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It's Not OK: New Zealand's Efforts to Eliminate Violence Against Women

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Abstract

This Report presents the findings of this research effort. It consists of three parts: Part I sets out the normative framework on domestic violence, both at the international and national level, and explains the relevant norms that govern the relationship between Maori and the Crown. Part II begins with a background discussion regarding the level of domestic violence in New Zealand. It then proceeds to detail the problems with the domestic law and implementing regulations addressing domestic violence, both with the law as written and problems with the law and regulations as implemented or enforced, the “implementation gaps.” It presents the delegation’s findings with respect to a range of problems women face when they are victims (and/or survivors) of domestic violence. It also documents the problems activists and workers face when they address these situations. Some of these problems relate to the existing law or government policy whereas others have to do with the way the law and policy has been implemented-or not implemented. Part III addresses domestic violence in Maori communities. While many of the problems presented in Part II also apply to Maori, Part III discusses some issues that affect Maori in particular. Both Parts II and III offer recommendations designed to address the documented problems. During the course of our research, the government of New Zealand has apparently decided to adopt a number of modifications to the existing legislation and policies addressing domestic violence. We commend the government for its willingness to make necessary modifications and join the government in hoping that these changes will help reduce and ultimately eliminate violence against women.

SPECIAL REPORT

“IT’S NOT OK”: NEW ZEALAND’S EFFORTS TO ELIMINATE VIOLENCE AGAINST WOMEN

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INTRODUCTION

Over the last decade, New Zealand has made significant efforts to address an acute social problem—violence against women. In New Zealand, it is estimated that one in three women has been a victim of domestic violence.¹ In an effort to combat the problem, New Zealand has enacted legislation and regulations that aim to prevent and eliminate domestic violence.² New Zealand has also created visible public education campaigns calling upon people to stop “family violence,” as domestic violence is called in New Zealand.³ As a result, domestic violence is no longer circumscribed to the private sphere, and it is not difficult to strike up a conversation on the issue. Nonetheless, the levels of domestic violence remain surprisingly high. Domestic violence affects all segments of the population and all ethnicities in New Zealand; however, the prevalence rates within

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1. See *infra* text accompanying note 171.

2. See *infra* notes 43-83 (discussing the Domestic Violence Act 1995 and its regulations).

3. Although “domestic violence” or “family violence” may also include child abuse, this report considers only male partner violence against women, and, as used in this report, “domestic violence” and “family violence” refer only to male partner violence against women.

Māori communities are even higher than the rates for the general population.⁴

The prevalence of violence against women persists despite New Zealand's commitments under international law to secure equality for women; act with due diligence to prevent, investigate, or punish acts of domestic violence; and provide for effective remedies to the victims of domestic violence. New Zealand has signed and ratified the U.N. Charter,⁵ the Universal Declaration of Human Rights,⁶ the International Covenant on Civil and Political Rights,⁷ and the International Covenant on Economic, Social, and Cultural Rights.⁸ While none of these treaties expressly addresses domestic violence, they each prohibit discrimination on the basis of sex.⁹ New Zealand has also signed and ratified the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"),¹⁰ which imposes more specific obligations on states to ensure women's equality.

This Report represents the culmination of a year-long project undertaken by the Leitner Center for International Law and Justice at Fordham Law School to study violence against women in New Zealand in light of these international commitments. Violence against women, and domestic violence in particular, is a serious issue that has received a great deal of attention internationally over the last few decades. However, patterns of violence persist in both developed and developing countries, undermining the status and rights of women and damaging the lives of women and children who are exposed to these situations. We acknowledge that the Labour-led coalition government in power from 1998-2008 in New Zealand made deliberate efforts to combat this problem. We maintain, however, that more can—and ought to—be done.

4. See discussion *infra* Part III.

5. U.N. Charter. The Charter was signed on June 26, 1945, and entered into force on October 24, 1945.

6. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/180 (1948) [hereinafter UDHR].

7. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

8. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 999 U.N.T.S. 3 [hereinafter ICESCR].

9. See discussion *infra* Part I.

10. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

The Fordham delegation was led by Professors Jeanmarie Fenrich, Paolo Galizzi, and Chi Mgbako; the 2007-2008 Crowley Fellow in International Human Rights, Jorge Contesse; and included eight second-year law students, Justin Bernstein, Annie Chen, Abisola Fatade, Michelle Magbalon, Mani Mostofi, Sarah Stevenson, Anupama Sawkar, and Emily Wei; and the Leitner Center's Program Assistant, Elizabeth Mooers. Prior to its fieldwork, the delegation participated in an intense program of study throughout the academic year, including a seminar on human rights in New Zealand led by Mr. Contesse and Professors Jeanmarie Fenrich and Tracy Higgins. While in New Zealand, the delegation met with lawyers, judges, legislators, government officials, academics, local leaders, and ordinary women and men from Aotearoa/New Zealand.¹¹ The delegation conducted approximately 165 interviews in all.¹²

This Report presents the findings of this research effort. It consists of three parts:

Part I sets out the normative framework on domestic violence, both at the international and national level, and explains the relevant norms that govern the relationship between Māori and the Crown.

Part II begins with a background discussion regarding the level of domestic violence in New Zealand. It then proceeds to detail the problems with the domestic law and implementing regulations addressing domestic violence, both with the law as written and problems with the law and regulations as implemented or enforced, the "implementation gaps." It presents the delegation's findings with respect to a range of problems women face when they are victims (and/or survivors) of domestic violence. It also documents the problems activists and workers face when they address these situations. Some of these problems relate to the existing law or government policy whereas others have to do with the way the law and policy has been implemented—or not implemented.

Part III addresses domestic violence in Māori communities. While many of the problems presented in Part II also apply to Māori, Part III discusses some issues that affect Māori in

11. *Aotearoa* is the Māori word for New Zealand.

12. See Annex I.

particular. Both Parts II and III offer recommendations designed to address the documented problems. During the course of our research, the government of New Zealand has apparently decided to adopt a number of modifications to the existing legislation and policies addressing domestic violence. We commend the government for its willingness to make necessary modifications and join the government in hoping that these changes will help reduce and ultimately eliminate violence against women.

Acknowledgements

The Leitner Center benefited from the contributions and assistance of many individuals and organizations in New Zealand and the United States. First, we would like to thank Di Grennell and Ani Pitman from the Amokura Family Violence Prevention Strategy in Whangarei; Holly Carrington from Preventing Violence in the Home in Auckland; Professor Ruth Busch from Waikato Law School in Hamilton; Senior Lecturer Janet Fanslow from the University of Auckland School of Population Health; Cathy Robertson from the National Collective of Women's Refuges in Invercargill; and Ruth Herbert, in Wellington, with whom we worked closely both in developing the project and during our stay in New Zealand. They facilitated our access to many of the individuals with whom we met and shared their knowledge, wisdom, and stories of strength with us. We also appreciate their willingness to comment on an earlier draft of this Report. The findings included in this Report, however, belong to the authors alone and have not been endorsed by any individuals or organizations in New Zealand.

Several other individuals graciously facilitated our work in New Zealand. In particular, we are grateful to Pita Sharples, MP; Virginia de Joux, Child, Family and Community Policy, Ministry of Social Development; Sheryl Hann, former Outreach Coordinator, New Zealand Family Violence Clearinghouse; Matthew Palmer, Deputy Solicitor-General (Public Law) at the Crown Law Office; and Hayley Samuel, from Doctors for Sexual Abuse Care.

We would also like to thank the many women and men, judges, lawyers, scholars, and non-governmental organization representatives who took time off to speak with us and share their

stories and perspectives on domestic violence, gender discrimination, and human rights in New Zealand. We learned from all of them beyond expectations.

I. *NEW ZEALAND'S OBLIGATIONS UNDER INTERNATIONAL LAW AND DOMESTIC LAW REGARDING DOMESTIC VIOLENCE AND ITS RESPONSES*

This Part lays out the normative framework on domestic violence, both at the international and national level, and explains the relevant norms that govern the relationship between Māori and the Crown. First, it sets the international rules and standards whereby domestic violence is deemed a human rights violation. As a signatory to CEDAW and other major international treaties, the provisions of international human rights law bind New Zealand's domestic law. Second, this Part explains the main regulations and programs put in place by the government of New Zealand to prevent and eradicate domestic violence, paying attention to provisions that aim to ensure culturally pertinent approaches in the case of ethnic minorities, especially Māori. This section then discusses the Domestic Violence Act 1995, the strategy on domestic violence prevention ("Te Rito"), the establishment of the Taskforce for Action on Violence Within Families, and the work of the Family Violence Clearinghouse. This Part closes with a description of New Zealand's international and domestic legal obligations towards indigenous people. Because domestic violence disproportionately affects Māori, and New Zealand's founding document is a treaty celebrated by the Crown and Māori, it is important to lay out the normative framework for the protection of indigenous peoples' rights. This normative framework provides guidance for the recommendations made regarding additional measures that should be taken to eradicate domestic violence.

A. *Domestic Violence as an International Human Rights Violation*

Domestic violence is a form of prohibited discrimination under international law and states are obligated to act with due diligence to prevent, investigate, or punish such acts and to provide effective remedies to the victims of domestic violence.

This section will consider New Zealand's obligations with respect to domestic violence under international instruments.

International human rights law embodies a clear commitment to equal rights for women. New Zealand has signed and ratified the U.N. Charter,¹³ the Universal Declaration of Human Rights,¹⁴ the International Covenant on Civil and Political Rights,¹⁵ and the International Covenant on Economic, Social, and Cultural Rights.¹⁶ Although these treaties do not expressly address domestic violence, they each prohibit discrimination on the basis of sex.¹⁷ New Zealand has also signed and ratified CEDAW, which imposes more specific obligations on states to ensure women's equality. CEDAW defines "discrimination against women" as

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying

13. U.N. Charter.

14. UDHR, *supra* note 6.

15. ICCPR, *supra* note 7.

16. ICESCR, *supra* note 8.

17. Article 55 of the U.N. Charter states:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

U.N. Charter art. 55. Article 7 of the Universal Declaration of Human Rights states: "All are equal before the law and are entitled without any discrimination to equal protection of the law." UDHR, *supra* note 6, art. 7. Article 26 of the International Covenant on Civil and Political Rights states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICCPR, *supra* note 7, art. 26. Article 2, paragraph 1, states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Id. art. 2, para. 1. Article 3 of the International Covenant on Economic, Social and Cultural Rights, states: "The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant." ICESCR, *supra* note 8, art. 3.

the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹⁸

CEDAW then requires states to “pursue by all appropriate means and without delay a policy of eliminating discrimination against women,” including by legislation and other measures.¹⁹ It also requires that states take measures to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary . . . practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for men and women.”²⁰

Although CEDAW does not specifically address domestic violence, the Committee on the Elimination of Discrimination Against Women (“CEDAW Committee”) has recognized that such gender-based violence is “a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”²¹ In its General Recommendation 19, the CEDAW Committee interpreted CEDAW’s definition of discrimination against women to

include[] gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.²²

18. CEDAW, *supra* note 10, art. 1.

19. *Id.* art. 2.

20. *Id.* art. 5.

21. Comm. on the Elimination of Discrimination Against Women, *Report of the Committee on the Elimination of Discrimination Against Women*, para. 1, at 1, U.N. Doc. A/47/38 (Jan. 29, 1992) (“General recommendation No. 19: Violence against women”), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, 331, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (May 27, 2008) [hereinafter General Recommendation 19].

22. *Id.* para. 6, at 1, reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, 331, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (May 27, 2008).

General Recommendation 19 further declares that gender-based violence violates a number of rights guaranteed by CEDAW, including the right to life, the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person, the right to equal protection under the law, the right to equality in the family, the right to the highest standard attainable of physical and mental health, and the right to just and favorable conditions of work.²³ The Declaration on the Elimination of Violence Against Women, an important policy instrument adopted by the United Nations General Assembly in 1993, similarly affirms that "violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms"²⁴

Although the perpetrators in instances of domestic violence are typically non-state actors, such as spouses or partners, under international human rights law, states may also be accountable for human rights abuses by private actors if states fail to take positive steps to promote and protect rights. With respect to domestic violence, "[s]tates may also be responsible for private acts if they fail to act with *due diligence* to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation."²⁵ The standard of due diligence is one of reasonableness. It "requires a State to act with the existing means at its disposal to address both individual acts of violence against women and the structural causes so as to prevent future violence."²⁶

23. See *id.* para. 7, at 2, reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, 331-32, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (May 27, 2008).

24. See Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Feb. 23, 1994).

25. See General Recommendation 19, *supra* note 21, para. 9, at 2, reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, 332, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (May 27, 2008) (emphasis added). The Declaration on the Elimination of Violence Against Women similarly states that States should "[e]xercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons" See Declaration on the Elimination of Violence Against Women, *supra* note 24, art. 4.

26. See The Secretary-General, *In-Depth Study on All Forms of Violence Against Women: Report of the Secretary-General*, para. 257, delivered to the General Assembly, U.N. Doc. A/61/122/Add.1 (Jul. 6, 2006).

There is a growing body of case law on domestic violence at the international and regional levels, which provides some additional guidance regarding what governments are obligated to do to comply with the due diligence standard. In *AT v. Hungary*, for example, the CEDAW Committee concluded that Hungary failed to comply with its obligations under CEDAW because it had not enacted specific legislation to combat domestic violence, and had failed to provide for protection orders or a shelter to protect victims of domestic violence.²⁷ In its decision, the CEDAW Committee also made general recommendations regarding measures the state party should take to comply with CEDAW. Among other things, the state party was advised to: enact legislation “prohibiting domestic violence against women, which [should include] protection and exclusion orders as well as support services, including shelters;”²⁸ “[i]nvestigate promptly, thoroughly, impartially and seriously all allegations of domestic violence and bring the offenders to justice in accordance with international standards;”²⁹ “[p]rovide victims of domestic violence with safe and prompt access to justice, including free legal aid where necessary, in order to ensure . . . effective . . . remedies;”³⁰ “[p]rovide offenders with rehabilitation programmes;”³¹ and “provide regular training on [CEDAW] to judges, lawyers and law enforcement officials[.]”³² The Declaration on the Elimination of Violence against Women provides a similar series of measures that governments should implement to prevent and eliminate domestic violence.³³

27. See Comm. on the Elimination of Discrimination Against Women, *Report of the Committee on the Elimination of Discrimination Against Women*, paras. 9.3-9.4, at 90-91, U.N. Doc. A/60/38 (Mar. 18, 2005).

28. *Id.* para. 9.6(e), at 92.

29. *Id.* para. 9.6(f), at 92.

30. *Id.* para. 9.6(g), at 92.

31. *Id.* para. 9.6(h), at 92.

32. *Id.* para. 9.6(d), at 92.

33. See Declaration on the Elimination of Violence Against Women, *supra* note 24, art. 4(d)-(l). States should:

(d) Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;

In sum, international law requires that New Zealand act with due diligence to prevent, investigate, or punish acts of domestic violence and that it provide effective remedies to the victims of domestic violence.

(e) Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women;

(f) Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;

(g) Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;

(h) Include in government budgets adequate resources for their activities related to the elimination of violence against women;

(i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;

(j) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women;

(k) Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public;

(l) Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence

B. *New Zealand's Domestic Statutory Law, Regulations, and Programs Addressing Domestic Violence*

1. Statutory Law and Implementing Regulations

a. The Domestic Violence Act 1995

New Zealand has sound legislation on domestic violence. After a thorough review of the Domestic Protection Act 1982, in 1995, Parliament enacted the Domestic Violence Act, which came into force in 1996.³⁴

The 1982 Act protected persons from violence occurring within the family. Until its passage, domestic violence was viewed as a private matter; the 1982 Act allowed police to become involved in domestic disputes. The Act provided remedies for victims and survivors of domestic violence in the form of non-violence orders³⁵ and non-molestation orders.³⁶ Non-violence orders protected applicants from acts of violence by the respondent, whereas non-molestation orders essentially prohibited the respondent from entering or remaining on any property where the applicant (or their children) lived, worked, or was present.³⁷ Non-molestation orders also prohibited "watching or besetting" these locations.³⁸ However, non-molestation orders were only granted to applicants who had separated from the respondent and if the Court saw it "necessary for the protection of the applicant or any child of the applicant."³⁹ These orders could be granted without notice to the respondent if the Court was satisfied that the delay might entail a risk to the applicant.⁴⁰

Scholars and domestic violence experts had expressed concern that the 1982 Act left out several forms of domestic relationships, was "poorly implemented," and that "non-violence

34. *See* Domestic Violence Act 1995, 1995 S.N.Z. No. 86.

35. *See* Domestic Protection Act 1982, 1982 S.N.Z. No. 120, § 4.

36. *See id.* § 13.

37. *See id.*

38. *See id.* § 16(b).

39. *See id.* § 15(a).

40. *See id.* § 14.

and non-molestation orders were often breached repeatedly."⁴¹ The government initiated a review of the legislation that eventually led to the enactment of new legislation.

On July 1, 1996, the Domestic Violence Act 1995 ("DVA 1995") came into force.⁴² The Act (1) expanded the definition of domestic violence to increase eligibility,⁴³ (2) created one protection order with standard non-violence and non-contact provisions,⁴⁴ (3) introduced stiffer penalties for breaches of protection orders,⁴⁵ (4) mandated rehabilitative programs for perpetrators,⁴⁶ and (5) made available voluntary support programs for survivors.⁴⁷ The Act also accounted for the protection of children,⁴⁸ child custody,⁴⁹ and property and residency needs.⁵⁰

The DVA 1995's definition of domestic violence is highly inclusive, encompassing physical, sexual, and psychological abuse. Section 3 of the Act states: "In this Act, 'domestic violence', in relation to any person, means violence against that person by any other person with whom that person is, or has been, in a domestic relationship."⁵¹

Furthermore, Section 3 clarifies that "[a] single act may amount to abuse" as well as "[a] number of acts that form part of a pattern of behaviour

... even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial."⁵²

By incorporating psychological abuse, which includes intimidation, harassment, damage to property, and threats,⁵³ and elevating it to the level of physical and sexual abuse, the DVA

41. See NEVILLE ROBERTSON ET AL., MINISTRY OF WOMEN'S AFFAIRS, *LIVING AT THE CUTTING EDGE: WOMEN'S EXPERIENCES OF PROTECTION ORDERS, VOLUME 1: THE WOMEN'S STORIES 6* (2007), available at <http://research.waikato.ac.nz/CuttingEdge/>.

42. See 1995 S.N.Z. No. 86, § 1.

43. See *id.* § 3.

44. See *id.* § 19.

45. See *id.* §§ 5(1)(e), 50.

46. See *id.* § 32.

47. See *id.* § 29.

48. See *id.* § 9.

49. See *id.* §§ 15, 19(2)(e)(ii).

50. See *id.* § 19.

51. *Id.* § 3(1).

52. *Id.* § 3(4).

53. See *id.* §§ 3(2)(c)(i)-(iv).

1995 aims at providing uniform protection to victims for most, if not all, forms of abuse.⁵⁴ By also stressing that both single acts and patterns of smaller acts constitute abuse, the law makes clear that all degrees of domestic violence trigger legal protection.⁵⁵

The DVA 1995's expansive approach is mirrored in the definition of "domestic relationship." Section 4 states:

- (1) For the purposes of this Act, a person is in a domestic relationship with another person if the person—
- (a) Is a spouse or partner of the other person; or
 - (b) Is a family member of the other person; or
 - (c) Ordinarily shares a household with the other person; or
 - (d) Has a close personal relationship with the other person.⁵⁶

The Act further defines a family member as anyone related by "blood or by or through marriage, a civil union, a de facto relationship, by adoption" or "[a]ny other person who is a member of the person's whānau or other culturally recognised family group."⁵⁷ The Act also sets out factors for determining a "close personal relationship," stressing the "nature and intensity" and "duration" of the relationship.⁵⁸

As laid out in Section 5 of the Act, "the Object of this Act is to reduce and prevent violence in domestic relationships by (a) Recognizing that domestic violence, in all its forms, is unacceptable behavior; and (b) Ensuring that, where domestic violence occurs, there is effective legal protection for its victims."⁵⁹ The Act aims to accomplish its object by:

- (a) Empowering the Court to make certain orders to protect victims of domestic violence;
- (b) Ensuring that access to the Court is as speedy, inexpensive, and simple as is consistent with justice;
- (c) Providing, for persons who are victims of domestic violence, appropriate programmes;

54. See ROBERTSON ET AL., *supra* note 41, at 9.

55. *See id.*

56. 1995 S.N.Z. No. 86, § 4(1).

57. *Id.* § 2(a)-(b), amended by 2005 S.N.Z. No. 3, § 7.

58. 1995 S.N.Z. No. 86, §§ 4(4)(a)-(b).

59. *Id.* § 5(1).

(d) Requiring respondents and associated respondents to attend programmes that have the primary objective of stopping or preventing domestic violence;

(e) Providing more effective sanctions and enforcement in the event that a protection order is breached.⁶⁰

The primary remedy under the DVA 1995 is the protection order. Protection orders prohibit the respondent from inflicting any type of violence onto the applicant and from any non-consensual contact.⁶¹ Protection orders are significant in that they trigger or make available all other remedies under the Act, such as access to programs or tenancy orders. The Court's power to make a protection order is set out in Section 14 of the Act, which states:

(1) The Court may make a protection order if it is satisfied that—

(a) The respondent is using, or has used, domestic violence against the applicant, or a child of the applicant's family, or both; and

(b) The making of an order is necessary for the protection of the applicant, or a child of the applicant's family, or both.⁶²

Applications to obtain a protection order can be on notice⁶³ or "without notice"⁶⁴ to the respondent. On notice protection orders are subject to a standard procedure before a Family Court, whereby the respondent has the right to contest the applicant's request for the order and the judge decides whether or not to grant it. One of the key features of the DVA 1995 is the significantly lowered threshold for without-notice orders.⁶⁵ Without-notice applications are to be granted "if the Court is satisfied that the delay that would be caused by proceeding on

60. *Id.* § 5(2).

61. *See id.* §§ 19, 20(2).

62. *Id.* § 14(1).

63. *See id.* § 7.

64. *See id.* § 13.

65. *See* NEVILLE ROBERTSON ET AL., MINISTRY OF WOMEN'S AFFAIRS, LIVING AT THE CUTTING EDGE: WOMEN'S EXPERIENCES OF PROTECTION ORDERS, VOLUME 2: WHAT'S TO BE DONE? 59 (2007), available at <http://research.waikato.ac.nz/CuttingEdge/VolTwo.pdf> (quoting the New Zealand Law Society's Standing Committee on Domestic Violence's remarks on the decrease of the threshold for granting protection orders "without notice").

notice would or might entail—(a) A risk of harm; or (b) Undue hardship to the applicant or a child of the applicant’s family or both.”⁶⁶ Once a without-notice application is granted, a temporary protection order is put in place, which becomes final by operation of law after three months “unless it is sooner discharged.”⁶⁷ Once the temporary protection order is issued, respondents are served, and if they fail to successfully challenge the order or fail to do so in a timely manner, a final protection order is issued.⁶⁸ Likewise, once a protection order becomes final it is permanent, although it “may” be discharged on the application of the applicant or respondent should the Court see it “fit” to do so.⁶⁹

The DVA 1995 increases the punitive sanctions against perpetrators as well as the sanctions for breaches of protection orders. In addition to the injunctive and punitive approaches of the protection orders, the DVA 1995 incorporates rehabilitative and social work elements. These elements come in the form of mandatory programs for respondents and voluntary programs for applicants. Section 32(1) of the Act dictates that “[o]n making a protection order, the Court must direct the respondent to attend a specified programme, unless the Court considers that there is good reason for not making such a direction.”⁷⁰

The approval process, general content, goals and structure of these programs are regulated by the Domestic Violence (Programmes) Regulations of 1996 (“1996 Regulations”).⁷¹ Section 32(1) of the Regulations states that programs for respondents “must have the primary objective of stopping or preventing domestic violence on the part of [the respondent].”⁷² Furthermore, these programs also “must have the goal of changing the behavior of [the respondent],”⁷³ by (1) “[i]ncreasing understanding” about the “effects,” “impact,” and “social, cultural and historic context” of domestic violence; (2) “[i]ncreasing understanding” about the DVA 1995 and the legal

66. *See* 1995 S.N.Z. No. 86, § 13(1).

67. *Id.* § 13(3).

68. *See id.* § 13.

69. *See id.* § 47.

70. *Id.* § 32(1).

71. *See* Domestic Violence (Programmes) Regulations 1996, 1996 S.R. No. 174.

72. *Id.* § 32(1).

73. *Id.* § 32(2).

"consequences of breaching protection orders"; and (3) "[d]eveloping skills to deal with potential conflicts in non-abusive ways."⁷⁴

It is a breach of the protection order for a respondent not to attend the program as directed by the Family Court, unless the program provider excuses them.⁷⁵ On completion of the program by the respondent, the program provider must provide the Court with a report on attendance and participation.⁷⁶ If a respondent fails to attend, program providers are required to notify the registrar, which will bring the matter to the judge's attention.⁷⁷ The judge may call the respondent before the Court.⁷⁸ If summoned, the respondent is asked to explain his non-attendance and may face criminal prosecution.⁷⁹

The DVA 1995 also makes voluntary programs available to protected persons (applicants). These programs are made available to the applicant on the issuance of a protective order. The 1996 Regulations set out guidelines for the programs including:

content and presentations, goals, and structure. Regulation 26 provides that every program must:

(a) . . . be consistent with the object of the [1995] Act [to reduce and prevent violence in domestic relationships and to provide appropriate programmes for persons who are victims of domestic violence];

(b) . . . be designed to be presented in a manner that—

...

(ii) Respects the cultural values and beliefs of the people attending the programme;

...

74. *Id.*

75. See MINISTRY OF JUSTICE, A REVIEW OF THE DOMESTIC VIOLENCE ACT 1995 AND RELATED LEGISLATION: A DISCUSSION DOCUMENT 45 (2007), available at <http://www.justice.govt.nz/publications/global-publications/r/a-review-of-the-domestic-violence-act-1995-and-related-legislation-a-discussion-document-december-2007>.

76. See Domestic Violence Act 1995, 1995 S.N.Z. No. 86 § 40. The programme provider does not directly notify the Court, but rather notifies the Registrar under §40(1). *Id.* Section 40(3) in turn directs the Registrar to provide this information to the individual who applied for the protection order or to their counsel. *Id.*

77. See Domestic Violence Act 1995, 1995 S.N.Z. No. 86, § 39.

78. See *id.* § 42.

79. See MINISTRY OF JUSTICE, *supra* note 75, at 45.

(g) . . . provide for the assessment and ongoing review of the needs of people attending the programme.⁸⁰

Regulation 28 outlines the goals every program must adopt, such as promoting the protection of protected persons from domestic violence; empowering protected persons to deal with the effects of domestic violence; increasing understanding about domestic violence; and presenting information about the operation of protection orders.⁸¹

While the DVA 1995 does not have strong cultural components relating to Māori, the 1996 Regulations directly provide for and mandate culturally tailored programs for Māori adult protected persons (applicants with protection orders in place). Hence, the Ministry of Justice and the Department of Courts select and contract with non-governmental Māori program providers based on parameters set out in the 1996 Regulations. Pursuant to Regulation 27:

Every programme that is designed for Maori or that will be provided in circumstances where the persons attending the programme are primarily Maori, must take into account Tikanga Maori, including (without limitation) the following Maori values and concepts:

- (a) Mana wāhine (the prestige attributed to women):
- (b) Mana tāne (the prestige attributed to men):
- (c) Tiaki tamariki (the importance of the safeguarding and rearing of children):
- (d) Whanaungatanga (family relationships and their importance):
- (e) Taha wairua (the spiritual dimension of a healthy person):
- (f) Taha hinengaro (the psychological dimension of a healthy person):
- (g) Taha tinana (the physical dimension of a healthy person).⁸²

80. Domestic Violence (Programmes) Regulations 1996, 1996 S.R. No. 174, § 26.

81. *See id.* § 28.

82. *Id.* §27; *see* FIONA CRAM ET AL., EVALUATION OF PROGRAMMES FOR MĀORI ADULT PROTECTED PERSONS UNDER THE DOMESTIC VIOLENCE ACT 1995 113-14 (2002), *available at* <http://www.justice.govt.nz/pubs/reports/2002/maori-domestic-violence/index.html>.

Some program providers adopt a Kaupapa Māori approach, which "is about thinking critically, including developing a critique of Pākehā [i.e., New Zealanders of European descent] constructions and definitions of Māori and affirming the importance of Māori self-definitions and self-valuations."⁸³

b. Other Relevant Statutes

The DVA 1995 intersects with several other pieces of New Zealand legislation including the Care of Child Act 2004, the Family Proceedings Act 1980, and the Immigration Act 1987.⁸⁴

The Care of Children Act 2004 ("CCA 2004"),⁸⁵ which replaced the Guardianship Act 1968, promotes child welfare particularly as it relates to protection from abuse, parental guardianship, and access. Both the DVA 1995 and CCA 2004 prohibit or curtail a parent's access to a child in cases of family violence (abuse of partner or child). Section 52 of CCA 2004 supplies a set of child custody orders to be considered during DVA 1995 proceedings.⁸⁶ Furthermore, the CCA 2004 makes a presumption against respondents under the DVA 1995 when approving additional guardians (secondary guardians appointed by the primary guardians).⁸⁷

The Family Proceedings Act 1980⁸⁸ encourages couples counseling before an application for a separation order is made to the Court.⁸⁹ However, when an application is made, a judge may rule against counseling when the respondent has used violence (within the meaning of Section 3(2) of the DVA 1995) against his partner or child.⁹⁰

The Immigration Act 1987⁹¹ sets out the standards, framework, and process for determining who may enter and remain in New Zealand on a temporary or permanent basis.⁹² The specific policies under the Immigration Act of 1987 are set

83. See CRAM ET AL., *supra* note 82, at 11.

84. See MINISTRY OF JUSTICE, *supra* note 75, at 56-63.

85. Care of Children Act 2004, 2004 S.N.Z. No. 90.

86. See *id.* § 52.

87. See *id.* § 22(2)(d).

88. Family Proceedings Act 1980, 1980 S.N.Z. No. 94.

89. See *id.* § 9(1).

90. See *id.* § 10(3).

91. Immigration Act 1987, 1987 S.N.Z. No. 74.

92. See MINISTRY OF JUSTICE, *supra* note 75, at app. 1.

out in the Immigration Operations Manual.⁹³ One such policy is the Victims of Domestic Violence (“VDV”) policy of the Department of Labor, which

enables people temporarily in New Zealand who have been living together in an established relationship with a New Zealand citizen or resident, and who had intended to seek residence in New Zealand on the basis of that marriage or relationship, to apply for a work or residence permit:

- If that marriage or relationship has ended due to domestic violence by the New Zealand citizen or resident, and
- If they returned to their home country, they would be disowned by their family and community as a result of their relationship ending, and have no means of independent support.⁹⁴

VDV applies to both women and men, and utilizes the broad definition of domestic violence found in Section 3 of the DVA 1995.⁹⁵ In April 2007, the VDV was strengthened to include a protection order under DVA 1995 “as evidence of domestic violence for the purposes of the policy.”⁹⁶

2. Domestic Violence Strategies and Programs of Action

Along with the DVA 1995 and the above-mentioned relevant statutes, the government of New Zealand has published three strategy documents pertaining to domestic violence in recent years. Each of these strategies contains a range of new programs and initiatives to better address domestic violence. This section explains the main characters of three relevant strategies: Te Rito, the Family Violence Taskforce, and the Family Violence Clearinghouse.

a. Te Rito

In 2002, the government of New Zealand launched Te Rito: New Zealand Family Violence Prevention Strategy, defined as “an

93. *See id.*

94. *Id.*

95. *See id.*

96. *Id.*

integrated, multi-faceted, whole-of-government and community approach to preventing the occurrence and reoccurrence of violence in families/whānau."⁹⁷ Te Rito's development and implementation is guided by a set of nine principles.⁹⁸ The strategy comprises five key goals and objectives (objectives are intended to help focus goals) to be implemented within a five-year timeframe.⁹⁹ Lastly, Te Rito has eighteen areas of action.¹⁰⁰ These actions direct the strategy's implementation and stress improving "inter-agency co-ordination, collaboration and communication."¹⁰¹ Many of the principles, goals and objectives, and areas of action emphasize a need for culturally and ethnically-relevant approaches with specific reference to Māori and Pacific Islanders.

Te Rito roots the strategy's intention to operate in culturally relevant social spheres in the Treaty of Waitangi, noting that "[t]he Treaty of Waitangi provides for a unique relationship

97. See MINISTRY OF SOCIAL DEVELOPMENT, TE RITO: NEW ZEALAND FAMILY VIOLENCE PREVENTION STRATEGY 6 (2002), available at <http://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/planning-strategy/te-rito/te-rito.pdf> [hereinafter TE RITO: NEW ZEALAND FAMILY VIOLENCE PREVENTION STRATEGY].

98. Te Rito's guiding principles are:

- (1) All people have a fundamental right to be safe and to live free from violence
- (2) The unique customary and contemporary structures and practices of whānau, hapū and iwi must be recognised, provided for and fully engaged
- (3) Family violence prevention is to be viewed and approached in a broad and holistic manner
- (4) Perpetrators of violence in families/whānau must be held accountable for their violent behaviour
- (5) There must be a strong emphasis on prevention and early intervention with a specific focus on the needs of children and young people
- (6) Approaches to family violence prevention must be integrated, co-ordinated and collaborative
- (7) The community has a right and responsibility to be involved in preventing violence in families/whānau
- (8) The diverse needs of specific populations must be recognised and provided for when developing and implementing family violence prevention initiatives
- (9) Family violence prevention initiatives should be continually enhanced as information and better ways of working are identified.

Id. at 12-13.

99. See *id.* at 14-15.

100. See *id.* at 16-17.

101. See *id.* at 5.

between Māori and the Crown.”¹⁰² This unique relationship recognizes the Māori as *tangata whenua* [people of the land] and, as such, Te Rito stresses, “it is important that approaches to family violence prevention are constructed and implemented with the special interests and needs of whānau, hapū and iwi in mind, and strengthen [their] ability to control their own development and achieve their own aspirations.”¹⁰³ Furthermore, Te Rito emphasizes that approaches to family violence should be “culturally relevant and effective for: 1. whānau, hapū, iwi; and 2. Pacific peoples and other ethnic populations.”¹⁰⁴

Since Te Rito’s launch in 2002, the Ministry of Social Development, through its Te Rito Small Executive Group, has periodically reviewed the progress of all areas of action. Implementing Te Rito as an umbrella national strategy often equates to macro forms of implementation such as allocating funds to other programs or drafting policies for other departments.¹⁰⁵ The government of New Zealand has not made available any Te Rito progress reports after 2004.

b. Taskforce for Action on Violence Within Families

In 2005 the Ministry of Social Development established the Taskforce for Action on Violence Within Families “to advise the Family Violence Ministerial Team on how to make improvements to the way family violence is addressed, and how to eliminate family violence in New Zealand.”¹⁰⁶ The Taskforce is a joint initiative that brings together governmental and nongovernmental agencies, independent Crown entities, and the

102. *Id.* at 12. On the special relationship the Treaty of Waitangi sets between Māori and the Crown, see *infra* Part I.C.2.

103. See TE RITO: NEW ZEALAND FAMILY VIOLENCE PREVENTION STRATEGY, *supra* note 97, at 12.

104. See *id.* at 15.

105. See, e.g., *id.* at 26. Area of action “5” demands the development of a “plan of action for preventing violence in Māori communities.” *Id.* Thus, Te Puni Kokiri (Ministry of Māori Development) (“TPK”) and its Māori Task Force on Family/Whānau Violence is tasked with area of action “5”’s implementation. See *id.*

106. Taskforce for Action on Violence Within Families, Ministry of Social Development, The Taskforce, <http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/initiatives/action-family-violence/taskforce-info.html> (last visited Sept. 5, 2009).

judiciary "to work together and provide leadership to end family violence and promote stable, healthy families."¹⁰⁷

The Taskforce develops specific programs for Māori and Pacific peoples, as well as initiatives to address child abuse.¹⁰⁸ It also launched the Campaign for Action on Family Violence—"It's not OK!"—featuring "community leaders, engaging community partners and underpinned by awareness-training packages for media."¹⁰⁹ The Taskforce has also overseen police training in family violence investigation and risk assessment.¹¹⁰ Drawing from the experience of the Manukau (South Auckland) and Waitakere (West Auckland) Family Violence Courts, it advised the government to establish four more courts in Auckland and Wellington.¹¹¹ The government plans on establishing still more courts in the rest of the country.¹¹² Starting in 2008, the Taskforce "will focus on the quality and diversity of approaches to eliminating violence in Māori and Pacific families, with a workforce trained in prevention, early intervention, protection, and accountability."¹¹³ The brochure, however, does not specify how the Taskforce will carry out this work.

Most Taskforce members are chief executives. The government has stressed the importance of having high-level

107. *Id.* Members of the Taskforce include the Chief Executive of the Ministry of Social Development (Chair), the Chief Executive of the Accident Compensation Corporation, the Secretary for Education, the Director-General of Health, the Secretary for Justice, the Chief Executive of the Ministry of Pacific Island Affairs, the Commissioner of the New Zealand Police, the Chief Executive of Te Puni Kōkiri, the Chief Executive of the Ministry of Women's Affairs, the Chief District Court Judge, the Principal Family Court Judge, the Children's Commissioner, the Chief Families Commissioner, the Deputy Chief Executive, Social Services Policy, Ministry of Social Development, a representative from the Taskforce's Maori Reference Group, a representative from the Taskforce's Pacific Advisory Group, the Chief Executive of CCS Disability Action, the Chief Executive, Strategic Relationships, Jigsaw, the Chief Executive of the National Collective of Independent Women's Refuges, the Chief Executive of Relationship Services, and the Chief Executive of the Tamaki Community Development Trust. *Id.*

108. TASKFORCE FOR ACTION ON VIOLENCE WITHIN FAMILIES, N.Z. MINISTRY OF SOC. DEV., THE ONGOING PROGRAMME OF ACTION: SUMMARY (2007), available at <http://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/initiatives/action-family-violence/taskforce-ongoing-programme-of-action-summary.pdf>.

109. *Id.*

110. *See id.*

111. *See id.*

112. *See id.*

113. *Id.*

officials so as to “swiftly implement” improvements and policies across government agencies.¹¹⁴

c. Family Violence Clearinghouse

Initially based at the University of Canterbury’s Te Awatea Violence Research Centre, the Family Violence Clearinghouse “is the national centre for collating and disseminating information about domestic and family violence in Aotearoa New Zealand.”¹¹⁵ In September 2008, the Ministry of Social Development, which provided the funding for the launch of the Family Violence Clearinghouse in 2005, took over the administration of the website.¹¹⁶ The Family Violence Clearinghouse’s purpose is to centralize the information on domestic violence to be consulted by both nongovernmental organizations and state agencies.¹¹⁷ Despite the large number of resources contained on the website, it is not clear whether it was created to share information with nongovernmental organizations (“NGOs”) or with the government or to monitor and follow-up the situation and studies on domestic violence in New Zealand.¹¹⁸

The website hosts studies and evaluations on the different regulations and programs on family violence explained above.¹¹⁹ As such, the Clearinghouse allows researchers and policy-makers to access up-to-date information as well as to make informed decisions.

114. TASKFORCE FOR ACTION ON VIOLENCE WITHIN FAMILIES, N.Z. MINISTRY OF SOC. DEV., *THE FIRST REPORT 13* (2006), available at <http://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/initiatives/action-family-violence/taskforce-report-first-report-action-on-violence.pdf>.

115. New Zealand Family Violence Clearinghouse, <http://www.nzfvc.org.nz/> (last visited Sept. 2, 2009). Te Awatea Violence Research Centre was established “to foster research [on family violence], disseminate it, and make it available.” Interview with Annabel Taylor, Deputy Director, Te Awatea Violence Research Centre, in Christchurch, N.Z. (May 12, 2008).

116. See Email from Philip Worthington, Information Manager, New Zealand Family Violence Clearinghouse [NZFVC] to NZFC Subscribers (Aug. 28, 2008) (on file with author).

117. See New Zealand Family Violence Clearinghouse, About, <http://www.nzfvc.org.nz/About.aspx> (last visited Sept. 2, 2009).

118. Interview with Nick Fahey, Project Manager and Chief Researcher, Family Violence Clearing House, Christchurch, N.Z. (May 12, 2008).

119. See New Zealand Family Violence Clearinghouse, Research and Publications, <http://www.nzfvc.org.nz/research.aspx> (last visited Sept. 4, 2009).

C. *New Zealand's Obligations to Māori as Indigenous People*

This section analyzes the obligations under both international and domestic law that New Zealand has toward the indigenous Māori people. The section provides the normative framework against which domestic violence programs that affect Māori ought to be designed, implemented, and evaluated.

1. International Law

As noted above, New Zealand is a party to most major international human rights treaties, including the International Covenant on Civil and Political Rights,¹²⁰ the International Covenant on Economic, Social, and Cultural Rights,¹²¹ the Convention on the Elimination of All Forms of Racial Discrimination ("CERD"),¹²² CEDAW,¹²³ the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,¹²⁴ the Convention on the Rights of the Child,¹²⁵ the Rome Statute of the International Criminal Court,¹²⁶ and the Geneva Conventions I-IV.¹²⁷ New Zealand is usually regarded as a nation committed to the promotion of the international human rights regime.¹²⁸

120. ICCPR, *supra* note 7.

121. ICESCR, *supra* note 8.

122. International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195. The Convention entered into force on January 4, 1969.

123. CEDAW, *supra* note 10.

124. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85. The Convention entered into force on June 26, 1987.

125. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3. The Convention came into force on September 2, 1990.

126. Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90. The Rome Statute came into force on July 1, 2002.

127. The Four Geneva Conventions were adopted on August 12, 1949 and entered into force on October 21, 1950. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea (Second Geneva Convention), 75 U.N.T.S. 85; Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention), 75 U.N.T.S. 135; Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 75 U.N.T.S. 287.

128. In May 2008, New Zealand became the tenth recipient of the United Nations' Franklin Delano Roosevelt International Disability Award, recognizing the country's role

Despite its adherence to most major treaties, New Zealand has not ratified the two most important international instruments addressing the rights of indigenous peoples, namely, the International Labour Organization Convention on Indigenous and Tribal Peoples in Independent Countries (“ILO Convention 169”)¹²⁹ and the Universal Declaration on the Rights of Indigenous Peoples, adopted in September 2007.¹³⁰ The former, adopted in 1989, is a fully binding instrument, whereas the recently adopted Declaration contains, according to the U.N., “non-binding,” aspirational provisions.¹³¹

Both the Convention and the Declaration lay out a normative framework that seeks to promote and protect the rights of native peoples. ILO Convention 169 provides for self-management and the right of indigenous and tribal peoples to decide their own priorities;¹³² the right of indigenous peoples to be consulted whenever any measure that may have a direct effect on them is being explored, planned or implemented, and the right to “be fully involved in all relevant processes.”¹³³

For many years, ILO Convention 169 set the highest standard for the protection of indigenous peoples’ rights. With the adoption by the United Nations’ General Assembly of the Declaration on the Rights of Indigenous Peoples in September 2007, international human rights law has set up new and stronger standards in areas including land and resources, self-

as “a leading proponent of the United Nations Convention on the Rights of Persons with Disabilities” and its “deep commitment to disability issues domestically.” See Press Release, Secretary-General, U.N. Doc. SG/SM/11551 (May 6, 2008), available at <http://www.un.org/News/Press/docs/2008/sgsm11551.doc.htm>.

129. Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169), June 27, 1989, 328 U.N.T.S. 247. The Convention was entered into force on September 5, 1991.

130. United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007). While the Universal Declaration was adopted with the vote of 143 nations, only 19 countries—mostly from Latin America—have ratified ILO Convention 169.

131. The U.N. press release stated: “A non-binding text, the Declaration states that native peoples have the right ‘to the recognition, observance and enforcement of treaties’ concluded with States or their successors.” Press Release, General Assembly, General Assembly Adopts Declaration on Rights of Indigenous Peoples; ‘Major Step Forward’ Towards Human Rights for All, Says President, U.N. Doc. GA/10612 (Sept. 13, 2007), available at <http://www.un.org/News/Press/docs/2007/ga10612.doc.htm>.

132. INT’L LABOUR OFFICE, ILO CONVENTION ON INDIGENOUS AND TRIBAL PEOPLES, 1989 [NO. 169]: A MANUAL 15, 18 (2003).

133. *Id.* at 18.

determination, participation, and social and economic rights. Notwithstanding the Declaration's non-binding character, it raises indigenous peoples' right from consultation to "prior and informed consent" and "emphasizes the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions and to pursue their development in keeping with their own needs and aspirations."¹³⁴

With "deep regret,"¹³⁵ New Zealand voted against the Declaration. The government alluded to difficulties with four provisions that were found to be incompatible with New Zealand's constitutional and legal system, the Treaty of Waitangi, and the principle of governing for the good of all its citizens.¹³⁶ Despite these contradictions, the government of New Zealand emphasized that it "fully supported the principles and aspirations of the Declaration . . . [and that] the country had been implementing most of the standards in the Declaration for many years."¹³⁷ To the extent that New Zealand did not object to the Declaration's provisions on self-determination, consultation, consent, and participation, it is possible to conclude that the government agrees with the Declaration's provisions on these matters. Moreover, U.N. treaty-based bodies have explicitly referred to the duty of states to seek consent, grounded, *inter alia*, on CERD, to which New Zealand is a signatory.¹³⁸

134. *United Nations Adopts Declaration on Rights of Indigenous Peoples*, UN NEWS CENTRE, Sept. 13, 2007, <http://www.un.org/apps/news/story.asp?NewsID=23794&Cr=indigenous&Cr1>.

135. See Press Release, General Assembly, *supra* note 131.

136. The government's representative cited article 26 on lands and resources, article 28 on redress, and articles 19 and 32 on a right of veto over the state as being in tension with domestic provisions or plainly impossible to be implemented. See *id.*

137. *Id.*

138. The International Convention on the Elimination of All Forms of Racial Discrimination Committee's General Recommendation 23 urges states to ensure "that no decisions directly relating to [indigenous peoples'] rights and interests are taken without their informed consent." See Comm. on the Elimination of Racial Discrimination, *Compilation of General Recommendations and Decisions of General Interest Adopted by the Committee on the Elimination of Racial Discrimination*, para. 4(d), at 18, U.N. Doc. CERD/C/365/Rev.1 (Dec. 5, 2000) ("General Recommendation XXIII on the rights of indigenous peoples"), reprinted in Comm. on the Elimination of Racial Discrimination, *Report of the Committee on the Elimination of Racial Discrimination*, 122, U.N. Doc. A/52/18 (Sept. 26, 1997) and *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, 286, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (May 27, 2008).

As a party to the main international human rights instruments, New Zealand submits periodic reports on its adherence to the treaties and thus subjects its human rights record to scrutiny by the treaty-based bodies. While observations by the treaty-bodies have generally been positive, some treaty-based bodies have been critical of New Zealand's human rights record in certain areas. In particular, in 2007, the CERD Committee issued concluding observations noting concern over the realization of rights by the Māori population. Commendation was offered for the decrease in socio-economic disparity between Māori (and Pacific Islanders) compared with European New Zealanders,¹³⁹ but the Committee expressed concern over other aspects of the law affecting Māori disproportionately, including the non-incorporation of the Treaty of Waitangi,¹⁴⁰ the 2008 cut-off of the Waitangi Tribunal's jurisdiction for historical claims,¹⁴¹ the overrepresentation of Māori in the prison population, and the Foreshore and Seabed Act.¹⁴² New Zealand is expected to respond to these concerns and, as a country that takes international law seriously, it is expected that measures will be implemented to address and show results in these areas.

Through different means, international law has proved crucial for the advancement and protection of indigenous peoples' rights.¹⁴³ Today, with the adoption of the U.N.

139. Int'l Convention on the Elimination of All Forms of Racial Discrimination, July 30-August 17, *Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, Concluding Observations of the Committee on the Elimination of Racial Discrimination*, para. 7, U.N. Doc. CERD/C/NZL/CO/17 (Aug. 17, 2007).

140. *Id.* para. 13.

141. *Id.* para. 17.

142. *Id.* paras. 19, 21.

143. As Wiessner observes,

[V]irtually all indigenous peoples share a common set of problems resulting from the tortured relationship between the conqueror and the conquered Five basic claims of indigenous peoples arise from this condition: (1) traditional lands should be respected or restored; (2) indigenous peoples should have the right to practice their traditions and celebrate their culture and spirituality with all its implications; (3) they should have access to welfare, health, educational and social services; (4) conquering nations should respect and honor their treaty promises; and (5) indigenous nations should have the right to self-determination.

Sigfried Wiessner, *Rights and Status of Indigenous Peoples: A Global Comparative and International Legal Analysis*, 12 *HARV. HUM. RTS. J.* 57, 98-99 (1999).

Declaration on the Rights of Indigenous Peoples, the agreement among the community of nations is unequivocal—states must take positive measures in a wide range of areas to ensure that the rights and interests of their native populations are guaranteed. Despite voting against the Declaration, New Zealand still is obliged to observe the community of nations' norms and understandings on the rights of native peoples. But this obligation does not only derive from New Zealand's international obligations; at the domestic level, perhaps unlike most other countries with significant indigenous populations, New Zealand is bound by political and legal obligations, in particular, those set in the Tiriti o Waitangi/Treaty of Waitangi.

2. Treaty of Waitangi

In 1840, over 200 Māori chiefs and the representatives of the Queen of England signed a treaty that would set the framework for the relationship between the settlers and the native Māori population. The Treaty, signed in Waitangi, is "widely held to be New Zealand's founding document,"¹⁴⁴ and is considered applicable to all Māori as official policy.¹⁴⁵ In the words of the Waitangi Tribunal,

The Treaty represents the gift [by Māori] of the right to make laws in return for the promise to do so so as to acknowledge and protect the interest of the indigenous inhabitants That then was the exchange of gifts that the Treaty represented. The gift of the right to make laws, and the promise to do so so as to accord the Maori interest an appropriate priority.¹⁴⁶

Despite the Treaty of Waitangi's brevity—it only contains three articles—there is wide disagreement on its interpretation,

144. See A. JOSEPH, CONSTITUTIONAL AND ADMINISTRATIVE LAW IN NEW ZEALAND § 3.1 (2d ed. 2001); see also Douglas Graham, *The New Zealand Government's Policy*, in RECOGNISING THE RIGHTS OF INDIGENOUS PEOPLES 5 (Alison Quentin-Baxter ed., 1998); Noel Cox, *The Treaty of Waitangi and the Relationship Between the Crown and Maori in New Zealand*, 28 BROOK. J. INT'L L. 123, 125 (2002) ("The Treaty of Waitangi . . . has long been regarded as New Zealand's founding document.").

145. See E.M. BROOKFIELD, WAITANGI & INDIGENOUS RIGHTS: REVOLUTION, LAW & LEGITIMATION 105-06 (2d ed. 2006).

146. GEOFFREY PALMER & MATTHEW PALMER, BRIDLED POWER: NEW ZEALAND'S CONSTITUTION AND GOVERNMENT 334 (4th ed. 2004) (citing Waitangi Tribunal, *Motunui-Waitara Claim Report: Wai 6* (2d ed., Waitangi Tribunal, Wellington, 1983)).

particularly, on the extent of sovereignty that Māori ceded to the Crown. The debate is grounded on the different English and Māori versions of the Treaty: in the English version, Māori chiefs cede “sovereignty,” whereas in the Māori version, the term used is “*kawanatanga*,” which is translated as “governorship.”¹⁴⁷ It is argued that Māori could not cede “sovereignty” because no such notion existed in their language. Similarly, Article II of the Treaty’s English version guarantees to Māori the “full, exclusive, and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess,” whereas in the Māori version, the chiefs retain “*te tino rangatiratanga*”—which is translated as “full chieftainship” of “*taonga*,” that is,—“treasures, properties or precious things,”—a notion that is broader than “full, exclusive, and undisturbed possession” of lands and resources.¹⁴⁸ Article III guarantees to all Māori the same rights as all other British subjects.¹⁴⁹

147. See Treaty of Waitangi, U.K.-Māori, art. I, Feb. 6, 1840. The English version reads as follows: “The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole sovereigns thereof.” The Māori version reads as follows: “Ko nga Rangatira o te wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu – te Kawanatanga katoa o o ratou wenua.”

148. *Id.* art. 2. The English version reads as follows: “Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.” The Māori version reads as follows: “Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangitira ki nga hapu – ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua – ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.”

149. *Id.* art. 3. The English version reads: “In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.” The Māori version states: “Hei wakaritenga mai hoki tenei mo te wakaetanga ki te Kawanatanga o te Kuini

Despite the disagreement over the different meanings in the English and Māori versions, there is consensus that the Treaty sets a particular kind of relationship between the Crown and Māori. This relationship is generally understood as a "partnership,"¹⁵⁰ which, according to the interpretation given by courts and the Waitangi Tribunal, imposes on the parties the obligation "to act reasonably, honourably, and in good faith."¹⁵¹ The partnership between Māori and the Crown entails the duty to consult Māori before adopting any measure that could affect them.¹⁵² The obligation to consult parallels the standards on consultation and participation established in ILO Convention 169 in 1989.¹⁵³

Furthermore, legislation passed in the 1990s and its case law have established as a good practice consultation with indigenous

– Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani."

150. See Treaty of Waitangi Act 1975, 1975 S.N.Z. No. 114, art. 4(2A)(a) (referring to the Treaty parties as in a partnership relation); *New Zealand Maori Council v. Attorney-General*, [1987] 1 N.Z.L.R. 641, 644 (C.A.) ("[T]he Treaty signified a partnership between races . . ."); see also Ann Sullivan, *The Treaty of Waitangi and Social Well-Being: Justice, Representation, and Participation*, in *WAITANGI REVISITED: PERSPECTIVES ON THE TREATY OF WAITANGI* 123, 123 (Michael Belgrave et al. eds., 2005) ("[T]here is considerable agreement between the courts and the [Waitangi] Tribunal that Treaty principles refer to a partnership between Maori and the Crown . . .").

151. Sullivan, *supra* note 150, at 123.

152. "[The] duty to make informed decisions . . . implies that within the principle of partnership there is an obligation to consult and to provide adequate time for the consultation process." *Id.*

153. Article 6 of ILO Convention 169 proclaims that:

1. In applying the provisions of this Convention, governments shall:
 - (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
 - (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;
 - (c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.
2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

ILO Convention No. 169, *supra* note 129, art. 6.

peoples when preparing plans or policy statements, or changes to plans or policy statements.¹⁵⁴ Lately, in 2002, the Local Government Act 2002¹⁵⁵ imposed “new requirements for local authorities on consultation and to undertake capacity-building for Māori,”¹⁵⁶ thus raising the standard much in the same way as it has occurred in international human rights law. Indeed, the government of New Zealand equates one of the most important provisions in the Declaration on the Rights of Indigenous Peoples—the principle of informed consent—with the provisions enshrined in the Treaty of Waitangi.¹⁵⁷ In Article 10, the Declaration states,

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the *free, prior and informed consent* of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.¹⁵⁸

154. The main statute in which consultation has been required is the Resource Management Act 1991, 1991 S.N.Z. No. 69. The New Zealand Ministry for the Environment has stated that “[a]pplicants have a duty to report on consultation when constructing an assessment of environmental effects, but this does not amount to a legal duty to consult. . . . Despite this, it is recognized good practice that applicants for resource consents should engage in consultation with tangata whenua [the people of the land] where their proposals may affect” the relationship of Māori and their culture and traditions with their ancestral lands, waters and other sites, the protection of historic heritage from inappropriate subdivision, and the principles of the Treaty of Waitangi. See MINISTRY FOR THE ENVIRONMENT, GUIDELINES FOR CONSULTING WITH TANGATA WHENUA UNDER THE RMA: AN UPDATE ON CASE LAW 3 (2003), available at <http://www.mfe.govt.nz/publications/rma/guidelines-tangata-whenua-dec03/case-law-tangata-whenua.pdf>.

155. Local Government Act 2002, 2002 S.N.Z. No. 84.

156. *Id.* at 7 (“Section 81 of [the Local Government Act] 2002 requires local authorities to establish processes to provide opportunities for Maori to contribute to decision-making. Section 82 sets out standard principles for local authorities to follow when undertaking consultation, and specifically requires local authorities to adopt processes to consult with Maori in accordance with these principles.”).

157. One day after the vote at the United Nations, Maori Affairs Minister Parekura Horomia affirmed that New Zealand has “some of the most extensive consultation mechanisms in the world.” *Maori Party’s Head in the Clouds*, SCOOP, September 14, 2007, <http://www.scoop.co.nz/stories/PA0709/S00272.htm>. Horomia specifically referenced to “the principles of the Treaty of Waitangi, including the principle of informed consent,” as being enshrined in New Zealand’s domestic law. *Id.* (emphasis added).

158. See United Nations Declaration on the Rights of Indigenous Peoples, *supra* note 130, art. 10 (emphasis added).

Thus, notwithstanding New Zealand's vote against the Declaration on the Rights of Indigenous Peoples, to honor the Treaty of Waitangi, the government must seek prior and informed consent from Māori if a decision that may affect them is to be adopted. Furthermore, this principle has application to a wide range of issues, from lands and resources, to political participation and, as shown in this report, addressing domestic violence.

II. DOMESTIC VIOLENCE IN NEW ZEALAND: PROBLEMS WITH THE EXISTING LAW AND REGULATIONS, AND "IMPLEMENTATION GAPS"

A. Domestic Violence in New Zealand: The Current Situation

Domestic violence is a significant issue in New Zealand. Despite the government's effort to tackle it, the levels of violence within the family, particularly violence against women, remain surprisingly high. Information regarding domestic violence—or "family violence," as it usually called in New Zealand—is everywhere. A large media campaign airs television ads and radio announcements along with posters and flyers saying "It's not OK!" to use violence.¹⁵⁹ Even bank teller machines flash messages about the need to combat family violence in New Zealand.¹⁶⁰ The news often reports incidents of domestic violence.¹⁶¹ The websites of many governmental agencies have

159. See The Campaign for Action on Family Violence, Are You Ok?, <http://www.areyouok.org.nz/>.

160. Upon landing in New Zealand, a member of the Leitner Center's delegation retrieved money from a teller machine and caught a picture of the machine's screen message once she had made the withdrawal. The screen showed the following message: "Stop for New Zealand's Biggest Morning Tea and help prevent domestic violence, 9-20 June 2008."

161. See, e.g., Nicola Brennan, *We Should Be Outraged*, THE GISBORNE HERALD, Nov. 24, 2007, available at <http://www.gisborneherald.co.nz/article/?id=499> (reporting on the outrage following the murder of a woman killed by her former partner); see also Moana Tipu, *When Enough Is Enough: Breaking the Cycle of Domestic Violence*, TE KARAKA, Autumn 2003, available at http://www.nzine.co.nz/features/domestic_violence.html (reporting on prevalence of domestic violence across races, religions, and socio-economic backgrounds in New Zealand). International press has reported on domestic violence, labeling it as New Zealand's "dark secret." See Heather Sharp, *New Zealand Faces its Dark Secret*, BBC NEWS, Jan. 29, 2007, <http://newsvote.bbc.co.uk/2/hi/asia-pacific/6309791.stm> (reporting on the high levels of violence against women, especially within Māori communities).

links to emergency services for victims of domestic violence.¹⁶² A large network of non-governmental organizations, mostly funded by the government, also provide frontline services and support, advocate for victims and survivors, and conduct studies on domestic violence.¹⁶³ The level of awareness is thus fairly high.

Some of New Zealand's most noticeable art and literature directly speak about domestic violence or, more generally, about violence and discrimination against women. The characters of the award-winning novel *The Bone People* are locked in violent and unhealthy relationships, despite their love for each other.¹⁶⁴ Paikea, the twelve-year-old character of the acclaimed film *Whale Rider*, struggles with her grandfather's refusal to allow her become the tribe's leader, in a film that offers a fine discussion of gender roles within Māori tribes.¹⁶⁵ Domestic violence is the major theme of the widely acclaimed film *Once Were Warriors*, a crude depiction of an urban Māori family's marginalization and resort to alcohol, drugs, and abuse.¹⁶⁶ The two films received praise both nationally and at the international level.¹⁶⁷

162. See, e.g., Child, Youth and Family, Suspect abuse?, <http://www.cyf.govt.nz/SuspectAbuse.htm> (last visited Sept. 4, 2009); Child, Youth and Family, Community Support Contacts, <http://www.cyf.govt.nz/1652.htm> (last visited Sept. 4, 2009).

163. See, e.g., National Collective of Independent Women's Refuges [Women's Refuge], Women's Refuge: Services, <http://www.womensrefuge.org.nz/index.cfm?objectId=0CFAF51F-1321-AE99-6998D1B854839A56> (last visited Sept. 4, 2009); New Zealand Family Violence Clearinghouse, Current Initiatives, <http://www.nzfvc.org.nz/Initiatives.aspx> (last visited Sept. 4, 2009).

164. See generally KERI HULME, *THE BONE PEOPLE* (1984). The novel was awarded the Man Booker Prize in 1985 and the Pegasus Prize for Literature in 1984. See Michiko Kakutani, Book Review, *N.Y. TIMES*, Nov. 13, 1985, at C23.

165. See generally *WHALE RIDER* (Apollo Media 2002).

166. See generally *ONCE WERE WARRIORS*, (Communicado Productions 1994).

167. *Whale Rider* won nine awards, including Best Film, at the New Zealand Film & Television Awards in 2004. See *Whale Rider—Festivals and Awards*, <http://www.whaleriderthemovie.com/awards.html> (last visited Sept. 4, 2009). Internationally, it screened at a number of festivals and won awards at Sundance, Rotterdam, Independent Spirit Awards, San Francisco and many other prestigious film festivals. *Id.* *Once Were Warriors* won best film at the New Zealand Film & Television Awards in 1994. See The Internet Movie Database, Awards for *Once Were Warriors*, <http://www.imdb.com/title/tt0110729/awards> (last visited Sept. 4, 2009). On the global level, the film received recognition at a number of international film festivals, including the Durban International Film Festival, Montreal Film Festival and Rotterdam Film Festival. *Id.* It opened to positive reviews from critics around the world. See, e.g., Roger Ebert, Review, *Once Were Warriors*, *Mar. 3, 1995*, <http://rogerebert.suntimes.com/apps/pbcs.dll/article?AID=/19950303/REVIEWS/503030304/1023>.

Domestic violence studies may adopt different perspectives. They may examine domestic violence using a public health approach, as the most-cited study on the subject in New Zealand does.¹⁶⁸ Public health analyses may be complemented with cost-based perspectives, which put emphasis on the heavy economic burden a state must bear when dealing with domestic violence.¹⁶⁹ Such economic costs not only relate to the well-being of women who are victims of domestic violence (and their children) but also to "the costs associated with political and social instability through intergenerational transmission of violence."¹⁷⁰ Finally, one can also adopt an international human rights framework to analyze the problem, that is, a perspective that examines a state's response to violence against women as a form of discrimination and the existence of larger structures of subordination.¹⁷¹ This Report embraces such an approach.

In New Zealand, it is generally stated that one in three women has been a victim of domestic violence. More precisely, according to Fanslow's and Robinson's prevalence study,

For those women aged 15 and over, at least one act of physical violence inflicted by non-partners was reported by approximately 1 in 6 participants, while sexual violence was reported by approximately 1 in 10 women. Approximately 1 in 3 ever-partnered women reported that they had experienced at least one act of physical and/or sexual violence by an intimate partner, and experience of physical and/or sexual violence by a current or previous intimate partner within the previous 12 months was reported by approximately 5% of respondents.¹⁷²

As the same study explains, its findings are consistent with official data at the time: the 2001 New Zealand National Survey of Crime Victims ("NZNSCV") reported that 26.4% of women

168. See generally Janet Fanslow & Elizabeth Robinson, *Violence Against Women in New Zealand: Prevalence and Health Consequences*, 117 J. N.Z. MED. ASSOC. 1206 (Nov. 2004), available at <http://www.nzma.org.nz/journal/117-1206/1173/>.

169. Scholars in New Zealand conducted this type of study in the early 1990s. See Suzanne Snively, *The New Zealand Economic Cost of Family Violence*, SOC. POL'Y J. OF N.Z. July 1995, <http://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/journals-and-magazines/social-policy-journal/spj04/spj4-the-nzeconomic.doc>.

170. *In-Depth Study on All Forms of Violence Against Women: Report of the Secretary-General*, *supra* note 26, para. 107.

171. See *id.* paras. 30-37.

172. See Janet Fanslow & Elizabeth Robinson, *supra* note 168, at 10.

had been physically abused by an intimate partner at least once in their lifetime.¹⁷³ Despite the level of assaults and threats being “so high” and “unusual compared to other crime surveys”—assaults accounted for 26% of all crimes and threats accounted for 22%—the survey acknowledges that, by including “partners or people well known”—which the survey aims not to include—there could be double-counting of offenses.¹⁷⁴ Moreover, the crime survey states that “it is difficult to be more precise about the proportion of Victim Forms that related to partners or people who were well known,” thus leaving the number of domestic violence incidents largely unknown.¹⁷⁵ As we discuss below, the lack of available data on domestic violence is a serious, and largely unattended, problem in New Zealand.

There is consensus that New Zealand has sound legislation on domestic violence. Yet, New Zealand still has a serious problem eliminating violence against women. As the Governor-General has observed, New Zealand has “some of the best legislation in the world (the Children, Young Persons and Their Families Act 1989 and the Domestic Violence Act 1995) and among the worst of performances.”¹⁷⁶ The following sections detail some of the problems that New Zealand faces when dealing with domestic violence. First, we examine areas in which the law as written should be modified to better address the concerns and needs of victims, survivors, perpetrators, and the

173. ALLISON MORRIS ET AL., *NEW ZEALAND NATIONAL SURVEY OF CRIME VICTIMS* 2001, at 139 (2003), <http://www.justice.govt.nz/pubs/reports/2003/victims-survey/index.html>. Fanslow and Robinson observe that

[t]he slightly lower rates obtained by the [New Zealand National Survey of Crime Victims (“NZNSCV”)] may be due to inclusion of women aged over 65 years, who may be less likely to disclose [intimate-partner violence], and/or methodological differences (e.g., use of a computer-based survey), and inclusion of questions about IPV in a ‘crime’ context.

Janet Fanslow & Elizabeth Robinson, *supra* note 168, at 10. The study also mentions the 1995 Hitting Home Survey, which found that “35% [of men reported having] been physically violent to an intimate partner in their lifetime.” *Id.* The 2005 NZNSCV failed to report specifically on intimate partner abuse.

174. PAT MAYHEW & JAMES REILLY, *NEW ZEALAND CRIME AND SAFETY SURVEY 2006 KEY FINDINGS*, 31-34 (2006), https://www.gencat.cat/justicia/doc/doc_22720164_1.pdf.

175. *Id.* at 32 n.14.

176. Ian Hassall & Janet Fanslow, *Family Violence in New Zealand: We Can Do Better*, 119 J. N.Z. MED. ASSOC. 1228 (Jan. 2006), available at <http://www.nzma.org.nz/journal/119-1228/1830/>.

community at large. Second, we focus on the lack of implementation of some of the law's provisions.

B. *Problems with the Law and Regulations as Written*

Although the current legislation and regulations on domestic violence are generally considered good, there are areas in which improvement should be made. The following section details some of the problems that the current law "as written" presents. The information we present here was mostly gathered through interviews while the Leitner Center delegation visited the country in May 2008.

1. Access to Programs

As mandated by the DVA 1995, once a Court grants a protection order, it must direct respondents to attend stopping violence programs "unless the Court considers that there is good reason for not making such a direction."¹⁷⁷ As stated on the National Network of Stopping Violence Services ("NNSVS") website, violence programs aim to help people "wanting to resolve problems in their lives caused by violence: women who are wanting to leave or have left violent relationships, children and young people affected by violence, men who want to get in charge of violent and abusive behaviour and become better partners, dads, friends and workmates."¹⁷⁸ The importance of these programs in helping to prevent and eliminate domestic violence cannot be underestimated. Therefore, it is important to scrutinize both their availability and their effectiveness.

a. Poor Support for Self-Referrals

Generally, only men who are referred to stopping violence programs through the courts are eligible to attend such programs free of charge. As the coordinator of a Family Court

177. Domestic Violence Act 1995, 1995 S.N.Z. No. 86, § 32(1).

178. National Network of Stopping Violence Services [NNSVS], About Us, <http://www.nnsvs.org.nz/aboutus/> (last visited Sept. 4, 2009). The National Network of Stopping Violence Services ("NNSVS") is comprised of fifty-three member agencies across the country. See Interview with Brian Gardner, National Manager, NNSVS, in Wellington, N.Z. (May 19, 2008).

observed, “there is not equality of access [to these services].”¹⁷⁹ According to the current legislation and regulations, there are mandatory programs for respondents and voluntary programs for applicants. As a result, the government provides funding to the specialized agencies that provide such services.¹⁸⁰ The law, however, does not actively support self-referrals; that is, there is little (or no) funding for men who voluntarily seek help through these programs. As officials from the Ministry of Justice acknowledged, they provide funding “only if [men are] referred through courts, as well as other court mandated programs.”¹⁸¹

Because men who voluntarily attend stopping violence programs may be more likely to change violent behaviors, the government should give special attention and support to these cases. In reality, the opposite tends to happen. Frontline service providers consider the lack of funding for self-referrals a problem. The NNSVS’ National Manager, Brian Gardner, remarked that there is “not enough [funding] to cover the entire costs” for men who self-refer to the programs.¹⁸² One service provider complained that “the government only funds twenty non-mandated [self-]referrals, but I get approximately five times more than that!”¹⁸³ Similarly, the manager of another stopping violence program observed: “For self-referrals there is a charge of NZ\$30 per session . . . and the vast majority don’t pay. If they can’t afford it then we wear the costs. It’s not good business but we have to ask ourselves what’s our intention.”¹⁸⁴ He further remarked that if the purpose is to reduce violence, then the

179. Interview with Robert Loo, Family Court Coordinator & Chairman, Family Violence Focus Group, in Invercargill, N.Z. (May 14, 2008).

180. The Network’s agencies are not-for-profit community agencies that receive funding “from a wide range of government agencies, charitable trusts, and donations.” *Id.*

181. Interview with Alison Stephens, Ministry of Justice, in Wellington, N.Z. (May 21, 2008).

182. Interview with Brian Gardner, *supra* note 178.

183. Interview with service provider, in N.Z. (May 2008). While in New Zealand, the Leitner Center interviewed over one hundred individuals from approximately twenty-five organizations that provide services to victims of domestic violence and/or stopping violence programs. A number of these individuals requested that we withhold their identities and the dates and locations of the interviews in order to preserve their anonymity. Citations to such interviews are noted throughout this Report as “Interview with service providers” or “Interview with stopping violence programs.”

184. Interview with the manager of a stopping violence program, in N.Z. (May 2008).

programs have no choice but to absorb the costs of non-paying clients.¹⁸⁵ Finally, there is a cost-based consideration: stopping violence programs are cheaper than incarceration. As one provider remarked, "[I]t costs about NZ\$60,000 per year to incarcerate someone but only NZ\$3,000 to send them to a stopping violence program."¹⁸⁶ The duty to *prevent* violence from occurring mandates that the state actively support men's self-referrals to stopping violence programs, particularly as the number of self-referrals has only increased since the government's public awareness campaigns.¹⁸⁷

b. Programs for Women

Similarly, women who want to attend protected-persons programs cannot always do so free of charge if a protection order was granted more than three years before, or if they do not apply for a protection order.¹⁸⁸ Some protected-persons program providers require a court referral (and therefore court funding) for women to come to their programs.¹⁸⁹ Others offer a sliding scale.¹⁹⁰ Women's ability to attend protected persons programs should not depend on their seeking a protection order (or their ability to pay). Sometimes women may not want to bring their case before a judge, yet they still may want to *do something* to deal with a violent situation. The obligation to seek a protection order may prevent women from attending these programs in practice.

2. Access to Legal Aid

One of the most important features of a comprehensive strategy to eliminate domestic violence is a proper response from courts. Consequently, it is crucial that victims of domestic violence have prompt access to the courts. Many interviewees

185. *Id.*

186. *Id.*

187. "Since the 'It's Not OK!' campaign, there have been double the number of non-mandated male participants in the men's programs." Interview with Andrew Treacher, Men's Program Coordinator, NNSVS, in Wellington, N.Z. (May 19, 2008).

188. *See* Interview with Holly Carrington, Services Manager, Preventing Violence in the Home, in Auckland, N.Z. (May 12, 2008).

189. *See id.*

190. *See id.*

observed that applying and obtaining a protection order is not as easy as it should be. In the words of Brian Gardner, the process to get a protection order is “the opposite of free, easy, and safe.”¹⁹¹ Different reasons account for this opinion.

First, many applicants who do not meet the threshold for legal aid but still earn a low salary have to pay for a lawyer to prepare their protection order application. This can be very costly. Even police officers acknowledge the problem with lack of access to legal aid. “If women don’t qualify for legal aid, the average cost is about NZ\$1000 [in Invercargill]. Women can get help from the community law office or self-represent. [However,] if the judge does not like the content of the affidavit, he will discharge the application and the woman can’t apply for another [protection order]. It is a problem when women don’t have a lawyer”¹⁹² Police Family Violence Coordinators share this opinion: “[I]t is appalling you have to pay to be safe. If you need legal protection, it could be NZ\$800-1500 for legal costs. If the respondent contests the protection order, the applicant owes even more.”¹⁹³ Specialized family lawyers summarize this dramatically: “[I]t is financially unsustainable to assist women in getting protection orders, because there is not enough funding.”¹⁹⁴ Lynn Ginty, a worker at Nelson Rape Crisis since 2002 who previously worked with Women’s Refuge, thinks women should not have to pay for lawyers when applying for a protection order.¹⁹⁵ Neville Robertson, a prominent domestic violence researcher in New Zealand, thinks likewise: “There are too many hurdles to getting a protection order: the cost, junior level lawyers doing all the applications It needs to be free and easy.”¹⁹⁶ Ginty further observed, “[i]f the government were

191. Interview with Brian Gardner, *supra* note 178.

192. Interview with Sergeant Margaret Windle, Police Family Violence Coordinator, in Invercargill, N.Z. (May 14, 2008).

193. Interview with Pegeen O’Rourke, Police Family Violence Coordinator, in Christchurch, N.Z. (May 13, 2008).

194. Interview with Alexander Ashmore, Barrister, Mahon & Associates, in Auckland, N.Z. (May 14, 2008).

195. *See* Interview with Lynn Ginty, Nelson Rape Crisis, in Nelson, N.Z. (May 16, 2008).

196. Interview with Neville Robertson, Senior Lecturer, University of Waikato Law School, in Hamilton, N.Z. (May 15, 2008).

serious about stopping domestic violence, it would subsidize protection orders."¹⁹⁷

Second, attorneys who have very little experience are the ones who generally provide legal aid. A senior attorney explained that young lawyers do legal aid to gain experience.¹⁹⁸ Because domestic violence incidents are particularly complex, there should be efforts to attract senior lawyers to take applications for protection orders and domestic violence cases more generally. Domestic violence cases require particular skills, which need time to develop. Alexander Ashmore, a barrister in Auckland, made a worrying statement: "younger lawyers are scared of hearings."¹⁹⁹

Third, in some places, the lack of incentives for lawyers to take these cases can result in a total absence of lawyers. Lynn Ginty pointed out that, over the 2007 Christmas break, "no lawyers were available to help women through Women's Refuge, so women would call Rape Crisis. Rape Crisis would refer women to the Law Institute, [which] would then refer them to lawyers in Christchurch."²⁰⁰ One Māori service provider said that "legal aid lawyers are a dying breed."²⁰¹ She observed that, in Palmerston North, for instance, they have no legal aid whatsoever.²⁰²

The lack of legal services available to women who face domestic violence situations can be even graver when it comes to immigrant women. In Christchurch, there was an incident in which a Filipina woman was unable to get legal status because she did not get the final protection order. The director of the only ethnic women's refuge in the city explained that the client did not have legal representation, and "the judge's comments indicated that the judge thought the woman just wanted the final protection order for immigration purposes, even though she had documented abuse The woman also missed the appeals

197. Interview with service provider, *supra* note 183.

198. See Interview with Shelley Gray, Attorney, in Invercargill, N.Z. (May 15, 2008). Gray remarked that remuneration for legal aid is "dreadful." An attorney with six years of experience may charge anything from NZ\$250 to NZ\$400 per hour. *Id.* The rates for legal aid is about NZ\$140 per hour. *Id.*

199. Interview with Alexander Ashmore, *supra* note 194.

200. Interview with Lynn Ginty, *supra* note 195.

201. Interview with service provider, *supra* note 183.

202. See *id.*

process, because she had no lawyer.”²⁰³ Several service providers observed that self-represented women have less validity in the eyes of the judges.²⁰⁴ A judge at a Family Violence Court confirmed this perception: “even if [self-represented women] are educated and intelligent, they don’t always get it right as if they had a lawyer.”²⁰⁵

3. Lack of Mandatory and Adequate Training

In order to appropriately address domestic violence incidents and their consequences, public officials and frontline service providers need to be adequately trained. In New Zealand, the lack of mandatory training for some officials in key positions may seriously undermine the country’s obligation to combat and eliminate domestic violence. As we discuss below, several people identified as a major problem the absence of coherent and robust training policies. New Zealand has successfully brought the issue into the spotlight—programs have been put in place, reports and working papers are constantly released, and there is a highly organized civil society that pushes the matter. Still, New Zealand could do more. In the words of one government official, “training is patchy.”²⁰⁶

a. Police

Police are often the first to intervene when a domestic violence incident occurs. Consequently, their response can determine to a large extent how the case will unfold. Police not only show up at the scene of an incident—they also prosecute cases. Police prosecutors appear in many of the less serious criminal charges in the District Court, and in preliminary hearings of some serious charges. Hence, police need to know

203. Interview with Leila Chacko, Director, Shakti Ethnic Women’s Support Group, in Christchurch, N.Z. (May 12, 2008).

204. Interview with service provider, *supra* note 183. Similarly, the Women’s Support Group Director added that the judge in the Filipina woman’s case possibly had a lack of sensitivity towards the woman’s claims. Interview with Leila Chacko, *supra* note 203.

205. Interview with Judge David Mather, Waitakere Family Violence Court, in Auckland, N.Z. (May 14, 2008).

206. Interview with Ministry of Women’s Affairs, in Wellington, N.Z. (May 19, 2008).

exactly *what* kind of evidence they should collect, *how* they should gather that information, *who* they need to talk to, *when*, etc.

There is agreement that police do not receive adequate training on domestic violence. According to Judge Peter Boshier, there is not enough training for the police and court staff on family violence.²⁰⁷ Similarly, staff from the National Collective of Independent Women's Refuges commented that "police only get six hours of training on domestic violence in six weeks of training."²⁰⁸ Holly Carrington, from Preventing Violence in the Home, observed that "training on domestic violence does not give [police] the needed understanding of why domestic violence happens."²⁰⁹ As explained below, one of the most cited problems is the police's failure to enforce protection orders—or, more generally, the laws and regulations on violence against women. As Judge Peter Boshier stated: "[I]t is fair to say that some police prosecutors are not well-trained and sensitive to the issues. Some old school prosecutors just want to get it through, and are quick to amend a charge down to common assault."²¹⁰ Staff from Preventing Violence in the Home similarly remarked: "Auck[land] prosecutors just want expediency in cases, and have good intentions, but don't always have adequate training or look out for safety of women."²¹¹ The lack of training is problematic since it can cause a significant imbalance between the victim, who is represented by an overworked policeman who is not a qualified lawyer, and the respondent, who often has a fully qualified and trained defense attorney.

Police receive a small amount of training. As noted above, according to NGO workers, police only receive six hours of training on domestic violence.²¹² In Invercargill, the Police Family Violence Coordinator stated that police have four hours of formal training on domestic violence issues.²¹³ In Christchurch, police officers receive at least five and a half hours

207. Interview with Judge Peter Boshier, Principal Family Court Judge, in Wellington, N.Z. (May 20, 2008).

208. Interview with Heather Henare, Chief Executive, Women's Refuge, in Wellington, N.Z. (May 21, 2008).

209. Interview with Holly Carrington, *supra* note 188.

210. Interview with Judge Peter Boshier, *supra* note 207.

211. Interview with Holly Carrington, *supra* note 188.

212. See Interview with Heather Henare, *supra* note 208.

213. See Interview with Sergeant Margaret Windle, *supra* note 192.

of training dealing with protection orders, investigations, and prosecutions.²¹⁴ As a result of this poor training, some women expressed concern with the government's initiative to increase the power of police to issue on the spot protection orders—one of the proposals that came out of the DVA 1995 review process, which was announced in June 2008.²¹⁵ It became clear that the absence of a uniform, nationally coordinated policy on police training affects the government's effort to prevent and eliminate domestic violence notwithstanding its legal obligation to do so.

b. Judges

Judges play a crucial role in protecting women who are victims of violence. Judges hear applications for protection orders, oversee men's attendance to stopping violence programs, and decide convictions of perpetrators. Also, judges' work can have an impact on the *prevention* of violence—if men see that protection orders are granted, or perpetrators receive serious sentences for using violence or breaching protection orders, they may be deterred from engaging in this behavior. Notwithstanding the critical role of judges, the law does not contemplate mandatory training for judges on domestic violence issues.

Domestic violence service providers think judges' knowledge about domestic violence is too narrow. NGO workers remarked that judges have “no real understanding of the dynamics of fear. No information on what happens after; [they] don't understand retaliation acts. [The] ones who were lawyers in Family Court know a bit more, but struggle with psychological abuse and signs of it.”²¹⁶ Solicitors echoed this idea: “A lot of judges in the past were trained about the issue [but] new up and comers are not

214. See Interview with Pegeen O'Rourke, Police Family Violence Coordinator, in Christchurch, N.Z. (May 13, 2008).

215. See *id.* In June 2008, the government announced that it would send a bill to Parliament to strengthen domestic violence laws. One of the proposals was to grant the power to police to issue on-the-spot short-term protection orders. See *Govt Proposes Strengthening Domestic Violence Laws*, STUFF, June 10, 2008, <http://www.stuff.co.nz/4579347a11.html>.

216. Interview with Holly Carrington, *supra* note 188.

being trained. Nowadays they assume that they will just pick it up through experience."²¹⁷

The Ministry of Justice deems that it would affect the judiciary's independence were judges to be subject to mandatory training, even in the face of international law standards that call for the training of judges. "International committees always recommend judge training, but they only look at judges' failure in the process, when it's actually a larger issue [J]udges have control over their own training programs."²¹⁸ The officials' remarks are consistent with the opinion of Principal Family Court Judge Peter Boshier: "The Institute of Judicial Studies recommends some training for judges, but not too much because the judges would rebel."²¹⁹

Women's Refuge has delivered training to judges, although not as part of a consistent national policy. Women's Refuge staff affirmed that judges should receive much more training: "We have had two opportunities to deliver trainings and both were half an hour!"²²⁰ Judge David Mather, at the Waitakere Family Violence Court, acknowledged, "we judges need training."²²¹

c. Lawyers

Although women may self-represent to obtain protection orders, it is not an easy process and women benefit significantly from legal representation. Holly Carrington remarked that "Preventing Violence in the Home suggests that women get lawyers"²²² "[E]ven though they're only filling out an affidavit of the witness, it's hard to get POs [protection orders] (increasingly so) and so that lawyers know which criteria they have to meet in the witness statement."²²³ Or, as Judge Peter Boshier told us: "Because women have less access to legal aid,

217. Interview with Anthony Mahon, Solicitor, Mahon & Associates, in Auckland, N.Z. (May 14, 2008).

218. Interview with Justine Cornwall, Ministry of Justice, in Wellington, N.Z. (May 21, 2008).

219. Interview with Judge Peter Boshier, *supra* note 207.

220. Interview with Sheryl Hann, Women's Refuge, in Wellington, N.Z. (May 21, 2008).

221. Interview with Judge David Mather, *supra* note 205.

222. *See* Interview with Holly Carrington, *supra* note 188.

223. *Id.*

they have trouble meeting the evidentiary requirements and cannot get a protection order for that reason.”²²⁴

Lawyers get to know about these criteria only through practice, however, for there is no contemplated training in law schools’ curricula. As a result, some think all law schools should require future lawyers be trained on the issues surrounding domestic violence and protection orders.²²⁵ The lack of training is not only a problem with future lawyers, but also with practicing lawyers. “There’s no training at all for lawyers. Optional training costs about NZ\$300. On the Domestic Violence Standing Committee, which is conservative, lawyers take a gender-neutral approach. There has been talk about developing guidelines for lawyers because there’s no guidance or training for lawyers. There’s no way to mandate [training].”²²⁶ In the words of an experienced family lawyer, “training for lawyers needs to be refreshed.”²²⁷

d. Benefits Officers

Benefits officers from Work and Income New Zealand (“WINZ”), the government agency that provides financial assistance and employment services throughout the country, receive a fairly large number of domestic violence disclosures, from victims as well as from perpetrators. Only in 2006-2007, there were about 4000 family disclosures to WINZ staff.²²⁸ Within WINZ, there are twenty-six Family Violence Response Coordinators who support, mentor, and provide advice to Work and Income officers on family violence matters, safety issues, and services across the country.²²⁹ Family Violence Coordinators operate on a co-delivery model with local NGO and family violence agencies to deliver family violence awareness training to

224. Interview with Judge Peter Boshier, *supra* note 207.

225. Interview with service provider, *supra* note 183.

226. Interview with Sheryl Hann, *supra* note 220.

227. Interview with Emma Parsons, Attorney, Mahon & Associates, in Auckland, N.Z. (May 14, 2008).

228. *See* Interview with Olwen Taylor, Work and Income Family Violence Intervention Programme, Ministry of Social Development, in Wellington, N.Z. (May 19, 2008).

229. Interview with Katie O’Donnell, Violence Response Coordinator, Work and Income Family Violence Intervention Programme, N.Z. Ministry of Soc. Dev., in Wellington, N.Z. (May 19, 2008).

the WINZ staff.²³⁰ Clients are given resource kits, which include information on Women's Refuge, local services, crisis plans, and the impact of family violence on children.²³¹

There is also a Family Violence Intervention Programme ("FVIP") training that is provided to front-line Work and Income, and Benefit Control staff. The training consists of a one-day session, co-delivered by Work and Income and NGO trainers with presentations from other NGO service providers.²³² It covers issues such as prevalence of family violence, its definition, causes, social context, dynamics, indicators, effects, and practice sessions (such as routine screening).²³³ There is also refresher training for staff that has been employed longer provided by the Family Violence Response Coordinators.²³⁴ "But the problem with refresher training," a Family Violence Response Coordinator acknowledged, "is having time to release the case managers so that they can attend the refresher training."²³⁵

Staff members acknowledge that the training is meant as an introduction, and is not intended to replace skilled intervention from family violence specialists.²³⁶ Moreover, Katie O'Donnell, the Family Violence Response Co-Coordinator in Wellington, said that despite the fact that every person should be routinely screened, some staff "aren't ready to ask those questions [on family violence]."²³⁷ Given the prevalence of domestic violence in New Zealand, frontline staff should conduct mandatory screening of all clients. Also, there should be incentives for staff to enroll in refresher training.

4. Failure to Require Data Collection

In February 2007, the CEDAW Committee reviewed New Zealand's periodic report on compliance with the provisions of

230. See *id.*

231. See *id.*

232. E-mail from Virginia de Joux, Senior Policy Analyst, Child Family and Community Policy, N.Z. Ministry of Soc. Dev., to author (Dec. 4, 2008) (on file with author).

233. *Id.*

234. *Id.*

235. Interview with Katie O'Donnell, *supra* note 229.

236. See *id.*

237. *Id.*

the CEDAW. The Committee noted the “need to improve availability of reliable and in-depth data on domestic violence.”²³⁸ In August 2007, after New Zealand appeared before the Committee, the Committee observed “that insufficient statistical data disaggregated by sex in all areas covered by the Convention [made] it more difficult to assess accurately the situation and progress of different groups of women with regard to all areas covered by the Convention,” including violence against women.²³⁹

The current laws and regulations fail to adequately address this important topic. New Zealand acknowledged before the CEDAW Committee that data collection, particularly on the number of convictions for domestic violence incidents, “is not . . . comprehensive.”²⁴⁰ In its response to the Committee, the government stated that the “[t]he Taskforce for Action on Violence within Families [had] identified as a priority the need to ensure comprehensive family violence data”²⁴¹ without detailing the specific measures to be adopted. It comes as no surprise then that the Committee eventually called upon New Zealand

to consider using measures such as benchmarks, targets, recruitment and support programmes, incentives and quotas with regard to various articles of the Convention and to strengthen its system of data collection in all areas covered by the Convention, in order to enhance its knowledge base about the actual situation of different groups of women and to track trends over time. It also calls upon the State party to monitor, through measurable indicators, the impact of measures taken and progress achieved towards the realization of de facto equality for women. It encourages the State party to use these data and indicators in the

238. Comm. on the Elimination of Discrimination Against Women [CEDAW Comm.], *List of Issues and Questions with Regard to the Consideration of Periodic Reports*, para. 10, U.N. Doc. CEDAW/C/NZL/Q/6 (Feb. 27, 2007).

239. See CEDAW Comm., *Concluding Comments of the Committee on the Elimination of Discrimination Against Women*, para. 20, U.N. Doc. CEDAW/C/NZL/CO/6 (Aug. 10, 2007).

240. CEDAW Comm., *Responses to the List of Issues and Questions with Regard to the Consideration of the Sixth Periodic Report: New Zealand*, para. 11, U.N. Doc. CEDAW/C/NZL/Q/6/Add.1 (Apr. 27, 2007).

241. *Id.*

formulation of laws, policies and programmes for the effective implementation of the Convention.²⁴²

The absence of available data encompasses several areas: enforcement of protection orders, the effectiveness of stopping violence programs, the number of convictions for domestic violence incidents, and so forth.

In some instances, available data is problematic and may be difficult to use for comparative purposes. Like in other places, available data in New Zealand does not necessarily comprise all women who may be victims of domestic violence. Radha Balakrishnan, principal policy and research analyst at the Families Commission, observed that since questionnaires on family violence "are framed differently [it is] harder to compare data from subsequent years," adding that police "[h]aven't collected data well enough to recognize it is an issue."²⁴³

Similarly, there is no mandated data collection to assess the effectiveness of men's stopping violence programs. Brian Gardner, the National Manager of the Stopping Violence Services Network, remarked that "[i]t's often difficult to make sense of the data."²⁴⁴ Gardner, more generally, said that "the number of deaths related to domestic violence has been rising [yet] it's difficult to get information."²⁴⁵ Parekotuku Moore, the National Director of Māori Development, echoed Gardner's remarks: "[we are not funded well enough] to have a really robust system of data to know who is coming through our programs."²⁴⁶ As we explain in the following section, the lack of attention given to these programs is particularly problematic.

Scholars argue that New Zealand should be able to produce, collect, and disseminate data without too much effort: "New Zealand is a little country; it shouldn't be hard to evaluate and to have statistics," observed Ruth Herbert, a private consultant who wrote a thesis on domestic violence in New Zealand.²⁴⁷

242. CEDAW Comm., *supra* note 239, para. 21.

243. Interview with Radha Balakrishnan, principal policy and research analyst, Families Commission, in Wellington, N.Z. (May 21, 2008).

244. Interview with Brian Gardner, *supra* note 178.

245. *Id.*

246. Interview with Parekotuku Moore, National Director of Maori Development, National Network of Stopping Violence, in Wellington, N.Z. (May 19, 2008).

247. Interview with Ruth Herbert, domestic violence researcher, in Wellington, N.Z. (May 19, 2008).

According to Herbert, “[t]he government has not been willing to pay NGOs to collect data.”²⁴⁸ Judge David Mather made a similar point when asked whether the government had any interest on compiling statistics. His response left no room for doubt: “No.”²⁴⁹ Moreover, Judge Mather commented that the Ministry of Justice’s statistics “are not so fresh,” referring us to the research conducted by scholars at Massey University.²⁵⁰ Leigh Coombes, a lecturer in psychology at Massey University and one of the researchers who conducted the study on the Waitakere Court, confirmed the government’s lack of interest in serious data collection. She observed that “judges at Waitakere wanted the Court evaluated, but the Ministry of Justice was not on board, so the judges asked Massey University.”²⁵¹

Scholars believe that the government could do better fighting domestic violence if strategies were based on research and evidence:

[U]nless initiatives and strategies are based on evidence, or can be critiqued by researchers and strategists to add some ‘pseudo’ analysis, then the prioritisation and decision making around which initiatives and strategies to adopt for implementation ends up being based on an arbitrary decision making process rather than good science. And the arbitrary decision making process can fall victim to power and control dynamics as people jostle to get their issues on the list.²⁵²

248. *Id.*

249. Interview with Judge David Mather, *supra* note 205.

250. *Id.*

251. Interview with Leigh Coombes, Lecturer, School of Psychology, Massey University, in Auckland, N.Z. (May 14, 2008) *See generally* MANDY MORGAN, LEIGH COOMBES & SARAH MCGRAY, *AN EVALUATION OF THE WAITAKERE FAMILY VIOLENCE COURT PROTOCOLS* (2007), available at http://psychology.massey.ac.nz/pdf/Family-Court-Protocols_Apr2007.pdf.

252. E-mail from Ruth Herbert, domestic violence researcher, to author (Oct. 2, 2008) (on file with author). In her thesis, Herbert writes about the Family Violence Taskforce:

[I]t is generally the case that the higher the level of official sitting at the governance table (in this instance CEO level) the lower the level of community involvement. Whilst there are non-government agencies represented on the Taskforce, indications are that the voice of the community is often not being heard. The potential for an imbalance of power when community agencies are in a forum with their funders has been noted. Interviewees reported

The New Zealand Family Violence Clearinghouse's Chief Researcher confirmed Herbert's remarks. He acknowledged that the Clearinghouse's ' goal is "to break down the silos," adding that there is a lack of evaluation of best practices, culturally appropriate approaches to domestic violence, information on elder abuse, and that research on evaluation accounts for less than ten per cent of the research.²⁵³ However, it is unclear whether the government's ultimate goal for creating the Clearinghouse was to share info with the NGO community or to provide information to policy-makers."²⁵⁴

The Leitner Center delegation had the opportunity to question government officials about New Zealand's failure to collect data in light of the international bodies' recommendations, such as the CEDAW Committee's reports. One government official, acknowledged that this is a problem that was not limited to domestic violence: "New Zealand does not have enough data on anything."²⁵⁵ When asked about the lack of data on stopping violence programs' effectiveness, this official concluded: "It's actually very hard to do effectiveness research."²⁵⁶

In this context, the importance of the CEDAW Committee's final recommendation to New Zealand is clear. The CEDAW Committee called upon New Zealand "to ensure that adequate data is collected on all forms of violence against women and urges the State party to conduct research on the prevalence, causes and consequences of violence against all groups of women to serve as the basis for comprehensive and targeted intervention."²⁵⁷

different sectors not respecting each other's perspective and that can lead to power and control issues.

Ruth Herbert, *Learning Our Way Forward, Implementation of New Zealand's Family Violence Strategies* 64 (Mar. 2008) (unpublished Masters thesis, Victoria University, Wellington) (on file with author).

253. Interview with Nick Fahey, former New Zealand Family Violence Clearinghouse project manager, in Christchurch, N.Z. (May 12, 2008).

254. *See id.*

255. *See* Interview with Ministry of Women's Affairs, in Wellington, N.Z. (May 19, 2008).

256. *See id.*

257. *See* CEDAW Comm., *supra* note 239, para. 25.

5. Conclusions and Recommendations

Access to Programs:

Conclusion:

Under the DVA 1995 and its implementing regulations, the government provides funding to specialized agencies that provide stopping violence services. Funding goes only to court-mandated programs, however. There is little or no funding for men who voluntarily seek help through these programs, notwithstanding that these men may be more likely to change violent behavior.

Recommendation:

To better comply with its duty to *prevent* violence from occurring, New Zealand should actively support men's self-referrals to stopping violence programs—particularly as the number of self-referrals has increased in response to the government's public awareness campaign.

Conclusion:

On many occasions, men who begin stopping violence programs drop out without completing the program. When courts mandate men to attend such programs, and men fail to attend, there are legal avenues available. However, men who self-refer do not have a legal obligation to remain in the program.

Recommendation:

The government should consider implementing incentives for men to complete the whole program so as to ensure that all efforts to prevent violence from occurring are made.

Conclusion:

Women who want to attend protected-persons programs may have to pay to attend such programs if they have not applied for a protection order or if they were granted a protection order more than three years ago. As a result, a woman's ability to attend a protected-persons program may depend upon her seeking a protection order or her ability to pay.

Recommendation:

In order to better comply with its duty to prevent incidents of domestic violence and address the structural causes of such violence, New Zealand should actively support the participation of women in protected-persons programs, by establishing incentives and facilitating women's access to these programs.

Legal Aid:**Conclusion:**

Under international law, New Zealand has an obligation to provide safe and prompt access to justice for victims and survivors of domestic violence, including free legal aid where necessary. The process of obtaining a protection order is complex and, in reality, requires the assistance of an attorney. For women who cannot afford a private attorney but who also do not qualify for legal aid, it may be financially unsustainable to obtain an order of protection.

Recommendation:

To better comply with its international legal obligations, the government should consider providing legal aid for all women applying for protection orders.

Conclusion:

In many cases, the lawyers who provide legal aid are junior lawyers who take such cases to gain experience. As a result, the attorneys who handle these cases may lack the experience necessary to handle the complex issues that arise in domestic violence cases. Further, in some areas, the lack of incentives for lawyers to take legal aid cases has resulted in a complete absence of legal aid lawyers.

Recommendation:

The government should implement incentives to attract senior lawyers to provide legal aid for victims and survivors of domestic violence in order to ensure adequate legal representation for the victims and survivors of domestic violence. Additionally, in order to comply with its obligation to provide safe and prompt access to justice for victims and

survivors of domestic violence, including free legal aid where necessary, New Zealand must ensure access to legal aid attorneys for survivors of domestic violence where such attorneys are needed.

Training:

Conclusion:

Police play an essential role in addressing domestic violence. They are the first to respond when a domestic violence incident occurs and they also prosecute many of the less-serious offenses in court. Yet there is no uniform, nationally-coordinated policy on police training related to issues of domestic violence. This affects the government's effort to prevent and eliminate violence against women.

Recommendation:

In order to comply with its obligation to prevent domestic violence and to impartially and seriously investigate acts of domestic violence, New Zealand should implement a uniform program of training for all police on responding to situations of domestic violence.

Conclusion:

Both judges and lawyers play an essential role in protecting women who are victims of domestic violence. Judges decide applications for protection orders, oversee men's attendance to stopping violence programs, and decide on convictions against perpetrators, among other things. Lawyers assist women when applying for protection orders and need to know which criteria must be included in the affidavit. Under the current regulations, however, there is no mandatory training on domestic violence for judges or lawyers.

Recommendation:

Given the significant role they each play in addressing violence against women, the government should establish mechanisms for mandatory training on domestic violence for both judges and lawyers.

Conclusion:

Benefits officers from Work and Income New Zealand (WINZ), the government agency that provides financial assistance and employment services throughout the country, receive a large number of domestic violence disclosures annually.

Recommendation:

Given the prevalence of domestic violence in New Zealand, frontline WINZ staff should receive refresher training on domestic violence issues and should conduct mandatory screening of all clients.

Data Collection:**Conclusion:**

Domestic observers and international bodies, such as the CEDAW Committee, have observed that there is insufficient data collected on domestic violence in New Zealand. The lack of complete and reliable data affects the implementation and evaluation of effective domestic violence policies because such policies are not based on comprehensive research. For instance, there is no data available to assess the effectiveness of men's stopping violence programs.

Recommendation:

The government should produce, collect and disseminate data on domestic violence (including, for example, research on the prevalence, causes and consequences of violence against all groups of women, enforcement of protection orders, effectiveness of stopping violence programs, the number of convictions for domestic violence incidents, evaluation of best practices and culturally appropriate approaches to domestic violence) in full coordination with all relevant governmental and non-governmental agencies.

B. *Problems with Implementation*

1. Stopping Violence Programs

The government fails to adequately monitor the effectiveness of stopping violence programs. Stopping violence programs are a critical component of any comprehensive strategy to eliminate violence against women. They help men (and women) to deal with domestic violence and its implications, and despite being triggered by domestic violence incidents, stopping violence services are intended to help prevent more violence. Therefore, the government should evaluate these programs to see how they are working *in practice*, and determine what is needed to improve them.

It is assumed that because men complete a stopping violence program they are ready to live free of violence. As one stopping violence program acknowledged, men “graduate” from these programs because they complete the number of required sessions but there is no actual assessment as to whether, and how, the program has helped the person deal with violence.²⁵⁸ For Brian Gardner, the National Manager of the Stopping Violence Services Network, “[t]he government should be asking the men and women who use the services and are impacted by them [about the programs’ effectiveness], but they’re not.”²⁵⁹ Andrew Treacher, a Men’s Program Coordinator in Wellington, agreed: even though he requires men to complete a behavior checklist at the beginning and the end of the program, he complains about the lack of funding “to measure success or conduct research and [thus] design . . . new programs.”²⁶⁰

Public servants confirm these remarks. A domestic violence advisor explained that they evaluate the effectiveness of stopping violence programs “basically by respondent’s attendance.”²⁶¹ Similarly, the Family Violence Court Coordinator in Invercargill

258. See Interview with representative of stopping violence program, in N.Z (May 2008). The identity of this speaker and the date and location of the interview have been withheld in order to preserve the anonymity of the representative.

259. See Interview with Brian Gardner, *supra* note 178.

260. See Interview with Andrew Teacher, Men’s Program Coordinator, National Network of Stopping Violence, in Wellington, N.Z. (May 19, 2008).

261. See Interview with domestic violence worker, in N.Z (May 2008). The identity of this speaker and the date and location of the interview have been withheld in order to preserve the anonymity of the domestic violence worker.

added, "a lot of work needs to be done evaluating the effect of those programs."²⁶² Even the Principal Family Court Judge, Peter Boshier, raised concerns about the lack of evaluation:

There is inadequate research on the efficacy of programs for violators of domestic violence laws. Victim programs are more successful than perpetrator programs. The perpetrator programs are a start, but studies need to be done to see their effect on individuals. If perpetrators don't go to the meetings, they are not held accountable, and the Ministry of Justice is not good at prosecuting breaches. Men do not attend programs at a rate of about 30%, but the prosecutors put such breaches at the bottom of their priority list. Men who do not attend court-mandated programs need to be prosecuted so people know the courts 'mean business'.²⁶³

During the Leitner Center's visit to the country, it became clear that stopping violence programs play a crucial role in the strategy to prevent and eliminate violence against women. Yet it was also clear that there is much to be done to improve these programs' effectiveness. Hence, the government should allocate sufficient resources to evaluate these stopping violence programs and also to allow for follow-up with the participants.

2. Problems with Protection Orders

At the core of the DVA 1995 lie protection orders. Protection orders aim to ensure the safety of victims of violence by preventing violence from occurring in the future. Therefore, when protection orders are not granted or served on respondents in a prompt manner, there is a failure to protect victims of domestic violence as intended. Similarly, when respondents who fail to observe protection orders are not sanctioned, not only are women put in danger; the whole system that has been put in place to prevent and eliminate domestic violence is undermined. We observed different problems with protection orders, including failure to serve protection orders, lack of enforcement of protection orders, and little knowledge on how to obtain protection orders.

262. See Interview with Robert Loo, Family Court Coordinator & Chairman, Family Violence Focus Group, in Invercargill, N.Z. (May 14, 2008).

263. See Interview with Judge Peter Boshier, Principal Family Court Judge, in Wellington, N.Z. (May 20, 2008).

a. Failure to Serve Protection Orders

Failure to serve protection orders stands out as one of the most common problems recounted to the Leitner Center delegation. One person commented that “[t]here are police stations that actually refuse to serve protection orders. There are serious attitudinal issues that must be changed on a government level and through police training. There is a common misperception that it is easy to get a protection order with no evidence and deprive men of their children.”²⁶⁴ Likewise, police should always serve protection orders as rapidly as possible. As told by Judge Peter Boshier, “one woman was granted a protection order on a Friday, there were problems serving the protection order, and she was fatally stabbed on Monday.”²⁶⁵ As observed by a men’s programs worker, “[l]ate service can re-spark violence.”²⁶⁶ In many instances, the man has already cooled down, the incident of violence has past, and so the late service takes them back to the emotional state linked to the violence event, thus increasing the risk to the woman. Quick service helps concentrate the situation into a shorter period of time and allows parties to move forward quicker.²⁶⁷

Failure to serve is particularly acute in rural and isolated zones. One interviewee remarked that serving protection orders in northern New Zealand can be tough because perpetrators “can hide out for months.”²⁶⁸

b. Lack of Enforcement of Protection Orders

Once a protection order is granted, women should feel safer. In theory, protection orders should keep a perpetrator away from the applicant. And, should there be a breach, police are supposed to respond promptly. In many cases, survivors of domestic violence told us that police had responded quickly and decisively. As a result, women did feel safer. There are occasions, however, when the opposite is true. If protection

264. See Interview with domestic violence advisor, in N.Z. (May 2008). The identity of this speaker and the date and location of the interview have been withheld in order to preserve the anonymity of the domestic violence advisor.

265. See Interview with Judge Peter Boshier, *supra* note 207.

266. See Interview with stopping violence program, *supra* note 184.

267. See *id.*

268. Interview with domestic violence advisor, *supra* note 264.

orders are not correctly enforced, they may in fact endanger the person who initially sought help from the legal system by increasing the hostility without providing additional protection. Some domestic violence workers remarked that "women are scared to use protection orders, because enforcement [is] not good, which puts them in more danger."²⁶⁹ In December 2006, for instance, Reipae, a nineteen year old woman, was stabbed by her ex-partner after police released the perpetrator to her address at four a.m.²⁷⁰ He had been held by the police for fighting in the street. The police bailed him to Reipae's address, notwithstanding the fact that she had a protection order against him, which included a provision that said he was not allowed on her property.²⁷¹ Reipae phoned the police during her ex-partner's fatal attack on her with a knife. She was dead before they arrived, only three hours after her ex-partner had been released from custody. "The perpetrator killed her, had a drink of water, and went and hanged himself."²⁷² A domestic violence worker commented that "bailing to the address of a victim is very common."²⁷³

Breaches of protection orders amount to a large number of the stories collected in the 2007 study *Living at the Cutting Edge*, commissioned by the Ministry of Justice.²⁷⁴ The Leitner Center delegation encountered several women whose stories mirror the ones contained in the aforementioned report. One paradigmatic case in the report is Marama's: after several episodes of both psychological and physical abuse, she had a protection order against her partner, Patrick. Despite the protection order, on many occasions Marama's partner would break in at her house

269. Interview with Holly Carrington, *supra* note 188.

270. See interview with family member of Reipae Joanne Dobson, in N.Z. (May 2008). The identity of this speaker and the date and location of the interview have been withheld in order to preserve the family member's anonymity. Reipae's story is also one of the 212 cases of women and children who, as of August 2007, had died in domestic violence homicides since the enactment of the Domestic Violence Act 1995 to whose memory a report on protection orders is dedicated. See generally NEVILLE ROBERTSON ET AL., UNIV. OF WAIKATO, *LIVING AT THE CUTTING EDGE: WOMEN'S EXPERIENCES OF PROTECTION ORDERS* (Aug. 2007), available at <http://research.waikato.ac.nz/CuttingEdge/>.

271. See Interview with family member, *supra* note 270.

272. *Id.*

273. Interview with domestic violence worker, *supra* note 261.

274. See NEVILLE ROBERTSON ET AL., *supra* note 270.

leaving calling cards, putting mucus on the window screen of her car, or flattening the bike's tires to let her know that he still had access to her and her daughters. On one occasion, Marama called the police but, as she explains, they "didn't seem bothered."²⁷⁵ On another occasion, Patrick actually called out to Marama. "She called the police, and they told her that it could be anyone."²⁷⁶ After another incident, she called the police and they "suggested that Marama should hide out in her garden and take photos of Patrick [damaging her property]. When she raised the issue of her safety, they told her to 'fit out a security light.'"²⁷⁷ The report is filled with stories of breaches of protection orders. Similarly, a public health scholar argues that the government agencies' failure to enforce protection orders ultimately led the government to adopt a whole new policy on enforcement: Te Rito Action 3 "to establish and implement processes for ensuring that the legal sanctions under the Domestic Violence Act 1995 are effectively monitored and enforced."²⁷⁸ Yet, this policy "appears never to have been actioned."²⁷⁹

Lack of enforcement of protection orders touches on police and judge training. As a family court judge remarked: "Enforcement of protection orders is a grey area. Many cops are young, 20-22 years old, and show up to a scene where the people involved are all older than them, and there may be alcohol involved and a lot of moving people. The cops may not know who to believe, and in the exercise of their discretion, may not be conservative enough."²⁸⁰

Judges also play a role in making sure protection orders are enforced. Shelley Gray, an attorney in Invercargill with vast experience on family law and protection order applications, observed that judges are generally not strict with individuals who breach protection orders. "[P]eople who breach protection orders are not given high sentences," she remarked.²⁸¹ This can cause a man to resent a woman, potentially leading to more violence. In addition, as explained in the previous section,

275. *See id.* at 47.

276. *Id.*

277. *Id.*

278. *See* Herbert, *supra* note 252.

279. *See* NEVILLE ROBERTSON ET AL., *supra* 270.

280. Interview with Judge Peter Boshier, *supra* note 207.

281. Interview with Shelley Gray, *supra* note 198.

whenever a respondent fails to attend a stopping violence program, a judge may summon him before the court.²⁸² This is a discretionary power that judges have and it should be utilized. Otherwise, women may be at even higher risk than when the violence began. U.N. treaty bodies have also been critical of judges in this area. In 2007, the CEDAW Committee declared its concern "about the continued prevalence of violence against women, particularly Maori, Pacific and minority women, and *the low rates of prosecution and convictions for crimes of violence against women.*"²⁸³

One reason for poor enforcement of protection orders is that Criminal Courts deal with breaches of those orders, rather than Family Violence Courts, which have granted the protection orders. A domestic violence worker explained that the breach itself may appear quite minor, especially for a Criminal Court judge who is used to seeing different types of criminal cases.

If the woman goes ahead and prosecutes that breach, and the judge ends up spending most of his/her day dealing [with] what would appear to be a far less serious matter than other things Judges might think, "This is not a big deal. It's not serious." You're often dealing with criminal court judges that don't have an understanding of family violence. The victim will go through the whole process only to have the judge tell him [the perpetrator] that he has to go through a [domestic violence] program [which in fact was already mandated by the [protection order] in the first place. Why, then, as a victim, would you drag yourself through the whole process?"²⁸⁴

Stopping violence programs' workers can also help to enforce protection orders. It is critical that service providers, who develop relationships with men who attend these programs, be attentive to any type of non-observance. If they act promptly, grave incidents may in fact be prevented from occurring. But even if service providers act quickly, it is paramount that the courts respond. If judges fail to use their power to check whether or not a respondent is in fact attending the program,

282. See *supra* notes 77-79 and accompanying text.

283. *Concluding Comments of the Committee on the Elimination of Discrimination Against Women*, *supra* note 239, para. 24 (emphasis added).

284. See Interview with domestic violence worker, *supra* note 261.

incidents may happen. A stopping violence program's worker narrated an incident "[i]n 2006, [where] two women were murdered . . . I had done the paperwork on these men for not showing up [to stopping violence programs] and nothing was done."²⁸⁵ His critique is directed to the court system.

c. Lack of Education About Protection Orders' Availability and Application Process

Despite the increasing public awareness of domestic violence in New Zealand, many people feel that the application process to obtain a protection order is still very complicated and largely unknown to the public. A domestic violence advisor, for instance, said that "with the knowledge that I have it is still difficult [to prepare an application for a protection order]."²⁸⁶ This advisor further remarked that there is "a huge gap in people's awareness [of availability of protection orders]."²⁸⁷ It is important that victims of violence have easy access to protection orders since protection orders trigger a number of services and legal protections, most prominently, stopping violence services.

As Robert Loo, Family Court Coordinator in Invercargill and Chairman of the Family Violence Focus Group, pointed out: "[T]he biggest issue is accessing services if you don't have a [protection order]. The government only funds for those who have [protection orders] and that is a small part of the women who could use services but they have no way to access them."²⁸⁸ This makes access and availability of protection orders significantly important for New Zealand's domestic violence strategy.

Providing information to the community on the application process for protection orders is also critical due to the absence of legal aid services in many instances—whether it is due to geographic isolation, lack of lawyers willing to take legal aid cases, or to the fact that women may simply not qualify for legal aid.²⁸⁹

285. See Interview with stopping violence program, *supra* note 184.

286. See Interview with domestic violence advisor, *supra* note 261.

287. *Id.*

288. Interview with Robert Loo, *supra* note 179.

289. See *supra* Part II.2.B.

Further, education on the availability of protection orders should be directed also to government workers. As one service provider pointed out, "workers often have a small amount of experience with [protection orders] The government should fund community trainings and provide funding for training social workers. Every government worker within CYFS, all NGOs, the Trust's health board, (all of these should be trained). 'We get whanau who know a little about protection orders but don't know how to access the process because they are prevented by prohibitive costs [of hiring a lawyer].'"²⁹⁰

3. Meetings the Standards of the DVA 1995

a. Emotional Abuse

Section 3 of the DVA 1995 includes psychological abuse within the definition of domestic violence.²⁹¹ However, in practice, it is difficult to obtain legal protection whenever violence is psychological, as opposed to physical. Family lawyers see that judges are eager to grant protection orders for physical abuse, but they are reluctant when it comes to psychological violence. Shelley Gray, a senior family lawyer, noted, "The problem is judges tend to grant [protection orders] mostly when there's physical violence; if there's no physical violence, they may just not issue a [protection order]. 'Zero tolerance' is just words."²⁹² Similarly, Anthony Mahon, a solicitor in Auckland, commented that "emotional claims . . . [are] much harder to describe."²⁹³

A service provider in Wellington observed that "people don't understand that domestic violence includes emotional and psychological violence. It is rare to have a POL-400 [police form] for incidents of emotional and psychological violence. Even CYF has said, 'it's only verbal,' even if [the violence] is recurring and

290. See Interview with service provider, *supra* note 183.

291. See Domestic Violence Act 1995, 1995 S.N.Z. No. 86, §§ 3(2)(c)(i)-(iv) ("In this section, violence means—(c) Psychological abuse, including, but not limited to, (i) Intimidation: (ii) Harassment: (iii) Damage to property: (iv) Threats of physical abuse, sexual abuse, or psychological abuse: (v) In relation to a child, abuse of the kind set out in subsection (3) of this section[.]"); *supra* note 53 and accompanying text.

292. Interview with Shelley Gray, *supra* note 198.

293. Interview with Anthony Mahon, *supra* note 217.

there are children involved.”²⁹⁴ The service provider commented that the public education campaign—“It’s not OK”—did not raise awareness enough about emotional and psychological violence.²⁹⁵ A survivor of domestic violence who currently serves as a volunteer commented, “Initially, after the DVA was enacted, it was not [hard to obtain protection orders for emotional abuse], due to the push for strong implementation of the Act. However, it has now become harder; lawyers tend to put off survivors who come to them with emotional abusive cases, because their chances of getting protection orders are slim.”²⁹⁶

Judge Boshier held a different perspective. According to him, “[m]ost lawyers don’t volunteer this information [for example, copies of text messages and emails as evidence of such abuse], and so there is an issue of evidence.”²⁹⁷ He believes most Family Court judges share the view that emotional abuse constitutes family violence.²⁹⁸

At times, police also fail to deal with situations where abuse is not physical. The Services Manager of Preventing Violence in the Home, an organization which provides training to police, remarked that “police should take into account the risk to the victim and the victim’s perception of risk. But the police are not adequately trained to assess risk. There are technical breaches of the protection orders that they don’t arrest for unless it’s a physical assault.”²⁹⁹ Another survivor of domestic violence who volunteers at a service provider said they “get really worried when [they] have a client who has just been through emotional abuse, because ‘we just know it won’t get through.’”³⁰⁰

294. Interview with service provider, *supra* note 183.

295. *See id.*

296. Interview with a survivor of domestic violence, in N.Z. (May 2008). The identity of the speaker and the date and location of this interview have been withheld in order to preserve the speaker’s anonymity.

297. Interview with Judge Peter Boshier, Principal Family Court Judge, in Wellington, N.Z. (May 20, 2008).

298. *See id.*

299. *See* Interview with Holly Carrington, *supra* note 188.

300. Interview with a survivor of domestic violence, in Auckland, N.Z. (May 12, 2008). The identity of the speaker has been withheld in order to preserve the speaker’s anonymity.

b. Immigrant Women and Disabled Women

New Zealand's law and regulations on domestic violence are directed to all individuals. However, two disadvantaged groups are often left in the margins of the DVA 1995 and its regulations regarding implementation—immigrants and women with disabilities.

Immigrant women often come from cultures where there is no reporting and no law on domestic violence, where violence is "part of life for the woman."³⁰¹ For many migrant women, residency status is used by abusive partners as a tool of power and control. According to Shila Nair of Shakti Asian Women's Centre: "Often in these cases, women find they can't go home because they are no longer a part of her family in her home country, and there is a stigma of those who leave marriages. Therefore, women find it hard to find a place to stay."³⁰² Holly Carrington, from Preventing Violence in the Home, further noted that "when [migrant women] do leave the man and seek help, they report feeling alienated by the environment of the court, eventually making them return to the household."³⁰³

Shakti workers commented that "women find that judges have hardly any cultural understanding, and even though they want to implement [New Zealand] law, they need to understand cultural backgrounds."³⁰⁴ However, Shila Nair highlighted one major case in 2007 where Judge David Mather, from the Waitakere Family Violence Court, recognized dowry as psychological abuse, stating: "[It] was a major milestone for this kind of cultural understanding."³⁰⁵

There is disagreement on whether police with the same cultural background should be called to the scene of a domestic violence incident. In Christchurch, for instance, workers at Shakti have a good relationship with a Chinese woman police officer, "who is able to serve as translator for Chinese women

301. Interview with Shila Nair, National Coordinator, Shakti Asian Women's Centre, in Auckland, N.Z. (May 16, 2008).

302. *Id.*

303. Interview with Holly Carrington, *supra* note 188.

304. Interview with Shila Nair, *supra* note 301.

305. *Id.*

who report [domestic violence].”³⁰⁶ In Auckland, however, Shakti workers think differently:

There are instances where police will send a policeman with the same ethnic background as the victim thinking they are being culturally appropriate, and it is actually bad for the victim because the police from the same culture will think the abuse is okay and not recognize the act as domestic violence.³⁰⁷

Generally, migrant women tend to report domestic violence less than Māori and Pakeha women. As a consequence, the government’s notable public campaigns efforts should be especially sensitive to migrant women. However, this is not the case. According to Shila Nair, “‘It’s not OK!’ is not working for immigrants; the general sentiment is that it is propaganda that is not meant for us, it is for Whites [and] Maori.”³⁰⁸ Indeed, when the Leitner Center delegation met with staff from the Campaign for Action on Family Violence, we raised the question about the absence of immigrant faces on the TV ads. Staff members were aware of “increase[ing] the stigma attached to already stigmatized groups.”³⁰⁹ Yet they noted that there were no immigrant faces on the ads due to time constraints: “We only have forty seconds to send the message out.”³¹⁰ Since migrant women are particularly invisible to domestic violence strategies—due to language and cultural barriers—using part of those forty seconds to portray ethnic migrant communities should be a priority.

Women with disabilities also face greater challenges when they are victims of domestic violence. According to Laurie McNess, Disability Project Coordinator of the National Network of Stopping Violence Services, disabled women are two to twenty-two times more likely (depending on the study) to be abused.³¹¹

During the DVA 1995 review process that the Ministry of Justice conducted at the beginning of 2008, the Disability

306. Interview with Leila Chacko, *supra* note 203.

307. Interview with Shila Nair, *supra* note 301.

308. *Id.*

309. Interview with Family and Cmty. Serv., N.Z. Ministry of Soc. Dev., in Wellington, N.Z. (May 19, 2008).

310. *Id.*

311. See Interview with Laurie McNess, Disability Project Coordinator, NNSVS, in Wellington, N.Z. (May 19, 2008).

Coalition Against Violence filed a submission in which it stated that "just as Pakeha cannot know or tell Māori what they need, non-disabled cannot know or tell disabled what they need."³¹² The Coalition raised as problematic the "lack of access to refuges and safe places for many people with disabilities" and "the lack of trained pool of domestic violence carers on call to support disabled victims, who cannot get into refuge and cannot be left on their own when the police remove the abuser."³¹³ Like migrant women, women with disabilities often refrain from reporting abuse and violence. Laurie McNess commented: "There was one instance where one of my patients came forward with sexual abuse claims, and the next day her friend did as well. After one week, seventy more people had stories of sexual abuse by workers in the facility, but they had to walk away because there wasn't enough staff to deal with it—it would create chaos in the management."³¹⁴

4. Conclusions and Recommendations

Stopping Violence Programs:

Conclusion:

Stopping violence programs play a crucial role in New Zealand's strategy to prevent and eliminate domestic violence yet the government currently does not have a uniform approach to evaluate the efficacy of such programs.

Recommendation:

To better comply with its international obligation to act with due diligence to prevent acts of domestic violence, the government should allocate resources to evaluate stopping violence programs with a view to improve the efficacy of these programs.

312. See NNSVS Disability Coalition Against Violence, *Submission to the Ministry of Justice on the Review of the Domestic Violence Act 1995 And Related Legislation* 5 (Feb. 2008) (on file with authors).

313. See *id.* at 6.

314. Interview with Laurie McNess, *supra* note 311.

Protection Orders:

Conclusion:

Protection orders lie at the core of the current legislation on domestic violence (the DVA 1995 and its Regulations). Therefore, it is crucial that protection orders be served promptly. In some instances, police refuse to serve protection orders; on other occasions, they fail to do so, thus putting women in more risk.

Recommendation:

In order to comply with its obligations to act with due diligence to prevent acts of violence, the government should ensure that police promptly serve protection orders in all cases and by all possible means.

Conclusion:

Once a protection order is granted it remains in place unless a judge dismisses it. Police officers and judges should therefore consider breaches of protection orders serious in all cases. In some instances, however, members of the police or judiciary have deemed breaches of protection orders to be minor or of little importance.

Recommendation:

The government should make efforts to make sure that protection orders are fully enforced and that *all* breaches are addressed promptly and decisively.

Conclusion:

Criminal Courts oversee breaches of protection orders. On occasions, this causes a lack of coordination with Family Violence Courts, which grant protection orders. Further, Criminal Court judges, who are used to dealing with serious crimes, may underestimate incidents that constitute breaches of protection orders.

Recommendation:

The government should consider giving jurisdiction to Family Violence Courts to address breaches of protection orders.

Conclusion:

Victims of domestic violence must have easy access to protection orders. In many cases, victims do not know enough about available services and the process to obtain protection orders.

Recommendation:

Because protection orders trigger a number of services for both victims and perpetrators, the government should make efforts to make information on protection orders easily available, particularly in isolated and rural zones.

Emotional Abuse:**Conclusion:**

Under Section 3 of the DVA 1995, emotional abuse is treated as seriously as physical abuse. In practice, however, there is little enforcement of these provisions. Because emotional abuse is hard to prove, judges may be less eager to grant protection orders on grounds of emotional abuse alone. Police may also be unwilling to arrest for breach of a protection order that does not involve physical assault. As a result, many incidents of actual violence are not properly addressed, thus undermining the government's effort to eliminate violence against women.

Recommendation:

The government should carry out adequate training on emotional abuse for police, judges, lawyers, and government workers to ensure that emotional abuse is treated as seriously as physical abuse when it comes to granting and enforcing orders of protection.

Immigrant Women:**Conclusion:**

Under the current legislation and regulations, migrant persons are subject to the law's protection. In practice, however, migrant women report domestic violence less and remain invisible to many of the protections due to cultural and language barriers.

Recommendation:

In order to better protect migrant women from acts of domestic violence and to investigate and punish such acts against migrant women, the government should conduct training for judges and police on how to deal with domestic violence within immigrant communities.

Disabled Women:

Conclusion:

Women with disabilities face particular challenges when they are victims of domestic violence. They are more likely to face abuse and less likely to report abuse or violence due to lack of access to refuges and safe places because of their disabilities and an inability to care for themselves when left alone if the police remove the abuser.

Recommendation:

The government should consider making refuges more accessible for women with disabilities and providing trained persons to support disabled victims in their home where necessary.

III. *DOMESTIC VIOLENCE IN MĀORI COMMUNITIES*

The rates of family violence in Māori communities in New Zealand are even higher than the rates for the general population discussed above. According to the Ministry of Social Development's 2008 Social Report, Māori women are three times more at risk of being assaulted or threatened by a partner than the average (eighteen percent compared with six percent for all respondents).³¹⁵ The problems discussed above with respect to the current domestic violence legislation and regulations and their implementation also pertain to the Māori communities and impede progress on eliminating family violence in these communities. Indeed, some of the cases discussed above to illustrate these identified problems involve Māori communities.³¹⁶ In addition to these general problems, there are issues specific to

315. See N.Z. MINISTRY OF SOC. DEV., *THE SOCIAL REPORT 2008*, 105 (2008), <http://www.socialreport.msdc.govt.nz/documents/social-report-2008.pdf>.

316. See, e.g., *supra* notes 270-272 and accompanying text.

the Māori communities that lead to increased rates of violence and that require culturally appropriate responses and Māori specific programs to address domestic violence.

This part first briefly considers the composition of the population of New Zealand and identifies disparities between different segments of the population. It then considers some of the reasons offered to explain these disparities. This part provides some context for the discussion regarding domestic violence in Māori communities that follows. Without such context, "[t]here is a risk of reductionism, which reduces family violence to an intimate relationship removed from any social context."³¹⁷ This part then highlights some of the difficulties facing Māori communities in addressing domestic violence.

A. *Socioeconomic Indicators and Disparities in New Zealand*

Although estimates vary somewhat, approximately 4.25 million people live in New Zealand.³¹⁸ People of European descent, or Pakeha, comprise the largest ethnic group, at nearly three million people (approximately seventy-eight percent).³¹⁹ The second largest ethnic group is the Māori, who make up about fifteen percent of the population, or approximately .57 million people.³²⁰ Asians comprise about nine percent of the

317. See Interview with Di Grennell, Executive Director, Amokura Family Violence Prevention Strategy, in N.Z. (May 12, 2008).

318. See, e.g., N.Z. MINISTRY OF SOC. DEV., THE SOCIAL REPORT 2007, 11 (2007), <http://www.socialreport.msd.govt.nz/documents/2007/social-report-2007.pdf> [hereinafter SOCIAL REPORT 2007] (indicating that the resident population was estimated to be 4.17 million at the end of December 2006); STATISTICS N.Z., NEW ZEALAND IN PROFILE: AN OVERVIEW OF NEW ZEALAND'S PEOPLE, ECONOMY AND ENVIRONMENT 2008, 5 (2008), <http://www.stats.govt.nz/NR/rdonlyres/D94E8A52-F75F-4EC7-BB5D-D9871D9AE198/0/5789NZInProfileWEB.pdf> (indicating a population of 4.23 million as of 2007); U.S. DEP'T OF ST., BUREAU OF PUBLIC AFFAIRS, BACKGROUND NOTE: NEW ZEALAND (2009), <http://www.state.gov/r/pa/ei/bgn/35852.htm> (last visited Sept. 4, 2009) (giving a figure of 4.28 million).

319. See SOCIAL REPORT 2007, *supra* note 318, at 15 (using data from the 2006 Census, 2,997,051 or 77.6% of people who stated an ethnicity, with people able to specify up to six ethnic groups).

320. See *id.* (using data from the 2006 Census, 565,329 people, or 14.6% of people who stated an ethnicity, with people able to specify up to six ethnic groups). Government statistics count Māoris in two ways, through ethnicity and descent. Māori ethnicity refers to cultural affiliation, while Māori descent is about ancestry. Thus, while in 2006, 565,329 people identified with the Māori ethnic group (cultural affiliation), 643,977 were of Māori descent (ancestry). See STATISTICS N.Z., QUICKSTATS ABOUT MAORI: 2006 CENSUS 1 (2007), <http://www.stats.govt.nz/NR/rdonlyres/095030F8->

population, and Pacific peoples are about seven percent of the population.³²¹ New Zealanders have a fairly high life expectancy and, to the extent that life expectancy is a proxy for overall health, they are a fairly healthy people. But health is not evenly distributed. Overall life expectancy at birth for the three-year period ending in 2006 was 81.9 years for females and 77.9 years for males.³²² Life expectancy for Māori women, however, was 73.2 years and for Māori men 69.0 years.³²³

There are similar disparities in earnings, unemployment, and education. Median hourly earnings in June 2006 were NZ\$17.00 per hour.³²⁴ Disaggregated by ethnicity, Europeans were the only group with a median income higher than the total median (NZ\$17.74 per hour, compared to Māori (NZ\$15.15 per hour), Pacific peoples (NZ\$14.50 per hour), and Others (NZ\$15.56 per hour)).³²⁵ Unemployment, relatively low in New Zealand, has declined steadily since 1998.³²⁶ However, the rates for Māori (7.9%), Pacific people (6.4%), and Others (including many recent migrants) (6.2%) were much higher in 2006 than the overall rate (3.8%) and European rate (2.7%).³²⁷ With respect to educational attainment, in the year ended December 2006, seventy-seven percent of the population aged twenty-five to sixty-four had attained an educational qualification at upper secondary or above, and almost twenty percent of people had a bachelor's degree or higher.³²⁸ However, the rates of people with

BD62-4745-836D-0EF185619C37/0/2006censusquickstatsaboutmaorirevised.pdf. Unless otherwise indicated, figures stated or referred to in this report are derived from official sources that utilize the ethnicity measure.

321. See SOCIAL REPORT 2007, *supra* note 318, at 15 (in the 2006 Census, of those who stated at least one ethnicity, 354,549 (9.2%) and 265,974 (6.9%) people identified as Asian and/or Pacific, respectively). These figures include "all of the people who stated an ethnic group, whether as their only ethnic group or as one of several ethnic groups. Where a person reported more than one ethnic group, they have been counted in each applicable group. Totals therefore do not add up to 100 percent." *Id.*

322. See *id.* at 24. Both male and female life expectancy at birth have been steadily increasing since the mid-1980s. See *id.*

323. See *id.* (data based on three-year averages from 2000-2002).

324. See *id.* at 48. Male employees (NZ\$18.13 per hour) were compensated better than women (NZ\$15.88 per hour). See *id.*

325. See *id.* at 49.

326. See *id.* at 44-45 (3.8% in 2006, with 3.5% for males, 4.1% for females, compared to 6.1% (total, with equal percentages for male and female) in 1996 and about 7% in 1998).

327. See *id.* at 44-45.

328. See *id.* at 40.

at least upper secondary level qualifications were lower for Māori (60.7%) and Pacific peoples (53.5%) than Europeans (80.1%).³²⁹ Similarly, the rates of people with tertiary qualifications were 18.9% for Europeans, 8.5% for Māori, and 7.1% for Pacific peoples.³³⁰

Compared to some countries, New Zealand has a relatively low homicide rate.³³¹ All of its citizens are not equally safe from crime, nor equally involved in the penal system, however. In 2004, the number of people who "died as a result of assault or intentional injury" was 1.2 per 100,000 people, with males more likely to die from assault or intentional injury than females (1.7 and .7 per 100,000, respectively).³³² Disaggregated into a binary Māori/non-Māori variable, the Māori rate (2.9 per 100,000) is more than double the overall rate, and more than triple the non-Māori rate (.8 per 100,000).³³³ The rate for Māori males (4.7 per 100,000) is nearly triple the overall rate for males, while the rate for females (1.2 per 100,000) is almost double the overall rate for females.³³⁴ Māori and Pacific peoples are also more likely to be the victims of a crime than Asians or Europeans. According to the New Zealand Crime and Safety Survey 2006, "39 percent of New Zealand adults aged 15 years and over experienced some form of criminal victimisation in 2005."³³⁵ For Māori and Pacific peoples however, "47 percent of [Māori and Pacific] adults had experienced some form of criminal victimisation in 2005."³³⁶

Perhaps most relevant for the current report, "[f]or Maori women, the risk of being assaulted or threatened by a partner is three times the average (18 percent compared with 6 percent for

329. *See id.* at 41 (Others includes Asians).

330. *See id.* Māori and Pacific students are less likely than Europeans to leave secondary school with a qualification at National Certificate of Educational Achievement ("NCEA") Level 2 or above, less likely to participate in early childhood education, less likely to be enrolled in degree-level courses at the tertiary level, and less likely to attain a tertiary qualification. *See id.* at 34-41.

331. *See* KEVIN WATKINS, U.N. DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 2007/2008, 322 (2007), http://hdr.undp.org/en/media/hdr_20072008_en_complete.pdf.

332. SOCIAL REPORT 2007, *supra* note 318, at 100-01.

333. *See id.* at 101.

334. *See id.*

335. *Id.* at 102.

336. *Id.* at 103.

all respondents).”³³⁷ As noted by one Māori leader, “[f]amily violence is the most significant issue confronting our people I told the Minister of Social Development that family violence was the most significant issue facing the community and if we did not find a way to stop it, it would destroy our communities.”³³⁸ On the opposite side of the criminal justice system, Māori and Pacific peoples have much higher incarceration rates (440 and 220 per 100,000, respectively) than the overall population (130 per 100,000), the collective non-Māori rate (eighty per 100,000), or the rate for the European ethnic group (seventy per 100,000).³³⁹

B. *Explanations for the Disparities*

Although disparities for segments of the New Zealand population on a variety of indicators are fairly well established, the causes for those disparities are far less settled, and proffered solutions to the problems they present vary greatly. Suggested causes for disparities between Māori and others range from a historical legacy of colonialism and discrimination to a range of analyses from a “culture of poverty” and “culture of violence” to a “warrior gene.”³⁴⁰ According to some Māori service providers we interviewed, Māori communities exist in a context of disempowerment, which engenders family violence. “[Colonial history] doesn’t become an excuse [but it] creates a context in

337. *Id.*

338. See Interviews with Māori leaders, in N.Z. (May 2008). The identities of the speakers and the dates and locations of these interviews have been withheld at the speakers’ request in order to preserve their anonymity.

339. See Mark Burton, *Maori and Pacific Peoples* 3 (N.Z. Office of the Minister of Justice, Cabinet Policy Comm., Paper No. 11), available at http://www.justice.govt.nz/effective_interventions/cabinet_papers/maori-pacific.pdf (using 2003 data). By 2006 the non-Māori imprisonment rate had risen to ninety-eight per 100,000, the Maori rate to 568 per 100,000. See *id.* at 3 n.1.

340. See, e.g., Julie Cassady, *The Legacy of Colonialism*, 51 AM. J. COMP. L. 409, 409-10, 448-54 (2003) (arguing that poor conditions for indigenous peoples are largely the result of the historical legacy of colonialism and discrimination); James O. Gump, *Film Review*, 100 AM. HIST. REV. 1217, 1218 (1995) (asserting, in a review of *Once Were Warriors*, the existence of a “culture of poverty [that] has spawned a culture of violence,” without bothering to define either term or provide non-tautological evidence of their existence); *Warrior Gene Theory Sparks Debate and Highlights Domestic Violence in New Zealand*, THE MEDICAL NEWS, Aug. 9, 2006, <http://www.news-medical.net/?id=19383> (describing one researcher’s claim that Māori disproportionately carry a “warrior gene,” making them more prone to violence and other bad behavior).

which certain choices become more viable."³⁴¹ One interviewee noted that warrior myth is the pop explanation for domestic violence in Māori communities. In the absence of other more positive, externally-generated images of Māori, it has become internalized by Māori.³⁴² "Not a lot of attempts [have been made] to separate out a history of warfare [from] violence between intimate partners."³⁴³ Contrary to this image, early ethnographers criticized Māori for "not disciplining children and [for] their women being too uppity . . . and having a voice."³⁴⁴ An academic we met with also pointed to colonization as one of the factors leading to domestic violence in Māori communities:

I think a lot of it is rooted in post-colonization issues There was colonization between 1840-1899 [during which time] Māori lost a lot of land and commercial opportunities, so there was a socioeconomic collapse and poverty. Then diseases [and] various wars, and the population collapsed numerically. Then we went through a period of assimilation. Then with post World War II urbanization, [there was] another push of assimilation. Also the[re was a] deliberate introduction of alcohol So there started to be set up multiple generations of dysfunction. The term "multi-generational stress disorder" is used to describe countries where there has been colonization and indigenous peoples are now a minority in their homeland.³⁴⁵

Socio-economic factors have also been pointed to as a cause of domestic violence in Māori communities. For his part, then Minister of Justice Mark Burton acknowledged that the "root causes of Māori over-representation in the criminal justice system appear to be centred on socio-economic factors rather than ethnicity. Being Māori does not make a person an offender Pacific peoples' over-representation in the criminal justice system . . . seems to be centred on similar socio-economic risk factors."³⁴⁶ A Māori provider similarly noted, "[t]he single most persistent

341. Interview with service provider, *supra* note 183.

342. *See id.*

343. *Id.*

344. *Id.*

345. Interview with academic, in N.Z (May 2008). The identity of the speaker and the date and location of this interview have been withheld in order to preserve the speaker's anonymity.

346. Burton, *supra* note 339, at 1.

factor shared among domestic violence cases is socioeconomic. If you control for socioeconomic indicators then our [Māori] disproportionality disappears.”³⁴⁷

According to Robert Cooper, CEO of Ngati Hine Health Trust, violence in New Zealand is “horizontal, structural, and political.”³⁴⁸ Government legislation is causing “unbearable pressure on ordinary family relationships [when] they’re tough enough. There is insufficient income to meet fundamental needs, children’s nutrition is inadequate.”³⁴⁹ Many Māori youth take up drugs, gangs, and violence because they offer a logical “escape from brutal realities” of their lives.³⁵⁰ Māori have “enough natural intelligence to forecast their future. Their prospects as older people aren’t good.”³⁵¹ Of course, there are “some people with individual capacity who will shine in anything that they do and have the opportunity to follow careers [but] there are others for whom that is a forlorn hope.”³⁵² There are many more in the latter camp who are “overwhelmed, poorly educated, under employed, underpaid, and culturally alienated. Within our families there are those among us who are not benefiting from New Zealand’s economic and social development.”³⁵³

On a recent trip to New Zealand, the former Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people “received plenty of evidence concerning the historical and institutional discrimination suffered by the Maori people.”³⁵⁴ According to the former Special Rapporteur, “[h]istorically, much legislation [has] had a negative impact on Maori rights.”³⁵⁵ The historical

347. Interview with service provider, *supra* note 183.

348. Interview with Robert Cooper, CEO, Ngati Hine Health Trust, in Whangarei, N.Z. (May 13, 2008).

349. *Id.*

350. *See id.*

351. *Id.*

352. *Id.*

353. *Id.*

354. U.N. Comm’n on Human Rights, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: Addendum, Mission to New Zealand*, para. 54, U.N. Doc. E/CN.4/2006/78/Add.3 (Mar. 13, 2006) [hereinafter *Report of the Special Rapporteur*].

355. *Id.* para. 8.

discrimination seems largely to have been related to land rights and culture.

With respect to land, the former Special Rapporteur notes that "approximately . . . 94 per cent of Maori ancestral land base has been appropriated by a variety of historical processes, including . . . fraudulent purchase, confiscation or alienations of land under the various Native Land Acts, and the individualization and fragmentation of title resulting from the Native Land Court."³⁵⁶ One specific example of this is that in the 1860s the Crown used military action to confiscate over two million acres from the people of Taranaki (over ninety-six percent of their original lands) while persecuting those who resisted, and then sold or leased the land to non-Māori well into the twentieth century.³⁵⁷ In contemporary times, treaty settlements intended to redress this historical discrimination have "involve[d] quantities of reparation that represent merely a fraction of the value of the land and resources lost by Maori during the colonial period,"³⁵⁸ arguably compounding prior discrimination and constituting a continuing form of discrimination against the Māori. It is perceived as such by some Māori legal authorities, particularly because "claimants [are forced] to waive their entitlement to the protection of the courts when they negotiate settlements . . . until the claimants have waived their rights, the negotiations will not be finalized," and the result is therefore perceived as "a largely imposed settlement package, which claimants cannot bring before an independent or judicial body for rigorous qualitative testing."³⁵⁹ And of course, the biggest recent land rights issue has been the Foreshore and Seabed controversy.³⁶⁰

With respect to cultural discrimination, the former Special Rapporteur points out that, historically, cultural and educational policy was based on a model of Māori assimilation,³⁶¹ which undermined Māori cultural identity and governance structures.³⁶²

356. *Id.* para. 22.

357. *See id.* para. 23.

358. *Id.* para. 32.

359. *See id.* para. 34.

360. *See id.* paras. 43, 55.

361. *See id.* para. 59.

362. *See id.* para. 77.

Use of the Māori language in schools was actively discouraged,³⁶³ for example. These policies did not recognize the “inherent rights” of the Māori, nor their “traditional governance bodies.”³⁶⁴ According to one Māori provider we met with,

institutionalized racism [is] still present, though it’s not like [around] twenty years ago. Now the Māori are driven to be “Māori for Māori.” Twenty years ago, an organization like [this one] wouldn’t have existed because separatist strategies were scorned. Views are more accepting now to let Māori choose for themselves. Before, there was also no trust of Māori with funds for programs and there were doubts about Māori’s skills to administer programs . . . sense that you can be too brown.³⁶⁵

A final area highlighted by the former Special Rapporteur has to do with depiction of Māori in the media, where stereotypical and negative images seem to dominate.³⁶⁶ A 2004 study showed that Māori are portrayed as possessing benefits denied to others, and as being corrupt or financially incompetent managers.³⁶⁷ The former Special Rapporteur considered the study’s findings to be of “special concern,” and that they “highlight a systematic negative description of Maori in media coverage” warranting attention via the New Zealand Human Rights Act.³⁶⁸ We heard similar critiques from people we met with in New Zealand. As stated by one Māori provider, “If you ask any New Zealander to . . . name three children who have been killed they’ll name three Māori. But Māori children are not the only ones [who have been the victims of family violence murders].”³⁶⁹ An academic similarly noted that if you take six cases, “three are well known Māori cases, and three are non-Māori cases no one has ever heard of, where the facts are substantially the same. Discrimination in how Māori are depicted feeds the stereotype that all [Māori] men are violent and abuse

363. *See id.* para. 60.

364. *See id.* para. 78.

365. Interview with service provider, *supra* note 183.

366. *See Report of the Special Rapporteur, supra* note 354, para. 66.

367. *See id.*

368. *See id.*

369. Interview with service provider, *supra* note 183.

their wife and children, which is extremely unhealthy."³⁷⁰ A Māori leader also noted that

[t]he media spotlights problems in non-Pakeha communities. The selection of news items pertaining to Māori and immigrant communities is illustrative of a racist attitude What [the media] does to people is tell them they can't work their way out of the situation they're in. The media tells them they're poor, dumb, and don't contribute to the economy and there is nothing of the accomplishments of Māori and Pacific communities³⁷¹

C. *Funding Issues*

A number of individuals expressed concerns related to government funding of Māori service providers. In particular, individuals noted difficulties due to insufficient funding of programs, government funding unnecessary new strategies or programs rather than sustaining existing programs, and government policy against funding needed capital expenditures. Although we focus on Māori service providers here because our research in this area was gathered primarily from Māori providers, we recognize that many of the difficulties with respect to funding would apply to non-Māori providers as well.

The government has a policy to "never give out the whole funding amount" required for a program.³⁷² This causes great difficulties for service providers who must provide 100% of needed services without receiving funding to cover the costs of such services and with little time or ability to fundraise to make up the difference. According to a member of Parliament, the government often outsources its work without providing total funding.³⁷³ The "social services have become little fingers of the state," but they are deliberately underfunded.³⁷⁴ NGOs have to be accountable, but because they are underfunded, they have to pay staff less.³⁷⁵ The MP gave as an example a group of two

370. See Interview with academic, *supra* note 345.

371. See Interviews with Māori leaders, *supra* note 338.

372. Interview with service provider, *supra* note 183.

373. See Interview with Member of Parliament in N.Z. (May 21, 2008). The identity of the speaker and the location of this interview have been withheld in order to preserve the anonymity of the Member of Parliament.

374. *Id.*

375. See *id.*

hundred Māori social service providers that must comply with state regulations, but pays twenty percent less than market for salaries because of insufficient funding.³⁷⁶ Moreover, a Māori service provider pointed out that the government funds itself to screen and make referrals but refers people to NGOs/service providers that are underfunded.³⁷⁷

One Māori service provider explained his organization is funded to provide domestic violence services by Child, Youth, and Family (“CYF”), a service of the Ministry of Social Development.³⁷⁸ The funding it receives, however, only covers the cost of such services for the first two quarters of the year. This provider also stated that her organization services a broad geographical area, noting that it takes time and money to reach isolated communities and people in need of their services.³⁷⁹ Yet it receives no funding for education, outreach, or gas for transportation.³⁸⁰ Moreover, “the government agencies will continue to refer clients even though they *know* we’re not funded to provide that service.”³⁸¹ Another Māori provider similarly noted that her organization is only funded for a certain number of families in a year but that it “work[s] with that [number of families] in a week.”³⁸²

One service provider we met with in the South Island receives half of its funding from the government, and raises the rest of its funding from “trusts, lotteries, wherever we can.”³⁸³ This provider is “only covered for the first initial contact of a number of clients per year.”³⁸⁴ As a result, they spend “quite a lot” of time chasing money.³⁸⁵ Another provider in the South Island noted that the funding they receive “is stringent” and that they “have to do a lot of actively seeking funds.”³⁸⁶ This provider “fulfill[s] our contract number of people that we’re supposed to

376. *See id.*

377. *See* Interview with service provider, *supra* note 183.

378. *See id.*

379. *See id.*

380. *See id.*

381. *Id.*

382. *Id.*

383. *Id.*

384. *Id.*

385. *See id.*

386. *Id.*

see in the first four months of the year."³⁸⁷ This organization may be "fully funded" by the government as a result of a new policy, Pathway to Partnership, discussed below. The additional funding they may receive will not cover the cost of having someone do all the paperwork that will be required, however.³⁸⁸ It will cover "[e]xisting contracts, probably. Not salaries or wages. It will cover outreach, residential services, the phone line, but not the people to answer the phone or the phone bill. Only enough for day-to-day operations, not training."³⁸⁹ The organization expressed concern about people hearing that it is to be fully funded now, which could make it harder for them to raise money they need to cover operating costs.³⁹⁰

Another problem identified with respect to funding was a pattern where the government will fund an initiative in the beginning but will not provide funding to sustain the program. A Māori leader noted that good projects are often put in place but then funding is withdrawn or cutback.³⁹¹ For example, Mauri Ora was a project that was working but whose funding was almost cut until its leaders convinced the Ministry of Māori Affairs to adopt the project.³⁹² The project was saved but it is still under-resourced. According to the Māori leader, "they don't resource it to the level it needs to be" which is "appalling because they do go through an exceptional process" in terms of getting certified.³⁹³ "Even if they basically jump through all the government's hoops they still don't get the required funding to do their jobs."³⁹⁴ A domestic violence expert we interviewed similarly noted that it is "a trait of that part of government," the Ministry of Social Development, "[t]hey have a little bit of money so they support something at the start and hope others will take up the funding later."³⁹⁵ According to a domestic violence counselor, "[w]hat I've seen is that the Māori services come and

387. *Id.*

388. *See id.*

389. *Id.*

390. *See id.*

391. *See* Interviews with Māori leaders, *supra* note 338.

392. *See id.*

393. *See id.*

394. *See id.*

395. *See* Interview with domestic violence expert, in N.Z. (May 2008). The identity of the speaker and the date and location of this interview have been withheld in order to preserve the speaker's anonymity.

go and that there are many cases where Māori groups that are successful have funding that [is] not renewed. Or mainstream organizations copy the model and then the Māori service funding is pulled.”³⁹⁶

A number of people also expressed frustration with the government practice of funding new studies and initiatives to address domestic violence rather than adequately funding existing organizations that are working on this issue. One person described the government approach as: “Bang! Here’s a new campaign. ‘Community: Define. Deliver. Here’s NZ\$40,000’. But there is no follow up.”³⁹⁷ Knowledge is lost with each new round of task forces, reports, and guidelines.³⁹⁸ As noted by Ruth Herbert, there have been many strategies for Māori but none of them has had a big impact. “Some of the policies were good but when they are not implemented they are lost and new policies are thought up.”³⁹⁹ Herbert explained there is a lack of resources, will and continuity. “We keep changing the deck chairs on the ship.”⁴⁰⁰ Others noted the challenges for the Family Violence Taskforce in developing a shared analysis of violence in a big group with varying levels of knowledge and experience in working with domestic violence. They also commented on the difficulty of retaining suitably experienced policy, research and operational support.⁴⁰¹ Herbert also pointed out that “[i]n New Zealand we forget to look at other countries and how they have done things so we are always inventing new processes. . . . [New Zealand] won’t look at other models. [New Zealand] wants to reinvent the wheel and try something new.”⁴⁰²

One service provider suggested that

[t]he government must also actually give money to existing networks and agencies rather than keep spending money on new strategies. . . . The government’s approaches are too short term. We need money to sustain the capacity that has been built. Many positions are under-resourced. After

396. See Interview with service provider, *supra* note 183.

397. See *id.*

398. See *id.*

399. See Interview with Ruth Herbert, *supra* note 247.

400. See *id.*

401. See Interview with service provider, *supra* note 183.

402. Interview with Ruth Herbert, *supra* note 247.

money is spent on training, etc., there is very little left over for individual clients.⁴⁰³

This provider also noted "[b]y the time the money has dripped down, [it ends up providing] NZ\$20 per client."⁴⁰⁴ Another service provider similarly noted of new strategies and task forces "they have these meetings. They get paid NZ\$200 a day or something ridiculous. They make these beautiful policies, it comes back into our community, by the time it gets here there's nothing."⁴⁰⁵

A final problem noted with respect to funding is that "most contracts don't allow for capital expenditures."⁴⁰⁶ Because of funding restrictions, service providers may not use government funds for buildings, telephone lines, or other capital expenditures.⁴⁰⁷ In one instance, an organization's request for government funding to install a phone system was rejected. Yet the same organization was later "criticized for not being responsive [by phone]," which was the very problem they were attempting to alleviate with additional phone lines.⁴⁰⁸

The government of New Zealand has announced a new funding plan, Pathway to Partnership, which may help address some of the problems identified above. According to the Ministry of Social Development, "Pathway to Partnership is a multi-year strategy aimed at strengthening community-based family, child and youth focused services."⁴⁰⁹ Pursuant to this plan, the Government is increasing its investment in these services by NZ\$446 million over the next four years.⁴¹⁰ The funding will be for existing services that currently have a contract with a relevant government agency.⁴¹¹

403. Interview with service provider, *supra* note 183.

404. *Id.*

405. *Id.*

406. *See id.*

407. *See id.*

408. *See id.*

409. N.Z. Ministry of Soc. Dev., Pathway to Partnership-Background Information, <http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/initiatives/pathway-to-partnership/key-information/key-information-background.html> (last visited Sept. 4, 2009).

410. *See id.*

411. *See id.*

The money is being progressively introduced from 1 July 2008, with an extra \$52 million available in 2008/09. This is made up of the \$37.5 million announced in February 2008 as well as \$15 million already allocated as part of Pathway to Partnership in the 2007 Budget. The funding increases to \$192.8 million in 2011/12.⁴¹²

At the time of the Leitner Center's visit to New Zealand in May 2008, we were informed by the Ministry of Social Development that the plan was "being developed as we speak" so we were not able to determine how the new program would address the problems identified above.⁴¹³

D. *Approval and Contracting for Service Providers*

Under the DVA 1995 and its implementing regulations, service providers must be approved in order to receive government funding. The approval process for service providers is set forth in the 1996 Regulations.⁴¹⁴ The system for approving domestic violence programs is both complicated and lengthy. There are two parts to the approval process: provider approval and program approval. Under the Regulations, applicants are required to submit detailed written submissions to panels that review the applications.⁴¹⁵ For organizations applying to be an approved service provider, such applications must include:

...

- (a) . . . (i) The full names and addresses of those persons [whom the organisation proposes to authorise to provide programs]; and (ii) A summary of the knowledge, skills, and expertise of those persons
- (b) The date the organisation was established;
- (c) The objectives and functions of the organisation;

412. *Id.*

413. *See* Interview with N.Z. Ministry of Soc. Dev., in Wellington, N.Z. (May 19, 2008).

414. *See supra* notes 71-74 and accompanying text.

415. *See, e.g.*, Domestic Violence (Programmes) Regulations 1996, 1996 S.R. No. 174, § 13.

(d) Whether the organisation has, in the past, provided programmes similar to those for which the applicant seeks approval.⁴¹⁶

Further,

[e]very applicant for approval as an approved agency must have in place systems which ensure that . . .

(a) The authority [to provide programmes] has effect for a stated period, being not more than the duration of the agency's approval;

. . .

(d) The authority is reviewed at regular intervals, taking into account- - - (i) whether the authorised person continues to meet the requirements of regulation 15⁴¹⁷

Additionally, every applicant must have:

(a) A code of ethics or practice; and

(b) An effective complaints procedure; and

(c) A relevant level of continuing education and an appropriate level of peer supervision or peer review for facilitators.

. . .

[and]

(3) . . . systems that will ---

(a) Ensure the assessment and ongoing review of the needs of people attending programmes that the applicant provides; and;

(b) Provide for communication between the authorised person and any other programme provider who is providing a programme to any other person who is protected by, or subject to, the same protection order; and

(c) Ensure, to the greatest extent possible, the safety of every person during his or her attendance at programmes provided by the applicant; and

416. *Id.* § 20(2).

417. *Id.* § 21(2).

(d) Provide for regular monitoring and evaluation of the effectiveness of such programmes and the presentation of such programmes.⁴¹⁸

There are additional application requirements for program approval.⁴¹⁹ If an application is approved,

the domestic violence advisor will arrange for the regional contract manager to negotiate a contract for the service. A contract is required before the Ministry of Justice can make referrals to the programme. Approval of a programme does not guarantee a contract with the Ministry of Justice although all approved providers will be considered for a contract.⁴²⁰

As a result of these government certification requirements, “there has been a movement from an activist/grassroots approach to a professionalization of the response to domestic violence.”⁴²¹ Although this may seem to be a positive development, “the bar for ‘professionalism’ keeps rising, making it hard for providers to attain certification.”⁴²² According to one provider, this has the effect of specifically limiting Māori providers “because in some area[s] no one can qualify . . . [P]roviders that have already been doing the work for years and have hands on experience and skills but lack formal training are often unable to get . . . government approval or funding.”⁴²³ Significantly, “these are the people who best understand the community and its cultural dynamics.”⁴²⁴ This raises the question of “what do we mean by being qualified?”⁴²⁵ If you create a set a criteria and the reality is that there is no one in an area who can meet it, the result is that no one can provide the needed service and no money is authorized to fund what might be working.⁴²⁶ Māori focused and community delivered training—such as that provided by Project Mauri Ora and Amokura—are intended to address these training needs for rural Māori communities.

418. *Id.* § 22.

419. *See id.* §§ 15-26.

420. *See id.* at 10.

421. *See* Interview with service provider, *supra* note 183.

422. *See id.*

423. *See id.*

424. *Id.*

425. *See id.*

426. *See id.*

Panels are not required to meet with the organizations applying for approval. Rather, the determination is made by the panel based on paper submissions from the organization seeking certification. In practice, the paper process is a barrier for many Māori service providers.⁴²⁷ It means that organizations that know how to fill out a government application with the correct language can get approved, "even if they have no idea what they are doing."⁴²⁸ At the same time, "[f]or Māori service providers they don't have the capacity to fill out the application with the correct bells and whistles."⁴²⁹ To illustrate this problem, one service provider shared that:

Well, currently there's a group . . . it's kaupapa-Māori-driven. It's a Māori program, Māori models. They haven't gone for approval because they can't jump through that hoop of approval . . . because they don't have somebody with the skill and expertise to stick them through the entire process of making application, of how it looks like in a folder As you know, they're saying 'But we want you to do this, this, and that' but who knows how to fill out that paper work? You know you've got this really good meaning marae-based organization but nobody know how to do that. So it's just silly- what they need to do is start sending their people who write that stuff out to the communities, have them say, 'This is how you do it,' give them a template, fill it out. Make it easier.⁴³⁰

This situation led another Māori service provider to note that oftentimes the "qualification [needed to provide a government-contracted service] isn't worth the paper it's written on" and that the best people working on domestic violence do it "from their heart not for the almighty dollar."⁴³¹ Another person suggested that organizations applying for funding should be assessed based on experience rather than focusing exclusively on paperwork. The panel should

look at the structure of governance and who is responsible for running an organization's operations and function. In particular, look at the governing board and ask what life

427. *See id.*

428. *See id.*

429. *Id.*

430. *Id.*

431. *See id.*

skills do they bring to the table? Obviously, they need to have some form of official qualifications, but it's also important that they belong to the area and have experience.⁴³²

In some instances, organizations also have difficulty in accessing the forms and applications to apply for funding.

The push everywhere is to de-paper. Some contracts are only available through an electronic tendering system. The effect on rural/small organizations who lack access to technology is profound. For example, there are some places that only have dial-up connections to the internet. The end result is that people are being assessed on their ability to navigate the forms rather than provide the needed service. And while they might fail at registering, they could have succeeded at the other.⁴³³

Even after certification, the paperwork and administrative requirements can be onerous. As noted by one provider, “[i]t’s a huge uphill battle to keep up with it.”⁴³⁴ According to a Māori service provider,

the interesting thing about the government funding, what they’ve actually done, they’re giving out these little piecemeal amounts with these huge accountability reports, it’s crazy, the huge amounts of hoops that we have to jump through to retain and maintain that funding is huge, and for a small amount of money.⁴³⁵

The provider went on to explain that the government wanted his organization to have “supervision, supervision reports, and you can’t find a supervisor! . . . [Y]ou can’t even get them, that’s a real problem. See, and there are lots of more isolated communities than ours that have struggled, really really struggled.”⁴³⁶ Interestingly, this service provider acknowledged that “there’s nothing wrong with having one We’d love having a supervisor” but “we can’t, we live in [a rural location]. It’s a bit hard to access things like that There are just not

432. *Id.*

433. *Id.*

434. *Id.*

435. *Id.*

436. *Id.*

enough trained people around Especially trained around domestic violence, not enough."⁴³⁷

Some organizations have actually given up program approval and government funding as a result of the administrative requirements. One Māori provider relinquished program approval for individual counseling programs, deciding not to go "through all that paper work again to just do individuals because it's a small amount of money [T]oo many hoops—too many technical and legal hoops to jump through, honestly the paper work is phenomenal."⁴³⁸ As a result, they now refer people in their area who seek that type of program to the closest urban area.⁴³⁹

E. *Services in Rural Areas*

Rural Māori communities have particular difficulties in accessing services. "This region [the north] has the unfortunate distinction of being the 'top-of-the-bottom.' In other words, they rank near the top in all social indicators you don't want to rank highly in. The communities are under-serviced and under-resourced."⁴⁴⁰ In addition, "[a]s the price of petrol has gone up [recently], the difficulty of reaching rural populations has become more severe; it is also compounded by the geography and lack of infrastructure in the north [dirt roads, rural communities]."⁴⁴¹ As noted above, in some areas there are limited providers because no one in the area can qualify for certification or comply with the administrative requirements to sustain funding.⁴⁴²

According to some, this problem of access to services is exacerbated by the "no-go zones" policy of the government. "No-go zones" are places where unemployment benefits are not offered.⁴⁴³ "If you move in [to a no-go zone] you are not eligible for government benefits because you've moved away from

437. *Id.*

438. *See id.*

439. *See id.*

440. *Id.*

441. *Id.*

442. *See id.*

443. *See id.*

jobs.”⁴⁴⁴ This policy is “completely encouraging urbanization.”⁴⁴⁵ It also depletes the rural area of older people who can contribute to the community but need to receive benefits.⁴⁴⁶ “If you’re not available to work because you live in an area without industry, ‘no benefit to you, sorry.’ But you might be being a positive influence. This policy disadvantages a lot of not quite retirees who have a lot to contribute on the marae.”⁴⁴⁷ Moreover, “[s]trong communities are pivotal in prevention. For long term change we need positive people.”⁴⁴⁸

Of particular significance for domestic violence, there are also problems with the 111 (emergency services) phone service for individuals in rural areas. “The call center is based in Auckland. Dispatchers might not know locations or pronunciations of rural, less known places. The dirt road distance might be two hours assuming the police are at the station to take the call.”⁴⁴⁹ As a result, women may not receive assistance they require in a timely manner.

F. *Relations Between the Police and Māori Communities*

Issues regarding police enforcement of protection orders and failure to serve protection orders have been documented above.⁴⁵⁰ In addition to these general problems, which apply to both Māori and non-Māori communities, there is tension between the police and Māori communities in parts of New Zealand which may lead Māori not to call the police in situations of domestic violence. As noted by several interviewees, “Māori are suspicious of the police—specifically in relation to domestic violence issues. They ask themselves: Will they come? Will they come in a timely manner? Will they inflict physical harm?”⁴⁵¹ “People’s reluctance to involve the police in domestic violence disputes reflects how people feel about police in other parts of their lives.”⁴⁵² To illustrate this point, one person commented

444. *Id.*

445. *Id.*

446. *See id.*

447. *Id.*

448. *Id.*

449. *Id.*

450. *See supra* Part II.3.B.

451. Interview with service provider, *supra* note 183.

452. *Id.*

that Māori are glad that the police do not carry guns.⁴⁵³ Another interviewee explained,

[r]ight now, a lot of effort is going into the recruitment of Māori police officers. The police department is trying to rebuild rapport with the Māori community after last year's terrorism raids People see a disconnect between the police saying it is wrong to threaten violence in the home but then knocking down doors and subjecting men to humiliation. How is it wrong to threaten violence in the home but how is it not wrong when a child sees his father kneeling in the dust in his underwear?⁴⁵⁴

The Leitner Center did meet with one service provider that informed us that their community has no difficulty with police response to domestic violence.⁴⁵⁵ The individual attributed the solid police performance in these cases to the personalities of the police in that area and the relationships that had developed between the police and the domestic violence service providers there.⁴⁵⁶ Unfortunately, the individual acknowledged that "the police response is totally dependent on our relationships that we all have with them [T]he bigger areas don't have that."⁴⁵⁷

G. *Māori Programs Addressing Domestic Violence*

As noted above, New Zealand is obligated to take measures to prevent and eliminate domestic violence.⁴⁵⁸ In many of our interviews in New Zealand, people emphasized the importance of Māori programs to address domestic violence in Māori communities because Māori will more likely access such programs and because the substantive aspects of such programs are more effective in reaching Māori audiences.

In terms of accessing programs, Māori service providers indicated that Māori were more likely to attend programs run by Māori because they feel safe culturally and do not encounter institutionalized racism in such programs. "Māori clients work better with Māori service providers. In order to promote change

453. *See id.*

454. *Id.*

455. *See id.*

456. *See id.*

457. *Id.*

458. *See supra* Part I.

[within] Māori communities, the change must come from Māori. Before the Māori safe house, Māori women just were not accessing services at all.”⁴⁵⁹ According to one Māori provider, her organization has determined that “in order to promote change and education you need Māori to be involved. A huge amount of Māori were not accessing services because there were no Māori faces. Māori felt [the general domestic violence services were not] for them.”⁴⁶⁰ One provider explained that her organization embraces the notion of cultural as well as physical safety. It takes into account “cultural safety at every point during contact with our client.”⁴⁶¹ According to another Māori provider, “[I]t’s really about [creating and ensuring] a culturally safe space [I]f they didn’t have a culturally safe space, they might not be willing to leave a situation of domestic violence.”⁴⁶² Mariameno Kapa-Kingi, General Manager, Ngati Hine Health Trust, similarly noted, “we are more comfortable with each other because of our culture . . . Māori are more amenable to receiving corrections from other Māori.”⁴⁶³

Providing cultural safety through cultural practices such as separating items pertaining to food and those pertaining to the body, removing shoes before entering a house, and use of *karakia* (prayers) allows the women to engage.⁴⁶⁴ Di Grennell gave another example regarding Māori organizations using culturally significant language when discussing zero tolerance to violence policies. She noted that “[z]ero tolerance frameworks need to be culturally appropriate. Amokura uses ‘Transforming Whanau Violence.’ This framework focuses on key cultural imperatives to effect personal and cultural change.”⁴⁶⁵

Having Māori service providers also frees victims from battling with institutional racism.⁴⁶⁶ Stacey Pepene, Coordinator of Te Puna o te Aroha, Māori Women’s Refuge in Whangarei, recognizes institutionalized racism as a form of violence and

459. Interview with service provider, *supra* note 183.

460. *Id.*

461. *Id.*

462. *Id.*

463. See Interview with Mariameno Kapa-Kingi, General Manager, Ngati Hine Health Trust, in Whangarei, N.Z. (May 13, 2008).

464. See Interview with service provider, *supra* note 183.

465. Interview with Di Grennell, *supra* note 317.

466. See Interview with service provider, *supra* note 183.

wants to make sure a woman does not have "to defend her position as a victim of domestic violence as well as a Māori."⁴⁶⁷ For example, "Māori workers are more likely to understand poverty and act in a respectful way that doesn't cause shame."⁴⁶⁸ This avoids judgment using Pakeha views.⁴⁶⁹ To illustrate this problem, Pepene explained that:

[T]raditionally Māori families sleep together [in one large room as in a communal Marae setting] but now the system uses that as an indicator of unsafe conditions (and as grounds for removing the children from the house, for example). The government emphasis on overcrowding and the health and safety issues associated with overcrowding is good in terms of health management but that tells every Māori that if you're sleeping more than [one] person to a room then you're putting your family at risk of disease. The effect of this is that it drives Māori families underground. From a public health standpoint this is dangerous. It also results in an underreporting of actual need to avoid the judgment.⁴⁷⁰

The Leitner Center met with one woman who went through a Māori program to address her issues regarding domestic violence. In discussing the efficacy of the program, she recounted that "[i]nstead of leaving Māoriness outside, and being embarrassed about it, it embraced Māoriness in all parts. It is a holistic approach to healing that teaches the person to embrace her identity."⁴⁷¹

The substantive approach of Māori domestic violence programs differs from other programs as well in that Māori programs focus on the impact colonization has had on Māori domestic violence. Non-Māori programs, in contrast, tend to focus on domestic violence as a problem of intimate partner relations. One Māori leader stated that "[m]ost people are blown away by how violence came into the family because of

467. See Interview with Stacey Pepene, Coordinator, Te Puna o te Aroha, Maori Women's Refuge, in Whangarei, N.Z. (May 12, 2008).

468. *Id.*

469. *See id.*

470. *Id.*

471. Interview with domestic violence survivor, in N.Z. (May 2008). The identity of the speaker and the date and location of this interview have been withheld in order to preserve the speaker's anonymity.

colonization and how drugs and alcohol also came into the society because of colonization. Almost any negative behavior you can think of has infiltrated our families.”⁴⁷² Another noted “[t]hat’s the nature of colonization. You internalize the negatives about who you are and [are told] someone else saved you.”⁴⁷³ The Māori leader went on to explain that “violence towards family is not an historical trait in the Māori culture. The early settlers were very clear that they found the Māori too indulgent with their children and didn’t discipline them accordingly.”⁴⁷⁴ As a result,

[t]he process of decolonization is such an important part of the process of dealing with domestic violence. Colonization gives a context to Māori families who suffer from violence [about] what is happening to them. For families, it’s as if a light comes on for them after having been in a place of darkness when they learn about how colonization has affected them on an individual level.⁴⁷⁵

Not surprisingly, some Māori leaders believe that many of the programs addressing domestic violence on an individual level have not worked for Māori. We were told that

the government continues to send people to [domestic violence] programs that are individual-focused. This has worked for some but it hasn’t worked for Māori, Pasifika . . . anyone who isn’t Anglo-Saxon. If we want to be successful in the way in which we govern then we ought to be supporting successful programs.⁴⁷⁶

A domestic violence counselor at a Māori provider similarly discussed

a problem of false consciousness with Māori that can be connected to domestic violence, in that both circumstances have a patriarchal view of the relationship (man-woman, Māori-crown). Māori cannot be themselves, because they are forced into the colonizer’s framework. Healing from

472. Interview with Māori leaders, *supra* note 338.

473. *Id.*

474. *Id.*

475. *Id.*

476. *Id.*

domestic violence requires healing on two levels in order to recover from the victimization.⁴⁷⁷

According to Di Grennell, to address domestic violence, you need to challenge the idea that violence within *whanau* is acceptable or culturally valid and remove opportunities for violence to take place, which can be liberating for historically oppressed communities.⁴⁷⁸ A successful approach to domestic violence includes empowering people to demonstrate their capacities.⁴⁷⁹ She emphasizes that quality and effective services are also a necessary part of prevention.⁴⁸⁰

Māori organizations also discussed the importance of a communal or extended family approach to address domestic violence. Amokura advocates for a "*whanau oranga*" or "*whanau* (wider family) wellbeing" framework, which sees the solution to family violence incorporating the involvement of the extended family and the extended family as possessing interests related to family violence, such as shared responsibility for protection of a woman or child or interests in redress.⁴⁸¹ For other Māori providers, the first step for women is to identify their *whanau* network and *marae*. "[I]f you're Māori you have a *whanau*" yet "some of our women are so disconnected that it's about getting her . . . outside of the nuclear family because as a Māori, that's only the beginning—it's only the smaller core to a much larger picture."⁴⁸² These providers work to have the women re-access those connections believing that

if we can get her reconnecting with her *whanau*, it's going to be much safer for her and the children. It's about empowering her to use those connections and encouraging her to not work in isolation because one of the founding tactics of domestic violence is isolation. The perpetrator will

477. See Interview with service provider, *supra* note 183.

478. See Interview with Di Grennell, *supra* note 317.

479. See *id.*

480. See *id.*

481. See *id.* The Māori term for extended family is *whanau* but "*whanau*," as it appears in government legal and policy documents, does not always reflect the reality of its meaning within the Māori cultural context. In many government documents, it is used synonymously with nuclear family. As a result, when it is incorporated into legal documents and enforced, it doesn't allow for the inclusion of extended family members. See *id.*

482. Interview with service provider, *supra* note 183.

try to isolate her to the point where she feels she's burnt her bridges⁴⁸³

A Māori leader also emphasized the importance of family:

Kinship ties have been eroded through urbanization as Māori have been shifted away from the tribal setting and lost their connection to who they are. They lose their connection with their extended family and become isolated. That contributes to drug and alcohol use, family violence, etc. When you're part of a collective it's a lot more difficult to get involved in that type of behavior.⁴⁸⁴

To be clear, Māori programs do not allow perpetrators of domestic violence to avoid responsibility for their violent acts. Colonization is used as a starting point to help Māori understand and deconstruct the dynamics of violence within the context of colonizing practices. "It is a means of contextualizing the violence of our country's development"⁴⁸⁵ and helping Māori understand how they got to this place but not to avoid all personal responsibility. For example, at one men's program we met with, men's groups are run with Māori culture and history as a guideline. Men are greeted with *powhiri* (a Māori welcome ceremony). The groups discuss the Treaty of Waitangi and on the board is written "male by birth, man by choice."⁴⁸⁶ Men are told to think about this challenge and work to understand a family relationship. Sessions include equality, parenting, and child care.⁴⁸⁷ Often, men don't acknowledge committing violence in the present, but blame it on the past—they externalize the blame, and often blame colonization. In such instances, they are told, "white men came and colonized, but they didn't pick up your hand and make you smash your missus."⁴⁸⁸

483. *Id.* In the north, we similarly heard that "[i]t's really sad to see the high levels of domestic violence Every woman that comes to see me because of domestic violence knows another family member or friend experiencing domestic violence. So we don't see so many of these women. The government needs to learn to bring the wider whanau in. The whanau can build you up or strip you down." *Id.*

484. Interview with Māori leaders, *supra* note 338.

485. Interview with service provider, *supra* note 183.

486. *See id.*

487. *See id.*

488. *Id.*

H. *The New Zealand Government's Obligation to Consult with Māori*

As noted above, pursuant to the Treaty of Waitangi, the Crown is obligated to consult Māori before adopting any measure that could affect them.⁴⁸⁹ While in New Zealand, the Leitner Center met with a number of Māori organizations and individuals who expressed frustration with the manner in which the government conducted such "consultation" with respect to domestic violence programs. For example, one Māori leader expressed the view that

[t]he Domestic Violence Task Force should work to hear a Māori voice in order to respect the partnership idea of the Treaty of Waitangi. The Treaty of Waitangi relationship is with the Māori tribes, but the tribes are not invited to the task force meeting. Rather, the crown sets up the task force and then invites a few token Māori to attend [T]his is not a partnership. If the crown has defined the relationship, there is no space for Māori tikanga. To make the partnership into a reality, there needs to be a change in the fundamental beliefs of the government. But the government does not want to hear what Māori really have to say because it is frightened about what it will have to change.⁴⁹⁰

Another practitioner similarly noted that the "Māori world view is ignored and isn't taken to account until later. The legislation is drafted, then passed, then implemented and it is at that stage (implementation) when we get to have some influence but by then it's too late."⁴⁹¹ What should happen, according to a presentation at a Ministry of Social Development meeting, is that the "consultation process should mean that the government approaches Māori with a few options and engages with the Māori in making the right choice Māori want to have greater influence on the creation of the options the government is considering when creating new programs."⁴⁹² To address this gap, several providers advised that "[t]he most important thing would be for the [Domestic Violence] legislation to mention the Treaty of Waitangi. All the regulations would then flow from

489. See *supra* Part I.3.B.

490. Interview with Māori leaders, *supra* note 338.

491. Interview with service provider, *supra* note 183.

492. Work with Diverse Communities, Ministry of Soc. Dev., Presentation in Wellington, N.Z. (May 19, 2008).

that. This would acknowledge that this policy has specific relevance to Māori.”⁴⁹³ A Māori leader similarly noted that amending the DVA 1995 to reference the Treaty of Waitangi would “force the government to work with the people of the land. This [Labour] government has been trying to move away from putting the Treaty into legislation.”⁴⁹⁴ Another Māori provider similarly noted that reference to the Treaty would have implications for how regulations, policies and practices are formulated and funded.⁴⁹⁵

I. *Conclusions and Recommendations*

Funding

Conclusion:

The government of New Zealand currently relies on NGOs to provide many of the services necessary to comply with its obligations under international law including, for example, providing shelters for victims of domestic violence, education and outreach regarding domestic violence, stopping violence programs, telephone hotlines, and training programs. The government of New Zealand does not provide sufficient funding to cover the costs of such services, however.

Recommendation:

When implementing the new Pathway to Partnership plan, the government should recognize the actual demand for domestic violence services that it relies on NGOs to provide (and that the government is required to provide under international law), such as providing shelters for victims of domestic violence, education and outreach regarding domestic violence, stopping violence programs, telephone hotlines, and training programs, and should allocate adequate funding to cover the actual costs of such services.

493. Interview with service provider, *supra* note 183. However, the Leitner Center delegation also encountered individuals who believed that “the Treaty of Waitangi doesn’t have anything to do with violence,” and “is more or less about land and seafood.” See Interview with family violence workers, in N.Z (May 2008).

494. Interview with Māori leaders, *supra* note 338.

495. See Interview with service provider, *supra* note 183.

Conclusion:

The government of New Zealand appears to have a short-term approach to funding domestic violence service providers and programs whereby it will fund an initiative at the outset but will not provide sufficient funding to sustain programs, even those that are successful.

Recommendation:

In order to more effectively address issues related to domestic violence and to comply with its international obligations, the government of New Zealand should consider providing funding to sustain successful domestic violence service providers and programs rather than prioritizing new initiatives and studies.

Conclusion:

Typically, contracts between the government of New Zealand and service providers working on domestic violence issues do not allow government funding to be used for buildings, telephone lines, or other capital expenditures. Yet such expenses are often necessary for an organization to effectively provide the relevant services.

Recommendation:

The government of New Zealand should provide funding for capital expenditures where such items are necessary for NGOs to provide the domestic violence services the government outsources to them.

Approval and Contracting for Domestic Violence Service Providers**Conclusion:**

Under the DVA 1995 and its implementing regulations, domestic violence service providers must be approved by the government and receive a government contract in order to receive government funding. The system for approving domestic violence providers and programs is both complicated and lengthy. The approval process requires applicants to submit detailed written submissions to panels that review the applications. The government process for

approval has the effect of limiting approval and contracts (and, as a result, limiting funding) for Māori service providers who often lack the technical expertise to navigate the application process. As a result, in some areas, there are no organizations funded to provide needed domestic violence services.

Recommendation:

The government should consider simplifying the application process to obtain approval for domestic violence service providers and programs, providing template forms and making panel members or government officials available to assist Māori service providers and organizations with the application process.

Conclusion:

In some instances, government contracts for domestic violence services are only available through an electronic tendering system. Organizations that lack access to technology and the internet are not able to access the applications for such contracts.

Recommendation:

The government should ensure that applications for government contracts are made available to Māori service providers and organizations that lack access to the online forms for government contracts for domestic violence services.

Conclusion:

The administrative requirements in terms of paperwork and supervision after an organization receives approval can also be onerous, and in some cases impossible, for Māori service providers to satisfy, especially for service providers in rural and more remote locations.

Recommendation:

The government should consider revising the administrative requirements in terms of paperwork and supervision for organizations that have provider and program approval in order to reflect what is possible for Māori and rural service

providers and thereby encourage the provision of services in areas of need while maintaining standards for government-funded services.

Services in Rural Areas

Conclusion:

Rural Māori communities have particular difficulties in accessing services. In some areas there are limited providers because no one in the area can qualify for approval or comply with the administrative requirements to sustain funding. The difficulty of reaching rural populations is compounded by the geography and lack of infrastructure in the North. Of particular significance for domestic violence victims, there are problems with the 111 (emergency services) phone service for individuals in rural areas. Dispatchers at the call centers are sometimes unfamiliar with locations or pronunciations of rural, less known places. As a result, police are not always able to respond to calls for help in a timely manner.

Recommendation:

The government should consider providing regional or more local call centers for 111 phone services so that emergency services can respond to individuals in rural areas on a timely and effective basis.

Relations Between the Police and Māori Communities

Conclusion:

There is general distrust between Māori communities and the police in parts of New Zealand, particularly after the terrorist raids in 2007, which may lead Māori not to call the police in situations of domestic violence.

Recommendation:

The police department should try to repair relations and develop strong relationships with the Māori community so that Māori will contact the police in situations of domestic violence. The effort in some parts of New Zealand to recruit Māori police officers is clearly a positive step. There are existing models of close cooperation between domestic

violence service providers and the police in some communities in New Zealand that could be replicated elsewhere in the country.

Māori Programs Addressing Domestic Violence

Conclusion:

The government of New Zealand should be commended for funding Māori service providers to provide *Kaupapa* Māori programs on domestic violence and Māori shelters. Māori are more likely to access such programs and the substantive approach of such programs appears to be more effective in reaching Māori individuals.

Recommendation:

New Zealand should continue to support Māori service providers to provide *Kaupapa* Māori programs on domestic violence and Māori shelters, and should allocate adequate funding to cover the actual costs of such services under the new Pathway to Partnership plan.

The New Zealand Government's Obligation to Consult with Māori

Conclusion:

Under the Treaty of Waitangi and international law, the government of New Zealand has an obligation to consult with Māori before adopting strategies, initiatives or programs that will impact Māori, including domestic violence strategies, initiatives or programs.

Recommendation:

In order to comply with its obligations under the Treaty of Waitangi and international law, the government should consult with Māori regarding new strategies, initiatives, or programs to address domestic violence in Māori communities at an early stage when Māori can help shape the new programs (rather than asking Māori to approve strategies, initiatives or programs that have already been formulated by the government). The government should also consider amending the DVA 1995 to reference the Treaty of Waitangi. We recognize this is a controversial

proposal but, in so referencing the Treaty, the government would signal to Māori that it is serious about its commitment to consult Māori about domestic violence strategies, initiatives, or programs which impact them and to its Treaty obligations more broadly.