The New Zealand approach

Sentencing in Aōtearoa is firmly grounded in the Sentencing Act 2002 and its primary goal has been consistency in the law.[16] This Act recognises and provides that the Court of Appeal, New

[12] Khylee Quince "Māori and the Criminal Justice System in New Zealand" in *Criminal Justice in New Zealand* (LexisNexis, Wellington, New Zealand 2007) at 12.2.2.
[13] Above n, at 12.2.2.
[14] Mason Durie *Mauri Ora: The dynamics of Māori health* (Oxford University Press, 2001).
[15] Tom Rochford "Whare Tapa Wha: A Māori Model of a Unified Theory of Health" [2004] 25, No.1 The Journal of Primary Prevention 41 at 51.
[16] *R v Taueki* [2005] 3 NZLR 372 (CA)

Zealand's final court for almost all criminal cases, maintains a broad discretion with sentencing and allows for a wide range in outcomes where reasonable.[17] Sentencing principles are set out in section 8 of the Act and include requirements that a Judge take into account factors such as: the gravity of offending, culpability, circumstances of the offender (including an offender's personal, family, whanau, community and cultural background)[18] and includes principles such as that the least restrictive outcome be imposed and maximum penalties be served only in the most serious cases.[19]

A key aspect of sentencing in New Zealand is that a sentencing Judge maintains broad discretion to tailor the outcome of a case to the individual's personal circumstances. However, the Judge will always be required to adhere to broad legislative principles and higher court guideline judgements that provide guidance on how sentencing judges should approach a number of similar sentencing situations. This is consistent with the well-known legal principle *stare decisis* which dictates that like cases be treated alike. Nevertheless, it is important to note that Judges do retain discretion to assess the circumstances pertaining to each individual as a whole.

The Sentencing Act provides the means to allow sentencing Judges to consider the cultural background of offenders. This information can relate to an offender's family/whānau, whakapapa, geographical and genealogical connections and may include "the effect of colonisation on the offender and his or her wider tribal community", amongst other things.[20] One Judge has specified that the Act may be applied to allow courts to address problems with systemic bias in sentencing.[21]

b. Section 27

> **27 Offender may request court to hear person on personal, family, whānau, community, and cultural background of offender**

[17] *AW v R* [2016] NZCA 377 at [45].
[18] Sentencing Act 2002, section 8(i).
[19] Section 8.
[20] David Green *A case for Judicial Guidance: The Treatment of Cultural Background Information in Sentencing Māori in New Zealand.* (Draft: Oxford Scholar Paper, December, 2016). Retrieved from Khylee Quince) at 12.
[21] T Clark "Sentencing Indigenous Offenders" 20 AULR 245 (2014) at 257 citing JustSpeak Māori and the Criminal Justice System: A Youth Perspective (JustSpeak, March 2012) at 35.

> (1)If an offender appears before a court for sentencing, the offender may request the court to hear any person or persons called by the offender to speak on—
>
> (a) the personal, family, whanau, community, and cultural background of the offender:
>
> (b) the way in which that background may have related to the commission of the offence:
>
> (c) any processes that have been tried to resolve, or that are available to resolve, issues relating to the offence, involving the offender and his or her family, whanau, or community and the victim or victims of the offence:
>
> (d) how support from the family, whanau, or community may be available to help prevent further offending by the offender:
>
> (e) how the offender's background, or family, whanau, or community support may be relevant in respect of possible sentences.

If a sentencing Judge so requires, they have the ability to call an independent report writer to specifically examine an offender's cultural background if they think it may assist in the sentencing process.[22] Furthermore, section 27 of the Act provides that an individual may request a court to hear a speaker on personal, family, whānau, community and cultural background of the individual. This may include the way in which that background information may have related to the commission of the offence, any resolution attempts, issues relating to the offence, involving the offender and his or her whānau or community and the victim or victims.[23] However, research conducted by the Ministry of Justice indicates that there is currently a low level of awareness of the applicability of the provision to Māori offenders and an uncertainty into the scope and application of the provision.[24] Moreover, there are very few reported cases that specifically refer to cultural reports or cultural information at sentencing.

Parliamentary concern for the over-representation of Māori as offenders in New Zealand is reflected in s27, and its predecessor s16 of the Criminal Justice Act 1985. Section 16 was specifically enacted to address what was then considered a crisis in Māori offending and imprisonment rates, by Minister of Justice Geoffrey Palmer. Another key commentator, Judge O'Driscoll noted that:

> It is clear that s16 CJA 1985 was introduced largely because of the disproportionately high rate of imprisonment of Māori and it was envisaged that the section would assist to address the

[22] Sentencing Act, section 26(4).
[23] Section 27.
[24] A Chetwin, T Waldegrave and K Simonsen *Speaking About Cultural background at Sentencing* Wellington, Ministry of Justice, 2000, at 51-58.

> problem by encouraging the use or the availability of alternatives to imprisonment for Māori offenders. [25]

The Judge goes on to say that the intention of the legislation was that courts should receive information on Māori cultural patterns and on alternative programmes and rehabilitation of Māori offenders. However, the provision was couched in culturally neutral language, so that any offender could avail themselves of the opportunity to have a person speak to their background at sentencing.

In its earlier iteration, the provision was very much under-utilised, and the re-worded provision not only gives clearer guidance as to the nature of the information sought from a "cultural speaker", but also enables the court, in s 27(5) to suggest that such a speaker may be of assistance if the offender has not called of their own volition.[26]

Section 8(i) sits alongside s27 in the Sentencing Act in giving it explicit recognition of the relevance of cultural background in sentencing, providing that the court must take into account "the offender's personal, family, whānau, community and cultural background in imposing a sentence or other means of dealing with the offender with a partly or wholly rehabilitative purpose".[27] This provision is often referred to in the absence of a s27 application, which is invariably raised by counsel, notwithstanding the ability of the Judge to call for a cultural speaker pursuant to s27(5).[28]

Although it would appear that s27 and the use of cultural information at sentencing could be used as a powerful mitigation tool for Māori, the resulting case law is not so convincing. The following section looks chronologically at the way in which Judges have dealt with cultural information in a number of different cases.

[25] Judge O'Driscoll "A powerful mitigating tool?" on s27 of the Sentencing Act 2002 (2012) NZLJ., pp 358 – 360 at 359.
[26] A Chetwin et al, *Speaking About Cultural Background at Sentencing: Section 16 of the Criminal Justice Act 1985* (Ministry of Justice, Wellington, 2000).
[27] Sentencing Act 2002, section 8(i).
[28] *R v Mason* (2012) NZHC 1849 and *Mika v R* [2013] NZCA are examples of appellate level cases where the court considered Māori cultural background factors pursuant to s8(i) in the absence of a s27 application by defence counsel.

IV. CASE HISTORY

The legislative history of s27's predecessor, s16 of the Criminal Justice Act 1985, was first discussed in the case *Wells v Police* [1987] 2 NZLR 560 (HC). In this case, the issue to be addressed was whether Parliament intended cultural background evidence to be adduced formally (including after an oath was sworn, with other evidential requirements, and with the need to avoid hearsay), or whether people could rightly "speak to" cultural background matters. In considering this issue, Justice Smellie reviewed the intention behind the provision and concluded that the section was specifically introduced to address disproportionate rates of Māori offending.

Just a few years later the court applied this decision in the case *R v Watson CA360/90* (19 April 1991). In this case two sons were convicted of cannabis offending for involvement with their father's operation. The Court of Appeal recognised that their involvement was in part due to a sense of "whānau aroha" (family loyalty and affection). This made it more difficult for the sons to say no to their father's request for assistance. Their sentences were accordingly reduced. Nevertheless, it was not until the case of *R v Bhaskaran* CA333/02, 25 November 2002, that a presumptive right for s 27 reports to be heard was properly established.

The case *Nishikata v Police* HC Wellington AP126/99, 22 July 1999, provided an example of a case where the nexus between Māori heritage and culpability was established. The appellant received a reduced sentence of 18 months' imprisonment to two years' supervision where the offender strongly identified as being Māori and acted violently when goaded by the victim's abuse of a Māori elder for whom he had great respect. Glendall J noted: The penalty must reflect matters of mitigation arising from an offender's background and which recognises the structure and operation of the society within which he lives and in particular the degree to which the cultural or ethnic heritage predominates, in any problems of a cross-cultural nature. Up until the more recent case of *R v Rakuraku*, it would appear that the majority of Judges considering background information required this nexus between the information provided and the offending in order for the Judge to invoke their discretionary rights to allow a lesser sentence. This was evident in the cases *Mika v R* [2013] NZCA 648 and *RS (CA21/2014) v R* [2014] NZCA (*RS v R).*

The argument put forth in the case *Mika v R* was that the appellant, Fabian Mika, should be entitled to a discount of 10% based on his cultural heritage of being Māori. Mr Mika appealed his sentence as manifestly excessive because the Judge failed to take into account a 10% discount to reflect his Māori heritage and "its associated disadvantages". The Court held:

> [A]n absolute requirement that a court allow an offender a fixed discount against an otherwise appropriate starting point solely on account of his or her ethnicity is of such fundamental and far-reaching importance to sentencing policy that it could only be sanctioned by Parliament: and if the legislature had intended that courts must apply such a principle then we have to assume that it would have made that intention plain in the Sentencing Act or a subsequent statutory instrument. [29]

In the case *RS v R* the Judge failed to consider section 27 of the Sentencing Act of his own motion. The Court reasoned that the available material did not show a nexus between RS's background and the serious and violent offending which was the subject of the sentence. The Court went on to say that the serious nature of the offending in light of RS's prior record of serious offending precluded any finding of mitigation for ethnic or cultural reasons. Last, and relevantly, the Court relied on Mika and recorded that "a particular ethnicity or cultural background can never be a ground in itself for a discount in sentence".

It was not until the case *R v Rakuraku* [2014] NZHC 3270, that authority was given for the position that cultural background can in fact inform offending without a required nexus. *R v Rakuraku* is an excellent example of a case where background information was able to influence the Judge's decision to allow a lower sentence. Justice Joe Williams sentenced Mr Rakuraku to the minimum period of imprisonment for murder. This was an unusual sentence as the type of murder was of a particularly serious nature and involved a number of serious aggravating factors. However, in light of the cultural report that Justice Joe Williams received, the Judge felt that he was entitled to utilise his sentencing discretion in this instance. The report received recorded that Mr Rakuraku's life was one that was littered with much trauma of its own kind. The report included information not only regarding Mr Rakuraku's own circumstances but also those of his iwi, Tuhoe, who suffered immensely under the effects of colonisation. Over the course of his judgement, Justice Joe Williams eloquently articulates how Mr Rakuraku's cultural background impacted tragically on his present circumstances.

[29] *Mika v R* [2013] NZCA 648 at [52].

Although the Judge draws a casual link between Mr Rakuraku's background and his criminality, he does not specifically link this information to the offence. Justice Joe Williams' sentencing of this case demonstrates the extent to which understanding history and cultural background can lead to mitigating factors in sentencing.

However, it would appear that some reluctance to consider cultural background as a mitigating factor can be found, as is the case with the judgement of *Fane v R* [2015] NZCA 561. In this case, counsel for the appellant, Annette Sykes, argued a failure to consider the offender's cultural background under s8(i) of the Sentencing Act and not having raised the possibility of evidence provided through s27. The Court of Appeal recorded that s27 does not impose a duty on a Judge to raise it, but that there will be cases where the particular context makes it appropriate to invoke discretion. The court concluded that a nexus between Mr Fane's cultural background and his serious and unprovoked attack was not established, and accordingly it could not mitigate his culpability for this offending. They went on to say that whilst they considered that the cultural information evidence was obviously sincerely given, they could not conclude that it provided a significant mitigating factor justifying an independent discount from the starting point adopted.

V. CONCLUDING STATEMENTS

At a recent conference, presiding Judge of the Matariki Court, Greg Davis, stated "I think we as Judges are being failed by everybody in the system in terms of the information we get about an offender who appears before us for sentencing."[30] The Judge, who was speaking in regards to the under-utilisation of the provision of cultural information in the Sentencing Act and the high rates of Māori incarceration, went on to say "If we are going to address the rate of Māori imprisonment... we have to be doing this at every sentencing - otherwise we're just going to fiddle with the edges and nothing more."

This review has highlighted the fact that Judges hold a discretionary power that may allow cultural information at sentencing to be used as a significant tool for addressing the over-representation of Māori in the criminal justice system. It has been proposed that although there is provision for cultural information at sentencing it is still vastly under-utilised and still highly

[30] Judge Greg Davis "Our prison rates are on Judges, too" (Sir Peter Williams QC Penal Reform League annual conference, Russell, 9 June 2018).

contentious when actually applied in court. It is submitted that, were more cultural reports incorporated more often and to become the norm in our current criminal justice system as was originally intended, there may be more of an opportunity to see whether or not rates of incarceration and recidivism improve for Māori long-term. In saying this, it is high time that something be done about the increasingly bleak situation for Māori and that addressing the disproportionate rates of our people in the criminal justice system become an important focus for the New Zealand government.

In the meantime, and in order to promote the use and collection of cultural information for presentation at sentencing, the writer has undertaken the task of developing a resource which might assist individuals, families, whānau, lawyers or anyone commissioned to do so. The resource is briefly explained in the next section and will be attached alongside this report.

VI. HE PUKA MŌ TE AROMATAWAI AHUREA – A resource for the collection of Cultural Information

He Puka Mō Te Aromatawai Ahurea, is a booklet designed specifically to facilitate the collection of material for the purposes of individual cultural information which is to be presented in court for sentencing. The aim of the booklet is to allow a guideline of questions and specific considerations to keep in mind for a person wishing to collect relevant cultural information to present in court. It is by no means an exact method for which cultural information should be collected and presented but may be used as a guide where necessary. It is recommended that any person seeking to collect cultural information, whether it be an individual report writer, lawyer, community leader, collective whānau, or any other person, sit down with the individual requiring the cultural assessment and go through the questions together, taking time to record as much information as possible. Once the booklet has been completed, the information gathered may be used for a designated speaker to form a speech which they wish to be heard in Court or to form a written cultural report to be submitted for the purposes of s27 of the Sentencing Act 2002.

It is hoped that this booklet may be shared amongst different networks and social service organisations or any other interested parties, along with the 'Cultural Speaker at Sentencing' pamphlet and booklet in order to gain traction with the utilisation of cultural provisions at sentencing. Please see attached.