

REPORT TWO

Pacific Peoples and the Criminal Justice System in Aotearoa New Zealand

Written by Litia Tuiburelevu, Elizabeth Lotoa,
Isabella Ieremia & Gabriella Coxon-Brayne



With contributions from The University
of Auckland Equal Justice Project



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Michael &
Suzanne
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UNIVERSITY OF
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¹ Moana Jackson *The Maori and the Criminal Justice system: A New Perspective – He Whaipāanga Hou* (Policy and Research Division, Department of Justice, Study Series 18: Part 1, February 1987) [Jackson (1987)]; and Moana Jackson *The Maori and the Criminal Justice system: A New Perspective – He Whaipāanga Hou* (Policy and Research Division,

Overview

This is the second report in a two-stage research project entitled “Pacific Peoples and the criminal justice system in Aotearoa New Zealand.” Led and written by an all-Pacific team, we hope this research can contribute to transforming Aotearoa New Zealand’s criminal justice system. The Michael and Suzanne Borrin Foundation generously funded this report to address the lack of legal research about Pacific peoples and the law and, more specifically, a need to better understand our experiences of the criminal justice system.

The overarching research question asks:

What are the key systemic issues affecting Pacific peoples in Aotearoa New Zealand’s criminal justice system, and how might these be overcome?

This phase of the research centres on the experiences of our Knowledge Holders – Pacific people who have interacted with the justice system as individuals, family members or legal professionals. It goes without saying but goes better with saying, that the views contained herein do not represent that of *all* Pacific peoples. We acknowledge that most of our Knowledge Holders are Polynesian (Samoan/Tongan), under 40, and based in Tāmaki Makaurau. This research attempts to understand Pacific peoples’ relationship to the criminal justice system, but broader engagement is needed to paint a fuller picture of our experiences. As a baseline for “good policy”, we believe that any change should be forged by those at the coalface of the system.

The calls to transform the justice system have been loud and constant - evidenced in the many advocacy campaigns and research reports outlining why and how this needs to be done. We want this research to exist within, and expand upon, that existing body of knowledge as an act of solidarity with all those who have fought for our collective liberation.

The most radical possibilities already exist in our communities; be it in the playgrounds, shopping centres, community halls or classrooms. It is a matter of meeting people where they are and hearing what they say. Again, we circle back to wayfinding – as a method and metaphor – to illustrate this point. In Julian Aguon’s article ‘To Hell with Drowning’, the fight for climate justice is positioned within the intergenerational landscape of wayfinding, acknowledging the teachings of Lamotrek master navigator Larry Raigetel as its framing.² A compass is grafted onto a sky of stars as “an elaborate body of directional information collected and committed to memory by countless navigators before him.”³ Stars are only one feature of this map - the navigator reads countless signs of ecological change across the symmetry of sky and sea, journeying towards land. The incredible story of master navigator Mau Piailug is also intimately known through the teachings passed down to his student Nainoa Thompson. Looking towards Tahiti from Oahu, Piailug asked Thompson “Can you see the Island?” To which Thompson replied, “I cannot see the island but I can see an image of the island in my mind.”⁴

Department of Justice, Study Series 18: Part 2, November 1988) [Jackson (1988)].

2 Julian Aguon “To Hell With Drowning” (1 November 2021) The Atlantic <www.theatlantic.com>.

3 Ibid.

4 Jeff Moag “Mau Piailug, One of the Last Wayfinders, Followed the Stars to Tahiti” (15 March 2019) Adventure Journal <www.adventure-journal.com>.

5 Chellie Spiller, John Panoho and Hoturoa Barclay-Kerr *Wayfinding Leadership: Ground-Breaking Wisdom for Developing*

In wayfinding, “the world is your compass – and you and the waka are the needle.”⁵ The waka is fixed beneath the cosmos with the world moving around it. Gina Cole likens the waka’s calibration to a passenger sitting on the train; “you and the train are one item, and as you look out the window, the world is flying past you.”⁶ As Cole explains:⁷

In the practice of wayfinding, there is a difference in perception between Pacific conceptions of navigation and those of the West, in relation to the position of the navigator on the vessel.

In wayfinding navigation, islands move on the sea around the waka and the navigator who remain stationary. In this etak system of moving references, the islands may be out of sight beyond or below the horizon, but wayfinders hold the past home base of departure and the future destination in the present intention, in what Spiller et al. describe as the “eternal present” as they move towards landfall in the future.

In this way, the “destination” is already determined in the present, emerging from those already possessing the knowledge, histories, and visions of a future landfall in their mind’s eye.

Leaders (Huia, Wellington, 2015) at 35.

6 Spiller et al., at 35.

7 Gina Cole, “Wayfinding Pasifikafuturism: An Indigenous Science Fiction Vision of the Ocean in Space” (Phd Thesis, Massey University, 2020), at 22.

Backward

This Report is the second output of a research project broadly exploring Pacific peoples' experiences of Aotearoa New Zealand's criminal justice system ("justice system"). More specifically, the project seeks to better understand the overrepresentation of our people, especially our men, within the confines of the justice system and what key systemic barriers they encounter. This research is not solely offender focused and includes the knowledge of survivors, family members and legal professionals.

The research question was devised with reference to the project's overarching aims;

- A. To provide a safe space for Knowledge Holders to talanoa about their experiences of navigating the justice system;
- B. To offer a perspective on Pacific peoples' relationship to the justice system anchored in our Knowledge Holders' stories;
- C. To offer possibilities for transformation that are situated in conversation with the work already undertaken, whilst also acknowledging our place as Taiwi (with distinct whakapapa connections to Tangata Whenua), and obligations to honour Te Tiriti o Waitangi.

At this juncture, we must attend to the knots emerging from Report 1. Admittedly, our feelings towards the justice system (and the research itself) are mired in cynicism. It is challenging to operate from a framework of hope when we hear countless stories of trauma from members of our community. How do we properly honour our Knowledge Holders' stories without subjecting them to further exploitation? Who is this research even trying to "convince"? Is more research into the justice system even appropriate during a time of urgent, interlocking crises?⁸

The crisis of the current system reflects generations of political unwillingness to dismantle structures of oppression. Successive governments continue to stockpile research with little effort to usher in transformative change. Politicians on both sides of the spectrum are the last to move the needle on progress. While we hope that law and policymakers engage with this work, we reject the impulse to defang its radical challenges for the sake of buy-in. At the very least, it is our responsibility "to call attention to, and interrogate, power" rather than reinforce the system as it stands.⁹

To recalibrate our cynicism, we found comfort in the late Toni Morrison's transformative words: "I know the world is bruised and bleeding, and though it is important not to ignore its pain, it is also critical to refuse to succumb to its malevolence. Like failure, chaos contains information that can lead to knowledge – even wisdom. Like art."¹⁰ This made us curious about the generative possibilities that emerge from frustration. To do/say/speak nothing only upholds frameworks of domination. Yes, the criminal justice system is a chaotic vortex - but those most deeply entangled in its discord can also lead us to calmer waters.

8 These questions were guided by the provocations in Eve Tuck and K Wayne Yang "R-words: Refusing research" in Django Paris and Maisha T. Winn (eds.), *Humanizing research: Decolonizing qualitative inquiry with youth and communities* (SAGE, California, 2014) 223-248.

9 Tuck and Yang, at 244.

10 Toni Morrison "No Place for Self-Pity, No Room For Fear" (23 March 2015) *The Nation* <www.thenation.com>.

Process

“The top of the cliff isn’t the place to look at us; come down here and learn of the big and little currents, face to face.”

— Mary Kawena Pukui¹¹

Western legal research typically favours analysis made at the top of the cliff. Implicit in this positioning is a dangerous power imbalance and a misguided presumption of “objectivity”. As criminologist Juan Tauri contends, the Western academy typically favours methods that are “non-engaging”:¹²

Concomitant with the colonising process, criminological research has often discounted or dismissed Māori and Pacific peoples’ knowledges as simply ‘perspectives’ and has favoured research methods that are ‘non-engaging’. That is, they do not privilege the need for *kanohi ki te kanohi* (face-to-face) or *faaalalo* (reciprocal respect) research approaches and active researcher engagement in the process of gathering research or data.

For this reason, research is often deemed a “dirty” word by communities who are all too familiar with being the subjects of extractive, unreflexive “study”.¹³ Moreover, Indigenous researchers wanting to work within their communities are often met with resistance by the Western academy which claims that our cultural ties make us incapable of telling our history “correctly” and “objectively”. We believe our relational ties mean we have a greater responsibility to tell those stories truthfully.

The need to engage *kanohi ki te kanohi* was given in designing this research project. To properly honour our Knowledge Holders’ stories, we had to meet them where they were, acknowledging that we had everything to learn and very little to give.

The foundation of our research methodology was to simply “talk story”, affording Knowledge Holders the space to freely share their experiences through *talanoa*. “*Talanoa*” is a pan-Pacific term “rooted in Pacific oratory tradition as a type of inclusive, participatory and transparent dialogue”,¹⁴ revolving around the mutual exchange of personal stories, ideas and thinking, whether formally or informally. It is not, however, synonymous with a typical “Q&A”. As Patrick Thomsen explains, “[*talanoa*] allows people to engage in social conversation, which may lead to critical discussions or knowledge creation that generates rich, contextual, and interrelated information to surface as co-constructed.”¹⁵ Though not prescriptive in approach, it is grounded in respect, reciprocity, and empathy commensurate with Pacific cultural engagement practices. In practical terms, the *talanoa* approach afforded us the flexibility to adapt our conversations to the needs and specificities of each Knowledge Holder.

11 Mary Kawena Pukui, *‘Olelo Nōeau: Hawaiian Proverbs and Poetical Sayings* (Bishop Museum Press, Honolulu, 1983) at 24.

12 Robert Webb, Tamasailau Suaalii-Sauni, Talia Wright-Bardohl and Juan Tauri “Building understandings of Māori and Samoan experiences of youth justice: Navigating beyond the limits of official statistics” (2022) 37 *New Zealand Sociology* 70 at 80. See also Juan Tauri, “Indigenous Critique of Authoritarian Criminology” in K. Carrington et al. (eds.) *Crime, justice and social democracy: International perspectives* (Palgrave Macmillan, London, 2012).

13 See Linda Tuhiwai Smith *Decolonising Methodologies: Research and Indigenous Peoples* (Zed Books, 1999).

14 Patrick Thomsen “Transnational Interest Convergence and Global Korea at the Edge of Race and Queer Experiences: A *Talanoa* with Gat Men in Seoul” (2020) 17 *Du Bois Review* 411 at 416.

15 Thomsen, 2020, at 416. See also Timote Vaoleti “*Talanoa* Research Methodology: A Developing Position on Pacific Research” (2006) 12 *Waikato Journal of Education* at 21.

We emphasised that each talanoa was to understand their experiences within the system and they were not required to disclose any personal details relating to their case. It was also appropriate to meet our Knowledge Holders at practical locations outside of the academy and provide food, refreshments and koha for their time. Before each talanoa we prepared a list of the overarching themes we hoped to explore based on how each Knowledge Holder(s) interacted with the justice system; whether as an offender, survivor, family member or legal professional. Litia led the talanoa and one or more research assistants took notes.

Most of our Knowledge Holders were based in Tāmaki Makaurau but we also travelled to Otepōti (Dunedin) and Pōneke (Wellington). Covid-19 lockdown restrictions in 2021 and early 2022 greatly impacted our engagement strategy and extended the research timeline by six months. We had to hold most of the talanoa over Zoom because we could not meet face-to-face.

While digital engagement was not our preferred approach, it allowed us to speak with Knowledge Holders from around Aotearoa New Zealand relatively quickly. From May 2022, we were given the green light to proceed with in-person talanoa although Knowledge Holders were still allowed to speak with us online. We were mindful of prioritising our community's health and safety amidst the ongoing pandemic.

Outreach

Knowledge Holders were primarily recruited through word of mouth and social media. We also connected with various community leaders and organisations who assisted in distributing our call-out to their networks. Given that much of this work took place at the height of the pandemic, many organisations who initially expressed interest in working with us were subsequently unable to as they had to prioritise their Covid-19 response. The recruitment criteria were deliberately broad, inviting any person of Pacific descent, over 18 years old, and who had interacted with the justice system. This also included family members and legal professionals. With the benefit of hindsight, we acknowledge that our Knowledge Holder eligibility was set too wide. Being our first time undertaking qualitative research, we were eager to include as many Knowledge Holders as possible. Given the restrictions of the Covid-19 pandemic and our relative inexperience with qualitative research, it would have been more manageable to focus the talanoa on a specific demographic such as survivors, offenders, family members or legal professionals.

Ethics Approval

The University of Auckland Human Ethics Committee approved the research project on 22 July 2021 (Reference No. 22399). Knowledge Holder consent was obtained before each talanoa. No names or identifying information is used in this report to respect their privacy.

Knowledge Holder Breakdown

Over the course of the last two years, we spoke with **52 Pacific people** who generously shared with us their knowledge and experiences of the justice system. Of these, 13 were offenders (all formerly incarcerated), four were family members, two were survivors, five were prosecutors, five were defence lawyers and five were justice agents. We also facilitated three more extensive talanoa sessions with 18 Pacific peoples (total) who had interacted with the justice system but did not identify as an offender or survivor.

NB: Quotes from our Knowledge Holders are always italicised and will appear at the beginning of each section and throughout the discussion.

Relationship to Report 1

Reports 1 and 2 are designed to be read in conversation. In Report 1, we discussed the relevant literature about Pacific peoples and the justice system across each key stage of the justice process. While Report 1 provides the necessary scholarly context for this project, what became apparent was the lack of work privileging Pacific perspectives. At the end of Report 1, we identified several 'emerging issues' that we wanted to explore in Report 2. These were:

- Pacific researchers have done significant work on the criminal justice system. Still, much of this work is not publicly available, nor has it been implemented by the state and/or relevant justice agencies.
- How settler-colonialism impacts Pacific peoples' relationship to, and within, the justice system.
- The relationship between Pacific peoples' socio-economic status and our engagement with the justice system.
- The dominance of alcohol in offending by Pacific peoples since the 1960s, and whether the justice system appropriately addresses this issue.
- To have a more nuanced conversation about diversity, equity, inclusion, and representation within the legal profession.
- The relationship between Pacific peoples' mental well-being and their engagement with the justice system.
- The need to engage seriously with prison abolition amidst our current carceral crisis.
- How this research can (and should) engage with the ongoing work around constitutional transformation, specifically Matike Mai.

Given the size and scope of this research, not all of these issues have been addressed in this Report. However, we hope that this project offers a launching pad for further work to be done. As stated in Report 1, what carries through this project is an emphasis on inviting and unravelling points of inquiry rather than providing definitive answers.

Throughout this project, we reference Moana Jackson’s seminal work *He Whai-paanga Hou*. Although that piece was specifically about the relationship between Māori and the justice system, we believe much of his analysis broadly applies here, too. First, *He Whai-paanga Hou* remains the superlative system-based analysis of the justice system by locating it within its broader historical and socio-cultural context(s). Second, many Māori and Pacific peoples with shared whakapapa live in Aotearoa New Zealand and navigate the justice system.

Finally, similar issues arise between both groups regarding experiences with racism, victimisation and their interactions with the police, courts, sentencing and prisons. In identifying *He Whai-paanga Hou*’s applicability, we recognise that our experiences are not synonymous with Māori as we, as Pacific peoples, have not suffered the ongoing impacts of 187 years of colonisation.

“The settler-colonial state cannot be relied upon to liberate Pacific peoples and our Māori whanaunga from racist police and prison violence.”

— Dylan Asafo¹⁶

16 Dylan Asafo “Freedom Dreaming of Abolition in Aotearoa New Zealand: A Pacific Perspective on Tiriti-based Abolition” (2022) 2 *Legalities* 82 at 85.







ZDW





The Justice System Is...

“Framing ideas” or “research paradigms” are the underlying beliefs or assumptions upon which the research is based. These frames/paradigms collectively guide the research discussion. As Shawn Wilson describes:¹⁷

Any research represents the paradigm used by the researcher, whether the researcher is conscious of the choice of paradigm or not. Paradigms are about principles that provide a framework for research. As paradigms deal with beliefs and assumptions about reality, they are intrinsically value laden. What is reality? How do we know what is real and what is not? How can we find out more and explore reality? What moral beliefs will guide the ways of the search for reality? These questions are at the heart of what research paradigms are.

In Report 1 we provided positionality statements to introduce ourselves to readers, describe our relationship to the work, and identify what biases and/or blind spots may present in our writing. For this Report, it is equally important to be explicit about the overarching beliefs and frames orienting this project.

Our overarching research frame is this: **racism throbs at the heart of the criminal justice system resulting in racialised inequities, across all stages, for Pacific peoples.** These inequities are not unintended “faults” in the justice pipeline but are the inevitable result of a system born from settler colonialism.

This paradigm has been articulated, in various ways, many times before and will likely be reiterated many times after. Its durability reflects the critical concerns stated by generations of Pacific activists and scholars that the “problem” of Pacific criminality cannot be solved if we fail to seriously reckon with structural inequities and institutional racism both within and beyond the justice system.

The “overrepresentation” of Pacific peoples in the criminal justice system is a contemporary reality moulded by overlapping structural forces many of which preceded our fourth migration wave. While this report cannot provide a complete treatise on settler-colonialism in Aotearoa New Zealand, expanding on its underlying logic is necessary to illuminate how we, as Pacific peoples, are captured within it.

1. A Colonial Import

“Racism and white supremacy are the seminal papa, or foundation, of colonisation. Economic and political interests were key motivations behind the first decisions to “annex” New Zealand, but the colonisers’ presumption that they could assert their power in a land where they had never had jurisdiction before was race-based.”¹⁸

– Moana Jackson

¹⁷ Shawn Wilson *Research is Ceremony: Indigenous Research Methods* (Fernwood Publishing, Canada, 2008) at 33.

¹⁸ Moana Jackson “The connection between white supremacy and colonisation” (24 March 2019) E-Tangata <www.etangata.co.nz>.

¹⁹ Natsu Taylor Saito *Race, Justice and Settler-Colonialism: Why Structural Racism Persists* (New York University Press, New York, 2020) at 30.

²⁰ Patrick Wolfe “Settler Colonialism and the Elimination of the Native” (2006) 8 *Journal of Genocide Research* 387 at 388.

²¹ Wolfe, at 391.

New Zealand sits on stolen Indigenous lands. In the early 1800s, the British Empire invaded Te Ika a Maui, Te Wai Pounamu and Rakiura and inserted tangata whenua into the global colonial racial order. The invasive structure of settler colonialism replicates patterns of colonial extraction and domination but with an important addition - the colonists intend to remain in the colonised territory. Their sovereign prerogative is realised through the territorial acquisition of stolen Indigenous land and is maintained through social, political, legal, and economic institutions made for the settlers' benefit.¹⁹

Its permanence reveals that settler-colonial invasion "is a structure, not an event",²⁰ maintained through Indigenous elimination and subordination. The irreducibility of territorial acquisition is central to the settler-colonial project enforced by its unshakeable belief in White cis-heteropatriarchal supremacy borne from the Doctrine of Discovery and the myth of terra nullius.²¹ It is a totalising regime, crystallising concrete institutions of socio-cultural and economic power. As Yaasana Elena Aguilar Gil writes:²²

The world as we know it today is organized by three systems: colonialism, patriarchy, and capitalism, all of which were consolidated in the midst of catastrophe. Capitalism needs the colonial order; colonialism wasn't installed by the patriarchy. These systems are deeply imbricated. Racism, which orders and classifies bodies, is the son of capitalism, as machismo of the patriarchy and classism of capitalism.

The colonial imagination maintains its power by making invisible "the memory of its own creation, so [it] is assumed to be the natural order of things rather than a construct."²³ The "discovery" of "vacant" land was a figment of the colonial imagination to absorb Indigenous existence into pasture ripe for plunder.²⁴ Similar imaginings apply to the Pacific islands, too. As Mark Matsuda explains:²⁵

The "Pacific" has been reimaged many times by historians, from tales of ancient voyagers to Magellan's space of transit, to an Enlightenment theater of sensual paradise, to a strategic grid of labor movements and military "island hopping", to a capitalist basin, the key to a Pacific Century of emerging wealth and "globalization" at the end of the last millennium.

The rape and pillage of Parihaka, the nuclear bombing of the Marshall Islands, the Black-birding slave trade of the South Seas, phosphate mining in Banaba, genocide in West Papua, and the "Death Ship" landing on Samoa's shores are all "colonial projects [which] were 'both symbolic projects and narcissistic, imaginary ones', which further subjugated Indigenous peoples within the colonial imaginary as 'props in [the] colonisers' fantasy scenarios."²⁶

22 Yásnaya Elena Aguilar Gil "Writing in the face of catastrophe" (26 February 2020) Toward Freedom <www.towardfreedom.com>.

23 Lani Lopesi *Bloody Women* (Bridget Williams Books, Wellington, 2021) at 88.

24 Taylor Saito, at 51.

25 Cited in Lopesi, at 90. See Matt K. Matsuda "Introduction: Encircling the Ocean" in *Pacific worlds: a history of seas, peoples, and cultures* (Cambridge University Press, Cambridge, 2012) at 2.

26 Lopesi, 2021, at 89. See: George Steinmetz *The Devil's Handwriting: Precoloniality and the German Colonial State in Qingdao, Samoa, and Southwest Africa* (University of Chicago Press, Chicago, 2007).

Processes of exclusion and inclusion are central to the settler-colonial project, mediated through manufactured dynamics of difference.²⁷ Thus, in addition to Indigenous elimination/subordination, a core mechanism of the settler-colonial project is the elimination/subjugation of migrants of colour who are "subjected to similar, although certainly not identical, strategies of exclusion and exploitation [compared to Indigenous peoples]."²⁸

We contend that Pacific peoples are uniquely situated within this settler-colonial regime owing to our pre-colonial relationships with Māori; our proximity to Aotearoa as Indigenous inhabitants of Te Moana-Nui-a-Kiwa; and New Zealand's various, and ongoing, colonial prerogatives in the Pacific islands. Through the expansion of capitalist industry, Settler colonialism works within the broader frameworks of empire-building and imperialism, tying together experiences of dispossession between and beyond colonial borders. While Māori and Pacific peoples share similar experiences of marginalisation, we are "racialised and oppressed differently by the settler-colonial state such that our political projects are incommensurable but not incompatible."²⁹

Māori are racialised within the settler origin story that subsumed Indigenous peoples into a "territorial wilderness", rendering them as subhuman "beasts" and "savages", and as frontiers to civilise and disappear.³⁰ Comparatively, Pacific peoples (as a diasporic group) are racialised as a foreign "Other"/Alien, often used as a disposable, low-cost labour pool to "extract value from the invaded and expropriated Indigenous lands".³¹ Our "Otherness" is mediated through colonial and imperial dynamics that situate us as perpetual "outsiders" to (White) New Zealand.

In turn, we become vulnerable to the whims of labour demands and personalities of successive settler governments.³² As well as being "Otherised", Pacific peoples have historically been pitted against Māori (often regarding employment and government resources), in a colonial divide-and-rule tactic that has impeded collective healing, whakawhanaungatanga and solidarity building.

The legal system is settler-colonial apparatus that has been and continues to be crucial to maintaining monocultural hegemony. Despite its claims of "liberty", "equality" and "justice" for all, its very being is steeped in a "monocultural myopia, [which] when coupled with the economic demands of an imperial ethic, has led to a dismissal of other cultural systems as not being 'legal', and a subsequent imposition of the Western way. Māori society was one of many colonial victims of the short-sighted monolegalism."³³

The appointment of the first Māori Chief District Court Judge (Judge Heemi Tau- maunu) and the creation of the Te Ao Mārama model in the district courts are arguably the most significant steps the government has taken to begin addressing this "monocultural myopia", and the longstanding calls for transformational change.

27 Taylor Saito, at 44.

28 Taylor Saito, at 110.

29 Arama Rata and Faisal Al-Asaad "Whakawhanaungatanga as a Māori Approach to Indigenous-Settler of Colour Relationship Building" (2019) 45 New Zealand Population Review 211 at 213.

30 Taylor Saito, at 58.

31 Monika Batra Kashyap "Unsettling Immigrations Laws: Settler Colonialism and the U.S. Immigration Legal System" (2019) 46 Fordham Urb. L. J. 548 at 557.

32 Kashyap, at 558. See: Sean Mallon, Kolokesa Māhina-Tu'ai and Damon Salesa *Tangata o le Moana: New Zealand and the People of the Pacific* (Te Papa Press, Wellington, 2012).

The Ministry of Justice says that with Te Ao Mārama, “all people who come to court to seek justice will be seen, heard, understood and able to meaningfully participate.”³⁴ However, we question how these aspirations can be touted as transformational when, if anything, they are core justice principles that all individuals should already be entitled. That such an approach is heralded as being a proportionate response to calls for transformational change underscores how deficient the current system is.³⁵

Before the imposition of the colonial legal system, Māori lived in accordance with tikanga - the first law of Ao.³⁶ Unlike the “imposter legal system” witnessed today, tikanga:³⁷

Served the needs of whānau, hāpu and iwi for a thousand years before tauīwi (foreigners) arrived, providing a comprehensive philosophical framework within which relationships were negotiated and disputes were resolved. We had no police, no courthouses and an incarceration rate of zero percent.

In the early 19th century, settler society imposed its monocultural view of what it considered to be “law”, and “justice”, suppressing Māori legal traditions and assuming a monopoly on decision-making despite the rights guaranteed in He Whakaputanga o te Rangatiratanga o Nu Tirenī (1835) and, later, Te Tiriti o Waitangi (1840). While the “rule of law” is often uncritically extolled as the great equaliser in how justice is dispensed, it was, and is, “allied with the concerns of the newly propertied settlers and government” such that the core tenets of our justice system are neither neutral nor fair.³⁸

Decisions about which acts and omissions are deemed “criminal” are institutionally determined. For this reason, the criminal law “is not an inviolate repository of right and wrong” but rather “a tool related to the cultural, racial and economic features of our society.”³⁹ Given that collectivist Māori economic relations were in contradiction to capitalism, the settler state utilised the repressive apparatus of police, courts, and prisons to attempt to override this contradiction and remove Māori resistance to colonisation.

Looking at the relationship between incarceration and colonisation through a historical materialist lens, Emilie Rākete critically maps how prisons enabled the confiscation of Māori land and the establishment of the colonial capitalist economy.⁴⁰ Rākete explains how neoliberalism furthered this class war on Māori, of which mass incarceration was a critical feature. Between 1980 and 2016, the sentenced prisoner population grew by 170 per cent - within this, the population of wāhine Māori in prison increased by approximately 300 per cent.⁴¹ Along with growing socioeconomic precarity due to the decimation of welfare and employment security, “the ideological superstructure of neoliberal capitalism re-represents the crime that is an inevitable consequence of its class violence as the personal failing of irresponsible individuals.”⁴²

33 Moana Jackson *He Whaipāanga Hou: Part II*, at 35.

34 Ministry of Justice “Te Ao Mārama” <www.justice.govt.nz>.

35 We thank Chris Merrick for this suggestion.

36 Ani Mikaere referred to tikanga Māori as the “First Law” of Aotearoa/New Zealand in Ani Mikaere “The Treaty of Waitangi and Recognition of Tikanga Māori” in Michael Belgrave, Merata Kawharu and David Williams (eds.) *Waitangi Revisited: Perspectives on the Treaty of Waitangi* (2nd ed, Oxford University Press, Auckland, 2005) at 330.

37 Ani Mikaere “Three (Million) Strikes and Still Not Out: The Crown As Consummate Recidivist” in *Colonising Myths - Māori Realities: He Rukuruku Whakaaro* (Huia, Wellington, 2011) at 107.

Many Māori scholars have already detailed the imposition of the Westminster legal system on Māori communities to illuminate how “the criminal [justice] sector entrenches violence both in its assumption of authority to define criminal offending as well as in the way its processes and imprisons Māori in such excessive numbers.”⁴³

Addressing the incarceration crisis calls for deconstructing colonial capitalism and its endless reproduction of violence against Indigenous peoples. It also calls into question the positionality of working-class Pacific peoples within this landscape of colonial racial capitalism in Aotearoa New Zealand and how its materialist foundations and developments shape our own experiences of the justice system.

2. Racist

If racism is colonisation’s “seminal papa”, any institution seeded in it is sustained by its fertile ground. Racism is “the systematic stratification, domination, and marginalisation of individuals and communities on the basis of ascribed racial identity, which is itself socially constructed through reference to differences in phenotype and culture.”⁴⁴ As it stands, the rule of law has not remediated the justice system’s racial inequities. Race is a sociological construct, though it remains one of the most persistent organising factors in our social relations. As seminal Critical Race scholar Derrick Bell opined, race mediates every aspect of our lives and has consistently functioned as a proxy for power.⁴⁵ Racism exists in both interpersonal and institutional dynamics. For the purposes of this research, we focus on the latter. Analysing the justice system within a settler colonial framework exposes it as integral to the continued invasive structure of Indigenous peoples and racialised “Others”.⁴⁶

The term “institutional racism” was first coined by Black activists Kwame Ture and Charles V. Hamilton in *Black Power: The Politics of Liberation in America*:⁴⁷

Racism is both overt and covert. It takes two, closely related forms: individual whites acting against individual blacks, and acts by the total white community against the black community. We call these individual racism and institutional racism. The first consists of overt acts by individuals, which cause death, injury, or the violent destruction of property. This type can be reached by television cameras; it can frequently be observed in the process of commission. **The second type is less overt, far from subtle, less identifiable in terms of specific individuals committing the acts. But it is no less destructive of human life. The second type originates in the operation of established and respected forces in the society, and thus receives far less public condemnation than the first type.**

38 Jackson, *He Whaipāanga Hou Part II*, at 110.

39 Alec Karakatsanis *Usual Cruelty: The Complicity of Lawyers in the Criminal Injustice System* (The New Press, New York, 2019) at 21.

40 Emilie Rākete “Beneath the prison, a faultline: A historical materialist analysis of mass incarceration in Aotearoa” (Master’s Thesis, University of Auckland, 2019).

41 Kim Workman and Tracey McIntosh “Crime, punishment and poverty” in Max Rashbrooke (ed) *Inequality: A New Zealand Crisis* (Bridget Williams Books, Wellington, 2013) at 120.

3. Not Broken

Although definitions of institutional/systemic/structural racism vary across the literature, the essence of Ture and Hamilton's words holds. Focusing our analysis on how systems actively "seek the oppression of racialised bodies" through ideology, policy, process, customs, norms, and culture invites a more holistic inquiry into racism's embeddedness in the justice system.⁴⁸ In the last 50 years there has been a significant body of research exploring the intersection of race and justice as a dominant factor for the disproportionate criminalisation and incarceration of non-White people.⁴⁹ The research is unanimous in finding that in Western settler-colonising states (New Zealand, Australia, Canada, and the United States), Black, Brown, and Indigenous peoples are overrepresented in adverse criminal justice outcomes.⁵⁰

That is, they are more likely to be racially profiled, stopped, searched, and arrested by police and experience higher levels of police activity and presence within their communities; they are also less likely to receive an informal warning or caution, and are more likely to be charged and prosecuted.

If their matter reaches the prosecution stage these groups are less likely to receive name suppression,⁵¹ receive diversion or discharge without conviction, plead not guilty, or be granted bail, but are more likely to be subject to remand in custody and receive a conviction. Following sentence, these groups are less likely to receive a fine and/or non-custodial sentence and have a greater likelihood of being incarcerated.⁵² We inhabit, as Eduardo Bonilla-Silva describes "a racialised social system".⁵³

The justice system is "rooted in the same cultural foundations as other major social structures such as the education system, [and] it is inevitably influenced and shaped by the same cultural values and ideals."⁵⁴ Thus, racism has become a primary determinant in Pacific peoples' education and economic prospects, access to healthcare or housing, infrastructure and social resources in our neighbourhoods, and interactions with law enforcement and the judicial system. As American legal scholar Natsu Taylor Saito argues, "[it is] only by acknowledging the persistence and adaptability of racism will we be able to envision strategies capable of bringing about meaningful structural change and perhaps even liberation."⁵⁵

Drawing our attention to these dynamics illustrates how racial violence is "not a departure from, but rather constitutive of the criminal justice system."⁵⁶ This framing offers a departure from the tiring political queries about whether the criminal justice system is racist (yes) and urgently reorients our attention into interrogating how and why it reproduces racist outcomes.

42 Rāketē, at 102.

43 Mikaere, at 171.

44 Noah De Lissovoy "Conceptualising the Carceral Turn: Neoliberalism, Racism, and Violation" (2012) 39 Critical Sociology 739 at 742.

45 See Derrick Bell *Faces at the bottom of the well: the permanence of racism* (Basic Books, New York, 1992).

46 See Edward Said *Orientalism* (Pantheon Books, New York, 1978).

47 Kwame Ture and Charles V. Hamilton *Black Power: The Politics of Liberation in America* (Random House, New York, 1967).

48 Matada Research Group *Pacific Pay Gap Inquiry- Literature Review* (Human Rights Commission, 2022) at 13: See Sara Ahmed *On Being Included* (Duke University Press, Durham, 2012) at 39-42.

49 Bronwyn Morrison *Identifying and Responding to Bias in the Criminal justice system: A Review of International and New Zealand Research* (Ministry of Justice, November 2009) at 31.

50 Morrison, at 31. We are paraphrasing here to differentiate between Indigenous and ethnic minority groups within the identified settler-colonies.

There appears to be a broad consensus amongst some commentators, scholars, and politicians that our justice system is "broken" and in need of urgent "reform".⁵⁷ As evidence, they point to the mass incarceration of Māori, the delays in court processing, and the general "overrepresentation" of Māori and Pacific peoples across all its indices as demonstrative of the system's failures. While these facts are often presented to inspire change, implicit in their framing is the assumption that they are aberrant, unexpected leakages from an otherwise "working" pipeline - and not the consequences of a system flawed by design. At best, the "brokenness" rhetoric encourages a degree of critical re-assessment by those who might believe otherwise. At worst, it lets liberal appeals for reform usurp any radical and transformative interventions. The justice system is "broken" insofar as we believe in the myth that it ever served to promote the equality, liberty, and well-being of all people.⁵⁸ Once the system is understood as a colonial apparatus to "preserve racial and economic hierarchy through brutality and control", then we see that it does, in fact, work rather well.⁵⁹

Moana Jackson identified this issue some 40 years ago, stating:⁶⁰

Inequities which may be uncovered are neither processed into theoretical questionings of decision-making nor used to develop analysis of structural appropriateness. They are inequities seen as aberrational rather than systemic. In analytic terms, this has had two effects. It has limited research to the degree of people's adaptation to set structures, rather than an assessment of the structures themselves. It has also meant that most research into the operation of the justice system towards Māori offenders has merely described the existence of certain disparities between them and "comparable" Pakeha offenders.

Reformist ideology seduces us into preserving the status quo, offering enough superficial tweaks to signal signs of "improvement" whilst deceptively avoiding "changes that will transform the system [with] tweaks that will curb only its most grotesque flourishes."⁶¹ In concrete terms, this might look like policies to create "better prisons", "nicer police" and putting more Māori, Pacific and other racial minorities into positions of power and influence. Anyone who dares to challenge dominant ideological formations and re-imagine the system in the context of abolition and constitutional transformation is then called naïve and unrealistic. As Tracey MacIntosh reminds us:⁶²

51 As part of its "Is This Justice?" series in 2021, Radio New Zealand reported that although Pacific peoples made up 10 per cent of charges for sexual assault and related offences; for 12 per cent of charges for acts intended to cause injury; and for 6 per cent of illicit drug offences; they accounted for only 4 per cent, 5 per cent and 0 per cent of name suppression grants for those respective offence groups. See: Te Aniwa Hurihanganui "Pākehā granted name suppression three times as often as Māori" (17 September 2021) Radio New Zealand <www.rnz.co.nz>.

52 Morrison, at 31.

53 Eduardo Bonilla-Silva "Rethinking Racism: Toward a Structural Interpretation" (1997) 3 American Sociological Review 465 at 465.

54 Jackson, *He Whaitaanga Hou Part II*, at 12.

55 Taylor Saito, at 9. See: Derrick Bell "Racial Realism" (1992) 24 *Conn. Law Rev* 363-380.

56 Meghan G McDowell "Insurgent safety: Theorizing alternatives to state protection" (2017) 23 *Theoretical Criminology* 43 at 49.

But it would be difficult to think of any major social transformation in the history of humanity that wasn't regarded as unrealistic, delusional, or naïvely utopian by the large majority even a few years before what was once unthinkable became a reality. Those once unfathomable historical transformations include the abolition of slavery, the end of the British Empire, the end of the Cold War, the deconstruction of apartheid, and the embrace of marriage equality around the world. Right up until these things happened, people believed they couldn't happen.

Therefore, we ground our discussion following a vision of transformation that rejects reform.

Your way objective analytic
Always doubting the truth
Until proof comes
Slowly quietly
And it hurts
My way subjective gut-feeling
Like always sure of the truth
The proof is there
Waiting
And it hurts
— Konai Helu Thaman⁶³

57 New Zealand Law Society “New Zealand justice system broken, says Justice Minister” (24 January 2019) <www.lawsociety.org.nz>.

58 Karakatsanis, at 18.

59 Karakatsanis, at 17.

60 Jackson, *He Whaiapaanga Hou Part II*, at 109.

61 Karakatsanis, at 19.

62 Tracey McIntosh “Warehousing Our Humanity” (12 June 2022) E-Tangata <www.etangata.co.nz>.

63 Konai Helu Thaman “Nurturing relationships and honouring responsibilities: A Pacific perspective” In Suzanne Majhanovich, Christine Fox, and Adila Pasalic Kreso (eds.) *Living Together: Education and Intercultural Dialogue* (Springer, Dordrecht, 2009) at 175.

Experiences in the Justice System

Below we offer the stories and perspectives of the 52 Knowledge Holders who collaborated with us on this research project. Collectively, their stories tell a rather unhappy tale about Pacific peoples' engagement with the justice system. As Pacific scholars, we know the risks of re-circulating these "pain narratives". First, their pain must be "proven" through academic inquiry to be considered "true" and worthy of political attention.⁶⁴ And second, that their pain is used to justify more "tough on crime" state interventions in our communities.⁶⁵ We hope to mitigate those risks by not assuming the privilege of voice but the privilege of bearing witness and offering possibilities that emerge from their lived experiences. These possibilities are detailed later in this report.

Our Knowledge Holders consist of offenders, family members and legal professionals who generously gave insights into the "problem" of Pacific offending and our overrepresentation in the justice system more generally. It was essential to gain various perspectives from individuals engaged with the system at its various junctures to attempt a more holistic understanding of the complex issues.

Importantly, offenders were not asked to disclose specific details of their cases, though many spoke to the drivers of their offending more generally. We present their responses concerning the various issue prompts raised in the talanoa. We first present their perspectives on what brings our people to the justice system's attention. We then attempt an understanding of our offending that weaves Knowledge Holder stories and perspectives into the foregoing research frames.

What We Heard From Offenders...

Key points:

- Knowledge Holders were often the first in their family to interact with the justice system with their most serious offending generally happening in their twenties.
- Their interactions with the police were overwhelmingly negative. Moreover, these experiences did not improve when dealing with the "brown cops" who were often described as being equally bad, if not worse, than the rest.
- "Confusing", "isolating" and "exhausting" were the words most often used to describe the court system.
- Financial insecurity, substance abuse, and trauma were identified as the key drivers of their offending. These drivers were often connected to broader cultural and identity conflicts around the expectations placed on Pacific men.
- The stigma of shame pervades many Pacific offenders and their families.

⁶⁴ Tuck and Yang, at 277.

⁶⁵ Tuck and Yang, at 277.

“The law is black and white, but people are not.”

“Of the charges that we see them [Pacific peoples] often come in for, a lot of them are derived or driven by poverty. It drives the offending. So, whether it’s related to fines because they don’t have the means for paying their fines, or to appear in court, and so on and so forth. Because they simply just don’t have the money so they’re having to steal to make ends meet, and we see more and more of that coming in now. Especially given the economic climate that we’re currently in.”

“I felt like I was a failure to them as the older son, but me also carrying that toll, it ate me up as I grew up. My parents always expected me to be an adult when I was still a kid.”

“And so you can see why a life of crime is so lucrative when you measure it up in terms of the kind of finances that gangs can provide, or the financial security they can provide... it becomes real enticing to young people who are in these kinds of economic settings, they can kind of see it as a way up.”

“When I was growing up like you never answered back to your parents, whether they’re right or wrong, it was just listen and do, especially as an older boy in a family. They think it’s shameful to talk about whatever’s going on. And they never talked to us about anything so we just thought ‘oh look we assume that they don’t talk about those things’, we shouldn’t talk about those things...it’s a sign of weakness. Undoing it was pretty hard.”

“When I started [in prison] I didn’t want my family to come visit me because I felt like a burden to them, I felt like I was holding them back from what they’re doing...when I started learning about myself I started accepting that my family were the ones that wanted to support me.”

“We’ve got the highest rates of transients in my community, we’ve got young individuals who aren’t able to just have a secure place or a secure group of friends, if you’re always living in the state of transience. But that all leads or contributes to young people, either mixing with the wrong group, or living in households where you have too many people, and also being subject to, you know, sexual violence, a form of sexual violence, or sexual abuse, and so on, and so forth. So as you know, housing is quite a big issue, a large number of the kind of crimes are either driven by lack of income security, parents not being able to be around home, because obviously having to work just to sustain you know, the household stuff.”

The above quotations present a sample of the perspectives offered by former Pacific offenders. Notably, all were men, mostly Samoan and Tongan, and under 45. The majority told us they were raised in “good homes” and were the first in their family to interact with the justice system. For many, their first engagement point happened in their teenage years for less serious offences such as petty theft, robbery, assault, and Class B drug possession often committed with friends. The more serious offending happened in their twenties and most often was for family and/or intimate partner violence, aggravated robbery, Class A drug possession/distribution and violent assault.

When discussing what drove their offending, their reasons were predominantly rooted in financial insecurity, substance abuse, and trauma. What expanded from this was

more personal discussions about their relationships with their family and community.

Most commonly featured amongst the Knowledge Holders was that they were New Zealand born, raised in multi-generational households, from low-socioeconomic neighbourhoods, and closely connected to their family, peer and community networks through church, school and sports. However, these environments were also knotted with tension particularly as it related to issues around their mental health, masculinity, sexuality and shame. There was considerable mention of the culture of silence within Pacific households/communities when discussing personal issues (such as mental health), addiction and criminality. We often heard that their families preferred to “bury” whatever was occurring than risk reputational damage or draw the attention of the state.

“You know, in Pacific culture, it’s kind of like, protect and follow. It’s not for the state to intervene. It’s more for like you to organise it within yourself and deal with it that way. So, it was just a lot of blame and embarrassment, I think I felt that.”

For one Knowledge Holder, his family’s homophobia and living situation forced him to leave home at 16 and stay on the streets. He quickly formed a drug and alcohol addiction. His involvement in petty crimes in his teenage years escalated into more serious drug offences in his twenties, resulting in multiple prison stints. Several Knowledge Holders described struggling to meet the demands of their families, culture and community. Many internalised a heightened sense of responsibility to provide for themselves financially, their immediate family and extended relatives.

This was grounded in an acute awareness of the enormity of their grandparents’ and parents’ sacrifices in migrating to Aotearoa New Zealand to “build a better life” but getting caught in a cycle of economic deprivation.

There was an explicitly gendered element expressed in many of the talanoa around the belief that men should be the “providers”. When they could not meet those expectations, many internalised the demoralising feelings of shame and guilt which impacted their mental well-being.

We got the impression that these financial pressures were compounding, the general need to afford life’s necessities and provide for the family, extended relatives, remittances and cultural obligations (fa’alavelaves, funerals, weddings and so on). One Knowledge Holder told us about a friend who was too ashamed to admit that he could not provide a fa’alavelave contribution for his family. In desperation, he turned to drug dealing for a gang to raise money. For many, their relationship to violence was informed by their upbringing. Many said they were given “hidings by their olds” growing up. The intensity of these physical assaults varied. One went as far as to say that he preferred being physically reprimanded by his parents because “their words were worse than the hits.”

These experiences were not always presented as unfavourable but as a “normal” part of Pacific culture. Moreover, others mentioned that fighting – especially as Pacific men – was necessary to assert dominance and not be seen as weak. This was primarily when they were challenged or provoked, revealing a profoundly ingrained philosophy to “never fold”. Some cultural explanations for violence were also revealed. One Knowledge Holder spoke to a situation in his youth where he fought because of his duty to protect his sister, citing the Samoan concept of feagaiga (the sacred brother-sister covenant).

Though he did not suggest that this excused his actions, he felt it was an essential cultural nuance that the police, lawyers and the courts refused to engage with. Others cited instances where fighting was an appropriate response to someone disrespecting them, their family and/or their culture.

During their youth, many struggled to navigate the demands of cultural traditions and expectations in a Western/Pākehā society. Knowledge Holders emphasised that they had few avenues to express their emotions healthily and that their parents and elders actively discouraged discussing their feelings. For many, this impacted their emotional regulation and often led them to turn to harmful behaviours as an outlet for stress.

As will be set out in the 'Prisons' section (below), corrections programmes were often the first time they had been given the space and tools to discuss their feelings openly with one another. The pervasive stigma of shame (and its resulting culture of silence) is presented in all our talanoa.

“Being arrested, my first thought was being scared that my parents would find out.”

“That shame to reach out because you don't want to make it an issue for your family, we don't want to reach out for any kind of help because there's that stigma... I just thought “that was my burden to carry, it was my lesson to learn” ...now I realise how important it is to present yourself [in court] with the collective there.”

“So, the one with the families [Family Group Conference] I felt like that was probably the one that mattered the most to me, because you're holding yourself to account and you're in front of your whole family. Like my family came down, my minister came down, your whole support system is there and the gravity of your offending hits you then and there.”

“Seeing it from the lens of a Samoan, I think there's no greater humbling experience than you owning up to what you've committed but realising that it's a reflection of not only your actions but the collective as a whole.”

“The more we normalise the conversations, the more we realise that the criminal justice system is not just for the individual, even though, you know, it probably is, but from our perspective, if it's a family thing, it slowly removes that barrier of shame and makes it a responsibility of us as a collective.”

“You don't all of a sudden become an individual because you go through the system. They're still part of the family...we don't just isolate the individual because they got charged, we bear the consequences together as a family.”

There was a general acknowledgement that shame was a dominant force within the Pacific community and most often deployed by the older generation and/or the church towards those who transgressed social/cultural norms. We got the impression that the overarching issue was one of reputational damage; that the fear of bringing shame to your family in the eyes of the community was acutely felt by all.

This understanding of shame was internalised by Knowledge Holders from a young age and impacted how they navigated their relationships with themselves, their families, their community, and the justice system, too. In many ways, shame became the dominant psychic barrier preventing them from seeking help (both before and once they entered the justice system). Many prefer to bear the burden of navigating the system alone than risk having their parents know about their offending.

It was common to hear Knowledge Holders say that their families remained entirely unaware that they had been through the justice system and, in several cases, incarcerated. Upon reflection, many said they wished they had involved their families as they would have greatly benefitted from their collective support, especially while in prison.

What We Heard From Family Members...

Key points:

- When a child, sibling or parent(s) enters the justice system it can negatively impact their family and destabilise the unit.
- When the system positions family members as “outsiders” it makes it difficult for them to engage in justice processes and offer and receive support.
- There is a real lack of support offered to families of offenders.
- Children of offenders noted that the genesis of the parent's offending revolved around poverty, intergenerational trauma, and addiction.
- Children felt confused and overwhelmed by their interactions with police and other justice agents.
- Having a parent involved with the justice system often resulted in their children being involved in state care.
- Pacific families lack comprehensive, collective and culturally appropriate mental health support.

“When you have a child go through the system it's really hard for parents too – your whole world falls apart.”

“That's what I found New Zealand police try and do, they will keep trying to set traps to keep those young people into that system. You can't escape.”

“The state should have done more to keep the cultural link in place. We lost a parent that held the key to all the cultural knowledge and that part of the family.”

“That's our mental wellbeing gone, trying to stop your child going to jail.”

“There is no uplifting these young people, it is forever putting them down.”

“There needs to be more support for the victims and their families in the long-term.”

“In our world, we only have family.”

Despite the justice system being impenetrably wedded to the notion of “individualised justice”, its impacts radiate far beyond the individual. Across Te Moana-Nui-a-Kiwa, family is the anchor that binds all relational ties, and it was vital for us to understand how family members are impacted by the justice system too. The perspectives shared ranged from a mother to a young offender, three children of incarcerated parents, and a sibling to a survivor of harm. We acknowledge that our participant scope is small and the justice system’s impact on Pacific families merits research attention.

For Knowledge Holders related to current and/or former offenders, they emphasised that mainstream narratives on Pacific peoples and crime was a “*discussion that lacked a lot of nuance*”. Their intention in speaking with us was not to advance a plea for innocence for their family member’s offending but to offer insight into how the system impacted them, too. All recognised that their parents had caused harm for which they needed to be held accountable. However, they also believed that the system’s response was neither appropriate, proportionate nor restorative for the offender, the victim(s) or their wider support systems. All the children said that the genesis of the parent’s offending revolved around poverty, intergenerational trauma, gangs and addiction. Both parents had been physically and/or sexually abused in their youth and their children recognised that their offending behaviour was a repetition of a violent cycle. For one, she drew a connection between her family’s poverty and her parent’s methamphetamine addiction which saw them go in and out of prison. As a result, she stole food so she and her siblings could survive.

“My family has a whole history of being in the system.”

She also disclosed her father’s history of physical and sexual abuse both in the Cook Islands and Aotearoa New Zealand. She understood his offending behaviour as a manifestation of these intergenerational traumas.

She hoped to break these cycles by ensuring her children were raised in a safe and healthy environment.

“He was only doing what he knew.”

Interactions with police were often fraught. Like the views shared by offenders, Knowledge Holders felt that the police were heavy-handed, biased, coercive and, at times, abusive. Children frequently described their experiences with police as “*traumatic*”. Now in her early 20s, one remembered officers entering her family home in “*full force*” to arrest her parents, which was overwhelming for her and her younger siblings. When such heavy-handedness occurred, the family’s default response was to “*shut down*” and resist interaction. Much of this was partly due to the family’s general scepticism of law enforcement, which confused the children about what they could/should disclose to police when they were brought in for questioning.

“I did feel quite scared just because I didn’t know what was going on...I didn’t understand what we had done wrong, because I think I just assumed that because the police were there, we had done something.”

They often felt re-traumatised and emotionally exhausted by police interviews and having to tell the same story to various justice agents. One said she was simply “*too young to understand*” what was happening and was incredibly confused by the process.

This discussion also illuminated the inter-relationship between the justice system and state care. In most cases, when a parent/guardian is identified as an offender, Ōranga Tamariki will inquire about the child’s safety. Where a living situation is deemed unsafe, the child can be forcibly removed and placed into an alternative care arrangement for as long as required. It is no secret that Pacific peoples have endured a vexed and oftentimes traumatic relationship with state care.

While it is beyond the scope of this paper to detail that dynamic in its entirety, much of this discussion will be influenced by the findings of the Abuse in Care Royal Commission of Inquiry report. One child described how she and her younger siblings were separated and placed in different foster homes with non-family members. She described the foster home as feeling like a “*prison*”:

“It had bars on the windows, no freedom, no personal space, completely barricaded and ballways completely locked. I felt like I was in prison.”

She said her experiences in state care hugely impacted her mental health well into adulthood. Her primary grievance was her removal from her siblings and the damage their separation caused to all of them. She described failing school because she was constantly taken in and out of class by social workers, and becoming briefly addicted to drugs in her late teens. Other children described how their father’s incarceration negatively affected their sense of cultural identity and well-being. For them, their father held the “*key to all the cultural knowledge*” about their Samoan heritage but when he was imprisoned they felt that link was severed. This was compounded by the difficulties in gaining visitation rights and internal family conflicts. They expressed that they wished they had spent more time with their father and that the state should bear some responsibility for failing “*to keep the cultural link in place*”.

A separate though inter-related discussion emerged from the mother of a young male offender. In writing, it is difficult to capture the depth of her anger and frustration towards the justice system, which, in her experience, has been obstructive at almost every turn. These feelings were primarily directed towards her engagement with the police. She described when her son, then 17, was held in a police cell for several hours with a severe concussion. She was not contacted until five hours after his arrest and immediately requested he be seen by a doctor, which they refused.

She then asked if she could bring him a change of clothes, shoes and medication. This request was also denied. Having “*no faith*” in the Independent Police Conduct Authority, she sought an independent medical opinion which found that the police’s treatment of her son was medically negligent.

“It just shows the poor care these young people have to go through when in police custody, he wasn’t allowed any medication...they just said no you are not allowed to bring anything in... you’re not allowed a lawyer.”

“We asked New Zealand police for support, and got none, absolutely no support.”

Whilst her son was bailed to her home address for a minor assault charge, she described the police contact as “*excessive*” and “*incessant*”, undermining any trust in her as a parent to monitor his behaviour. The bail conditions also prevented her son from attending university or continuing his employment, leaving him depressed, lacking purpose and “*feeling that everything he had was taken away from him*.” She believed that the justice system unfairly stigmatises family members of offenders as though “*we, too, are criminals*.”

Moreover, the mother detailed several instances where police officers used excessive force when arresting her son, including when he was slammed headfirst onto the floor despite offering no resistance. On the advice of a friend, she spent \$3,000 on a home security camera to monitor police visits. She said this advice “*saved my sanity*”, and once the visiting officers became aware of the cameras, she noticed “*they were far better behaved*”. Much of the talanoa focussed on how she felt forced to take matters into her own hands, whether through hiring a private investigator, installing security cameras, or getting her son therapy. Despite the financial toll this took on their family, she felt it was her only option given the lack of support she had received from the justice system.

“My son lost his job, fell out of uni, and became suicidal.”

A final point emerging from this talanoa concerned Fijian-Indians’ classification within Aotearoa New Zealand’s Pacific community. In this instance, her son was precluded from accessing Pacific-specific support. This talanoa raised whether Fijian-Indians should be formally recognised as Pacific peoples. While it is inappropriate for us to make this determination, the issue merits critical attention.

Finally, we heard from one Knowledge Holder who is the sibling to a survivor of sexual abuse. This talanoa predominantly revolved around her experiences with the sentencing of the offender. She told us that she was most involved during sentencing when she read the victim impact statement on her brother’s behalf. She described feeling anxious about being in an “*alien [court] system*” mainly because she was not used to seeing Pacific peoples represented as survivors in criminal proceedings. As it was her first time being in a courtroom, she had hoped that the Crown would have made more effort to explain the process to her. However, she recognised this was difficult given the time pressures and the number of survivors involved. Nevertheless, she described feeling “*empowered*” when she read the Victim Impact Statement to the courtroom and was initially satisfied with the offender’s conviction and sentence of imprisonment. She later reflected that these positive feelings were fleeting as in the aftermath of the sentencing she saw her younger brother’s mental health “*go downhill*.”

She did not believe that the system had done enough to offer her brother and family therapeutic support, nor was there enough culturally appropriate support available. In unpacking this issue, she identified two obstacles; the system’s failure to meet the needs

of Pacific survivors and their families, and her parent’s distrust of Western counselling and therapy. In her view, the latter point illustrated the intergenerational differences within Pacific families regarding how to address mental health concerns.

Despite her insistence that the entire family should undergo counselling, her parents preferred an “*old school*” approach through prayer and forgiveness.

What We Heard From Survivors

Key points:

- The quality of police treatment directly impacted their journey through the justice system.
- Survivors want to be comprehensively supported and feel safe, trusted, and believed.
- Navigating the justice system can be another trauma for survivors on top of the initial harm caused to them.
- Retaining their agency in the proceedings was central to feeling empowered.
- More significant support for survivors and their families tailored to their needs is required.
- The survivor experiences included in this section are consistent with the findings of the 2003 Victim Report prepared by Dr ‘Ana Hau’alofa’ia Koloto, highlighting the system’s longstanding failure to respond to its shortcomings and its inability to achieve justice for all individuals moving through it.

We spoke with two Knowledge Holders who discussed their experiences as survivors of harm. While we are aware of the tensions inherent in the offender/survivor binary, we must also recognise that, for someone who has experienced harm, their journey through the justice system is unique.⁶⁶ Only one qualitative study has been published on Pacific victims’ experiences in the justice system. While many of our people have since contributed to various victim surveys and research reports, we still lack a contemporary understanding of the specific experiences of Pacific survivors navigating the justice system. As such, there is a clear and urgent gap for further engagement.

The two Knowledge Holders we spoke to were both women, mothers, lived in Wellington, and were recent survivors of intimate partner violence. When analysing their talanoa, we identified that they had engaged with the justice system in roughly the same period. Nevertheless, their experiences were markedly different. For one, her partner harmed her physically and mentally during their relationship. After one incident she eventually contacted police but felt “*hesitant*” in doing so. Alive to the realities of Pacific men at the interface of the justice system, she was concerned that the police would take a “*heavy-handed*” approach in dealing with her ex-partner. While she recognised the seriousness of the harm he had caused, she was also concerned about him being thrust into a system without the appropriate care.

⁶⁶ Our Knowledge-Holders preferred the use of ‘survivors’ over ‘victim’ in how they identified.

“I’ve always been quite hesitant to contact the police. I knew for a very long time that I should have, I could have gotten in touch with them. And I didn’t. Obviously, I didn’t think that would help anyone. That kind of speaks volumes, that I didn’t think that it was the right thing to do. But I noticed from that point that the police were very much into this idea that it was me against my ex, from the beginning. And I was in a very vulnerable state, obviously, pregnant, but also being a victim of abuse.”

She described feeling uncomfortable after her first police interview as it became clear that “they [police] wanted to pit people against each other” and were “excited” to have her make a video statement documenting the abuse. She also felt that the process was not adequately explained, which confused her.

“In almost every situation regarding my assault I felt disempowered. I would prepare questions to ask because I was always left wondering or feeling like I hadn’t asked the right thing.”

“I did need a support person to be with me because the policewoman that I was speaking with, I remember her saying to me, “ah, you’ve, you’ve got a black eye, we can use this, this is really good”. And I was in that mindset of, “I don’t want to do this right?” Like, this is going to ruin his life. And so from the beginning, you can kind of see how it’s like pitting people against each other. I don’t think the police should have acted that way. You could tell it was very slanted...”

As the investigation continued there was no prompt follow-up from the police family violence team. In their absence, she found support from her midwife and the women’s refuge who “did a lot of explaining of the [justice system] process and helped me get a protection order...there was lots of assistance from the public health system that picked up the gaps in the criminal justice system.” She identified that her concept of safety was “something very different to what the police were pursuing”. This resulted in her having to continually “re-explain” herself to police, lawyers, and court staff.

She said she had difficulties dealing with Pākehā police officers, believing they were “more interested in seeing my partner charged and convicted” than supporting her needs. She described feeling “powerless” and like the officers were “putting words into my mouth”. Ultimately, “I did not feel like I was put in a safe position.”

“There was a lot of support from the health system. That kind of picked up where there were gaps in the justice system. So, once I got in touch [with them] it was kind of seamless. The midwife basically arranged for me to go straight to Women’s Refuge. Once I was linked in with Women’s Refuge, they started explaining my rights as a victim. And they did a lot of explaining about how everything was going to work, like the feelings I might feel. They were very open and supportive. And they actually encouraged me without pressuring me, of course, to get a protection order.”

She emphasised that it was not until she had engaged with the health system and women’s refuge that she correctly understood “that police and not myself laid the charges.” Even though she did not necessarily believe that prosecution was the most appropriate action, she realised that was the state’s decision - not hers.

“It took the lawyer probably explaining it about three times for me to understand that those two things were separate, that my safety was different from what the police were laying charges about. I didn’t know that the charges were laid by police and not myself. Like I’ve, at that point, probably for about a week or so, I thought that it was me against my ex. And I was really mindful of that because my ex-partner is someone.”

“And obviously I know about negative representation for Pacific people. I knew that once the police got involved, I didn’t want to put him in a dangerous spot. I could kind of see throughout what was happening that if I hadn’t had that knowledge from the woman’s refuge, if I hadn’t known anything about the system, if I hadn’t been willing to advocate for myself, that I would have been in quite a difficult situation.”

She summarised her experiences as follows:

“I think that when it came to my experience, my main issue was with the attitude of police. But that’s a given, you’re both probably aware of the way that people are treated. I think they assumed that I would maintain a relationship with my ex. So the only way to protect me was to put him in jail, and just let me live my life, which is not what I wanted at all. I didn’t have a voice. And so my issue with the police was that they silenced me.”

“I’ve always believed in restorative justice. But I don’t think that the way that the justice system works currently, that it’s actually achievable. I find the greatest justice is me being able to live my life and be a good mum for my child. And to be honest, I don’t actually see my ex being part of that story... I didn’t feel supported or like I had any say in that situation. Which can be quite worrying and concerning when you don’t have any power in that system. And you just have to let it play out.”

When asked what she thought would be a more appropriate response to his offending, she discussed the role his family and community could have played in holding him to account.

“When you look at those cases of family violence, it’s not just the offender, it’s the whole family system. And it’s the wider system that allows it all to happen.”

“I think for other Pacific people, silence is so much a part of the culture. I don’t think it’s safe.”

“I think that demonstrates that the family need to be involved in that situation. But it’s tricky because there’s family dynamics and maybe even cultural dynamics which mean they are happy to keep his offending a secret and to brush it under the rug. They have enabled him for years and years. And they allow him to be the way that he is. But maybe they’re also the answer to helping with that.”

When asked what changes she would like to see, she said:

“What was surprising to me about your question was that the police, court advisors, and lawyers never asked me how I wanted to act in my situation or what I wanted to come from it.”

You were probably the first person to ask what I wanted. These people held a lot of power and were advising me on what had to be done but I felt like a silent party watching decisions be made about my life.”

“My answer to some form of solution would be to reframe restorative justice and make it mandatory for everyone involved (including authorities). I think Pacific people can be silent and avoidant when it comes to issues around the law which often makes bad situations turn toxic.”

“I believe restorative justice could be used in a more productive manner. I think it would be more effective if offenders and victims were able to meet with their support systems for separate restorative justice meetings. Do we want to restore toxic relationships or is this a wasted resource?”

“Outside of the court I think there needs to be less focus on the relationship of abuse between the victim and offender and more focus on the networks that surround each person. It is the informal support of my family and friends in addition to the women’s refuge that has helped me get my life back on track. I think that community support is invaluable.”

By comparison, the second Knowledge Holder described her experience as “*really positive*”. She identified that, once her ex-partner’s offending was brought to the attention of police, she was supported by a “*really excellent detective*” who became “*like one of the family*”. Once the Crown was involved her lawyer “*explained the [trial] process really well*”, especially in helping her prepare for questions by defence counsel.

She said her lawyer took her and her children through the courtroom the week before the trial to help familiarise them with the environment. The lawyer even did a mock ‘run through’ about how a typical trial day would unfold. When reflecting on the jury trial, she said her most “*traumatic*” experience was how she was questioned during cross-examination. While she was somewhat prepared for his questions, she nevertheless felt hurt by how she was characterised as a “*liar*.” Once the trial concluded, she continued to have nightmares about his questioning.

When asked about what she wanted to achieve through the trial, she responded:

“I wanted to get justice for what he did. And at the time that meant pursuing a conviction and having that confirmed so that he could be out of me and my children’s lives.”

She recognised that although he was convicted on multiple counts and sentenced to prison, he still refuses to take accountability for his actions and has not participated in any rehabilitative programmes. She is now concerned for her safety as his eligibility for parole approaches. This response raises an important question about what we do when someone who causes harm does not consent to transformative justice.⁶⁷ It also illuminates the shortcomings of imprisonment as a means to ensure offenders take accountability for the harm they have caused and are rehabilitated accordingly.

⁶⁷ Hunter Ashleigh Shackelford offers some valuable insights on this issue. See Hunter Ashleigh Shackelford “When People Who Harm Don’t Consent to Transformative Justice” (4 July 2022) Medium <www.hunterthelion.medium.com>.

When asked what changes she would like to see, she said she wished more mental health support was offered for her and her children following the trial. She observed that for survivors of long-term abuse “*our default is to go into autopilot*” to “*just keep distracting yourself and keep moving forward even though that’s not what you really need*”. She identified that one of the barriers to accessing therapeutic support was the lack of Pacific providers available, both in the justice system and more widely. She suggested that any state-funded therapeutic interventions needed to happen in the short, medium, and long term to minimise the radiating trauma that often emerges in the months or years following abuse.

“My daughter said to me, I didn’t know therapy was for [Pacific] islanders.”

“Shame is one of the biggest barriers for Pacific peoples wanting to access the justice system, particularly in situations where it involves family members and upsetting family dynamics. And that can only be addressed through a multi-pronged approach; on the one hand, building up access to therapy and support networks that aren’t tied to the church and removing their ownership of shame and then engaging with community networks.”

Given that we only spoke with two Knowledge Holders it would be inappropriate to draw any broad conclusions about the experiences of Pacific survivors. However, we can identify several key themes emerging from both stories.

- The critical difference in their experiences came down to the support they received from their initial interactions with the police. Police interactions perceived as judgmental, coercive, and biased made for a negative experience. By contrast, empathetic, attentive, and supportive officers made for a positive experience.
- The level of agency a survivor is afforded is critical. Though the prosecutorial duty falls to the state, survivors should never be made to feel voiceless. As one Knowledge Holder told us, this research talanoa was the first time anyone had ever asked her what she wanted.
- Dedicated therapeutic support must be available to survivors in the justice system and, more importantly, once they have formally left the system.
- We were especially interested in the perspective that any restorative justice process needs to be collective, involving both the offender and their wider family. One believed that the current restorative justice process (especially the Family Group Conference) was not fit for purpose for Pacific peoples if the offender’s relations did not interrogate how they, too, were accountable for the harm caused.
- In recognising that families can enable harmful behaviour, they should also be made accountable for the harm an individual causes. Although not explicitly stated, this view aligns with the collective forms of accountability and punishment inherent in Indigenous Pacific communities.
- Knowledge Holders had different perspectives of what “justice” looked like in their respective cases. For one, it was about achieving a conviction and sentence of imprisonment. For the other, she wanted to be safe and free

from her ex-partner but did not believe that he needed to be incarcerated to achieve this. This demonstrates the pitfalls of a “one size fits all approach” and lends weight to the argument that our responses to harm should be more specifically tailored to the survivor(s) and their needs.

What We Heard From Legal Professionals...

Key points:

- All Knowledge Holders acknowledged that, in addition to their duties as barristers and solicitors of the High Court of New Zealand, they also had a personal duty of service to their Pacific communities.
- In their work experience, poverty, alcohol, and cultural misunderstandings significantly drove Pacific offending. They also spoke to the dominant culture of shame and silence within Pacific communities and Pacific peoples’ difficulties adapting to Aotearoa New Zealand’s socio-cultural environment.
- The justice system did not adequately support Pacific peoples with mental health challenges, neurodiverse needs, and literacy shortfalls.
- Pacific peoples and their families navigating the justice system are woefully under-supported and they would benefit from having independent, cultural liaison officers available to assist them.
- There is a need for more Pacific lawyers, especially in community law centres and the public defence service.
- There is a need for greater interagency collaboration amongst Pacific service providers.

Knowledge Holders spoke about their experiences of being Pacific legal professionals. They comprised 12 lawyers (six defence counsel and six Crown prosecutors), one court registrar, two social service providers and one former Corrections guard (Pākehā). Before delving into the substantive analysis, it is vital to acknowledge the recurring theme of tautua (service) that emerged from the talanoa. All spoke of their desire to “give back to our people” and their motivation to pursue a career in the law to serve our communities best. There was unanimous agreement that the justice system continues to underserve our people, and all recognised that the privilege of a legal education came with a responsibility to give back.

A. WHAT WE HEARD FROM DEFENCE LAWYERS

“The biggest driver of offending for Pacific Island people is alcohol. The majority of offences I see with Pacific people are violence related - and that’s usually fuelled by alcohol.”

“When it comes to abuse and Island families, everyone has to keep it silent. Like it’s this huge culture around shame and stigma, bringing shame on the family if you ‘out’ of all these problems. And I think as a result of that, there’s no real encouragement to really express yourself,

and kids don’t learn how to express themselves in a healthy way.”

“One of the things that I’ve noticed is that a lot of young Pacific males go through the system with undiagnosed mental health issues. It’s actually quite alarming the amount of young men that come through that don’t have basic literacy skills.”

“I think anyone who comes into an adult courtroom can’t understand what’s going on. We don’t even speak English in way that people talk to each other.”

“If I could go back in time and create a place where I could honour the vā, and keep everyone safe and protected, what I would probably do is ask for a community navigator, ask for a communications assistant, and provide wraparound support for the person by talking to the family as well. Not just one on one, because Islanders don’t do one on one, the hurt that we feel is suffered together, it is felt together.”

“Well, we can start by using plain English. We can start by bringing the judge off the high pedestal down to the same level. We can start with everyone introducing themselves and just showing some just basic human decency. Not talking about the person who’s standing right there, but talking to them, letting them have a voice of their own. A lot of our people are just accessing a system, they’re not accessing justice. By no way are they accessing justice because they’re not being seen or heard.”

In discussing the main risk factors that can lead to offending, poverty and alcohol quickly emerged as the dominant drivers. Knowledge Holders spoke about how they saw Pacific peoples, especially our young men, use alcohol as a coping mechanism and its presence in committing violent offences. On alcohol as a coping mechanism, one Knowledge Holder believed that the prevalence of alcohol abuse and addiction often went unaddressed in Pacific families due to a culture of shame - “everyone has to keep it silent” - and gendered dynamics/hierarchies. She explained that the duty to respect one’s elders is sometimes used as an excuse to protect perpetrators of abuse within family units. In her experience with Pacific clients, this culture of silence and the closing of family ranks has prevented affected individuals from expressing themselves healthily and seeking appropriate support. This often leads to “raging events, where they’ve held it in for years and years, and then this leads to all-out fights, or they turn to alcohol [...] which can lead to harmful behaviours.”

Another Knowledge Holder discussed how they have witnessed their Pacific clients struggle to navigate the contemporary pressures of life in Aotearoa New Zealand against the cultural expectations placed upon them. These “competing obligations within the family” ran concurrently with “[their] misunderstandings of how to practice culture” whereby certain behaviours (such as physically disciplining women and children) were perceived to be cultural ‘norms’. Moreover, socio-economic disenfranchisement and its specific stressors were identified as making Pacific people more susceptible to dishonesty offending. Knowledge Holders observed the frequency of Pacific peoples presenting in court for fraud and dishonesty offences and anecdotally said (though without reference to data), that this was most often in relation to Pacific women “who had to feed their children and keep the lights on.”

Mental health, neurodiversity and literacy were all factors raised as the dominant barriers Pacific peoples faced when navigating the justice system. Several Knowledge Holders had observed many Pacific peoples enter the justice system with undiagnosed mental health and cognitive challenges or neurodiverse conditions but were prevented from accessing the appropriate therapeutic support due to a lack of a formal diagnosis.

Several Knowledge Holders also expressed frustration at the difficulties obtaining psychiatric reports given the strict criteria involved. This was compounded by a sense of shame held by many offenders in having their mental health concerns become the subject of courtroom discussion, with many preferring to “*tough it out*” in silence. This folded into a discussion around the lack of basic literacy skills amongst many of their Pacific clients, with many citing instances where it was clear that their client was not fully comprehending what was being asked of them in court despite being fluent in English. There was a palpable resentment at courtroom legalese being archaic and elitist- often leaving offenders and their families feeling “*alienated*” in the proceedings.

Bail and home detention were cited as the two justice processes that posed significant challenges for Pacific offenders. “*When it comes to EM bail and home detention, you get these suitability reports that say it’s an inappropriate address because of overcrowding.*” Knowledge Holders highlighted that what many judges consider “*overcrowded*” reflects a Western worldview around household dynamics. One Knowledge Holder said that having multiple family members did not inherently make a house unsuitable or unsafe: “*It’s just a fact of life a lot of the time, especially in Auckland with Pacific Island families.*” Some had considerable difficulty finding their clients an alternative bail address amidst Auckland’s housing crisis especially since they could not be put in emergency accommodation. Increasingly, offenders who would otherwise be suitable to remain in the community had to be remanded in custody.

When asked what changes they would like to see made to the justice system, their recommendations fell into five categories:

- Increased support and assistance for families to navigate the justice system. In concrete terms, this looked like having dedicated cultural liaison officers in the courtroom that guided and supported families in their journey. These people did not need to be lawyers but could work alongside lawyers where appropriate.
- A firm resolve to avoid formal legalese used in court proceedings, including having all parties (including the judge) sit at the same level.
- A greater need for Pacific lawyers to join the profession and work in the criminal justice space. Our shared identities, values and understandings of cultural practices allow for a greater understanding between ourselves and our Pacific clients, which is likely to improve the journey of Pacific people as they move through the justice system.
- An urgent legislative review of the 2013 amendments to the Bail Act 2000 and how they have impacted the remand prisoner population.
- Finally, one of our Knowledge Holders stated that they believe the legal profession and justice system have a long way to go, especially regarding their response to the Pacific community in Aotearoa New Zealand.

This Knowledge Holder noted that whilst the system has taken much-needed steps to embrace Te Ao Māori and tikanga, they observed that “*what happens with Pasifika is that it’s just a tag on - an add-on - and we’re all considered you know just one community like we’re all the same thing.*”

B. WHAT WE HEARD FROM PROSECUTORS

“The reasons that underlie all of this offending are pretty well established. It has to do with poverty. It has to do with institutional racism. These, particularly young men, are placed in situations where more often than not, they’re making decisions based on their circumstances, just like anyone else. You’ll always find that when it comes to sentencing, a lot of these young Pasifika men have been victims of violence themselves. And in the case of sexual violence, that’s even more prevalent, you know, they’ve also been victims of sexual violence from their own parents and other people who are part of their extended family.”

“It is racist. It absolutely is. And I think from a high-level view, that is because it’s based on Palagi foundations, which are totally inadequate for the communities that it is supposed to serve in terms of Māori and Pasifika. And that’s reflected in the incarceration rates of particularly Māori, but also Pasifika. And I suppose that racism within the system operates at every single stage of the system as well. We could both talk to the different stages at which that racism operates, but it would take a very long time.”

“There are definitely lots of Pacific Island people who need mental health help. It might not be to the level where they’re able to be diagnosed with anything, but it could definitely help them from further offending or even just helping them recognise that they have an issue.”

“I’d like to see more development around section 27 reports. I think that they are good. But I think that the lack of judicial commentary, and sometimes I think judges who are not Māori or Pacific or from an ethnic minority, which is the majority of judges, do feel wary of commenting and stepping into that territory. But I personally would like more development around those reports. Especially in terms of their application, and how they can best be applied in the most appropriate way.”

Pacific prosecutors identified that socio-economic disenfranchisement, mental health, racism, and intergenerational violence/trauma were cited as the dominant drivers of offending. As all these issues have already been identified in the prior discussions, we elaborate on their comments about cultural “*misunderstandings*”.

Discussion of cultural “*correctness*” is complicated in a diasporic context where migrant communities are tasked with determining how their cultural norms, practices and traditions can exist outside their place of origin. In this way, culture is never static. Within the Pacific diaspora, the influence of Christianity adds another layer to this dynamic. Speaking specifically to the Tongan community, one Knowledge Holder said he had observed many young, Tongan male offenders enter the justice system with a corrupted sense of their “*Tonganness*.” He opined that many Indigenous Tongan customs have become “*lost in translation*” and misunderstood/misappropriated when divorced from the

land. He observed that Christianity had warped that which is essentially Tongan, encouraging a “*macho*” attitude and perpetuating gender hierarchies:

“The father is the head of the family you know, the old biblical, the Old Testament type of thinking. So, unfortunately, most of the families live by that rule. And then when things get tough, the males don’t know any better but to resort to violence. It goes back to the upbringing. Their way to deal with problems is to discipline and use violence.”

When discussing the system’s barriers, Knowledge Holders identified racism, mental health challenges, and the culture of silence amongst Pacific families as the key obstacles for offenders. In discussing how effectively the justice system responds to and meets the diverse needs of Pacific peoples, there was a recurring belief that our communities would only continue to be disenfranchised by a Western legal system.

“[The system] it is racist. It absolutely is.”

A discussion of mental health also emerged during the talanoa. Many Knowledge Holders said that it was clear that many Pacific offenders and survivors had suffered mental health crises but, for various reasons, these went unaddressed.

Whilst it is essential to critique the system’s failure to provide comprehensive mental health support, we must also interrogate the cultural and community barriers that can prevent Pacific peoples from seeking help, speaking out, and being diagnosed.

As stated by one Knowledge Holder, many Pacific peoples are good at hiding their problems and “*for a lot of families, mental health is also this thing that’s unspoken of.*” They expressed that there needs to be more effort put into helping Pacific offenders identify their mental health challenges as this could better help them understand their offending behaviour and prevent future harm. This wove with their perspectives on the stigma of shame and its corresponding culture of silence that pervades much of the Pacific community.

“They don’t want to expose their dirty laundry in the courts. It’s difficult for them to volunteer to come in. It’s a lot of pride, reputation-wise, because they know this will follow them not only to their death but also for generations to come.”

Three dominant responses emerged in stating what changes they want to see to the system.

- Systemic injustices outside the courtroom need to be addressed and “*ending the prison pipeline for our marginalised communities requires a transformative societal approach*”. There was a lot of discussion about the interconnectedness of the justice system with other state institutions and the need for a complete “*overhaul*” to ensure our people are not falling through the cracks at the outset.
- Police Prosecutions should make a more conscious effort to divert charges, especially for younger offenders on their first charge.

- Adult jurisdiction can take a lot of guidance from how we approach youth justice. For example, the involvement of the offender’s family, the emphasis on collective accountability as opposed to punitivism, and the positive rapport built between the offender and justice agents.

C. WHAT WE HEARD FROM COURT STAFF

We spoke to three agents who worked as either court staff, for Pacific service providers, or in parole. They identified that most Pacific people moving through the justice system were young, male, on violence-related charges, and often survivors of abuse. They identified that the principal drivers of offending (particularly regarding violence, road-related offences, and theft/burglary) were socio-economic disadvantage and pressures from cultural authorities (church and family) to meet multiple financial obligations. All identified that the key barriers affecting Pacific peoples’ participation in the system were literacy, finances, language comprehension and technological access.

Those working in parole observed that current ethnicity reporting processes misidentified Pacific people (both as offenders and survivors), impacting their eligibility to access Pacific support programmes and services. This was especially the case when someone was both Māori and Pacific, with the system prioritising their Māori identity and did not include their Pacific ethnicity(s) on their file. They found that these files were “*almost impossible*” to change once a person had entered the justice system, with the problem only coming to their attention once an offender was before the parole board. Furthermore, Knowledge Holders felt that the parole process is fraught and inflexible, focusing on “*finding fault*” rather than addressing an offender’s rehabilitative potential. One parolee told a Knowledge Holder, “*You guys are worried about me doing drugs out there - it’s easier to get drugs in here (prison).*”

Additionally, when assessing parole applications, considerable weight is given to those who have successfully completed their prison programmes. However, they recognised that the programmes are not always accessible with a lack of nationwide Pacific-focused programmes.

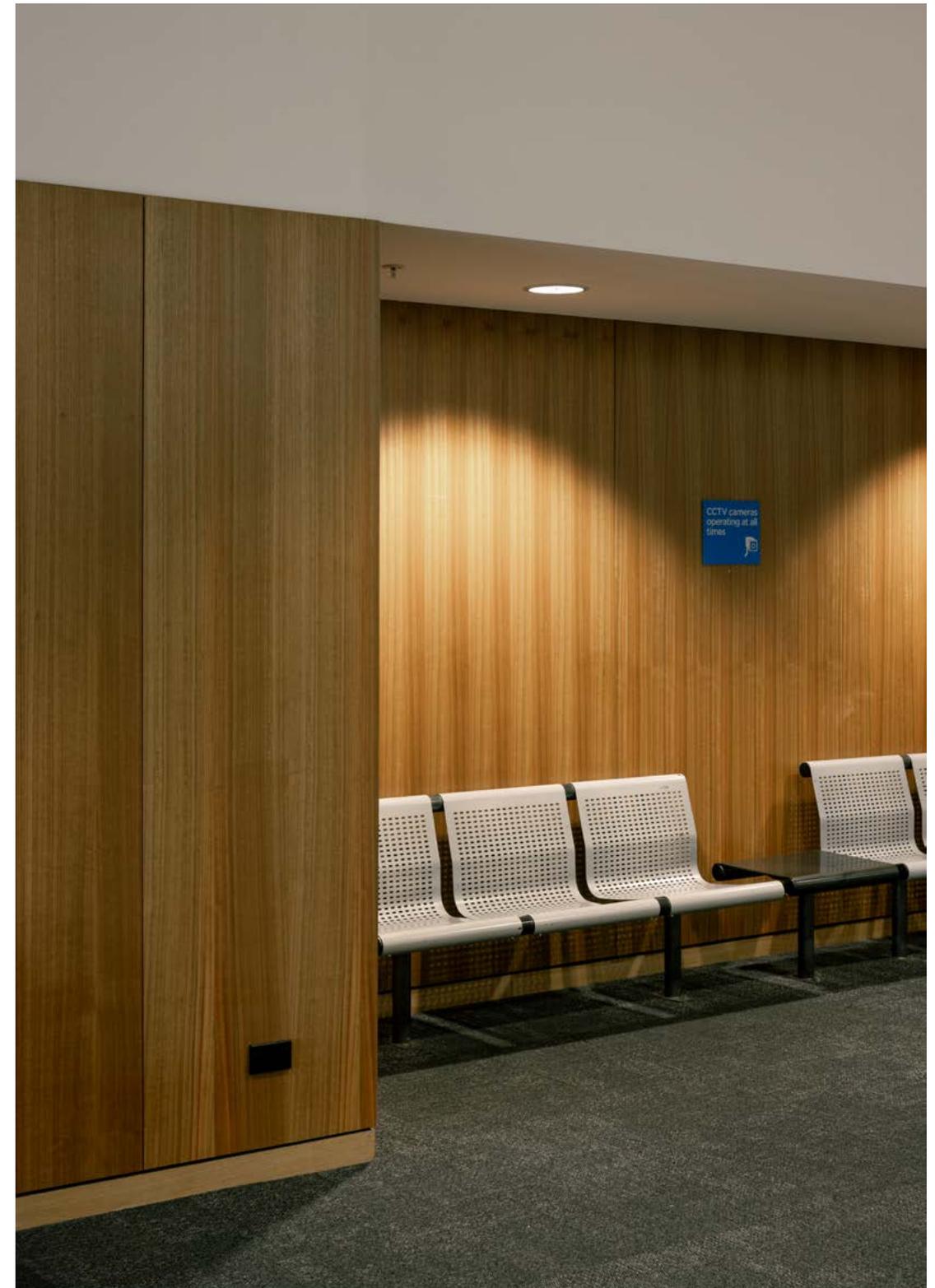
“Unless you are engaged in the [Saili Matagi] medium intensity programme for violent offending, then you’re stuffed.”

They also felt that too high an expectation is placed on formerly incarcerated persons to be “*perfect human beings*” once they have left prison, with little grace afforded to them during their transition back into the community. They acknowledged that many Pacific offenders preferred to stay in prison because they felt it was easier to survive there than face the “*insurmountable leaps to succeed on the outside*”. Tangentially to the topic of parole, they also identified concerns with managing the remand prison population who are often not assigned case managers because of their remand status. This makes it difficult for them to access service providers and the necessary support during their time inside.

Moreover, there was a broad acknowledgement of the absence of appropriate mental health care for Pacific peoples, both in that mental health disorders were not diagnosed before they entered the system, and the difficulty in obtaining psychiatric and therapeutic help through the courts.

In identifying what changes they wanted to see:

- An urgent need to update the ethnicity recording process to ensure that those of multi-racial heritage have their correct ethnicities fully acknowledged on all court records, right from when police charge them.
- People of both Māori and Pacific heritage should be given full access to both Māori and Pacific programmes and not solely identified as Māori.
- Numerous Pacific service providers exist although none of them are specifically justice orientated. They also emphasised the lack of inter-agency collaboration, particularly for grassroots support where it is most needed. For example, supported accommodation pathways and free accessible mental health counselling and therapy.
- Independent organisations like The Grace Foundation were the most successful in supporting those who had been incarcerated because they offered individuals a communal living structure, non-judgmental support, routine, and mental health workshops.
- These processes ensured that our men were thoroughly supported before transitioning to living independently or with their families. While Knowledge Holders broadly supported more government funding for organisations like the Grace Foundation, they also recognised that funding could stifle the organisation's independence.









System-Based Discussion

In this section, we detail the experiences of Knowledge Holders across the three critical stages of the justice system; police, courts, and prison. Report 1 detailed each stage of the justice system and can be read in conversation with the discussion points raised below.

Police

Key points:

- A strong sense of distrust, fear and lack of confidence persists in Pacific peoples' perception of police.
- The effects of intergenerational trauma still impact contemporary perceptions of police.
- A dominant perception exists that Pacific people are unfairly targeted, surveyed and profiled because of their race.
- A perceived dissonance between the police slogan of "safer communities together" and their lived experience.
- The increase in "brown cops" has not necessarily improved Pacific peoples' relationships with police.

"You're always going to perceive the courts and the police as some form of threat to correct your behaviour, we're always gonna have that kind of view of the police. And honestly, I can say that was my view of the police and the criminal justice system as well. It was this place you don't wanna mess with and don't want to think about and then you kind of look at it deeper and you realise the historical context that we have as Pacific peoples, but as Samoans too with the colonisers and the state. There's that deep distrust."

"You used to get a hiding from police, but police no longer do that. But the islander cops used to step people out in the cells and officers in prison used to also fight. But now everyone has visuals on them."

"With a lot of these white guys that join [the police], no offence, but like they're protecting their communities, protecting their white people and their way of life."

"I haven't met one brown cop who fucking doesn't take his job too far. And I've met a lot of them."

"There was a lot of them playing good cop, bad cop showing up to my house standing outside the front gate. Like, I'll be walking outside to check the mail and they'll be sitting there waiting for me, one guy swearing at me saying f this, f that, and another guy will like just hold him back. And I'll just laugh because it's like man 'is this a movie or something?' Or what's going on here? But yeah, it's a lot different from what you see portrayed by their 'safer communities together' to what I've had to deal with the police."

"They [police] pretty much attacked me in front of my daughter, and you know, I said "hey

I'll go, just let me say goodbye to my daughter, and you don't have to arrest me like that in front of her...they just carried on with what they were doing and dragged me in the car." "Yeah, it just started from there, I had that resentment towards them."

"They say to me I had the right to be silent and not make any statement and I have the right to talk to a lawyer and stuff like that. So I said "Okay, can I speak to a lawyer?" and they said to me all I have to do is just make a statement first and then we'll go and get your lawyer... they say "but we have to get you into court today, and if you don't make your statement now or talk to us now, then you have to sleep over here in the cell and wait to go tomorrow, and you know, like it's bullshit."

"So, he [police detective] sent his guys up to Mount Eden where I was in remand and they were trying to make deals like "oh we'll let you get out on home d[etention], if you just plead guilty to this"; or "if you just do this" and I was like nah, I'll just sit here until trial, which I did. I just, I didn't take them on any deals. I just sat in there. But yeah, they keep playing little games."

"And every so often, the police stopped by me, like, "mate, you could be at home. You want to go home mate? You wanna go home? You know, we'll drop a couple of charges if you plead guilty to this". As tempting as it was, I couldn't do it you know? Yeah."

"Just because you know about the law doesn't mean you have to be demanding or condescending about it. Now and then you get the arseholes abusing their power and force things on you for no apparent reason. We [Pacific people] don't know much about the law and what our rights are either, the police abuse people's ignorance about the law."

DISCUSSION

Police are not impartial arbiters of justice when they decide who to stop, search, arrest, and charge. Their decisions are influenced and conditioned by the system they operate in. Report 1 identified no qualitative research detailing Pacific peoples' experiences with police. Because of this, we emphasised in our talanoa with Knowledge Holders that this was a key area of interest, although more work is required. When we raised the topic of police, with rare exception, we were met with an exhausted, audible sigh from the Knowledge Holders present. Their stories about dealing with police were inflected with anguish, tension, and trauma. This was not exclusive to offenders, with family members and survivors expressing similarly negative perceptions of police. Positive relationships with police were the exception, not the norm. In this way, the word 'discontented' more accurately captures the relationship between Pacific peoples and police, despite nearly 50 years since the terror of the dawn raids.

Many offenders told us that the police had a firm presence in their neighbourhoods, and it was ingrained in them from childhood that they existed to punish "bad people." Their parents primarily informed this view; some were sceptical of law enforcement based on historical experiences, while others showed incredible deference to authority.

In unpacking these dynamics, Knowledge Holders observed that despite having lived through the dawn raids, their parents and the older community members still held the police in high regard and insisted that the younger generation do the same.

These responses echo the words of Melani Anae who describes the intergenerational differences between immigrant Pacific parents and their New Zealand-born children in the 1970s:⁶⁸

These experiences of racism in the streets, in the classrooms and in the shops went unchallenged by our parents. They would almost always side with the palagi [White] policemen or teachers who saw errant behaviour on our [the Polynesian Panthers] part – thus reinforcing the silencing and exacerbating the frustration. But it was only because they had so much respect for authority and the law of the land: **to them, the police, the teachers, the government were always right.**

Similarly, Knowledge Holders found it challenging to show that same level of respect to police given that allegations of brutality, racial profiling, coercion, illegality, and harshness often marred their personal interactions with them. There was a strong sense that the police slogan of “safer communities together” did not square with the treatment they received. In turn, this generated feelings of hostility, anxiety, and suspicion towards law enforcement. In Report 1, we expanded on the literature illustrating the role of policing in the reproduction and maintenance of racism against Pacific peoples. Much of this concerned the concentration of law enforcement, both historically and presently, in neighbourhoods populated by Pacific peoples and other racialised minorities. Pacific peoples, especially our men, have repeatedly been invoked as threats to public safety, expanding carceral interdictions into our communities.

The fusion of immigrant “Otherness” with criminality has proven durable across successive government regimes, enabling law enforcement to “mobilise those very same racist and xenophobic sentiments under the seemingly innocuous banner of public safety to rally support for and consent to the expansion of the carceral state.”⁶⁹

Unsurprisingly, many Pacific peoples’ third, fourth and even fifth generations remain distrustful of police. Our Knowledge Holders’ words remind us that the passing of time alone does not heal all wounds – the effects of historic wrongs will always resurface. In this way, the increased surveillance and presence of police in our communities reproduce the distinction “between those whose human being is put permanently in question and for those for whom it goes without saying.”⁷⁰

In an effort to address this dynamic, the state has made a concerted effort over the years to hire a more diverse police workforce with an emphasis on increasing the number of Māori and Pacific officers to enhance community relations. In addition to more Pacific peoples being employed in the force, we have also seen the introduction of Pacific community liaison officers, cultural awareness training and the re-branding of the television show “Police Ten 7” with a Tongan police officer. However, our Knowledge Holders emphasised that their interactions with the “*brown cops*” were oftentimes worse than when they dealt with non-Pacific police officers. There was a perception that “*the*

brown cops” were more excessive in their dealings with Pacific offenders and seemed eager to “*prove*” themselves to their Pākehā colleagues so as not to be seen as being “*soft*” on their “*own*”. While we can acknowledge the degree of subjectivity at play, there is nevertheless a critical conversation about the dangers of trying to ‘diversify’ and ‘reform’ a racist, classist, and colonial structure.

As Angela Davis reminds us:⁷¹

I think this is a maxim we shouldn’t forget. We always seem primed to celebrate the individual advancements of Black people, people of Colour and women, without taking into consideration that ‘diversity’ by itself may simply mean that previously marginalised individuals have been recruited to guarantee the more efficient operation of oppressive systems.

We have an unprecedented number of Pacific people in positions of institutional power as politicians, policymakers, lawyers, judges, police officers and other justice professionals. While their individual successes are well-earned, we contend that we cannot ‘diversify’ nor ‘represent’ our way out of racial violence.

In addressing discriminatory policing practices, we might look at how our community has historically mobilised to address this issue. In 1973, the Polynesian Panther Party (PPP) formed the Police Investigation Group (humorously titled the P.I.G. Patrol) to monitor police interactions during the much-maligned Task Force operations in inner-city Auckland.⁷² Realising that Pacific peoples were unfairly targeted by law enforcement, PPP members followed police in their vehicles and recorded every inquiry, search, and arrest of Polynesians for six weeks. In partnership with ACORD, they correlated their P.I.G. Patrol notes against the magistrates’ court proceedings to paint a clear picture of discriminatory policing practices. This data helped them collectively organise for legal and political action. We can learn from this that the most radical solutions have always emerged from grassroots thinking.

To avoid the pitfalls of analysis paralysis, we invited Knowledge Holders to share how they would like to envision safety and security beyond policing. The immediate and overwhelming response was that we needed to “*bring it back to the community*” by resourcing and empowering our people to keep each other safe. One Knowledge Holder said that police “*[were] the wrong kind of intervention or one type for all...we need our churches and communities to play that active role.*” Many also cited the positive work done by Māori and Pacific wardens who operate as community responders rather than as “*punishers.*” For many, their best interactions with police were when the officers were “*acting the least like a policeman.*”

As one Knowledge Holder told us, she never calls the police for help but recently had a community constable come to her home (off-duty) to check on her and her siblings, drop off food parcels and assist her with getting bills, licenses, and other documents together.

“He comes to the house casual, not in uniform, without force and says “Hey, I’m not here to judge.”

68 Melani Anae *The Platform: The Radical Legacy of the Polynesian Panthers* (Bridget Williams Books, Wellington 2020) at 30-31.

69 Jessi Lee Jackson and Erica R. Meiners “Fear and loathing: The challenge of feelings in anti-prison organizing” (2011) 39 *Women’s Studies Quarterly* 268–288. Quoted in McDowell, at 48.

70 Steve Martinot and Jared Sexton “The Avant-Garde of White Supremacy” 9 (2003) *Social Identities* 2 at 174.

From this example, what she considered a ‘good cop’ was essentially someone who was an effective community worker instead of someone who deals with harm through punitivism. While we recognise that more work needs to be done to gather Pacific peoples’ reimagining of community safety, the question of how we can progressively defund the current policing model and reinvest into community care strategies must be at the forefront of any justice discussion.

The Court System

Key points:

- American film and television heavily influence perceptions and expectations about the courts. Many are largely unfamiliar with how the Aotearoa New Zealand court system operates.
- Knowledge Holders placed a lot of trust in their lawyers but often felt underserved by the quality of the representation they received.
- A dominant perception exists that lawyers are just there to “make money”.
- Court proceedings were frequently described as frustrating, stressful and confusing.
- Socioeconomic barriers affected people’s participation in the court process.
- The legal aid system requires an urgent overhaul.

“Because you don’t understand what you’re going through. So all you can draw upon is what you see in movies and TV and stuff like that, and I had no idea what the process was like.”

“There’s no bar or standard for legal aid. They just take the money and get away with not doing a lot.”

“Resourcing is one of the key things, people just can’t afford legal aid, or at least people don’t meet the legal aid criteria...so the people who actually qualify for it is such a small group of people. Either you have to be on a benefit or you have to have multiple kids in order to meet that threshold which heaps of our community just don’t meet. They either have to borrow [money], get a duty solicitor or just don’t have the proper representation or the quality of representation required to either get the best deal possible.”

“If you want to properly give good and proper representation to your client you’re required to go above and beyond what you’re receiving...being able to pay our lawyers who represent them to ensure proper, quality representation must account for the extra hours in which they work.”

71 Angela Davis “Revolution Today” lecture for the Centre for Cultural Research and Innovation (9 October 2017, Barcelona).

72 Melani Anae *The Platform: The Radical Legacy of the Polynesian Panthers* (Bridget Williams Books, Wellington, 2020) at 85.

73 Moana Jackson, *He Whaipanga Hou Part II*, at 130.

74 Moana Jackson, *He Whaipanga Hou Part II*, at 132.

75 Mark Findlay “Community participation, and the integration within legal formalism in the South Pacific” (2001)

72 *Dans Revue Internationale de Droit Pénal* 495 at 499.

“At first I thought they [the lawyer] were tryna be helpful, but then when I’m sitting in court I’m thinking to myself “well are you gonna defend me?” Because you know they’re [the prosecution] bringing stuff up from back five years ago...but he just sat there and just said nothing.”

“I just felt like they come and sit there and make more money you know. I just felt it was kind of a set up to be honest.”

“One of my good friends, there’s no nice way to say it, but he tried to kill himself. The stress of just going through it [trial]. He just didn’t want to wait around to see if he was gonna go to jail or how he was gonna support his family if he’s in the system.”

“But in terms of access to justice, personally I think resourcing is one of the key things.”

“Court is the biggest barrier to our success.”

“Even the times in which the courts operate. Like, it’s something as simple as that. I’ve got shift workers who can’t come in at this time because they’ve got to go to work or they can’t find childcare arrangements. How does this system work for people required to take time off appear? They’re just further setting back the family even more.”

For the purposes of this Report, the ‘court system’ encompasses courtroom operations (most commonly in the District Court), interactions with judges, lawyers and other justice agents, and common court proceedings such as bail, trial and sentencing. Given that Knowledge Holders did not disclose the details of their case(s), the talanoa were deliberately kept broad.

We began by asking Knowledge Holders whether, and to what extent, they were educated about the court system. Several identified that their first point of reference was American film and television dramas which, as they now understood, showed them a dramatised version of over-zealous lawyering quite unlike what takes place here. Their responses illuminated the extent of relational separation between everyday people and the justice system. Despite our common law system being underpinned by the principle of “open justice”, the court itself poses an interesting paradox: if this is where justice must be “seen to be done”, then why do so few people know how it works?

This was underscored in how our Knowledge Holders described their experiences in the courtroom; “alienating”, “isolating” and “exhausting.” The first two descriptors are fitting given that the system has its “organisation and administration reflecting the peculiar characteristics of a Westminster-style bureaucracy.”⁷³ This is expressed both in its ideology and the physical design of the courtroom, where parties are separated and ordered by institutional hierarchy. In the Western legal tradition, justice is ‘contracted out’ to institutional agents of no relation to the harmed parties and thus “removed from the realities which precipitated the offence.”⁷⁴ This detached and hyper-individualised process reflects the justice system’s “monocultural arrogance”, in direct contradiction (and subjugation) of tikanga and tino rangatiratanga. We also contend that these courtroom dynamics are antithetical to Indigenous Pacific collective accountability, dispute resolution and restoration practices. Though it is beyond the scope of this paper to detail

the relationship between colonial and customary law in the Pacific islands, it is well recognised that collective, participatory justice is an “essential characteristic of custom-based resolutions in the South Pacific.”⁷⁵

Speaking to the paradox of custom and colonial legal structures, Mark Lindsay explains that:

An initial “grab” for power by colonial administrations in the Pacific was through control of the justice and sanctioning processes. This was effected at several levels of colonial influence. For example, Christian missionaries, by introducing a Judeo-Christian moral ethic to dominate indigenous “moralities”, created a compatible climate for the construction and enforcement of individualised justice, largely monopolised as it would be by state judicial mechanisms.

And further:

For example, the ideology of common law criminal justice relies on features such as individual liability, rational choice justifying penalty, the state’s obligation to prosecute and punish on behalf of the community, the limited availability of justification or excuse, and the consideration of extenuation only in mitigation. It is not a form of justice that well manages collective behaviour or communal interests. The potential for paradox where such a notion of justice comes up against customary resolution processes with very keen communal and collective investment, is clear. For instance, with traditional community shaming the whole village is coopted into the process and the offender’s family may take collective responsibility not only for the harm but also for his rehabilitation. Common law liability, on the other hand, tends to isolate the offender from the community at all stages of the penalty process, while requiring the individual to restore the social balance through his guilt and shame.

Similarly to Tikanga, approaches to punishment across the Pacific were collectively realised in accordance with the specific, customary structures of each village. Harm, even between individuals, justified a communal response because it resulted from a disruption of relational norms, values and conduct. In this way, everyone had a stake in holding that person(s) to account and preventing the harm from recurring.

However, the influence of Judeo-Christian theology has also impacted our collective responses to harm, accountability, and shame. As historian Zoë Catherine Lavatangaloa Henry explains:⁷⁶

Punishment was transformed and developed with the onset of Christianity and colonisation. Prior to that we had our own ways of dealing with wrongdoing and disruption that rested on Pacific values of communal restoration. Christianity and colonisation, all of that spicy stuff, came in and changed the game. Instead of

it being communally based, you now say your ‘Hail Mary’ and confess to a priest instead of it being a collective responsibility and aspect of our being.

Although the colonial court dynamics present in many of the Pacific islands now mirror what we have in Aotearoa New Zealand, what persists is a colonial monopoly on “justice” saturated in a monocultural logic. As a result, culturally specific ways of addressing interpersonal harm are subjugated in favour of a “civilised” system. For Pacific peoples, the stigma of shame (born of a Judeo-Christian moral ethic) adds a further barrier to collective engagement. As bell hooks so aptly reminds us, “shaming is one of the deepest tools of imperialist, white supremacist, capitalist patriarchy because shame produces trauma and trauma often produces paralysis.”⁷⁷

The Westminster system strips the individual of any liberatory accountability process that demands ownership of the harm caused. As discussed by our formerly incarcerated Knowledge Holders, the system is not set up for offenders to meaningfully repair their harm such that a conviction and sentence do not guarantee ‘justice’ for survivors. What emerged from the talanoa was that court interventions failed to address the underlying causes of harm and their offending behaviour(s), no matter how well-intentioned.

“Looking back I can say it [the Family Group Conference] was well resourced, it caught me when I needed it, and it should have had a good outcome, it had all the ingredients of a good outcome. But it doesn’t solve the underlying issues to address my offending.”

When Knowledge Holders described the courts as “*exhausting*”, this was most often in relation to their frustrations with the protracted timeframes (made worse under the Covid-19 pandemic), bureaucratic inefficiencies, and interactions with lawyers and other court staff. Language difficulties were a recurring issue throughout the talanoa. While the Ministry of Justice has made significant steps over the years to recruit more translators and communications assistants for those for whom English is a second language, little has been done to shift away from the outdated legalese used by judges, lawyers and other legal professionals. Despite being fluent in English, it made many Knowledge Holders confused in the courtroom. This added to their overall feelings of disillusionment toward the system.

The emergence of therapeutic courts in the last 20 years evidences the limitation of mainstream courts and further re-affirms that they are not culturally neutral spaces. While something like the Pacific Youth Court (PYC) offers an alternative approach for Pacific peoples, its authority is confined. Moreover, it is difficult to evidence the efficacy of the Pacific Youth Court in the absence of a comprehensive audit. However, something must be said about how our approach to youth justice underscores the importance of collective engagement whereas the adult jurisdiction maintains an iron grip on “individualised justice.” In our view, this reveals a philosophy of terminal criminality that tells any offender over 18 years that they, and they alone, are responsible for the harm caused. We believe it is worth considering how the values of the youth justice system could be effectively mapped onto the adult jurisdiction, and how the values of the PYC might better serve Pacific adult offenders.

76 Tabu Tok Panel “Punishment and Discipline- Season 2, Episode 1” Tabu Tok <www.tabutok.com>.

77 See bell hooks “bell hooks: cultural criticism and transformation Part I and II” Film (1997) Media Education Foundation. Available on <www.kanopy.com>.

Prison

Key points:

- Knowledge Holders highlighted that prison is a toxic, anti-rehabilitative and harmful environment with lifelong impacts.
- Knowledge Holders said there were few productive activities for them to do daily.
- Making contact with family members and other support networks was incredibly difficult.
- Many Knowledge Holders said that prison programmes were oftentimes effective but the offerings were scarce. Some Knowledge Holders were frustrated that the programmes only became available near the end of their sentence, often when it was too late for them to make any meaningful change.
- Many felt that the parole process was too focused on punishment and catching them rather than supporting their reintegration into the community.

“Prison doesn’t work.”

“You need to find a way through the prison sentence that isn’t going to destroy your soul, part of that process means switching off your sensitivity and becoming numb.”

“It’s one of the saddest places I’ve ever been.”

“Dark, damp, and dingy. A scary place to be for a teenager.”

“Everyone in there is mentally just fucked, it’s just a culture of paranoia. You sit there and you’re playing table tennis and you hear guys yelling on the phone, smashing the phone at night, you got guys screaming in their sleep, you got guys headbutting the wall and getting taken out on a stretcher in handcuffs. It’s fucked in there.”

“One thing I never forget is I was lying on my bunk, and I was just looking at the wall because there’s nothing to fucking read, I just read all the tags. I saw this tag that said, “I fucking wish I wasn’t born Māori.””

“Because when you get in there if you don’t have anything to rely on the first person to go to is in a gang and then you’re gonna owe a favour and once you owe a favour you are pretty much locked in with them.”

It is difficult to synthesise the depth of our talanoa around prisons within the limits of this Report. Throughout each talanoa, we were reminded of how complex the ‘prison system’ is: the minutiae of prison life, prison programmes, parole, and release. Prisons are intensely private institutions, so non-incarcerated folk do not understand what happens inside. We sincerely thank our Knowledge Holders for sharing their experiences in such detail.

The dominant impressions of prisons are that they are toxic and anti-rehabilitative environments operating on fear, paranoia and anxiety.

“When you arrive, sure you know you’ve done wrong, and you’ve hurt people and you need to get through that. To find the way through that you need to find a way that won’t destroy your soul...part of that process means switching off your sensitivity and becoming numb and getting into the rhythm of prison life...switching off your thought mechanisms, you’re not thinking about remorse or ‘sorry’ because it’ll drive you crazy...it’s ‘how will I survive that day?’ To reflect on your crimes, it’s not the time for that...The reflection comes after you’re released.”

Based on what we were told, when a person enters prison (whether as a convicted offender or on remand), their priority is assimilating to the “rules of the game”. This would often require them to fight other inmates as an initiation to assert their place in the unit.

“Pretty much every day I was fighting to try and survive. You try to kind of pass that message to people to leave you alone but that wasn’t the case you know, like, every time you fight, you win a fight, they want you to fight someone else, and then they want to recruit you [into a gang].”

While Corrections staff are formally responsible for “running” the prison, the gangs control the internal dynamics. Knowledge Holders explained that mainstream prison “is very gang orientated” and it was often a “necessary act of survival” to form alliances with them to “survive the lag”. These associations did not end upon their release and often carried into the “outside world”.

“If you don’t come correct – you’ll be eaten alive.”

“You have a certain place in jail. You can’t really be seen to be reaching out to the Ombudsman to say, hey, look, the prison directors not letting me do this or do that. You’ve just got to play the game their way.”

Knowledge Holders who had served longer “lags” (sentences) said that to get the attention of staff they would deliberately “act up” because “the badder you are in prison, the better you get treated.” A former prison guard (Pākehā) at one of the talanoa confirmed that prison staff would often bow to the demands of the “worst ones” to prevent unit disruption.

In describing what they would do daily, the overwhelming response was “nothing”. We heard there was very little to do to pass the time other than take their assigned meal breaks, sit in their cell, or spend time in the common room. For those recently incarcerated, the impact of the Covid-19 lockdowns increased restrictions on an already limited supply of activities.

“It was tough last year because of COVID. We would go, like, maybe three weeks at a time without getting any sunlight or air. So, we’ll just be stuck in our cells...And the times we did get let outside it would be into the courtyard the size of a bedroom, and we’ll just stand around trying to get some sunlight because you can’t see anything. And there’s only like a cage at the top, which has maybe about a metre gap where you can see some sort of sky and some sort of

sunlight. Yeah, other than that, we were just kept in our cells.”

“So you got guys who may never get to use the phone on any given day, because the lines are so huge, and then you’ve got to get phone cards. So, if you don’t have money on your canteen account to buy a phone card, you can’t ring anyone. Yeah, so guys just sitting in there, they can’t be bothered to be honest, they’re just tired. They’re like, just whatever happens, happens. I’m just gonna sit here.”

“It’s scary to be honest [in Mt Eden prison] there was a lot of bullying, lots of fights going on every single day and we got no unlock time, we only got an hour outside, we get like nothing, no TVs, no cleaning stuff, and it was pretty dirty you know, like, the staff were pretty shit to be honest.”

Prison programmes

Recently, the Ministry of Justice has increased the number of prison rehabilitative programmes available. These programmes address various needs including violence, alcohol and drug addiction, parenting and Tikanga Māori. Programme offerings differ from prison to prison and inmates are not automatically guaranteed a place. The courts, case managers and parole often determine their participation in a programme. Knowledge Holders were forthcoming about their motivations for participating in the programmes. For some, it was mandated as part of their sentence while for others it was simply a case of “*ticking a box to look good for parole*”.

“When I went there, actually I just went to tick a box because that’s what the parole board wanted me to do. And when I got there and just started listening and it kind of all made sense to me. I came out as a different man.”

Many described having positive experiences in the prison programmes as it was often the first time they had the opportunity to unpack their offending behaviour. The men spoke to the benefits of having the space to healthily and openly express their emotions with each other to interrogate their mental well-being, addictions and behaviours without judgment.⁷⁸

“Just learning about myself, to be honest, what was going on for me, why did I use alcohol, why did I get so violent, so much learning about all these emotions that go on inside my head.”

“In the [Special Treatment Unit and the Drug Treatment Unit] you are isolated or like in a different unit from the whole prison. And you get to stay there, and you know interact with other inmates that are doing the program. It’s all surprising, like, people I know from the past that were there, they were cruel and violent and so I see two different people when I got there. I think it’s just finding out about themselves and why they act out, understanding their feelings what’s going on in their heads and that and how to control them.”

“I did feel safe there...it felt like a weight off my shoulders because everybody is there for the same reasons.”

“It’s like a little community, we call it a community because everybody has to pull each other up. If they see unhelpful behaviours, you start learning how to approach the person and say it in a manner that it won’t come across to the other person as an attack or, you know, as a threat.”

“You talk to men that were violent before without them reacting and you start to feel like “Oh I can actually do it” you know, like you can actually talk somebody to calm down and hold somebody responsible for their own actions without coming across as rude or attacking them.”

However, the benefits of the programmes were largely negated when the men were thrust back into the prison unit.

“When you’re doing the courses, it’s safer. But when you’re in the unit it’s like going back to square one again...prison’s always gonna be prison and you’re always gonna come across staff that are rude and cruel and use their power against you. That’s what we had to tell the tutors, like, after we learn all this stuff it’s different in our little community then going back to the jail life if you approach someone like that, they’re gonna attack you, it’s a pride thing.”

Further, many expressed frustration at the requirement that they must have served half of their sentence before being eligible to participate in a programme. They believed that only a few weeks in prison entrenched them in its toxic dynamics.

“You must serve half of your sentence before you can access any programs. This model sets you up to fail and asking for change half-way through is bullshit - because you’re already set in your prison ways or have joined a gang.”

“The ones on remand should be able to do the programmes too...at least they can come out with something you know, like learning something or one or two things that they learn about themselves.”

Knowledge Holders also spoke to the state of mental health services (or lack thereof) available in prison. The evidence shows that Pacific peoples carry higher than average mental health burdens and that New Zealand-born Pacific peoples are twice as likely to have had mental health issues than those who migrated here after the age of 18.⁷⁹ The state has also acknowledged that the lack of mental health services available to, and accessed by, Pacific peoples only exacerbates these mental health challenges.⁸⁰ This service deficit is only amplified in prison.

⁷⁸ None of the Knowledge Holders we spoke to had participated in the Saili Matagi programme.

⁷⁹ Mark Oakley Browne, J Elisabeth Wells and Kate M Scott *Tē Rau Hinengaro: The New Zealand Mental Health Survey* (Ministry of Health, Wellington, 2006).

⁸⁰ New Zealand Police *Police Strategic Assessment – New Zealand’s Pacific people: Criminal behaviour and its underlying causes* (6 July 2018) at 4. (Obtained under Official Information Act 1982 Request IR-01-21-9657 to the New Zealand Police).

As one Knowledge Holder described:

“If you’re struggling with your mental health you make an appointment to see the doctor. It can take a week, two, or more. Depends on what prison. They prescribe you amitriptyline – that’s their blanket drug if you complain of anxiety or depression. In terms of specialised mental health support, there’s none. Unless you enter prison with a mental health condition, and it’s noted on your file. Those people that do [have a diagnosis] have psychiatrists and psychologists. To access them, it’s very difficult. A lot of people needed it. The guards knew. The doctors knew. I knew I had a mental illness.”

The talanoa about prison programmes illuminates one of the many structural flaws inherent in carceral institutions; that is, therapeutic and rehabilitative learning cannot be fully realised within a carceral structure. If prison is the first time these men have been exposed to any therapy and treatment, why must they wait until imprisonment to access this care? This leads back to the overarching problem that prisons fail to address the underlying causes of harm and offending behaviour(s). When asked if they felt prison effectively deterred them from crime, they responded:

“As a measure of deterrence, prison did not deter me from my offending. It was a consequence, but I never considered prison while I was committing my crime. I don’t think prison works. The first couple of sentences I did, it’s not a time for reflection. It didn’t change the way I thought about my criminality. It was an obstacle to jump over to get back out to continue my criminal lifestyle...I will say that my last couple of sentences as I got older really affected my mental health in a detrimental way than it did when I was younger.”

“Prison only works if you use the time to consider and reflect on what you’re missing.”

“I think prisons do more harm than good.”

“Prison hurts people. It’s affected my life more than anything else. It really affected my mental health in a way I couldn’t function properly. It took me a long time to recover, and some people never recover. I think it’s damaging. I think it’s a waste of time. There are many people there that shouldn’t be there. They can contribute in another way. There should be another way for people to repay what they owe.”

“When you’re caged your whole life, you just become more animalistic.”

“And there are people that make mistakes that end up in jail who are never ever like, there is no such thing as a second chance, when you get out of jail, it is like a fucking low percentage of people who actually make it out and have a normal life. Because once you get out, it’s hard to find a job, it’s hard to reconnect with the people that you were friends with before. It pushes you into a life where the only way to succeed or to make any kind of bread is to go down a path that you shouldn’t, you know, and it’s like, we talk about all these programmes, and rehabbing people to get out, but there aren’t programmes in remand. So even when you do beat your case, or like a lot of guys that were in there, they’re stuck in this limbo, where, okay, “I’m going to

have to pick a side”, where they’re gonna be broke, with their hands out trying to figure out a way to survive without breaking the law, or “I’m gonna have to break the law to get ahead.”

“When I came out, I thought “Oh this’ll be easy” because you know, like I’ve done it before. Everything changed...it was overwhelming. I breached [parole] a couple of times.”

“You’re doing the time for the rest of your life. That has big effects. There needs to be something done in that space whether it’s a clean slate extension for people who’ve been incarcerated. It would be such an easy fix to widen the opportunities for people who are choosing to try and do good in life.”

When asked what factors influenced successful reintegration, the dominant responses were comprehensive support networks, open communication, and agency. Some had found successful reintegration into the community with charities like the Grace Foundation which provided them with the tools to ease their transition back into society, including housing, healthcare, food and a daily routine.

While the Grace Foundation is not a Pacific-specific organisation, its emphasis on collective well-being draws a lot of Pacific men into their fold. Our overall impression from our Knowledge Holders was that prison had done very little to deter and rehabilitate them. It only succeeded in its rationale of containment. We often heard that prison made it incredibly difficult for them and their families to live full and productive lives.

Their responses reflect those of other formerly incarcerated persons who participated in the Safe and Effective Justice Advisory Group’s research into the justice system:⁸¹

A few ex-prisoners told us that prison had helped them to turn their lives away from crime. However, more often, we heard that imprisonment just makes it harder for them and their families and whānau to live positive and productive lives. We heard that prison environments, which are characterised by the loss of choice, lack of privacy, frequent fear, coercive control and need to wear a constant mask of invulnerability to avoid abuse, are not conducive to rehabilitation. Instead, they diminish people’s sense of responsibility and, particularly for younger people, connect them to a criminal network. Because we rely on a network of relatively few large prisons, prisoners often need to be accommodated a long way from their social support systems, which could be critical to their eventual successful release. Even when located close to whānau and family, we heard it can be difficult to maintain meaningful contact. We were also told that rehabilitation programmes are frequently difficult to access, that delays in programmes can lead to longer periods of imprisonment and that the frequent transfer of prisoners between prisons can interrupt programmes. In short, we heard that prisons can increase the likelihood of people reoffending after finishing their sentence.

These stories bolster the argument that prisons are outdated vestiges of a colonial state that fail to meet their stated rationales to deter and rehabilitate.

As Tracey McIntosh writes:

In many ways, this is because the existence of prisons is seen solely within a crime and punishment framework. We've come to accept as a self-evident truth the claim that an increase in incarceration is linked to the level of criminality in our society. This makes it possible for us to see our present practice as a matter of rational accounting....Of course, many see increases of prison populations as evidence of a successful war on crime. But the imprisonment rate is not a measure of crime reduction. There is no correlation anywhere in the world between the imprisonment rate and the crime rate. Our incarceration rate, as Kim Workman has reminded us, is a measure of the consumption of punishment.

Prisons cage our most marginalised communities, being those who are socio-economically disenfranchised, houseless, mentally unwell, and intellectually disabled.⁸² Two-thirds of incarcerated persons have problems with alcohol or drug abuse,⁸³ seventy per cent with prior convictions will be reconvicted within two years following their release, and around 49 per cent are re-incarcerated after two years following their release.⁸⁴ The evidence is irrefutable that the carceral system does not address the underlying harms that drive offending nor comprehensively support survivors of harm. As American criminologist, Meghan McDowell contends:⁸⁵

When the police, and the criminal justice system more broadly, are cast as integral to safety, this obscures the fact that law enforcement, prisons, and courts are often sites of violence rather than its resolution for people who do not have the protection of whiteness, money, citizenship, gender conformity, and/or heteronormativity.

The first report of Te Uepū Hāpai i te Ora (Safe and Effective Justice Advisory Group) found that “the justice system is not responsive to people who have been victimised”, citing the 2019 Criminal Justice for Victims survey which found that 83 per cent of victims did not think the justice system was safe for them.⁸⁶ The current carceral crisis invites us to reimagine safety, accountability, and rehabilitation beyond the current structures of the justice system. As lauded abolitionist scholar Angela Davis said, “prison is considered an inevitable and permanent feature of our social lives.”⁸⁷ Its durability in our social imagination illuminates a core aim of the settler colonial regime, which is to make itself, and all its institutions, “natural, permanent and without origin.”⁸⁸

This is not to say that those who cause harm should not be held accountable for their actions. That is nonsensical. Instead, and as American abolitionist scholar Mariame Kaba so aptly reminds us:⁸⁹

Turning away from systems of policing and punishment doesn't mean turning away from accountability. It just means we stop setting the value of a life by how much time another person does in a cage for violating or taking it—particularly when the criminal punishment system has consistently made clear whose lives it will value and whose lives it will cage.

As stated in the ‘Prisons’ section in Report 1, we argued that considering how to transform the criminal justice system must seriously contend with abolition. We have not wavered on that. The work of Moana Jackson, Tracey McIntosh, John W. Buttle, Dylan Asafo, Sina Brown-Davis, Emilie Rākete and Ti Lamusse, collectively offers us a comprehensive roadmap for how we can create a society without prisons; not as a remote possibility, but as a precise vision to orient around.

“Like police, there is no prison reform possible that can completely eliminate the innate inhumanity and racism of prisons. The rotting house must be dismantled, and a new system needs to be built.”⁹⁰

81 Te Uepū Hāpai i te Ora (Safe and Effective Justice Advisory Group) *He Waka Roimata: Transforming Our Criminal Justice system* (Ministry of Justice, June 2019) at 50.

82 Olivia Neas “Utopia Lab: The criminal justice system is broken” *North & South* (Auckland, June 2021) <www.northandsouth.co.nz>.

83 Ministry of Justice “Correctional Alcohol and Drug Treatment – Investment Brief” (February 2016) <www.justice.govt.nz>.

84 Ministry of Justice “Hāpaitia te Oranga Tangata” (16 July 2021) <www.justice.govt.nz>.

85 McDowell, at 48.

86 *He Waka Roimata*, at 15.

87 Angela Davis “The Fight to End Money Bail & Abolish Prisons” lecture at the Harvard Kennedy School of Government ARCO Forum (7 March 2003).

88 Lopesi, at 88.

89 Mariame Kaba *We Do This Til' We Free Us* (Haymarket, Chicago, 2021) at 140.

90 Dylan Asafo “Time to dismantle our rotting house” (5 June 2020) Newsroom <newsroom.co.nz>.









Responding to The Research Question

Below, we develop the wisdom of our Knowledge Holders to summarise the critical systemic issues affecting Pacific peoples navigating the justice system. As we only spoke to two survivors, this sample size was too small to identify what key systemic issues affect Pacific survivors more broadly. To reiterate, we acknowledge that their perspectives deserve dedicated attention to better understand how their needs can be appropriately met.

What are the key systemic issues affecting Pacific peoples within the justice system and how might these issues be overcome?

- There is a clear pattern in the systemic issues identified by Knowledge Holders in this project and those found in similarly qualitative work undertaken in the late 1990s and early 2000s by Pacific researchers.⁹¹ This demonstrates that while the issues are very much ‘known’ by our community, there is intractable institutional inertia to address them meaningfully.
- Socio-economic disenfranchisement was the most cited risk factor that drove offending and a barrier for Pacific peoples in accessing justice. These responses were consistent with the earlier research findings by Judy Paulin and Keneti Apa as outlined in Report 1.
- These socio-economic stressors were oftentimes intimately entangled with issues relating to cultural/familial expectations, identity, and patterns of inter-generational harm. In this way, these systemic issues are specific to the Pacific diasporic experience.
- The mental well-being of Pacific people, especially Pacific men, often goes unaddressed as they move through the justice system. However, this phenomenon is a micro reflection of macro-level dynamics relating to Pacific peoples’ mental well-being more generally.
- The stigma of shame (and its corresponding culture of silence) is an insidious force within the Pacific community that manifests in harmful ways. This intra-community issue must be collectively addressed if we want to transform how we respond to harm going forward.
- As an apparatus of settler-colonialism, the justice system is highly individualistic, adversarial, and alienating. As racialised migrant “Others”, we have been thrust into an irrefutably racist monolegal system that traces back to colonisation and the racial capitalist regime it relies on and sustains. Failure to make this history transparent obstructs any meaningful, system-wide change that could positively impact Pacific peoples.
- Though they are not formally absorbed in the justice process, family members are nevertheless impacted by the system with few available support avenues.
- ‘Inaccess to justice’ is too often discussed as an issue of individual rights instead of a collective class struggle under late-stage neoliberal capitalism.

⁹¹ We acknowledge the work done by The Justice Pacific Reference Group, Ida Malosi, and Sandra Alofiavae, and Keneti Apa.

- The emphasis on diversity, equity and conclusion has eclipsed the more urgent need to attend to and improve Pacific people's material conditions.
- The current system, particularly in the adult jurisdiction, offers few avenues for collective community engagement and is often limited to the sentencing stage.
- The wheels of the justice system turn slowly making the process exhausting and oftentimes re-traumatising for survivors, offenders, and their families.
- More 'brown faces' in positions of power do not necessarily lead to better outcomes for Pacific peoples.

Offering A Perspective...

This section offers a perspective on the “problem” of Pacific offending. It is not a ‘defining statement’ – such a task is impossible when addressing a diverse group of people, ethnicities, and cultures. In acknowledging the risk of homogenising the ‘Pacific experience’, we attempt to weave together the threads of colonialism, capitalism, and racism into a broad perspective on the overrepresentation of Pacific peoples in the justice system.

There is no single, causative explanation for why individuals offend. As discussed in Report 1, the dominant explanations for the ‘problem’ of Pacific offending have revolved around our community’s failure to assimilate to the New Zealand (read: Pākehā) ‘way of life’. While there has been considerable mention of our socio-economic disenfranchisement throughout the early literature, any critical analysis of the inter-relationship between class and crime was marred by racist stereotypes which painted us as biologically violent, deviant, and savage. While subsequent research has more accurately highlighted contemporary stressors that may predispose Pacific peoples to offend, these analyses are rarely contextualised against our relationship to Aotearoa New Zealand’s settler-colonial schema. Considering why Pacific peoples, especially our Pacific men, present so frequently within the justice system, an individualised focus frustrates nuanced analysis. As Moana Jackson remarked concerning explanations of Māori offending:⁹²

[It] is impossible to view an offender as an isolated victim of some internalised quirk or psychological or emotional instability. Likewise, it is impossible to regard him solely as the victim of external social pressures. The two sets of stressors are interlinked, and it is the manner of their interaction in a given case which will create imbalance in a person’s life and so determine whether they will or will not become an offender. An emphasis on one set of “causes” at the expense of another is thus inadequate and inappropriate to a holistic Māori understanding of behaviour. An emphasis on these pressures divorced from the history and cultural interaction which shape them would, of course, be similarly inadequate. The behaviour of a young Māori offender does not manifest itself in some spontaneous social or psychological act committed in a contemporary vacuum. Rather it is manifest in a context shaped by the historic forces which have defined his place in the New Zealand scheme of things. Today, that place is both stressful and unique.

While acknowledging significant contextual differences between offending by Māori and Pacific peoples, given the similar ways in which both groups are racialised we argue that Jackson’s observations broadly hold for Pacific peoples, too. However, explaining the overrepresentation of Pacific peoples within the criminal justice system can be challenging given that, as a diasporic group, the driving forces of cultural denigration and systemic deprivation resulting from colonisation cannot be hastily and neatly mapped onto us as they can for Māori.⁹³

Although we can identify racism as the key force behind our racialised overrepresentation in the justice system, how do we then explain why other racialised migrants do not present so overwhelmingly in the justice system by comparison? Across the research,

⁹² Jackson, *He Whaipaanga Hou Part II*, at 58.

⁹³ We thank Dylan Asafo and Chris Merrick for this offering.

the most cited risk factors that increase the likelihood of offending by Pacific peoples are;⁹⁴ family violence, child abuse and neglect, alcohol abuse, mental health challenges, identity struggles and cultural disconnection (particularly vis-à-vis youth). These factors “are known to generate harm and can potentially lead to long-term negative outcomes for those living in these environments with criminal offending being one potential outcome.”⁹⁵

Our Knowledge Holders’ responses reaffirmed this whilst revealing new and critical dimensions to our understanding of Pacific peoples’ experiences with the justice system.

In identifying these risk factors, the state has acknowledged that Pacific peoples exist against an all-encompassing backdrop of “adverse socio-economic circumstances.”⁹⁶ Although this socio-economic “backdrop” is often mentioned, it is rarely interrogated. For this reason, much of the discussion addressing the “problem” of Pacific offending fails to acknowledge the critical role of racial capitalism and therefore fails to advocate for evidence-based improvements to Pacific peoples’ material conditions. In other words, while it has been proven time and time again that the root causes of crime for Māori and Pacific peoples are material deprivation and poverty, the state’s solutions to crime are never focused on eradicating deprivation and poverty, let alone the systems of racial capitalism and colonisation that drive these realities.

We can think of several reasons why this might be, the dominant one being that the state often obscures, if not denies, the vital connection between capitalism and matters of ‘law and justice’.⁹⁷ While identifying and unpacking this connection is by no means the silver bullet to solving the aforementioned issues, failing to examine the conditions that forged this living environment hampers any radical response. In dismissing the argument that our offending/overrepresentation results from some collective cultural failing, we must foreground how we are uniquely imbricated within the “New Zealand scheme of things.” Expanding on our discussion in Report 1 and the foregoing ‘Framing Ideas’, we contend that this “scheme of things” can be understood through the lens of racial capitalism as a force which alienates Pacific peoples from collective well-being, collective justice, and collective solidarity.

Numerous scholars have exposed the inter-relationship between capitalism and carceralism, evidencing how the justice system severs collective relations and replaces them within an individualised culture of “blame and externalisation” where our most marginalised “are selected as targets for the collective fears.”⁹⁸

The concentration of racialised communities in low socio-economic areas exposes them to higher levels of state violence creating a perpetual feedback loop of deviancy amplification and tough-on-crime interventions. When this vortex of vulnerability captures someone, there is a greater likelihood of being harmed by crime and/or captured by the criminal law. However, merely attributing the racialised overrepresentation of Pacific peoples to capitalism/neoliberalism is inadequate. Instead, understanding Pacific peoples’ overrepresentation *and* the risk factors driving it demands a reckoning with racial capitalism and its dismantling. According to Cedric Robinson:⁹⁹

94 New Zealand Police *Police Strategic Assessment – New Zealand’s Pacific people* at 4.

95 *Ibid.*, at 4.

96 *Ibid.*, at 4.

Racial capitalism created the modern world system through slavery, colonialism, and genocide because the development, organisation, and expansion of a capitalist society pursue essentially racial directions, so too did social ideology. As a material force...racialism would inevitably permeate the social structures emergent from capitalism.

The hallmarks of racial capitalist development are evident throughout Aotearoa New Zealand and Te Moana-Nui-a-Kiwa; blackbirding, colonialism, Indigenous disappearance, incarceration regimes, and migrant labour exploitation. The creation of ‘New Zealand’ was a capitalist project as much as a racialised one. Capital accumulation was, and continues to be, dependent on Indigenous land dispossession and cultural subordination.¹⁰⁰

Under capitalism, not all racial groupings are treated equally. Capitalism relies on “relations of severe inequality” for its accumulation,¹⁰¹ most detrimentally impacting those who are Indigenous, Black, brown, poor, disabled and women.

In Aotearoa New Zealand, Pacific peoples are captured by this racial capitalist dynamic by expropriating our labour. Since the mid-twentieth century, we have remained siloed into a delineated fraction of the working class population with our economic fortunes barely shifting over the last 70 years. We were thrust into, and continue to be confined by, a racist socio-cultural system of persistent socio-economic subjection. This condition has worsened under neoliberal economic policies and is reflected across all socio-economic indicia. As wealth and income gaps continue to widen along racial lines, it is apparent that no individual effort can counter such overwhelming structural forces. This is because capitalism is indivisible from racial practice and racial hierarchy.

It is known that the consequences of socio-economic deprivation results in poorer health, housing, and education outcomes that are often carried on inter-generationally.¹⁰² As Jackson describes, “it is a stress which seems inescapable as the initial lack of money sets in motion an inexorable spiral of deprivation.”¹⁰³ It is also known that those same individuals are more likely to be captured in criminogenic environments and draw the attention of law enforcement. In concrete terms, this has looked like the targeting by police of those who are Māori, Pacific, Black and poor; the unrelenting xenophobia of non-White immigrants; and the frenzied demonisation of youth offenders.

An intersectional analysis identifies that many of these demographics are not mutually exclusive but mutually reinforcing, especially when read against the ethnic makeup of our incarcerated populations. In this way, “the justice system disciplines those who are most marginalised by neoliberalism’s conditions.”¹⁰⁴

97 Nicola Lacey “The prisoners’ dilemma and political systems: The impact of proportional representation on criminal justice in New Zealand” (2011) 42 *Victoria U. Wellington L. Rev.* 615.

98 De Lissovoy, at 740. See also Nicole Lacey, above n 95.

99 Cedric Robinson *Black Marxism: The making of the black radical tradition* (University of North Carolina Press, 1983) at 2.

100 See Pounamu Jade William Emery Aikman “Will Māori become tenants in their own land by 2061?” in Arcia Tecun, Lana Lopesi and Anisha Sankar (eds.) *Towards a Grammar of Race* (Bridget Williams Books, Wellington, 2022) 49-60.

101 Jodi Melamed “Racial Capitalism” (2015) 1 *Critical Ethnic Studies* 76 at 77.

102 Papaarangi Reid, Donna Cormack, and S-J. Paine “Colonial histories, racism and health—The experience of Māori and Indigenous peoples.” (2019) 172 *Public Health* 119.

103 Jackson, *He Whaipaanga Hou Part II*, at 65.

104 De Lissovoy, at 740.

Mason Joiner likens the impact of neoliberal capitalism and carceralism on marginalised bodies to “slow violence”:¹⁰⁵

Economic inequalities directly influence who gets incarcerated, and incarceration in turn intensifies those inequalities, inflicting slow violence as the economic effects are felt over long periods of time.

The stories from our formerly incarcerated Knowledge Holders underscore this point; that structural poverty impacts not only offending and criminalisation, but the macro and micro activities of the justice system itself. Undermining collective relations is a hallmark of capitalism, reflected across all social and political institutions. Racial capitalist scholar Jodi Melamed describes this as “a forgetting of interconnections, of viable relations, and of performances of collectivity that might nurture greater social wholeness.”¹⁰⁶ As a result, the settler state dictates “who can relate and under what terms”¹⁰⁷, denying us life-sustaining connections outside the settler-colonial paradigm. Just as capitalism siloes humans into atomised economic agents, this fragmentation process is also reflected in our legal system. Rampant hyperindividualism extends into how ‘justice’ is dispensed in accordance with the logic of individual responsibility and punishment – all of which suppress collective approaches to relational care and accountability.

This is not to say that, for example, our Indigenous Pacific practices (i.e., *ifoga*) can easily be uprooted and transposed onto our urban, diasporic context(s). However, until the state is willing to release its monopoly on crime and punishment, we are forced to rely upon a monolegal system that has repeatedly proven incapable of dispensing ‘justice’ equitably.

The role of Christianity folds into this discussion, although not neatly. It is widely accepted that Christianity has become entrenched in Pacific communities in the Pacific Islands and Aotearoa New Zealand. It is a space that many of our lives orbit around, offering fellowship, community, culture, and care. However, we must also question how Judeo-Christian theology is a reservoir of patriarchy, misogyny, shaming, hyper-masculinity, homophobia, and classism. Because of this, we contend that Pacific peoples are captured by two civilising missions both born from the global colonial seed; one being the distinct dynamics of being racialised “Others” under New Zealand’s settler colonial schema, and the second being the force of colonial Christianity across Te Moana-Nui-a-Kiwa more broadly. Thus, when Christianity is repackaged as being innately “Pacific,” it eclipses our Indigenous accountability, healing, identity, and reconciliation processes.

105 Mason Joiner “Slow Violence and Racial Capitalism: Understanding Mass Incarceration Through a Case Study of the California Prison System” (Senior Thesis, University of South Carolina, Spring 2022).

106 Melamed, at 79.

107 Ruth Wilson Gilmore “Partition” keynote speech presented at “Decolonize the City! Decoloniale Perspektiven auf die Neoliberal Stadt” (Berlin, 21-23 September, 2012).

Short To Medium- Term Possibilities From Knowledge Holders

Below, we present our Knowledge Holders' possibilities for change as they relate to the critical stages of the justice system. These recommendations comprise the most dominant ideas presented to us across all the talanoa.

In Policing, Criminal Law and Prosecution:

- Increase the community's awareness about schemes like Te Pae Oranga Iwi Community panels, especially those available for Pacific peoples. During our talanoa, we found that both Knowledge Holders and legal professionals were confused about which alternative justice schemes Pacific peoples could participate in.
- Increase the availability and practice of providing culturally appropriate mental health assessments for Pacific offenders to address the identified access barriers. This does not have to be a formal diagnosis per se, but to ensure that any concerns or potential issues are noted at the earliest stage.
- Legalise cannabis for recreational use, progressively remove all drug offences from the criminal jurisdiction, and treat it as a public health issue.
- Address alcohol abuse and addiction as a public health issue. As part of this, assess how current liquor licensing laws impact neighbourhoods most populated by Pacific peoples and ensure that any interventions are done with and by the affected community(s).
- Remove benefit fraud prosecutions from the criminal jurisdiction.
- Stories of police violence shared by the Knowledge Holders spoke to the limitations of reformism and the ultimate need to abolish policing, as will be affirmed in our long-term possibilities of transformation.

In the Court System:

- Mandate court rehearsals for anyone entering the justice system for the first time to ensure they are familiar with the court environment before any trial.
- Expand survivor support beyond their time in the justice system to address the radiating trauma that can emerge from being involved in the justice system. In addition, there needs to be a direct investment into culturally appropriate survivor services by and for Pacific peoples.
- Update current ethnicity recording procedures to ensure a person's ethnicity(s) is correctly recorded at the first instance. Where someone is multi-racial, all their identities should be accurately recorded on their file. Additionally, when someone is of Māori and Pacific heritage they should be given full access to services and programmes relating to both cultures.
- Overhaul the legal aid system consistent with the New Zealand Law Society (NZLS) recommendations and calls from the combined Community Law Centres o Aotearoa (CLCA). In addition, there needs to be a greater financial investment in our community law centres.

- Appoint Pacific cultural liaison officers in all District Courts to facilitate culturally appropriate engagement with Pacific offenders, survivors, and their support networks.
- An independent and comprehensive audit of the Pacific Youth Court with a discussion of how its processes could apply to Pacific adult offenders.
- Adopt a flat hierarchy in the courtroom where all parties sit on the same level and abandon using legalese in favour of plain English.

In Prisons:

- Ease restrictions on prisoner programme access and allow incarcerated persons, including those on remand, to participate in programmes right from the beginning of their sentence.
- Improve access and resourcing to therapy and counselling in prisons. Access to mental health support should be immediate and not delayed nor limited to only those with the financial means to receive a diagnosis or psychiatric report.
- Allow incarcerated persons more time to communicate with their family and friends by extending visitation rights and community visits. In addition to this, phone calls should be free and readily available and not dependent on phone cards that have to be purchased through a shopping system.
- Allow conjugal visits.
- Allow independent researchers and journalists access to prisons to report on what is occurring without Corrections and/or the Ministry of Justice having editorial oversight. As a taxpayer-funded institution, the principle of ‘open justice’ must apply here, too.
- Stories of prison violence shared by the Knowledge Holders spoke to the limitations of reformism and the ultimate need for the abolition of prisons, as will be affirmed in our long-term possibilities of transformation.

By Community/Service Providers:

- Increase the number of Pacific service providers working in criminal justice.
- Enable greater inter-agency collaboration between Pacific service providers. In addition, ensure churches and community groups are involved in justice-related discussions, services, and policy decisions.
- Resource therapeutic interventions within the community to address urgent mental health needs, especially for adult Pacific men. Ensure any interventions are made by, for, and of our community(s).
- Increase the availability of suitable transitional homes for those leaving prison and re-entering the community.
- Many Pacific community organisations and service providers do not often seek government funding (despite the significant financial investment this would provide them) because they are concerned that the state will take over their work. Knowledge Holders mentioned that the Ministry for Pacific

Peoples needs to play a more significant role in enabling equal working partnerships and ensuring the state does not assume a decision-making monopoly.

“We can’t possibly live otherwise until we first imagine otherwise.”
— Daniel Heath Justice¹⁰⁸

108 Daniel Heath Justice “Indigenous Wonderworks and the Settler-Colonial Imaginary” (10 August 2017) Apex Magazine <www.apex-magazine.com>.

Long-Term Possibilities

Identifying the key systemic issues affecting Pacific peoples within the justice system is impossible without considering how those issues are rooted in our specific sociocultural, socioeconomic, and historic context(s). In responding to how these issues might be overcome, two approaches emerge: the first route is to suggest specific policy changes and/or inclusions to address system-specific issues: for example, the introduction of cultural liaison officers in courtrooms, increasing legal aid funding, and resourcing of Pacific-specific mental health programmes. Though well-intentioned, the limitation of this approach is not the substance of the ideas themselves, but that they are not orientated into a broader vision to dismantle the justice system's monolegal foundations. Therefore, considering how we might disrupt the system is the more challenging approach. It is well understood that the transformation of the justice system necessitates the transformation of *all* our socio-cultural and economic structures. While it would take several volumes to detail each and every possibility, as a first step, we aim to articulate a maximalist vision(s) that we might orient around and build upon.

We are conscious of our responsibilities as researchers to make recommendations with the hope that they might contribute to change. However, we must forefront that the research is *not* the action. It is a necessary but insufficient condition for transformation. It will not dismantle systems of oppression, but it can spark a fire for us to gather around. Actual change comes from collective organising and mobilising off the page.

“Systems don’t just change just because we identify them; they change because we disrupt them.”¹⁰⁹

There is a depth of existing material and wisdom that informs our vision. While much of this work more directly concerns Māori, they articulate a broader aim for the system-wide disruption that impacts everyone. As a general principle, we broadly support the vision(s) as stated in:

- *He Whaiapaanga Hou Parts I and II* (1987-1988);¹¹⁰
- *Unlocking Prisons: How We Can Improve New Zealand’s Prison System* (insofar as those recommendations are located within a broader strategy to abolish prisons in Aotearoa New Zealand, 2014);¹¹¹
- *Abolitionist Demands: Toward the End of Prisons in Aotearoa* (2016);¹¹²
- *He Waka Roimata* (2019);¹¹³
- *They’re Our Whānau* (2019);¹¹⁴
- *Turuki! Turuki! Move Together! Transforming our criminal justice system* (2019);¹¹⁵
- *Matike Mai* (2016);¹¹⁶ and
- *Freedom Dreaming of Abolition in Aotearoa New Zealand: A Pacific Perspective on Te Tiriti-based Abolition Constitutionalism* (2022).¹¹⁷

¹⁰⁹ Cornelius Minor *We Got This: Equity Access, and the Quest to Be Who Our Students Needs Us to Be* (Heinemann, 2019) at 31.

¹¹⁰ Moana Jackson *The Maori and the Criminal Justice system: A New Perspective – He Whaiapaanga Hou* (Policy and Research Division, Department of Justice, Study Series 18: Part 1, February 1987). Moana Jackson *The Maori and the Criminal Justice system: A New Perspective – He Whaiapaanga Hou* (Policy and Research Division, Department of Justice, Study Series 18: Part 2, November 1988).

In sum, the dominant recommendations proposed in these works are:

- A call to action to urgently and comprehensively transform the criminal justice system.
- A rejection of liberal justice “reforms”.
- Affirming tino rangatiratanga to enable Māori to make decisions by, for and of their community. This necessitates a redistribution of power from the current Crown monopoly.
- Creating a justice system that values the inherent dignity of all people, fosters meaningful relationships between people, upholds collective responsibility and accountability, and exercises care, compassion, and empathy. These values inform a restorative and rehabilitative system rather than something adversarial and punitive. Matike Mai puts forward a constitutional basis of values for a transformed Aotearoa in which Mana Motuhake Māori is upheld. These values affirm the flourishing of Māori self-determination and Tikanga Māori and guide a vision for Aotearoa that must extend throughout all spheres of justice and community building. It depends on the radical deconstruction of colonialism which currently informs the entire structure of political power and governance.
- Alongside supporting the ongoing calls for a self-determining Māori system of justice given the colonising crisis of Māori communities, there is a need to radically deconstruct these systems of justice altogether given their ongoing harm to all exploited communities. Dylan Asafo’s research opens this dialogue around prison abolition and transformative justice concerning Pacific communities living on stolen whenua within the settler colonial state of New Zealand.
- Prison abolitionist Sina Brown-Davis has spoken powerfully from her positionality as Tangata Whenua and Tangata Moana in highlighting that the “criminal justice system is a system of extreme repression and control,” founded in an interlocking system of exploitation under neoliberal capitalism.¹¹⁸ A system profoundly embedded in violence can never stand for the principles of justice it claims to represent. Frameworks of dealing with harm must be transformative, restorative, and based on best practices for our cultures and communities in shifting us towards futures guided by *justness*.
- A total reimagining of what public safety, accountability and punishment can look like through a framework of abolition.
- Prioritised investment into communities to build “life-affirming institutions” that meet people’s social, cultural, economic, and healthcare needs. Following that, the most effective interventions are done by, for and from the community.
- A commitment to anti-racism across all institutions.
- Abolition of all prisons by 2040 through progressive decarceration strategies.

111 JustSpeak *Unlocking Prisons: How we can improve New Zealand’s prison system* (JustSpeak, 2014).

112 No Pride in Prisons *Abolitionist Demands: toward the end of prisons in Aotearoa* (No Pride in Prisons, 2016).

It would be remiss not to align any possibilities for Pacific peoples within this existing knowledge framework. It is our duty as Tauīwi to let Māori lead the dynamism of change and for us to absorb some of the burdens to challenge the Crown’s sovereign prerogative. Secondly, this approach prevents us from working in a silo and demands “radical co-presence and co-existence”.¹¹⁹ Only through collective resistance and solidarity building can we dismantle systems of oppression.

“The whole country needs to change – Pasifika are living in a European system every day. When you can’t even honour the Treaty then how can you honour other cultures?”

— Knowledge Holder

Confronting the drivers of harm that precede our entry into the justice system is the starting point. That means prioritising community investment to create therapeutic responses to address urgent health, education and well-being needs and a widened social safety net. It demands the progressive divestment of carceral strategies with targeted injections into improving the material conditions of the most socio-economically marginalised. Safe housing is transformative justice. Livable incomes are transformative justice. Anti-racism is transformative justice. Mutual aid is transformative justice. Education is transformative justice. Quality and affordable healthcare is transformative justice and so on and so on. We wholeheartedly support the transformative work already being done by grassroots organisations such as Auckland Action Against Poverty and their ‘Livable Incomes For All’ kaupapa in campaigning against the interlocking impoverishment and exploitation caused by the colonial capitalist economy.¹²⁰ Similarly, the conversation and recommendations put forth by Jacqueline Paul and Max Harris in ‘The Ministry of Green Works for Aotearoa New Zealand’ speak powerfully to the indivisibility of Tino Rangatiratanga Māori, environmental justice, equitable housing infrastructure and the abolition of poverty in Aotearoa.¹²¹

“To truly be visionary we have to root our imagination in our concrete reality while simultaneously imagining possibilities beyond that reality.”

— bell hooks

113 Te Uepū Hāpai i te Ora (Safe and Effective Justice Advisory Group) *He Waka Roimata: Transforming Our Criminal Justice system* (Ministry of Justice, June 2019).

114 Sylvia Ashton-Martyn, Laura O’Connell Rapira and ActionStation *They’re Our Whānau: a community-powered and collaborative research report on Māori perspective of New Zealand’s justice system* (ActionStation Aotearoa, October 2018).

115 Te Uepū Hāpai i te Ora (Safe and Effective Justice Advisory Group) *Turuki! Turuki! Move Together! Transforming our criminal justice system* (Ministry of Justice, 2019).

116 Matike Mai Aotearoa: The Independent Working Group on Constitutional Transformation *The Report on Constitutional Transformation* (Matike Mai, 2016).

117 Dylan Asafo “Freedom Dreaming of Abolition in Aotearoa New Zealand: A Pacific Perspective on Tiriti-based Abolition Constitutionalism” (2022) 2 *Legalities* 82.

118 Moana Jackson, Sina Brown-Davis and Annette Sykes “Decarceration, Not Prison; Justness, not Justice; Constitutional Transformation, Not Treaty Settlements” (Space, Race, Bodies II workshop, 6 May 2016) available online.

119 To quote First Nations scholar Dr. Val Napoleon at the Constitutional Kōrero Conference held at the University of Auckland 21-23 November 2022.

120 See Auckland Action Against Poverty “Livable Incomes for All” <www.aap.org.nz>.

121 Max Harris and Jacqueline Paul *A Ministry of Green Works for Aotearoa New Zealand: An ambitious approach to housing, infrastructure, and climate change* (FIRST Union, October 2021).

Crafting a Wider Vision ...

In keeping with our commitment to reject reform, we present the short-term and long-term possibilities within a tripartite vision to **Reject, Reorient and Rebuild**.

1. Reject the status quo

To achieve transformation, the current justice system must betray itself. To “reject” requires a collective agreement that the justice system is systemically dysfunctional, irredeemably racist, and exhausted beyond its limits. The settler-colonial justice system is not the only legitimate form of protection from, and solution to, harm. The foundations of this belief are deeply distorted by the logic of settler-colonialism, rooted in White Supremacy and racial capitalism. We endorse the recommendation stated in *Turuki! Turuki!*¹²² that there needs to be a cross-parliamentary accord for transformative justice. However, we also believe there needs to be equal emphasis on creating this accord within Pacific communities throughout the motu. In recognising the failure of successive governments to turn the tides of change, our energies might be better placed in community conscientising (discussed below) than hoping to be heard by closed ears. Pacific Knowledge Holders were nearly unanimous in expressing their dissatisfaction and hurt at the hands of the system and expressed their desire, however broadly or specifically articulated, for change. Channelling that collective agitation and frustration into something productive is a necessary first step. From there, we can consider how best to leverage the likes of the Ministry for Pacific Peoples and the Ministry of Justice for political action.

2. Reorient our imaginations

The imaginative heart of *Matike Mai* lies in the values it presents for us regarding constitutional futures, rooted in the whakapapa of the whenua itself. The report speaks to the value of whakapapa in relation to the positioning of Aotearoa within Te Moana-Nui-a-Kiwa, and how the ancestral relationship of Tangata Whenua and Tangata Moana is a constitutional framework which long predates the arrival of Pākehā settlers. This sets in place an essential conversation for Tangata Moana existing on stolen whenua Māori within the settler state of New Zealand (also recognising that many of us have both whakapapa Māori and Moana), and the need to reorient our relationship against a colonising Empire which has brought us to this nation. In returning to the bonds of solidarity, aroha, and kinship with our whanaunga Māori, we must stand, wholeheartedly and unwaveringly, with the values put forth in *Matike Mai* - the centrality of Tikanga, community, belonging, place, balance, conciliation, and structure – as the vision for a decolonised Aotearoa. The Rangatahi Values speak, with poetry and power, to the unfolding essence of whakapapa itself, centring the wellbeing of Ranginui and Papatūānuku through the constitutional expression of Mana Motuhake, built upon ancestral knowledge and guided by aroha in the space of education, health, and well-being.

A justice system orientated around the values of *Matike Mai* bites at the Achilles heel of the status quo. To steer away from carceral logic into collective possibilities, the first step is to prioritise collective conscientising. Much work is required to gather our Pacific communities’ collective vision of transformative justice. We acknowledge the significant amount of work that has already been undertaken with and by Māori that

offers a roadmap for us to undertake similar work in our own communities. Making the time for collective conscientising is no easy task given the overwhelming socio-economic stressors that deny us life-sustaining inter-connections.

Sadly, having the time to dream is a luxury few are currently afforded. This is where we can draw on the expertise of our Tuakana who have provided the blueprint for critical community conversations and engagement. For example, in the 1970s, anti-racist organisations including the Polynesian Panther Party, ACORD and Ngā Tamatoa created spaces for anti-racist and solidarity-building workshops to organise and mobilise around specific causes. We might also look to the Paulo Freire workshops held in the 1970s and 1980s which educated many Māori, Pākehā and Pacific peoples on critical structural analysis to bridge academia and activism.¹²³ More recently, organisations like PAPA¹²⁴, the Nikau Project,¹²⁵ JustSpeak¹²⁶, and the Pacific Youth Leadership and Transformation network (PYLAT)¹²⁷ have adopted multi-disciplinary approaches to advocacy that are community founded and grounded. In recognising the academic limitations of this project, we hope it can exist as a “phase 1” with the subsequent phases focussed on empowering the translation of this work into cross-community wānanga and more accessible knowledge forms, be that music, moving images, comics, posters, zines and so on...

In concrete terms, this might look like:

- Deeper engagement with Pacific communities throughout Aotearoa New Zealand to understand their experiences of the justice system and their ideas for change.
- Regular community workshops and cross-critical talanoa to devise strategies for transformative change.
- Collaborating with artists and communicators to devise new narrative interventions.

3. Rebuild in radical co-existence

For Pacific peoples, constitutional transformation offers a valuable pathway for realising alternative systems not confined to, nor designed by, settler colonialism. The vision articulated in Matike Mai provides the most comprehensive starting point for rebuilding in radical co-existence. Forming a separate justice system by, for and of Māori (as advanced by Moana Jackson 40 years ago), widens the possibilities for Tangata o le Moana, too. This is not to suggest that we must have a separate justice system for ourselves (although that possibility is not foreclosed). Instead, it forces us to expand our collective imaginations into what our futures might look like grounded in valuing kinship relations with the land, tangata whenua and te Tiriti.¹²⁸

Commitment to constitutional transformation gives Pacific peoples a central role in determining our futures in Aotearoa New Zealand, respecting our place as manuhiri (guests) and rebuilding whakapapa and whanaungatanga relations with tangata whenua. Rebuilding must also occur within our own communities by creating spaces to examine the roots of our collective and social ecosystems, to question the colonial capitalist systems we inherit, and then how we intend to dismantle them.

122 Te Uepū Hāpai i te Ora (Safe and Effective Justice Advisory Group) *Turuki! Turuki! Move Together! Transforming our criminal justice system* (2019).

123 See Kotare Trust and AWEA *Freire at the flaxroots: analysis and action in Aotearoa* (AWEA, Grey Lynn, 2014).

124 People Against Prisons Aotearoa <www.papa.org.nz>.

125 The Nikau Project hosts talanoa series supported by the Samoa House Library run by Nicole Hunt, Brooke Stanley Pao and Max Harris

126 JustSpeak <www.justspeak.org.nz>.

127 PYLAT is a charitable pacific youth network based in Christchurch.

128 Matike Mai Aotearoa *The Report on Constitutional Transformation* (2016).

Forward¹²⁹

¹²⁹ This section was written by Gabriella Coxon-Brayne with input and editorial assistance from Litia.

I need to learn how to navigate,
Read the stars, wind, and the ocean swells
Like she did.

This drifting in a random sea of sites and sounds,
Has been too lonely.

I will pick up the pieces
of my broken Gilbertese,
Gather the remnants of
my broken heart,
And use them to chart my course.

If I don't find her

Tao

She'll find me.

Teresia Teiawa, *Searching for Nei nim'anoa*
(Mana Publications).¹³⁰

“What shall we build on the ashes of a nightmare?”
— Robin D.G. Kelley¹³¹

It is vital to acknowledge that the theoretical body of our report is born mainly from the critical literature, poetry, and activism of Black revolutionary scholars.¹³² However, paying tribute to the genealogy of the work that sparked these thoughts is insufficient. This is a necessary call to action against the ongoing violence against our Black whānau within Moana communities and beyond; recognising, for example, the colonising demarcations of Te Moana-Nui-a-Kiwa according to anti-Blackness and legacies of the Trans-Atlantic Slave Trade in histories of Oceanic blackbirding. Liberatory futures are impossible without the revolutionary magic of solidarity, clearly mapping these layers of white supremacist dispossession as eternally intertwined, shattered through the deconstruction of violence in all forms. We are constantly reminded that pathways to global liberation rest upon the abolition of anti-Blackness as the foundation of white supremacy.

On the creative energy of abolition, Robin D.G. Kelley's 'Freedom Dreams: The Black Radical Imagination' provokes the inevitability of liberation not through revolutionary struggle alone - but the surrealist futures we intimately dream of and journey towards. Looking at the structures of carceral violence rooted in the broader projects of capitalism - indivisible from the exploitation of people and lands under the current structure of climate apocalypse - the struggle for a future alone often feels too overwhelming to grasp. Compelled by the forces of climate imperialism, the ocean now rises against us. In the days of writing this final piece, our oceanic neighbour, Tuvalu, declared that

it would fully digitise its lands, history, and culture - its entire existence - in facing the consumption of rising sea levels.

In Simon Kofe's haunting words, "To remind our children and our grandchildren what our island once was."¹³³ Where imperialism is a project of annihilation, Ruha Benjamin offers vital reflections on the inextricability of white life and black death to the United States' prison industrial complex, crafting poetics on Black afterlife as the pathway for abolition and the regeneration of communities based on kinship. "No body ever comes back, perhaps, but spirits and ancestors might."¹³⁴ Revolutionary, intergenerational kinship haunts and ruptures the fallacy of white imperial sovereignty, carrying forth not merely the possibility - but inevitability - of worlds beyond carceral landscapes. Looking at the horrific realities of dispossession which stem from the mass incarceration of exploited communities, the abolition of prisons and the entire carceral framework of colonial capitalism remains the only pathway to survival and thriving. Some might say these things are too fantastical to ever bring into being, which only illuminates the extent to which colonial capitalism continues to police our imaginations.

Our ancestors have long envisioned new worlds where we, their descendants, can thrive once more. Their visions for unfolding futures are woven into the creation of our Moana cosmologies, passed down as stories and re-birthed within the turbulence of our own timelines. Māui fishes up old-new worlds from the sea. Hina transforms not just herself but entire planes of existence to overcome paradigms of dispossession. Through these stories, we seek to understand transformation's inevitability as cosmology, genealogy, and the spark of life itself. Ancestral knowledge births our dreams for the (re) generations of life and stories to come.

From the dispossession of not knowing our way back to the Ocean that birthed us, Epeli Hau'ofa's eternal words return us home. "Oceania is vast, Oceania is expanding, Oceania is hospitable and generous, Oceania is humanity rising from the depths of brine and regions of fire deeper still, Oceania is us."¹³⁵ Against the pain of structurally embedded violence, the abolition of colonial capitalism is the end of a carceral economy built upon the endless consumption of incarceration, death, and dispossession. Let the system's demise burn from the regenerative fires of our collective dreams. On the ashes of a nightmare, we plant the first seeds of new life, born from the whakapapa of ancestral worlds. The ocean rises within us.

Abolition Geographies and Te Moana-Nui-a-Kiwa:

As previously acknowledged in our critical framings, Emilie Rāketē's master's thesis applies the methodology of historical materialism to the carceral landscape of settler colonial New Zealand, mapping how prisons and policing are central to the colonising economy of capitalism itself.¹³⁶ Carceral systems enforce the coloniser's law and are systemic, multi-billion-dollar investments into racial violence and prolonged suffering. Intergenerational poverty and socio-economic hardship are manufactured by the same violent system that seeks to incarcerate Indigenous and other exploited communities. As noted by Ruth Wilson Gilmore in her seminal text 'Abolition Geography and the Problem of Innocence' - the extractive economy is expanded across the land, inseparable from the territorialisation of bodies through the violence of criminalisation.¹³⁷ "And yet, the

extraction of time from each territorial body specifically and viscerally changes lives elsewhere - partners, children, communities, movements, and the possibility of freedom."¹³⁸

Given that the project of settler colonialism has enabled the expansion of New Zealand's empire throughout the Pacific region, carceral economies have defined imperialist, carceral geographies across Te Moana-Nui-a-Kiwa.

Jared Davidson's upcoming book 'Blood and Dirt: Prison Labour and the Making of New Zealand' explores how prison labour has built New Zealand's Empire, stemming from the ongoing dispossession of Indigenous lands in Aotearoa.¹³⁹ Serco, the company contracted to run prisons in New Zealand, has also been contracted by the Australian Government to run refugee detention centres in Nauru and Manus Island.¹⁴⁰ Such examples of carceral capitalism illuminate the horrifying convergence of settler colonialism, Indigenous mass incarceration, western imperialism, and resource extraction throughout the Pacific and the refugee crisis abroad.

These interwoven histories, born into legacies of violence seen today, critically map how colonisation is a project of global dispossession. On the dispossession which ties Banaba to Aotearoa through the trans-national exploitation of phosphate mining throughout the Pacific, feeding an agricultural industry built on stolen whenua Māori, Katerina Teaiwa leaves us with this eternal question - "What does indigenous solidarity look like when commodities are formed from whenua or te aba and become part of a global food chain?"¹⁴¹

From the violent dislocation (and annihilation) of Indigenous people from their whenua to capitalism's endless exploitation of finite resources, to the continued fragmentation of communities across cartographies of stolen land, to us all standing at the edge of ecological collapse as our oceans rise against us. We are acutely reminded that in our shared experiences of dispossession, our liberation is intimately woven beyond the colonial cartographies which have long fragmented us from each other. For Te Moana-Nui-a-Kiwa; we are all connected beyond memory to the source, Hawaiki: to return is to begin as we end.

130 Teresia Kieuea Teaiwa *Searching for Nei Nim 'anoa* (Mana Publications, Suva, 1995).

131 Robin D.G. Kelley *Freedom Dreams* (Beacon Press, Boston, 2002) at 196.

132 We are greatly indebted to the work by, in no particular order, Toni Morrison, bell hooks, Angela Davis, Mariama Kaba, Ruth Wilson Gilmore, Cedric Robinson, Robert D. G. Kelley, Kwame Ture, Saidiya Hartmann, Franz Fanon and Dorothy E. Roberts.

133 Simon Kofe, Tuvalu Minister for Justice, Communication & Foreign Affairs, "Tuvalu's Address to COP27" (United Nations Climate Change Conference, 16 November 2022)

134 Ruha Benjamin "Black Afterlives Matter" (16 July 2018) Boston Review <www.bostonreview.net>.

135 Epeli Hau'ofa "Our Sea of Islands" (1994) 6 *The Contemporary Pacific* 147 at 160.

136 Emilie Rāketē "Beneath the prison, a faultline: A historical materialist analysis of mass incarceration in Aotearoa" (Master's Thesis, University of Auckland, 2019).

137 Ruth Wilson Gilmore "Abolition Geography and the Problem of Innocence" in GT Johnson and A Lubin (eds) *Futures of Black Radicalism* (Verso Books, London, 2017) at 225.

138 Gilmore, "Abolition Geography", at 229.

139 Jared Davidson "Blood and Dirt: Prison Labour and the Making of New Zealand (manuscript summary)" (Bridget Williams Books, forthcoming).

140 Asylum Insight "Private Contractors at Onshore and Offshore Processing Centres" (4 April 2021) <www.asyluminsight.com>.

141 Tina Ngata and Katerina Teaiwa "Whareroa, Banaba, and the Western Sahara: The Stones and Bones of Empire" (7 December 2020) Tina Ngata <<https://tinangata.com/2020/07/12/whareroa-banaba-and-the-western-sahara-the-stones-and-bones-of-empire/>>.

Empire may try to render us broken, dispossessed, and displaced but whakapapa binds our existence before and beyond. Remembering these ancestral intimacies beyond the settler state necessitates the solidarity of Tangata Moana with Tangata Whenua in the journey set forth by Matike Mai Aotearoa, the restoration of Tino Rangatiratanga and Mana Motuhake Māori, situated within an international struggle against imperialism. For Pacific peoples, restoring Tino Rangatiratanga and Mana Motuhake should be embraced, not feared. It invites a generative space to reclaim, recover, reciprocate, and regenerate outside the colonial thought prison.

Colonising geographies speak to the all-consuming realities of carceral violence which are inherently woven into this research and yet expand beyond the scope of what has been clearly identified. The talanoa gifted from our Knowledge Holders - especially those who have been incarcerated, experienced the intergenerational pain of incarceration through family, and/or are survivors within the system - has brought into essence the compounding griefs of carceralism across space and intergenerational time. We are dealing with an interlocking system of violence and exploitation that aims to lock up our most marginalised and impoverished, repeating the cycles of intergenerational struggle that fuels the prison pipeline under colonial capitalism. Conversations around justice cannot be limited by the criminal punishment bureaucracy, the 'criminal (in)justice system' constructed by a colonising, recidivist state.

The reduction of justice to a narrative of criminalisation centres on individual wrongdoing as the substance of crime and injustice. Interpersonal harms are necessary to address through restorative frameworks of collective liberatory accountability. This is nearly impossible to achieve within the system, which is so smugly self-encircling that it has eaten its own tail.

Instruments of state violence such as prisons and policing are totally antithetical to "justice as love" at its most revolutionary core and the futures we fight for in our intergenerational longing for freedom. In 'All About Love', bell hooks reminds us of the mutuality of this truth, where there is no justice without love and "no love without justice."¹⁴² Moana Jackson has long spoken to the search for *justness* as an emancipatory, moral imperative rather than "a system exercise of 'justice', through imported systems."¹⁴³ Abolition geography offers the spatial antithesis of carceral geographies - the total transformation of our society with love, justness, and community as its foundations, nurturing the infinite potential within us all.

"What is a country but a life sentence?" - Ocean Vuong¹⁴⁴

The question of carceral space raised by Gilmore draws us to its indivisible relationship with time. On the economy of carceral capitalism, Gilmore writes that "what's extracted from the extracted is the resource of life - time."¹⁴⁵ Incarceration "opens a hole in a life, furthering, perhaps to our surprise, the annihilation of space by time."¹⁴⁶ Sentencing through the colonising vehicle of linear time is what economises the prison system, as noted by one of our Knowledge Holders "*while you're stuck inside the world continues, buildings change, family gets older.*"

The reordering of time is central to the colonial project. The commodification of land enables the imposition of Western linear frameworks of time, disconnected from

the dynamic movements of the seas, skies and earth it seeks to exploit. Within a capitalist economy, we are forced to spend our commodified time. Like all commodified resources, time is violently distributed through the ordering of racial capitalism.

The very definition of racism presented by Gilmore is "the state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death."¹⁴⁷ Premature death speaks to the extreme violence of racial capitalism where racialised communities are robbed of time, spent together through living breath. From our previous readings of Pacific peoples' statements in the Royal Commission of Inquiry into Abuse of State Care, one of the Knowledge Holders spoke to the grief of time lost to state violence. Even in reconnecting with their aiga, the wound of time lost together was sorely felt, brought into an emotional loop of trying to fix something that can never be fully grasped or fixed in its aftermath. With decolonisation resting upon the repatriation of Indigenous lands and transforming our materialist conditions, the liberation of time and space from carceral capitalism is vital to the journey ahead.

The Island Comes to You - Spiralling into Moana Futures:

As Witi Ihimaera poetically captures in *Navigating the Stars*, following the separation of Ranginui and Papatūānuku, Tama-nui-te-rā (the Sun) was tasked with controlling the time within a day.¹⁴⁸ Māui and his siblings endeavoured to find a way to slow the Sun. They knew that the only way to overcome Te Rā's strength was in utilising a very special taonga - his grandmother Muri-ranga-whenua's jawbone, an ancestral heirloom of cosmological knowledge to be passed down to Māui through whakapapa. Māui and his siblings travel towards the opening of Rarohenga; his sister Hina weaves the ropes needed to trap the Sun with a strand of her hair, giving it divine strength. After catching the Sun in his tracks, they subdue him with all their might until he concedes defeat and promises to move slowly through the sky. This pūrākau resonates with other cultural cosmologies within Te Moana-Nui-a-Kiwa where iterations of Māui also slow the sun, although through differing and sometimes contradictory interpretations.

At its core, Daniel Hernandez's PhD thesis reinterprets this pūrākau of Māui as an overall analogy for how slowing down time as an Indigenous ritual enables us to be in better relation with one another.¹⁴⁹ This message is transported to our current context of Te Ao Hurihuri, where many people are wrestling with time as ordered by capitalism. Under labour exploitation, working-class communities are not afforded the time to exist in good relation with one another, to wānanga and talanoa amongst our loved ones, let alone build community and organise against the exploitation of our current material

142 bell hooks *All About Love: New Visions* (HarperCollins Publishers, New York, 2000) at 19.

143 Moana Jackson, Sina Brown-Davis and Annette Sykes "Decarceration, Not Prison; Justness, not Justice; Constitutional Transformation, Not Treaty Settlements" (Space, Race, Bodies II workshop, 6 May 2016).

144 Ocean Vuong *On Earth We Are Briefly Gorgeous* (Penguin Press, London, 2019).

145 Gilmore at 227.

146 Gilmore at 227.

147 Ruth Wilson Gilmore *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (University of California Press, Berkeley, 2007) at 247.

148 Witi Ihimaera *Navigating the Stars* (Penguin Random House, New Zealand, 2020).

149 Daniel Hernandez Rootz "Vaka Transits: Traversing Seas of Urban Diasporic Indigeneity by Collapsing Time and Space with the Songs and Stories of the Kava Canoe" (PhD Thesis, The University of Auckland, 2019).

conditions. Linearity continues to define the temporal conditions of the capitalist system and carceral violence utilises this construction of time to its most violent extent, fragmenting families and communities for months, years, and generations. In remembering ancestral knowledge, however, we are reminded that the cosmology of colonial capitalism is not inevitable, new worlds are born from the geographies of Indigenous past futures.

“There is no great distance in the reaching because we are our own tūpuna. Also, we share the dust of stars. Reaching out and drawing in one comes to know oneself, becoming whole and human.”¹⁵⁰

This kōrero from Patricia Grace shatters the colonial construction of linear time, centring the cosmology of time as an intimate spiral; time as born from the land, where our ancestors and descendants speak through us and we through them. Whakapapa is the basis for understanding relationality throughout Te Moana-nui-a-kiwa, including the intergenerational connections that eternally bind Aotearoa and all our islands as the descendants of Oceania. The talanoa between Kassie Hartendorp, Daniel Hernandez, and Anisha Sankar in ‘Whose Futures?’ meditates on the notion of past futures as central to Indigenous frameworks of time and space, where we move backwards into ever-unfolding, spiralling futures.

As Hernandez notes, “There is a different Indigenous worldview where the past is the point of reference for us today, which removes the need for a progressive linear project of mass violence that attempts to force and impose an exclusive future utopian goal.”¹⁵¹ This cyclical understanding of time, where the past and future converge in intimate connection, echoes the dynamics of relational time in resistance to colonisation. To know where we come from is to know where we will go. Genealogy is the fabric of time, woven into our journeys of constant becoming and echoed in the diverse stories of our ancestral ecologies. *Ka Mua, ka Muri* – we walk backwards into the future.

Returning to our ancestors’ cosmological knowledge gives us the hope, wisdom, and mana to rebuild past futures of Indigenous thriving. Gina Cole’s ‘Wayfinding Pasifikafuturism: An Indigenous Science Fiction Vision of the Ocean in Space’ draws upon ancestral knowledge and Pasifika science fiction in offering hope for the inevitable reclamation of Indigenous futures.¹⁵² The framework of Pasifikafuturisms is offered as an oceanic, tidaletic space for collective dreaming towards liberation.

Drawing from ancestral histories of migration in sailing towards the future cosmos, Cole writes about ocean navigation using the metaphor of a waka as a needle in a compass. You do not discover or travel towards the island - the waka guides your vision, and the island comes to you. On the tribulations our ancestors faced in voyaging across Te Moana-nui-a-kiwa, towards the horizons of new yet intimately familiar worlds, the late rangatira Moana Jackson wrote “The night might sometimes be a long restlessness till dawn, but light still shone clear to the whatihua, the far universe where origins were forged, and new thoughts flourished.”¹⁵³

In the ways our ancestors found those far universes across Oceanic distances, so will we. Whakapapa teaches us that every life is a chance at redemption. The stories of our ancestors rebirthed, like lovers, holding on to that distant dream (or is it a hopeful memory)? That this time might be the one to transform us, again.

Where abolition seeks to tear down systems designed to perpetually exploit and incarcerate communities, land, and sea as indivisible from each other, we are constantly reminded that refusal is a creative project, always centred on the compassionate journey of reimagining. If not bound by the coloniser’s definitions of reality, where will the waka guide our vision next? In shattering the false ‘inevitability’ of prisons, the settler colonial state, and global capitalist exploitation - what lands (or far universes) do we dream into existence, already waiting for us on the horizons of liberated futures? Jarrett Martineau and Eric Ritskes write, “The freedom realised through flight and refusal is the freedom to imagine and create an elsewhere in the here; a present future beyond the imaginative and territorial bounds of colonialism. It is a performance of other worlds, an embodied practice of flight.”¹⁵⁴

When we asked our Knowledge Holders what dreams they hold for themselves and their families, we were reminded again of the intimacy of these surrealist visions that shatter carceral realities, where love remains the core of justice (or justness), liberation, and life itself. To break cycles, to do right by our kids - the generations before and beyond us. To be there for one another in ways that this capitalist world was never there for us. A world that gives space for breathing. The joy of Te Moana-Nui-a-Kiwa paraded through these oceanic streets, outlasting Empire, our sea of islands to the world. Teresia Teaiwa’s eternal poem ‘Searching for Nei nim’anoa’ speaks to the ancestors who find us in our wayfinding for return. Piecing together the fragments we find in ourselves and each other, we chart our course to new worlds born from home. The future has already unfolded from the past. Never alone, we stand as ancestors here and now.

150 Quote sourced from Emalani Case “A Voice For Mauna Kea” (3 April 2015) He Wahi Pa’akai: A Package of Salt < www.hewahipaakai.wordpress.com >.

151 Daniel Hernandez, Kassie Hartendorp and Anisha Sankar “Imagining elsewhere: A critically romanticized conversation on indigenous futures” in AM Turdola and S Walsh (eds) *Whose Futures?* (Economic and Social Research Aotearoa, Auckland, 2020) at 18.

152 Gina Cole, “Wayfinding Pasifikafuturism: An Indigenous Science Fiction Vision of the Ocean in Space” (Phd Thesis, Massey University, 2020),

153 Moana Jackson “Where to next? Decolonisation and the stories in the land” in *Imagining Decolonisation* (Bridget Williams Books, Wellington, 2020) at 138-139.

154 Jarrett Martineau and Eric Ritskes “Fugitive indigeneity: Reclaiming the terrain of decolonial struggle through Indigenous art” (2014) 3 *Decolonization: Indigeneity, Education & Society* 3 at 4.

