"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. In an effort to combat the problem, New Zealand has enacted legislation and regulations which aim to prevent and eliminate domestic violence. It has also created visible public education campaigns calling upon people to stop “family violence” as it is called in New Zealand.

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

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, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights. While none of these treaties expressly addresses domestic violence, they each prohibit discrimination on the basis of sex. New Zealand has also signed and ratified the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”), 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.

The Fordham delegation was led by Professors Jeanmarie Fenrich, Paolo Galizzi, and Chi Mgbako, and the 2007-08 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 the on-the-ground study, 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...
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.

The Leitner Center teams traveled to several New Zealand cities and towns, including: Auckland, Ruakaka, Christchurch, Hamilton, Invercargill, Kaitaia, Nelson, Whangarei, and Wellington.
women and men from Aotearoa/New Zealand. The delegation conducted approximately 165 interviews in all.\footnote{The delegation conducted approximately 165 interviews in all.}

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.” Part II presents the delegation’s findings with respect to a range of problems women face when they are victims (and/or survivors) of domestic violence. Similarly, Part II 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. Finally, Part III addresses domestic violence in Māori communities. While many of the problems presented in Part II also apply to Māori, this Part discusses some issues that affect Māori in particular. Both Parts II and III offer recommendations designed to address the documented problems. During the course of our research, the New Zealand government 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 Consortium 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

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 forth 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 are binding on New Zealand. Second, this Part explains the main regulations and programs put in place by the New Zealand government to prevent and eradicate domestic violence, paying attention to provisions that aim at ensuring culturally pertinent approaches in the case of ethnic minorities, especially Māori. This section 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.

1. 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, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights. Although these treaties do not expressly address domestic violence, they each prohibit discrimination on the basis of sex. New Zealand has also signed and ratified CEDAW, which

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11 See annex I.
12 U.N. Charter. The Charter was signed on June 26, 1945, and entered into force on October 24, 1945.
16 U.N. Charter, art. 55 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: . . . (c) Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.
Universal Declaration of Human Rights, supra note 13, art. 7 states:
All are equal before the law and are entitled without any discrimination to equal protection of the law.
ICESCR, art. 3 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.
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 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.17

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.18 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.”19

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.”20 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.21

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 favourable conditions of work.22 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.”23

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, “States may also be responsible

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17 CEDAW, art. 1.
18 CEDAW, art. 2.
19 CEDAW, art. 5.
21 General Recommendation 19 at ¶6.
22 General Recommendation 19 at ¶7.
27 Id. at 9.6(f).
28 Id. at 9.6(f).
29 Id. at 9.6(g).
30 Id. at 9.6(h).
31 Id. at 9.6(d).
   (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;
so as to prevent future violence.”

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.”

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 failed to provide for protection orders or a shelter to protect victims of domestic violence. 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; investigate promptly, thoroughly, impartially and seriously all allegations of domestic violence and bring the offenders to justice in accordance with international standards; “provide victims of domestic violence with safe and prompt access to justice, including free legal aid where necessary,” in order to ensure effective remedies; provide offenders with rehabilitation programs; and provide regular training on CEDAW to judges, lawyers and law enforcement officials.

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.

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

### 2. New Zealand’s domestic statutory law, regulations and programs addressing domestic violence

#### A. STATUTORY LAW AND IMPLEMENTING REGULATIONS

**A.1. The Domestic Violence Act 1995**


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 orders and non-molestation orders. 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.36 Non-molestation orders also prohibited "watching or besetting" these locations. However, non-molestation orders were only granted to applicants who had separated from the respondent and where the Court saw it "necessary for the protection of the applicant or any child of the applicant."37 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."38

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 and non-molestation orders were often breached repeatedly."39 The government initiated a review of the legislation which eventually led to the enactment of new legislation.

On July 1, 1996, the Domestic Violence Act 1995 ("DVA 1995") came into force. The Act (1) expanded the definition of domestic violence to increase eligibility;40 (2) created one protection order with standard non-violence and non-contact provisions;41 (3) introduced stiffer penalties for breaches of protection orders;42 (4) mandated rehabilitative programs for perpetrators,43 and (5) made available voluntary support programs for survivors.44 The Act also accounted for the protection of children,45 child custody,46 and property and residency needs.47

The DVA 1995’s definition of domestic violence is highly inclusive, encompassing physical, sexual, and psychological abuse. Section 3 of the Act states:

(1) In the 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.48

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 behavior...even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial."49

By incorporating psychological abuse, which includes intimidation, harassment, damage to property and threats (section 3(2)), and elevating it to the level of physical and sexual abuse, the DVA 1995 aims at providing uniform protection to victims for most, if not all, forms of abuse.50 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.51

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.52

The Act further defines a family member as anyone related by "blood or through marriage, a civil union, a de facto relationship, by adoption or any other person who is a member of the person’s whānau or other culturally recognised family group."53 The Act also sets out factors for determining a "close personal relationship," stressing the "nature and intensity" and "duration" of the relationship.54

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.”55 The Act aims to accomplish its object by

(a) Empowering the Courts to make certain

36 Id.
37 Id.
38 Id. at 5.
40 DVA 1995, § 3.
41 Id. § 19.
42 Id. § 2 (2) e & § 50.
43 Id. § 32.
44 Id. § 29.
45 Id. § 9.
46 Id. § 15 & § 19 (2) e (ii).
47 Id. Part 3.
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;
(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.56

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.57 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.58

Applications to obtain a protection order can be “on notice”59 or “without notice”60 to the respondent. On notice protection orders are subject to a standard

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48 Id. § 3.
49 Id. §3(4).
51 Id.
52 DVA 1995, § 4(1).
53 Id. § 2.
54 Id. § 4(1)(a), (b).
55 Id. § 5.
56 Id. § 5(2).
57 Id. § 19, § 20(2).
58 Id. § 14(1).
59 Id. § 7.
60 Id. § 13.
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. Without notice applications are to be granted "if the Court is satisfied that the delay that would be caused by proceeding on 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." 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 discharged." 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. 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.

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 "[i]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."

The approval process, general content, goals and structure of these programs are regulated by the Domestic Violence (Programmes) Regulations of 1996 ("1996 Regulations"). 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—
  (i) Respects the cultural values and beliefs of the people attending the programme;
  ...

61 Robertson et al., supra note 39, at 59 (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’).
63 Id. § 13(3).
64 Id. § 13.
65 Id. § 47.
66 Id. § 32(1).
68 Id. § 32(1).
69 Id. § 32(2).
70 Id.
72 DVA 1995 § 39.
73 Id. § 42.
(g) … provide for the assessment and ongoing review of the needs of people attending the programme.75

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.76

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 Māori or that will be provided in circumstances where the persons attending the programme are primarily Māori, must take into account Tikanga Māori, including (without limitation) the following Māori values and concepts:
(a) Mana wahine (the prestige attributed to women):
(b) Mana tane (the prestige attributed to men):
(c) Tiaki tamariki (the importance of the safeguarding and rearing of children):
(d) Whānaungatanga (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).77

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.”78

A.2. 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 1987.79

The Care of Child Act 2004 (CCA 2004),80 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.81 Furthermore, the CCA 2004 makes a presumption against respondents under the DVA 1995 when approving additional guardians (secondary guardians appointed by the primary guardians).82

The Family Proceedings Act 198083 encourages couples counseling before an application for a separation order is made to the Court.84 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.85

The Immigration Act of 198786 sets out the standards, framework and process for determining who may enter and remain in New Zealand on a temporary or permanent basis.87 The specific policies under the Immigration Act of 1987 are set out in the Immigration Operations Manual.88 One such policy is the Department of Labor’s Victims of Domestic Violence

76 Id. § 28.
81 Id. § 52.
82 Id. § 22(2)(d).
84 Id. § 9(1).
85 Id. § 10(3).
88 Id.
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(VDV) policy that:

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.

VDV applies to both women and men and utilizes the broad definition of domestic violence found in Section 3 of the DVA 1995. 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.”

B. DOMESTIC VIOLENCE STRATEGIES AND PROGRAMS OF ACTION

Along with the DVA 1995 and the above-mentioned relevant statutes, the New Zealand Government 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.

B.1. Te Rito

In 2002, the New Zealand government launched Te Rito: New Zealand Family Violence Prevention Strategy, defined as “an integrated, multi-faceted, whole-of-government and community approach to preventing the occurrence and reoccurrence of violence in families/whānau.” Te Rito’s development and implementation is guided by a set of nine principles. The strategy comprises five key goals and objectives (objectives are intended to help focus goals) to be implemented within a five-year timeframe. Lastly, Te Rito has 18 areas of action. These actions direct the strategy’s implementation and stress improving “inter-agency co-ordination, collaboration and communication.” 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 “the Treaty of Waitangi provides for a unique relationship between Māori and the Crown.” 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, hapu and iwi in mind, and strengthen [their] ability to control their own development and achieve their own aspirations.” Furthermore, Te Rito emphasizes that approaches to family violence should be “culturally relevant and effective for (a) whānau, hapu, iwi; and (b) Pacific

89 Id.
90 Id.
91 Id.
93 Te Rito’s guiding principles are:

All people have a fundamental right to be safe and to live free from violence

The unique customary and contemporary structures and practices of whānau, hapu and iwi must be recognised, provided for and fully engaged

Family violence prevention is to be viewed and approached in a broad and holistic manner

Perpetrators of violence in families/whānau must be held accountable for their violent behaviour

There must be a strong emphasis on prevention and early intervention with a specific focus on the needs of children and young people

Approaches to family violence prevention must be integrated, co-ordinated and collaborative

The community has a right and responsibility to be involved in preventing violence in families/whānau

The diverse needs of specific populations must be recognised and provided for when developing and implementing family violence prevention initiatives

Family violence prevention initiatives should be continually enhanced as information and better ways of working are identified. Id. at 12-13.
94 Id. at 5.
95 Id. at 12. On the special relationship the Treaty of Waitangi sets between Māori and the Crown, see infra Part I.3.B.
97 Id. at 14.
98 For instance, area of action 5 demands the development of a “plan of action for preventing violence in Māori communities.” Thus, Te Puni Kokiri (Ministry of Māori Development) and its Māori Task Force on Family/Whānau Violence is tasked with area of action 5’s implementation.
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 making funding allocations to other programs, or drafting policies for other departments. The New Zealand government has not made available any Te Rito Progress reports after 2004.

B.2. Taskforce for Action on Violence Within Families

In 2005, the Ministry of Social Development established the Taskforce for Action on Violence Within Families (hereinafter, “the Taskforce”) “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.” The Taskforce is a joint initiative that brings together governmental and non-governmental agencies, independent Crown entities and the Judiciary “to work together and provide leadership to end family violence and promote stable, healthy families.”

The Taskforce develops specific programs for Māori and Pacific peoples, as well as initiatives to address child abuse. 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.” The Taskforce has also overseen police training in family violence investigation and risk assessment. Drawing from the experience of the Manukau (South Auckland) and Waitakere (West Auckland) Courts, it advised the government to establish four more Family Courts in Auckland and Wellington, and plans on establishing still more courts in the rest of the country. 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.” 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 officials so as to “swiftly implement” improvements and policies across government agencies.

B.3. Family Violence Clearinghouse

Initially based at the University of Canterbury’s Te Awa tea 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.” 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. The Family Violence Clearinghouse’s purpose is to centralize the information on domestic violence to be consulted by both non-governmental organizations as well as state agencies. Despite the large number of resources contained in the website, it is not clear whether it was created to share information with...
NGOs or with the government or to monitor and follow-up the situation and studies on domestic violence in New Zealand.\textsuperscript{105}

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

3. 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 Maori people. The section provides the normative framework against which domestic violence programs that affect Māori ought to be designed, implemented and evaluated.

A. 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,\textsuperscript{106} the International Covenant on Economic, Social and Cultural Rights,\textsuperscript{107} the Convention on the Elimination of All Forms of Racial Discrimination,\textsuperscript{108} CEDAW,\textsuperscript{109} the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,\textsuperscript{110} the Convention on the Rights of the Child,\textsuperscript{111} the Rome Statute of the International Criminal Court,\textsuperscript{112} and the Geneva Conventions I-IV.\textsuperscript{113} New Zealand is usually regarded as a nation committed to the promotion of the international human rights regime.\textsuperscript{114}

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 No. 169)\textsuperscript{115} and the Universal Declaration on the Rights of Indigenous Peoples, adopted in September 2007.\textsuperscript{116} The former, adopted in 1989, is a fully binding instrument, whereas the recently adopted Declaration contains, according to the UN, "non-binding," aspirational provisions.\textsuperscript{117}

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;\textsuperscript{118} 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."\textsuperscript{119}

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-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

\textsuperscript{105} Interview with Nick Fahey, Project Manager & Chief Researcher, Family Violence Clearing House, Christchurch (May 12, 2008).

\textsuperscript{106} ICCPR, supra note 3.

\textsuperscript{107} ICESCR, supra note 4.


\textsuperscript{109} CEDAW, supra note 6.

\textsuperscript{110} Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 U.N.T.S. 85. The Convention was adopted on December 10, 1984, and entered into force on June 26, 1987.


\textsuperscript{116} United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly Resolution 61/295 on September 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.
peoples to maintain and strengthen their own institutions, cultures and traditions and to pursue their development in keeping with their own needs and aspirations.”

With “deep regret,” 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. Despite these contradictions, the New Zealand government 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.” To the extent that New Zealand made no objection against 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, UN treaty-based bodies have explicitly referred to the duty of states to seek consent, grounded, inter alia, on the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), to which New Zealand is a signatory.

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. Modification was offered for the decrease in socio-economic disparity between Māori (and Pacific Islanders) compared with European New Zealanders, but the Committee expressed concern over other aspects of the law affecting Māori disproportionately, including the non-incorporation of the Treaty of Waitangi, the 2008 cut-off of the Waitangi Tribunal’s jurisdiction for historical claims, the over-representation of Māori in the prison population, and the Foreshore and Seabed Act. 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. Today, with the adoption of the UN 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. In spite of voting against the Declaration, New Zealand is still 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 Tiriti o Waitangi or the Treaty of Waitangi.

119 Id. at 18.
122 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. Id.
123 Id.
126 Id. at ¶ 13.
127 Id. at ¶ 21.
128 Id. at ¶ 19.
129 As Wiessner observes, “virtually 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).
B. THE 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,"130 and is considered applicable to all Māori as official policy.131 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 Māori interest an appropriate priority.132

Despite the Treaty of Waitangi’s brevity—it only contains three articles—there is wide disagreement on its interpretation, 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."133 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 so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes individually thereof the full exclusive and undisturbed possession of their properties or precious things,' a notion that is broader than "full, exclusive, and undisturbed possession" of lands and resources.134 Article III guarantees to all Māori the same rights as all other British subjects.135

In any event, 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,’136 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.”137 The partnership between Māori and the Crown entails the duty to consult Māori before adopting any measure that could affect them.138 The obligation to consult parallels the standards on consultation and participation established in ILO Convention 169 in 1989.139

Furthermore, legislation passed in the 1990s and its case law have established as a good practice consultation with indigenous peoples when preparing plans or policy statements, or changes to plans or policy statements.140 Lately, in 2002, the Local Government Act (LGA) 2002 imposed “new requirements for local authorities on consultation and to undertake capacity-building for Māori.”141 thus

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133 See Treaty of Waitangi, U.K.-Māori, adopted in Feb. 6, 1840, Article I: “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 Ranagtira o te wakaminenga me nga Ranagtira katoa hoki ki hai i uru ki tu kawa wakaminenga ki kru rawa atu ki te Kuini o Inganri ake toun atu te Kawanatanga katoa o o ratou wenua.”

134 Article II: “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.” In te Reo: “Ko te Kuini o Ingarani ka wakarite ma te wakaaetanga ki te wakaaetanga katoa ki nga Tangata o Ingarani.” The Māori version states: “Hei wakaritenga ma te wakaaetanga katoa ki te Kawanatanga o te Kuini – ka takina e te Kuini o Inganri nga tangata māori katoa o Nu Tirani ka tuku ki a ratou katoa nga tuku whakataua o te katuanga nga tuku whakataua.”

135 Article III: “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 wakaaetanga ma hai atu te wakaaetanga katoa ki te Kawanatanga o te Kuini – ka takina e te Kuini o Inganri nga tangata māori katoa o Nu Tirani ka tuku ki a ratou katoa nga tuku whakataua o te katuanga nga tuku whakataua.”

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 is “widely held to be New Zealand’s founding document,” and is considered applicable to all Māori as official policy.

raising the standard much in the same way as it has occurred in international human rights law. Indeed, the New Zealand government 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.142 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.

Thus, notwithstanding New Zealand’s no vote on the Declaration on the Rights of Indigenous Peoples, to honor the Treaty of Waitangi the government must seek prior and informed consent from Māori whenever a decision that may affect them is to be adopted. Furthermore, this principle has application in 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”

1. 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 TV ads and radio announcements along with posters and flyers saying “It’s not OK!” to use violence. Even bank teller machines flash messages about the need to combat family violence in New Zealand. The news often reports incidents of domestic violence. Many governmental agencies’ websites have links to emergency services for victims of domestic violence. 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. 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. Paikea, the 12-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. 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. The two films received praise both nationally and at the international level.

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. 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. Such economic costs not only relate to the wellbeing of women who are victims of domestic violence (and their children) but also the costs associated with political and social instability through intergenerational transmission of violence.

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. 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-partner was reported by approximately 1 in 6

143 See http://www.areyouok.org.nz/.
144 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.”
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.153

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 had been physically abused by an intimate partner at least once in their lifetime.154 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.155 Moreover, the crime survey states that "it is difficult to be more precise about the proportion of Vic
tim Forms that related to partners or people who were well known," thus leaving the number of domestic violence incidents largely unknown.156 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."157 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 community at large. Second, we focus on the lack of implementation of some of the law’s provisions.

2. 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.

A. 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.”158 As stated on the National Network of Stopping Violence Services’ 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 behavior and become better partners, dads, friends and workmates.”159 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.

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152 See, supra, Part I.3.
154 New Zealand Crime and Safety Survey 2001 (2003), at 139, available at 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 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 (eg, use of a computer-based survey), and inclusion of questions about IPV in a ‘crime’ context.” Id. 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.
156 Id.
158 DVA 1995, § 32(1).
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 observed, there is “not equality of access” to these services. 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. 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.”

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 National Network of Stopping Violence Services’ (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. One service provider complained that “the government only funds 20 non-mandated self-referrals, but I get approximately 5 times more than that!” Similarly, the manager of another stopping violence program observed: “for self-referrals there is a charge of 30 [NZ] dollars 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 our intention is.” He further remarked that if the purpose is to reduce violence then the programs have no choice but to absorb the costs of non-paying clients. Finally, there is a cost-based consideration: stopping violence programs are cheaper than incarcerating a person. As one provider remarked, “it costs about $60,000 per year to incarcerate someone but only $3,000 to send them to a stopping violence program.” 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.

Programs for women

In a similar vein, women who want to attend protected-persons programs cannot always do so free of charge if a protection order was granted more than 3 years ago, or if they do not apply for a protection order. Some protected-persons program providers require a court referral (and therefore court funding) for women to come to their programs. Others offer a sliding scale. 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.

B. 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 observed that applying and obtaining a protection order is not as easy as it should be. In the words of Brian Gardner, the National Manager of NNSVS, the process to get a protection order is “the opposite of free, easy and safe.” 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 NZD 1,000 [in Invercargill].

160 Interview with Robert Loo, Family Court Coordinator & Chairman, Family Violence Focus Group, Invercargill (May 14, 2008).
161 Id.
162 Interview with Alison Stephens, Ministry of Justice, Wellington (May 21, 2008).
163 Interview with Brian Gardner, National Manager, National Network of Stopping Violence Services, Wellington (May 19, 2008).
164 Interview with Service Provider.
165 Interview with the Manager of a Stopping Violence Program.
166 Id.
167 Interview with Stopping Violence Program.
168 Since the “It’s Not OK” campaign there has been double the number of non-mandated male participants in the men’s programs. Interview with Andrew Treacher, Men’s Program Coordinator, NNSVS, Wellington (May 19, 2008).
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…” Police Family Violence Coordinators share this opinion: “it is appalling you have to pay to be safe. If you need legal protection, it could be NZD 800-1,500 for legal costs. If the respondent contests the protection order, the applicant owes even more.” Specialized family lawyers summarize this dramatically: “it is financially unsustainable to assist women in getting protection orders, because there is not enough funding.” 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. 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.” Ginty further observed, “if the government were serious about stopping domestic violence, it would subsidize protection orders.”

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. Because domestic violence incidents are particularly complex, there should be

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 where 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....”

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169 Interview with Holly Carrington, Services Manager, Preventing Violence in the Home, Auckland (May 12, 2008).
170 Interview with Brian Gardner, National Manager, National Network of Stopping Violence Services, Wellington (May 19, 2008).
171 Interview with Sergeant Margaret Windle, Police Family Violence Coordinator, Invercargill (May 14, 2008).
172 Interview with Pegeen O’Rourke, Police Family Violence Coordinator, Invercargill (May 14, 2008).
174 Interview with Lynn Ginty, Nelson Rape Crisis, Nelson (May 15, 2008).
175 Interview with Neville Robertson, Senior Lecturer, University of Waikato Law School, Hamilton (May 15, 2008).
176 Interview with Lynn Ginty, Nelson Rape Crisis, Nelson (May 16, 2008).
177 Interview with Shelley Gray, attorney, Invercargill, May 15, 2008. Gray remarked remuneration for legal aid is “dreadful...an attorney with 6 years of experience may charge anything from NZD 250 to NZD 400 per hour.” The rates for legal aid are NZD 140 per hour.
efforts to attract senior lawyers to take protection orders' applications 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: "young lawyers are scared of hearings." 178

Third, in some places, the lack of incentives for lawyers to take these cases can result in a total absence of lawyers. Lynn Ginty, from Nelson Rape Crisis, 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, who would then refer them to lawyers in Christchurch." 179 One Māori service provider said that "legal aid lawyers are a dying breed." 180 She observed that in Palmerston North, for instance, they have no legal aid whatsoever. 181

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C. 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 highly organized civil society which pushes the matter. Yet New Zealand could do more. In the words of one government official, "training is patchy…and not good." 185

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 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. Judge Peter Boshier stated: "There is not enough training for the police and court staff on family violence." 186 Similarly, staff from the National Collective of Independent Women’s Refuges commented that "police only get 6 hours of training on domestic violence in 6 weeks of training." 187 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." 188 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 it: “it 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.” Staff from Preventing Violence in the Home made the same remark: “Auckland prosecutors just want expediency in cases, and have good intentions, but don’t always have adequate training or look out for safety of women.” 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 on domestic violence. As noted above, according to NGO workers, police only get 6 hours of training on domestic violence. In Invercargill, the Police Family Violence Coordinator told us that police have 4 hours of formal training on domestic violence issues. In Christchurch, police officers receive “at least 5 1/2 hours of training dealing with protection orders, investigations [and] prosecutions.” 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. 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 their legal obligation to do so.

**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 on convictions against perpetrators. Also, judges’ work can have an impact on the prevention of violence—if men see that protection orders are granted, or perpetrators get serious sentences for using violence or for breaches of 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. They have 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.” Solicitors echoed this idea: “a lot of judges in the past were trained about the issue; new up and comers are not being trained. Nowadays they assume that they will pick it up through experience.”

The Ministry of Justice deems that it would affect the judiciary’s independence should judges 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… Judges have control over their own training programs.” The officials’ remarks are consistent with the opinion of the Principal Family Court, Peter Boshier: “The Institute of Judicial Studies recommends some training for judges, but not too much because the judges would rebel.”

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!” Judge David Mather, at the Waitakere Family Violence Court, acknowledged: “We, judges, need training.”

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190 Interview with Holly Carrington, Services Manager, Preventing Violence in the Home, Auckland (May 12, 2008).
191 Interview with Heather Henare, Women’s Refuge, Wellington (May 21, 2008).
192 Interview with Sergeant Margaret Windle, Police Family Violence Coordinator, Invercargill (May 14, 2008).
193 Interview with Pegeen O’Rourke, Police Family Violence Coordinator, Christchurch (May 13, 2008).
194 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. “Govt proposes strengthening domestic violence laws,” Stuff.co.nz (June 10, 2008) available at http://www.stuff.co.nz/4579347a11.html.
195 Interview with Holly Carrington, Services Manager, Preventing Violence in the Home, Auckland (May 12, 2008).
196 Interview with Anthony Mahon, solicitor, Mahon & Associates, Auckland (May 14, 2008).
197 Interview with Justine Cornwall, Ministry of Justice, Wellington (May 21, 2008).
198 Interview with Peter Boshier, Principal Family Court Judge, Wellington (May 20, 2008).
199 Interview with Sheryl Hann, Women’s Refuge, Wellington (May 21, 2008).
200 Interview with Judge David Mather, Waitakere Family Violence Court, Auckland (May 14, 2008).
**Lawyers**

Although women may self-represent to obtain protection orders, it is not an easy process and women benefit significantly from legal representation. “Preventing Violence in the Home suggests that women get lawyers,” says PVH’s Services Manager, Holly Carrington.201 “Even though they’re only filling out an affidavit of the witness, it’s hard to get protection orders, increasingly so, and lawyers know which criteria they have to meet in the witness statement.”202 Or, as Judge Peter Boshier told us: “Because women have less access to legal aid, they have trouble meeting the evidentiary requirements and cannot get a protection order for that reason.”203 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.204 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 $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].” In the words of experienced family lawyers, “training for lawyers needs to be refreshed.”206

**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 4,000 family disclosures to WINZ staff.207 Within WINZ, there are 26 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.208 Family Violence Coordinators operate on a co-delivery model with local NGO and family violence agencies to deliver family violence awareness training to the WINZ staff. Clients are given resource kits, which include information on Women’s Refuge, local services, crisis plans, and the impact of family violence on children.209

There is also a Family Violence Intervention Programme (FVIP) training which 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.210 It covers issues such as prevalence of family violence, its definition, causes, social context, dynamics, indicators, effects, and practice sessions (such as routine screening). There is also refresher training for staff that has been employed longer provided by the Family Violence Response Coordinators. “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.”211 Staff members acknowledge that the training is meant as an introduction, and is not intended to replace skilled intervention from family violence specialists.212 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 are not ready to ask those questions [on family violence].”213 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.

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201 Interview with Holly Carrington, Services Manager, Preventing Violence in the Home (May 12, 2008).
202 See id.
203 Interview with Judge Peter Boshier, Principal Family Court Judge, Wellington (May 20, 2008).
204 Interview with Māori providers.
205 Interview with Sheryl Hann, Women’s Refuge, Wellington (May 21, 2008).
206 Interview with Emma Parsons, Attorneys, Mahon & Associates, Auckland (May 14, 2008).
208 Id.
209 Id.
210 Personal communication (email) with Virginia de Joux, Senior Policy Analyst, Child Family and Community Policy, Ministry of Social Development (December 4, 2008).
212 Id.
213 Id.
D. FAILURE TO REQUIRE DATA COLLECTION

In February 2007, the CEDAW Committee reviewed New Zealand’s periodic report on compliance with the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women. The Committee noted the “need to improve availability of reliable and in-depth data on domestic violence.” 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.

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.” In its response to the Committee, the government stated that the “[the Taskforce for Action on Violence within Families had] identified as a priority the need to ensure comprehensive family violence data” 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 formulation of laws, policies and programmes for the effective implementation of the Convention.

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 “haven’t collected data well enough to recognize it is an issue.”

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 “it’s often difficult to make sense of the data.” Gardner, more generally, said that “the number of deaths related to domestic violence has been rising yet it’s difficult to get information.” 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.” 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,”

214 CEDAW Committee, List of issues and questions with regard to the consideration of periodic reports: New Zealand, Feb. 27, 2007, CEDAW/C/NZL/Q/6, para. 10.
216 CEDAW Committee, Responses to the list of issues and questions with regard to the consideration of the sixth periodic report: New Zealand, Apr 27, 2007, CEDAW/C/NZL/Q/6/Add.1, at 11.
217 Id.
219 Interview with Radha Balakrishnan, principal policy and research analyst at the Families Commission, Wellington (May 21, 2008).
220 Interview with Brian Gardner, National Manager, National Network of Stopping Violence Services, Wellington (May 19, 2008).
221 Id.
222 Interview with Parekotuku Moore, National Director of Māori Development, National Network of Stopping Violence, Wellington (May 19, 2008).
observed Ruth Herbert, a private consultant who wrote a thesis on domestic violence in New Zealand. According to Herbert, “the government has not been willing to pay NGOs to collect data.” 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.” 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. 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.”

Scholars believe that the government could do better fighting domestic violence if strategies were adopted 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.

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 10% of the research. 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.

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.”

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223 Interview with Ruth Herbert, researcher, Wellington (May 19, 2008).
224 Id.
225 Interview with Judge David Mather, Waitakere Family Violence Court, Auckland (May 14, 2008).
227 Personal (email) communication with Ruth Herbert, October 2, 2008. In her thesis, Herbert writes about the Family Violence Taskforce: “it 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
have enough data on anything.”231 When asked about the lack of data on stopping violence programs’ effectiveness, this official concluded: “It’s actually very hard to do effectiveness research.”232

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.”233

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 3 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:
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.

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 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.

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

228 Interview with Nick Fahey, former New Zealand Family Violence Clearinghouse project manager (May 12, 2008).
229 Id.
230 Id.
231 Interview with Ministry of Women’s Affairs, Wellington (May 19, 2008).
232 Id.
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.

3. Problems with implementation

A. 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. For Brian Gardner, the National Manager of the Stopping Violence Services Network, “the 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.” For 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.”

Public servants confirm these remarks. A domestic violence advisor explained that they evaluate the effectiveness of programs “basically by respondent’s attendance of a program.” Similarly, the Family Violence Court Coordinator in Invercargill added, “a lot of work needs to be done evaluating the effect of those programs.” 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.

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.

B. 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

234 Interview with Stopping Violence Program.
235 Interview with Brian Gardner, National Manager, National Network of Stopping Violence Services, Wellington (May 19, 2008).
236 Interview with Andrew Teacher, Men’s Program Coordinator, National Network of Stopping Violence, Wellington (May 19, 2008).
237 Interview with Domestic Violence Worker.
238 Interview with Robert Loo, Family Court Coordinator & Chairman, Family Violence Focus Group, Invercargill (May 14, 2008).
239 Interview with Judge Peter Boshier, Principal Family Court Judge, Wellington (May 20, 2008).
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.

**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 we met with commented that “there 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.” 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.” As observed by a men’s programs worker, “late service can re-spark violence.” In many instances, the man has already cooled down, the incident of violence has passed, 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.

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

**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 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, thus putting them in more danger.” In December 2006, for instance, Reipae, a 19-year old woman, was stabbed by her ex-partner after police bailed the perpetrator to her address at 4 a.m. 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. 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.” A domestic violence worker commented: “bailing to the address of a victim is very common.”

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. 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 leaving calling cards, putting mucus on the window screen of her car, or flattening the bike’s tires.

240 Interview with Domestic Violence Advisor.
241 Interview with Judge Peter Boshier, Principal Family Court Judge, Wellington (May 20, 2008).
242 Interview with Stopping Violence Program.
243 Interview with Domestic Violence Advisor.
244 Interview with Domestic Violence Advisor.
245 Interview with Holly Carrington, Services Manager, Preventing Violence in the Home, Auckland (May 12, 2008).
247 Interview with family member of Reipae Joanne Dobson.
248 Interview with family member of Reipai Joanne Dobson.
If protection 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, thus putting them in more danger.”

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.” On another occasion, Patrick actually called out to Marama. She called the police, and they told her that it could be anyone. 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.” 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.” Yet, this policy “appears never to have been actioned.”

Lack of enforcement of protection orders touches on police and judge training. As Chief Judge Peter Boshier 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.”

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. “People who breach protection orders are not given high sentences,” she remarked. This can cause a man to resent a woman, potentially leading to more violence. In addition, as explained in the previous section, whenever a respondent fails to attend a stopping violence program a judge may summon him before the court. 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. The United Nations’ 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 Māori, Pacific and minority women, and the low rates of prosecution and convictions for crimes of violence against women.”

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 or 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 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?

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, incidents may happen. A stopping violence program’s worker narrated an incident “in 2006, I wherei two women were murdered…I had done the paperwork on these men for not showing up to stopping violence programs and nothing was done.” His critique is directed to the court system.

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.” This advisor further remarked that there is “a huge gap in people’s awareness of availability of protection orders.” 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: “the 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.” 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.

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 whānau who know a little about protection orders but don’t know how to

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260 Interview with Domestic Violence Worker.
261 Interview with Stopping Violence Program Manager.
262 Interview with Domestic Violence Advisor.
263 Id.
264 Interview with Robert Loo, Family Court Coordinator & Chairman, Family Violence Focus Group, Invercargill (May 14, 2008).
265 See, supra, Part II.2.B.
266 Interview with Service Provider.
access the process because they are prevented by prohibitive costs of hiring a lawyer."

C. MEETING THE STANDARDS OF THE DVA 1995

Emotional abuse

Section 3 of the DVA 1995 includes psychological abuse within the definition of domestic violence. 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 in Invercargill 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." She added that "zero tolerance' is just words." Similarly, Anthony Mahon, a solicitor in Auckland, commented: "emotional claims are much harder...to describe." 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 there are children involved." The service provider commented that the public education campaign—"It's not OK"—did not raise awareness enough about emotional and psychological violence. 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." Judge Boshier held a different perspective. According to him, "most lawyers don't volunteer this information [for example, copies of text messages..."

266 See Section 3(2) DVA 1995: “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.”

267 Interview with Shelley Gray, Attorney, Invercargill (May 15, 2008).

268 Interview with Anthony Mahon, Solicitor, Mahon & Associates, Auckland (May 14, 2008).

269 Interview with service provider.

270 Id.

271 Interview with a survivor of domestic violence.
and emails as evidence of such abuse, and so there is an issue of evidence.” 273 He believes most family court judges share the view that emotional abuse constitutes family violence.274

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.”275 Another survivor of domestic violence who volunteers at a service provider, said they get worried when they have a client who has been through emotional abuse, because “we just know it won’t get through.”276

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 implementing regulations—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.”277 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.”278 Holly Carrington, from Preventing Violence in the Home, further noted: “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.”279

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.”280 Shila Nair highlighted, though, one major case in 2007 where Judge David Mather, from the Waitakere Family Violence Court, recognized dowry as psychological abuse. “It was a major milestone for this kind of cultural understanding.”281

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 who report domestic violence.”282 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.283

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 Māori.”284 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 about “increasing the stigma attached to already stigmatized groups.”285 Yet they noted that there were no immigrant faces on the ads due to time constraints: “We only have 40 seconds to send the message out.”286 Since migrant women are particularly invisible to domestic violence strategies—due to language and cultural barriers—using part of those 40 seconds to portray ethnic migrant communities should be a priority.

273 Interview with Judge Peter Boshier, Principal Family Court Judge, Wellington (May 20, 2008).
274 See id.
275 Interview with Holly Carrington, Services Manager, Preventing Violence in the Home, Auckland (May 12, 2008).
276 Interview with a survivor of domestic violence.
277 Interview with Shila Nair, National Coordinator, Shakti Asian Women’s Centre, Auckland (May 16, 2008).
278 Id.
279 Interview with Holly Carrington, Services Manager, Preventing Violence in the Home, Auckland (May 12, 2008).
280 Interview with Shila Nair, National Coordinator, Shakti Asian Women’s Centre, Auckland (May 16, 2008).
281 Id.
282 Interview with Leila Chacko, Director, Shakti Ethnic Women’s Support Group, Christchurch (May 12, 2008).
Women with disabilities also face greater challenges when they are victims of domestic violence. According to Lorri Mackness, Disability Project Coordinator of the National Network of Stopping Violence Services, disabled women are 2 to 22 times more likely (depending on the study) to be abused.287

During the DVA 1995 review process that the Ministry of Justice conducted at the beginning of 2008, the Disability 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.”288 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.”289 Like migrant women, women with disabilities often refrain from reporting abuse and violence. Laurie McNess commented: “There was one instance where one of my clients came forward with sexual abuse claims, and a week later six of her friends did as well. Over the next two months, 70 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.”290

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.

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.

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283 Interview with Shila Nair, National Coordinator, Shakti Asian Women’s Centre, Auckland (May 16, 2008).
284 Id.
285 Interview with Family and Community Services, Ministry of Social Development, Wellington (May 19, 2008).
286 Id.
287 Interview with Laurie McNess, Disability Project Coordinator, National Network of Stopping Violence Services, Wellington (May 19, 2008).
289 Id. at 6.
290 Interview with Laurie McNess, Disability Project Coordinator, National Network of Stopping Violence Services, Wellington (May 19, 2008).
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 (18 percent compared with 6 percent for all respondents).291 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.292 In addition to these general problems, there are issues specific to 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 section provides some context for the discussion regarding domestic violence in Māori communities that follow. Without such context, “[t]here is a risk of reductionism, which reduces family violence to an intimate relationship removed from any social context.”293 This section then highlights some of the difficulties facing Māori communities in addressing domestic violence.

1. Socioeconomic indicators and disparities in New Zealand

Although estimates vary somewhat, approximately four and one quarter million people live in New Zealand.294 People of European descent or Pakeha comprise the largest ethnic group, at nearly three million people (approximately 78%).295 The second largest ethnic group is the Māori, who make up about 15% of the population, or approximately .57 million people.296 Asians comprise about 9% of the population, and Pacific peoples are about 7% of the population.297 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.298 Life expectancy for Māori women, however, was 73.2 years and for Māori men 69.0 years.299

There are similar disparities in earnings, unem-
ployment and education. Median hourly earnings in June 2006 were NZ$ 17.00 per hour.300 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)).301 Unemployment, relatively low in New Zealand, has “declined steadily since 1998.”302 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%).303 With respect to educational attainment, in the year ended December 2006, 77% of the population aged 25-64 had attained an educational qualification at upper secondary or above, and almost 20% of people had a bachelor’s degree or higher.304 The rates of people with at least upper secondary level qualifications is lower for Māori (60.7%) and Pacific peoples (53.5%) than Europeans (80.1%), however.305 Similarly, the rates of people with tertiary qualifications were 18.9% for Europeans, 6.5% for the Māori, and 7.1% for Pacific peoples.306

Compared to some countries New Zealand has a relatively low homicide rate.307 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).308 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).309 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.310 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 victimization in 2005.”311 For Māori and Pacific peoples, however: “47 percent of [Māori and Pacific] adults had experienced some form of criminal victimization in 2005.”312

Perhaps most relevant for the current report, “for Māori women, the risk of being assaulted or threatened by a partner is three times the average (18 percent compared with 6 percent for all respondents).”313 As noted by one Māori leader, “family violence is the most significant issue confronting our people.”314 “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.”315 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 (80 per 100,000), or the rate for the European ethnic group (70 per 100,000).316

2. 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

300 See Social Report 2007 at 48. Male employees (NZ$ 18.13 per hour) were compensated better than women (NZ$ 15.88 per hour). See id.
301 See id. at 49.
302 See id. at 44-45 (3.8% in 2006, with 3.5% for males, 4.1% for females, compared to 6.1% (total, male, and female) in 1996 and about 7% in 1998).
303 See id. at 45.
304 See id. at 40.
305 See id. at 41 (Others includes, e.g., Asians).
306 See id. Māori and Pacific students are less likely to leave secondary school with a qualification at National Certificate of Educational Achievement at 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.
308 See Social Report 2007 at 100-01.
309 See id. at 101.
310 See id.
311 Id. at 102.
312 Id. at 103.
313 Id. at 103.
314 See Interview with Māori leader.
315 See id.
a range of analyses from a “culture of poverty,” “culture of violence,” to a “warrior gene.” 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 which certain choices become more viable.” 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. “Not a lot of attempts have been made to separate out a history of warfare from violence between intimate partners.” Contrary to this image, early ethnographers criticized Māori for “not disciplining children and forfeiting their women being too uppity…and having a voice.” 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 and between 1840-1899 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, another push of assimilation. Also the deliberate introduction of alcohol... So there started to be set up multiple generations of dysfunction. The term “multigenerational stress disorder” is used to describe countries where there has been colonization and indigenous peoples are now a minority in their homeland. 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 (2003) acknowledged that the “root causes of Māori over-representation in the criminal justice system appear to be centered 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 centered on similar socio-economic risk factors.” A Māori provider similarly noted that: “The single most persistent factor shared among domestic violence cases is socioeconomic. If you control for socioeconomic indicators then our (Māori) disproportionality disappears.”

According to Robert Cooper, CEO of Ngāti Hine Health Trust, violence in New Zealand is “horizontal, structural, and political.” 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.” Many Māori youth take up drugs, gangs, and violence because they offer a logical “escape from brutal realities” of their lives. Māori have “enough natural intelligence to forecast their future. Their prospects as older people aren’t good.” 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.” 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.”

316 See Hon. Mark Burton, Cabinet Policy Committee Paper II Māori and Pacific Peoples, 3 available at http://www.justice.govt.nz/effective_interventions/cabinet_papers/moari-pacific.pdf (2003 data). By 2006 the non-Māori imprisonment rate had risen to 98 per 100,000, the Māori rate to 568 per 100,000. See id. at 3 n.1.
317 See, e.g., Julie Cassady, The Legacy of Colonialism, 51 Am. J. Comp. L. 409, 409-10, 448-56 (2003) (arguing that bad conditions for indigenous peoples are largely the result of the historical legacy of colonialism and discrimination); James O. Gump, Review [untitled], 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 nontautological evidence of their existence); Warrior Gene Theory Sparks Debate and Highlights Domestic Violence in New Zealand, http://www.news-medical.net/?id=19383 (last visited May 5, 2008) (describing one researcher’s claim that Māori disproportionately carry a “warrior gene,” making them more prone to violence and other bad behavior).
318 See Interview with Māori Service Providers.
319 See id.
320 See id.
321 See id.
322 See Interview with Academic.
323 See Interview with Māori Service Provider.
324 See Interview Robert Cooper, CEO of Ngāti Hine Health Trust, Whangarei (May 2008).
325 See id.
326 See id.
327 See id.
328 See id.
329 See id.
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 Māori people.” According to the former Special Rapporteur, “historically, much legislation has had a negative impact on Māori rights.” The historical 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 Māori 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.” One specific example of this is that in the 1860s the Crown used military action to confiscate over 2 million acres from the people of Taranaki (over 96% of their original lands) while persecuting those who resisted, and then sold or leased the land to non-Māori into the twentieth century.

In contemporary times, Treaty settlements intended to redress this historical discrimination have “involved[...quantities of reparation that represent merely a fraction of the value of the land and resources lost by Māori during the colonial period,” 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.” And of course, the biggest recent land rights issue has been the Foreshore and Seabed controversy.

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, which undermined Māori cultural identity and governance structures. Use of the Māori language in schools was actively discouraged for example. These policies did not recognize the “inherent rights” of the Māori, nor their “traditional governance bodies.” According to one Māori provider we met with, “institutionalized racism is still present, though it’s not like it was 20 years ago. Now 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.”

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. A 2004 study showed that Māori are portrayed as possessing benefits denied to others, and as being corrupt or financially incompetent managers. The former Special Rapporteur considered the study’s findings to be of “special concern,” and that they “highlight a systematic negative description of Māori in media coverage” warranting attention via the New Zealand Human Rights Act. 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].” 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 their wife and children, which is extremely unhealthy." A Māori leader also noted that the 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 communities...".

3. 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. 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. The “social services have become little fingers of the state,” but they are deliberately underfunded. NGOs have to be accountable, but because they are underfunded, they have to pay staff less. The member of Parliament gave, as an example, a group of 200 Māori social service providers that must comply with state regulations, but pays 20% less than market for salaries because of insufficient funding. 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 under-funded.”

One Māori service provider explained that they are funded to provide domestic violence services by Child, Youth and Family (CYF), a service of the Ministry of Social Development. The funding they receive, however, only covers 20% of the costs of such services for the first two quarters of the year. This provider also noted that they service a broad geographical area. It takes “time and money to reach isolated communities and people in need of their services.” Yet they receive no funding for education, outreach or for gas for transportation. Moreover, “the government agencies will continue to refer clients even though they know we’re not funded to provide that service.” Another Māori provider similarly noted that they are only funded for a certain number of families in a year but that they “work with that number of families in a week.”

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.” This provider is “only covered for the first initial contact of a number of clients per year.” As a result, they spend “quite a lot” of time chasing money. Another provider in the South Island noted that the funding they receive “is stringent” and that they “have to do a lot of actively

345 See Interview with Māori Service Provider.
346 See Interview with Academic.
347 See id.
348 See Interview with Māori Leader.
349 See Interview with Māori Service Provider.
350 See Interview with a member of Parliament.
351 See id.
352 See id.
353 See Interview with Māori Service Provider.
354 See Interview with Māori Service Provider.
355 See id.
356 See id.
357 See id.
358 See Interview with Māori Service Provider.
359 See Interview with Domestic Violence Service Providers.
360 See id.
361 See id.
seeking funds.”362 This provider “fulfills[] our contract number of people that we’re supposed to see in the first four months of the year.” 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.363 It will cover “existing 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.”364 The organization expressed concern about people hearing that they are to be fully funded now, which could make it harder for them to raise money they need to cover operating costs.365

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.366 For example, Mauri Ora was a project that was working but funding almost cut until they convinced the Ministry of Māori Affairs to adopt the project.367 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.”368 “Even if they basically jump through all the government’s hoops they still don’t get the required funding to do their jobs.”369 A domestic violence expert we interviewed similarly noted that it is “a trait of that part of government,” the Ministry of Social Development, “they have a little bit of money so they support something at the start and hope others will take up the funding later.”370 According to a domestic violence counselor, “what I’ve seen is that the Māori services come and 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.”371

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 $40,000. But there is no follow up.”372 Knowledge is lost with each new round of task forces, reports, and guidelines.373 As noted by Ruth Herbert: “There have been strategies for Māori over and over but there has not been a big impact. Some of the policies were good but when they are not implemented they are lost and new policies are thought up. Why? There is a lack of resources, will and continuity. We keep rearranging the deck chairs on the ship.”374 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.375 Ruth Herbert also pointed out that “in 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.”376

One service provider suggested that “the 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 money is spent on training, etc, there is very little left over for individual clients.”377 This provider also noted “likely the time the money has dripped down, it ends up providing! $20 per client.”378 Another service provider similarly

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362 See id.
363 See id.
364 See id.
365 See id.
366 See Interview with Māori Leader.
367 See id.
368 See id.
369 See id.
370 See Interview with Domestic Violence Expert.
371 See Interview with Domestic Violence Counselor.
372 See Interview with Māori Service Providers.
373 See id.
374 See Interview with Ruth Herbert, Domestic Violence Researcher, Wellington (May 19, 2008).
375 See Interview with Māori Service Providers.
376 See Interview with Māori Service Providers.
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.

noted of new strategies and task forces “they have these meetings. They get paid $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.”379

A final problem noted with respect to funding is that “most contracts don’t allow for capital expenditures.”380 Because of funding restrictions, service providers may not use government funds for buildings, telephone lines, or other capital expenditures.381 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.382

The New Zealand government 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.”383 Pursuant to this plan, the Government is increasing its investment in these services by $446 million over the next four years.384 The funding will be for existing services that currently have a contract with a relevant government agency. “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.”385 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.386

4. 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 Domestic Violence (Programmes) Regulations 1996 (as amended 2002). 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.387 For organizations applying to be

376 See Interview with Ruth Herbert, Domestic Violence Researcher, Wellington (May 19, 2008).
377 See Interview with Māori Service Provider.
378 See id.
379 See Interview with Māori Service Provider.
380 See Interview with Māori Service Provider.
381 See id.
382 See id.
384 See id.
385 See id.
386 See Interview Ministry of Social Development, Wellington (May 19, 2008).
387 See, e.g., Domestic Violence (Programmes) Regulations 1996 (as amended 2002), Section 13 (Applications for approval as programme providers).
an approved service provider, such applications must include:

• the date the organisation was established (regulation 20);
• the objectives and functions of the organisation (regulation 20);
• whether the organisation has, in the past, provided programmes similar to those for which the applicant seeks approval;
• the authorised persons (the facilitators): full names and addresses; and a summary of their knowledge, skills and expertise (regulation 20).
• a system for ensuring that facilitators only have authorisation to provide programmes for the duration of the agency’s approval;
• a process to ensure that only facilitators who continue to meet regulation 15 deliver programmes;
• a code of ethics or practice;
• an effective complaints procedure;
• a relevant level of continuing education and an appropriate level of peer supervision or peer review for facilitators;
• systems to ensure assessment and ongoing review of the needs of attendees;
• provision for communication between the facilitator 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;
• safety provisions for every person attending the programme;
• regular monitoring, evaluation of effectiveness and presentation of programmes; and
• procedures to manage confidentiality, consent and safety issues (section 43).388

There are additional application requirements then for program approval.389 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.”390

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.”391 Although this may seem to be a positive development, “the bar for professionalism keeps rising, making it hard for providers to attain approval.”392 According to one provider, this has the “effect of specifically limiting Māori providers because in some areas 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.”393 Significantly, “these are the people who best understand the community and its cultural dynamics.”394 This raises the question of “what do we mean by being qualified?”395 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.396 Māori focused and community delivered training such as training provided by Project Mauri Ora and Amokura are intended to address these training needs for rural Māori communities.

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.397 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.”398 At the same time, “for Māori service providers they don’t have the capacity to fill out the application with the correct bells and whistles.”399 To illustrate this

388 Provider Guidelines: For providers wishing to be approved to provide domestic violence programmes, (December 2005), at 11. These guidelines were prepared by the first regional domestic violence approval panels, the regional domestic violence advisors and the former Department for Courts National Office in consultation with Te Puni Kōkiri, the Ministry of Women’s Affairs, the Ministry of Justice, the Ministry of Pacific Island Affairs, the National Offices of Relationship Services, the National Collective of Independent Women’s Refuges and the National Network of Stopping Violence Services. The Guidelines have been updated to reflect the Domestic Violence (Programmes) Regulation amendments made in 2002. See id. at 3.
389 See id. at 12.
390 See id. at 10.
391 See Interview with Māori Service Provider.
392 See id.
393 See id.
394 See id.
395 See id.
396 See id.
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.400

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.”401 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 and an organization’s operations and function. In particular, look at the governing board and ask what life 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.”402

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.403

Even after certification, the paperwork and administrative requirements can be onerous. As noted by one provider, “It’s a huge uphill battle to keep up with it.”404 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.”405 They went on to explain that the government wanted them to have “supervision, supervision reports, and you can’t find a supervisor.... You can’t get them...that’s a real problem. See, and there are lots of more isolated communities than ours that have struggled, really really struggled.”406 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... [T]here are just not enough trained people around.... Especially trained around domestic violence, not enough.”407

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...too many hoops- too many technical and legal hoops to jump through, honestly the paper work is phenomenal.”408 As a result, they now refer people in their area who seek that type of program to the closest urban area.409

397 See id. 398 See id. 399 See Interview with Māori Service Provider. 400 See Interview with Māori Service Provider. 401 See Interview with Māori Service Provider. 402 See Interview with Māori Service Provider. 403 See Interview with Māori Service Provider. 404 See id. 405 See Interview with Māori Service Provider. 406 See id. 407 See Interview with Māori Service Provider. 408 See Interview with Māori Service Provider. 409 See id.
5. 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.”410 In addition, “[as 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).]”411 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.412

According to some, this problem of access to services is exacerbated by the “no-go zones” policy of the government.413 “No-go zones” are places where unemployment benefits are not offered. “If you move in to a no-go zone you are not eligible for government benefits because you’ve moved away from jobs.”414 This policy is “completely encouraging urbanization.”415 It also depletes the rural area of older people who can contribute to the community but need to receive benefits.416 “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.”417 Moreover, “strong communities are pivotal in prevention. For long term change we need positive people.”418

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 2 hours assuming the police are at the station to take the call.”419 As a result, women may not receive assistance they require in a timely manner.

6. Relations between the Police and Māori Communities

Issues regarding police enforcement of protection orders and failure to serve protection orders have been documented above.420 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?”421 “People’s reluctance to involve the police in domestic violence disputes reflects how people feel about police in other parts of their lives.”422 To illustrate this point, one person commented that Māori are glad that the police do not carry guns.423 Another interviewee explained

“Iright 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 they knocked down doors and subjected men and elders 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?”424

The Leitner Center did meet with one service provider that informed us that their community has
no difficulty with police response to domestic violence.425 They 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.426 Unfortunately, they acknowledged that "the police response is totally dependent on our relationships that we all have with them... The bigger areas don’t have that."427

7. Māori programs addressing domestic violence

As noted above, New Zealand is obligated to take measures to prevent and eliminate domestic violence.428 In many of our interviews in New Zealand, people emphasized the importance of Māori programs to address domestic violence for Māori communities because Māori will be more likely to 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 within Māori communities, the change must come from Māori. Before the Māori safe house, Māori women just were not accessing services at all."429 According to one Māori provider, their 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."430 One provider explained that they embrace the notion of cultural as well as physical safety. They take into account "cultural safety at every point during contact with our client."431 According to another Māori provider, "It’s really about creating and ensuring a culturally safe space. If they didn’t have a culturally safe space, they might not be willing to leave a situation of domestic violence."432 Mariameno Kapa-Kingi, General Manager, Whānau Whanui, 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."433

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.434 Di Grennell gave another example regarding Māori organizations using culturally significant language when discussing zero tolerance to violence policies. She noted that "zero tolerance frameworks need to be culturally appropriate. Amokura uses ‘Transforming Whānau Violence.’ This framework focuses on key cultural imperatives to effect personal and cultural change."435

Having Māori service providers also frees victims from battling with institutional racism.436 Stacey Pepene, Coordinator of Te Puna o te Aroha, Māori Women’s Refuge in Whangarei recognizes institutionalized racism as a form of violence and wants to make sure a woman is "not having to defend her position as a victim of domestic violence as well as a Māori."437 For example, "Māori workers are more likely to understand poverty and act in a respectful way that doesn’t cause shame."438 This avoids judgment using Pakeha views. 439 To illustrate this problem, Ms. Pepene explained that:

traditionally 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 over-

425 See Interview with Māori Service Provider.
426 See id.
427 See id.
428 See supra Part I.
429 See Interview with Māori Service Provider.
430 See id.
431 See id.
432 See Interview with Māori Service Providers.
433 See Interview with Mariameno Kapa-Kingi, General Manager, Whānau Whanui, Ngati Hine Health Trust, Whangarei (May 2008).
434 See Māori Service Providers.
435 See Interview with Di Grennell, Amokura, Whangarei (May 12, 2008).
436 Interview with Māori Service Providers.
437 See Interview with Stacey Pepene, Coordinator of Te Puna o te Aroha, Māori Women’s Refuge in Whangarei (May 2008).
438 See id.
439 See id.
crowding 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 1 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.440

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 “instead 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.”441

The substantive approach of Māori domestic violence programs differs from other programs as well in that Māori programs focus on the impact of colonization on Māori and many problems that Māori now face, in part as a result of colonization, including 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 “I’m lost, people are blown away by how violence came into the family because of 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.”442 Another noted “that’s the nature of colonization. You internalize the negatives about who you are and lare told someone else saved you.”443 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.”444 As a result, the 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 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.445

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 DV 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.”446 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 domestic violence requires healing on two levels in order to recover from the victimization.”447 According to Di Grennell, to address domestic violence, you need to challenge the idea that violence within whānau is acceptable or culturally valid and remove opportunities for violence to take place, which can be liberating for historically oppressed communities.448 A successful approach to domestic violence includes empowering people to demonstrate their capacities. She emphasizes that quality and effective services are also a necessary part of prevention.449

Māori organizations also discussed the importance of a communal or extended family approach to address domestic violence. Amokura advocates for a “whānau oranga” or “whānau (wider family) well-being” framework, which sees the solution to family violence incorporating the involvement of the

440 See id.
441 Interview with Domestic Violence Survivor.
442 See Interview with Māori Leaders.
443 See id.
444 See id.
445 See id.
446 See id.
447 Interview with Domestic Violence Counselor.
448 See Interview with Di Grennell and Ani Pitman, Amokura, Whangarei (May 12, 2008).
449 See id.
450 See Interview with Di Grennell and Ani Pitman, Amokura, Whangarei (May 12, 2008). The Māori term for extended family is Whānau but “Whānau,”...
The substantive approach of Māori domestic violence programs differs from other programs as well in that Māori programs focus on the impact of colonization on Māori and many problems that Māori now face, in part as a result of colonization, including domestic violence.

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 retribution. For other Māori providers, the first step for women is to identify their whānau network and marae. “If you’re Māori you have a whānau” 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.” These providers work to have the women re-access those connections believing that “if we can get her reconnecting with her whānau, 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 try to isolate her to the point where she feels she’s burnt her bridges…” 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.”

To be clear, Māori Programs do not allow perpetrators of domestic violence to avoid responsibility for their violent acts. Colonialism 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” 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. The groups discuss the Treaty of Waitangi and on the board is written “Male by birth, man by choice.” Men are told to think about this challenge and work to understand a family relationship. Sessions include equality, parenting and child care. 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.”

8. 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. 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:

The 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...this 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.\(^{458}\)

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.”\(^ {459}\) 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.”\(^ {460}\) To address this gap, several providers advised that “the most important thing would be for the [Domestic Violence] legislation to mention the Treaty of Waitangi.”\(^ {461}\) All the regulations would then flow from that. This would acknowledge that this policy has specific relevance to Māori.\(^ {462}\) 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.”\(^ {463}\) Another Māori provider similarly noted that reference to the Treaty would have implications for how regulations, policies and practices are formulated and funded.\(^ {464}\)

Conclusions and Recommendations

FUNDING

Conclusion:
The New Zealand government 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 New Zealand government 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.

Conclusion:
The New Zealand government 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.

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\(^ {458}\) Interview with Māori Leader.
\(^ {459}\) Interview with Māori Service Providers.
\(^ {460}\) Presentation by Work with Diverse Communities, Ministry of Social Development, Wellington (May 19, 2008).
\(^ {461}\) Interview with Māori Service Providers. Although, 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.” Interview with Family Violence Workers.
\(^ {462}\) Interview with Māori Service Providers.
\(^ {463}\) See Interview with Māori leaders.
\(^ {464}\) See Interview with Māori Service Provider.
Recommendation:
In order to more effectively address issues related to domestic violence and to comply with its international obligations, the New Zealand government 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 New Zealand government 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 New Zealand government 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 on-line 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 to 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 New Zealand government 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 New Zealand government 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.
Conclusion

Notwithstanding New Zealand’s commitments under international and domestic law to secure equality for women and to prevent, investigate and punish acts of domestic violence, violence against women continues to be an acute social problem in New Zealand. While it is clear that New Zealand has made deliberate efforts to combat domestic violence, this report identifies a number of weaknesses with New Zealand’s domestic law and policies to address domestic violence and offers suggestions for how such problems might be addressed. It is our hope that this report contributes to the work of the many non-governmental organizations, government officials, service providers, lawyers and academics working on these challenging issues in New Zealand.
“It’s not OK:”
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