

PACIFIC WOMEN'S WATCH (NEW ZEALAND)

NON-GOVERNMENTAL ORGANISATION
ALTERNATIVE REPORT

STATUS OF WOMEN

**Comments to the UN CEDAW Monitoring Committee
on New Zealand's progress in implementing the
Convention on the Elimination of All Forms of
Discrimination against Women
(CEDAW)**

September 2017

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EXECUTIVE SUMMARY and RECOMMENDATIONS

Pacific Women's Watch (New Zealand) (PWW(NZ)) NGO Alternative Report for the Eighth CEDAW review reports some gains for New Zealand women towards achieving equality since seventh review. Further action is still required to overcome continuing discrimination. Issues and challenges have been identified and highlighted at seminars, workshops and discussion meetings over the past four years, particularly focused on women in the greater Auckland region reflecting a large ethnically diverse population and the greatest proportion of Māori, Pacific, Asian and migrant women and girls. Technology enabled women throughout New Zealand to contribute via an online survey. Issues identified in the CEDAW review resonate with issues and conclusions presented in the New Zealand NGO Country Report, Beijing Platform for Action Twenty-Year Review.

Women's concerns are clear with little change since 2012. They are: the male/female pay gap inequity; unresolved discriminatory workplace and racial issues; high level of domestic violence; increasing poverty for families; health and welfare of women, including ethnic minority women and women from the Lesbian, Gay, Bisexual, Transgender, Intersex (LGBTI) communities; women with disabilities and girls.

Article 1 – Definition of Discrimination against Women

New Zealand law prohibits all forms of discrimination including against all women. A significant pay gap continues to frustrate along with limited promotion, sexual harassment and dominant "male culture". Many women, especially Māori, Pacific and disabled women, experience limited work opportunities compounded by poor health and lack of education impacting family outcomes, continuing a cycle of poverty.

Recommendation:

that government initiate and fund programmes raising awareness of discrimination, particularly unconscious bias within the work place, wider community, including cultural oppression and gender analysis training for police and judiciary.

Article 2 – Anti-Discrimination Measures

Despite legislation, many women suffer discrimination. Māori women, Pacific women, new migrants and women from ethnic minorities, LGBTI and disabled women all experience discrimination limiting choices and opportunities in education and employment leading to poor health and continued poverty.

Recommendation:

that government ensure adequate and appropriate funding for intervention services for all women especially Māori and other disadvantaged women, who are victims of domestic violence.

that government promote a culturally diverse workforce with ongoing monitoring and analysis. With sufficient funding to mfw to collect new disaggregated data with respect to the many and varied challenges faced by all women and girls

that barriers limiting access to education are identified and removed for all children particularly disabled children.

Article 3 – Development and Advancement of Women

The Ministry for Women (MfW) budget is limited. MfW's excellent work to advance women's participation in non-traditional occupations is applauded.

Development for Māori women is overshadowed and limited by lack of recognition of impact of colonisation and paucity of desegregated data.

Recommendations to develop a Plan of Action for Women are strenuously avoided.

Recommendations

that government provide the necessary resources for the MfW to ensure gender awareness training in all ministries.

that government support culturally appropriate research to inform Māori women's development policies

that the MfW works with all women to develop an inclusive, accessible Plan of Action for New Zealand Women.

Article 4 – Acceleration of Equality between Men and Women (Temporary special measures)

The government continues to oppose special temporary measures or quotas.

Recommendations

that government prioritise proactive awareness raising, advocacy and monitoring of the private sector.

that government ensure the MfW nomination service is adequately resourced, promoted and accessible to the private sector.

Article 5 – Sex Roles and Stereotyping

Marriage Amendment Bill 2013, enabling same sex couples to marry is welcomed. People identifying as other than heterosexual, particularly transgender and intersex women still experience varying levels of discrimination. Legal recognition of gender is complex and highly medicalised. Poor understanding in the medical fraternity compounds discrimination and exclusion.

Women in the media continue to be negatively portrayed.

Recommendations

that gender identity be explicitly included in the New Zealand Human Rights Act

that systems be simplified to enable gender identity changes on legal documents

that government provide sufficient, appropriate funding supporting organisations advocating for those with diverse sexualities, gender identities and sex characteristics.

Article 6 – Suppression of Exploitation of Women

Sex workers in New Zealand are protected by the Human Rights Act. Reports of migrant women undertaking sex work contravening their visa restrictions – a law designed to prevent trafficking – raise concerns that they may be exploited/mistreated and unlikely to complain for fear of deportation.

Ethnic minority women brought to New Zealand for marriage are listed as “dependent” on their partners visa and may suffer control and abuse with the threat of deportation used against them.

Recommendations:

that the anti-trafficking law be reviewed to protect women choosing to work as a sex worker but currently forbidden

that immigration legislation permitting women to come to New Zealand for marriage (declared on their visa) include rigorous monitoring until the marriage is registered and the woman granted residency in her own right.

Article 7 – Political and Public Life

Efforts to increase the participation of women in political life have had mixed results. Disabled women encounter further barriers to participation in public life. Parliament is not wheelchair accessible.

The drive encouraging more women on to boards and high-level management has shown some improved participation: statutory boards at 43 percent women directors; 22 percent for top 100 companies on the New Zealand Stock Exchange of which seven are chairs and three Chief Executive Officers. The number of Māori, Pacific and ethnic minority women on boards is negligible.

Recommendations

that government establish measurable strategies and goals promoting women in leadership in business, government and community, promoting the MfW nominations service to publicly listed and private companies

that the MfW prioritise proactive awareness raising, advocacy and monitoring of the private sector.

Article 11 – Employment

Lack of equal pay and pay equity continue as barriers to full economic rights for women. Gender pay gap of 9 percent (2017) worsens by age, ethnicity and occupational sector with women over represented in low paid work. However, a recent court decision and subsequent legislation see improved pay rates for women in the care sector. There are concerns that this legislation will not bring similar gains for other women. PWW(NZ) notes: The Wage Exemption Act allows disabled women to be paid less than the minimum wage (Appendix 3 p2)

Recommendations

that government introduce legislation and appropriate policy measures to address pay inequality across all sectors.

that the Minimum Wage Exemption Act 1983 be abolished and government undertake comprehensive reform of employment strategies including effective monitoring and implementation of the law.

that the Committee congratulate the government on the care workers pay settlement and request

that momentum be sustained to ensure equal pay and pay equity in line with the Convention and the Sustainable Development Goals.

Article 12 - Health

Increased access to contraceptive funding contributed to a decline in the rate of unplanned pregnancies. Barriers remain to accessing reliable, affordable family planning for many women, especially for ethnic minority women.

Women not permanent residents including those on student visas, face unaffordable costs as subsidized health care is not available to them.

Abortion is only legal if strict medical criteria are met, otherwise it is a criminal offence.

Enforced and coerced sterilisation and contraception of disabled women and girls remains legal and justified as being in the "best interests" of the disabled woman/girl.

Access to health care remains a challenge for migrant and refugee women despite efforts to provide information in different languages. Hidden costs and lack of appropriate cultural awareness limit access. Subsidised healthcare is only available to those with New Zealand permanent residency.

Mental health and in particular rising suicide rates are of grave concern to New Zealand with new community wide prevention plans needed.

Recommendations

that government remove abortion as a criminal offence under the 1978 "Contraception, Sterilisation and Abortion Act" and implement an informed consent model for termination of pregnancy

that eligibility criteria to subsidised family planning services and contraception costs be expanded

that legislation be expanded to ensure enforced sterilisation, contraception and hormone treatment of disabled women and girls are illegal

that government collaborates with and support culturally appropriate initiatives assisting migrant women to access healthcare including screening programmes

that current mental health programmes are reviewed and revised with particular focus on the unacceptably high suicide rates.

Article 13 – Economic and Social life

Increased housing costs and a shortage of housing particularly in Auckland has led to overcrowding, poor health, increasing poverty and a marked increase in homelessness. The government has consistently refused to acknowledge the issue leading to a worsening situation.

Recommendation

that urgent action is taken to ensure access to adequate housing for all including disabled women.

Article 15 – Law

PWW(NZ) is concerned that racism in the justice system, changes to legal aid, and conscious and unconscious institutional sexism created barriers to justice for women. Efforts to reduce legal aid spending undermines equal access to justice disproportionately affecting women. New Zealand's benefit laws discriminate against women, the Ministry of Social Development taking a punitive approach to women on sole parent support.

Recommendations:

that government prioritise efforts to reduce Maori offending and recidivism through a specific Māori strategy, with measurable targets and a dedicated budget

that financial barriers to justice are mitigated by increasing access to legal aid

that funding be provided for regular, ongoing training on gender issues for judges, psychologists, counsellors, lawyers, police and other legal professionals. Training to include: gender stereotyping, coercive control, and psychological abuse

that cultural barriers are overcome by employing a culturally diverse workforce and funding organisations that work with ethnic minorities

that appropriate resources are allocated to police and courts to introduce mandatory arrests and convictions for breaches of Protection Orders.

Article 16 – Marriage and Family life

Domestic violence continues as a major concern with efforts to address this abuse of human rights having no apparent effect. Responding to family violence accounts for 41 percent of police time (Family Violence Clearing House 2016). Family violence reaches all sectors of the community but there is a lack of culturally appropriate measures to halt this abuse.

PWW(NZ) applauds the introduction of new legislation providing ten days paid leave for victims of domestic violence enabling them to stay in work and attend to personal and essential matters.

PWW(NZ) welcome the passing of the Marriage Amendment Act enabling all to marry regardless of gender.

Recommendations

that culturally appropriate support services are adequately resourced to overcome the growing problem of domestic violence.

that government support and fund services such as halfway houses for all women and specifically for disabled women and women from ethnic minorities.

INTRODUCTION

This Alternative NGO Report draws on New Zealand wide information but is largely reflective of particular issues faced in the North of New Zealand, centred on the Auckland region. Auckland population comprises 34 percent of the total population, is more ethnically diverse, with proportionally more Pacific and Asian people, than of the whole of New Zealand. Auckland has the greatest rate of migration: 40 percent born overseas and 46 percent of the total growth of New Zealand (Statistics NZ). This increased pressure on services, particularly housing, exacerbating hardship and social exclusion. Māori and Pacific people experience the highest levels of hardship with 43 percent of Pacific people living in overcrowded situations.

In 2015 PWW(NZ) presented a New Zealand NGO Report Beijing+20 Review; informed through workshops including disabled, ethnic minority and LGBTI women. An online survey received responses from over 700 women throughout New Zealand. These results support this alternative NGO Report to CEDAW. Concerns for women are virtually unchanged since 1999:

- Pay gap differential for women compared to men.
- Ongoing workplace difficulties including low pay for the type of work performed; balancing work with family commitments (work-life balance); feeling under-valued by management; poor working environments.
- High level of domestic violence suffered by women and girls.
- Continuing impoverishment of families – one in four children in poverty.
- Adequacy of housing.
- Health and welfare of Māori, Pacific and ethnic minority women, women with disabilities and transwomen.

PROLOGUE TO THE REPORT

Review of the Committee on the Elimination of Discrimination against Women's Concluding Comments following consideration of New Zealand's seventh report in 2012 shows only little improvement in concerns raised.

Overview of Progress on Committee's Concluding Comments related to CEDAW paragraphs:

12. The comprehensive nature of the Convention is still not given full recognition.
13. Visibility of the Convention, Optional Protocol and the Committees general recommendations is limited and not widely recognised.
16. Access to Legal aid is further limited with the closing of offices and removal of practitioners.
- 17 Government consistently rejects the recommendation to develop an Action Plan for Women.
19. Government steadfastly opposes implementation of temporary special measures to progress women's rights.
- 22 Legislation is in process to address forced and underage marriage.
25. Anti-violence campaigns continue, but not all forms of violence are addressed.
29. Some limited progress has been made encouraging more women to participate in public and political life.
33. Equal pay for work of equal value has been addressed for care workers but proposed legislation limits the ability of others to achieve equality.
Efforts to increase paid parental leave were vetoed by government. Paid parental leave remains below the international benchmark; availability of quality affordable, accessible child care inadequate.
35. Abortion law remains unaltered with abortion illegal unless approved by two authorising doctors.
Mental health situation has deteriorated.
39. Bill to protect against forced and underage marriage is before parliament.

ARTICLE 1 – Definition of Discrimination against Women

New Zealand domestic law still does not clearly define discrimination against women. CEDAW is not fully incorporated into New Zealand domestic legislation with discrimination against women persisting in:

- Pay gender gap of 9 percent with no women listed in the top fifty salary earners in 2016.
- Workplace harassment, discrimination and bullying
- Domestic and family violence
- Family poverty with 1 in 4 children living in poverty.
- Racial discrimination of Māori, Pacific, migrant and ethnic minority women.

The PWW(NZ) NGO Country report (2015) for Beijing+20 noted concerns highlighted by the Universal Periodic Report 2014 including the gender pay gap, predominance of women in low wage occupations especially Māori and Pacific women and women from minority groups. October 2014 careworker Kristine Bartlett won her case for higher pay under the Equal Pay Act. Low participation rates for women in management and leadership roles especially in the private sectors with no woman CEO in the top 50 listed companies in 2016. Post-doctoral women report difficulties gaining permanent employment while male colleagues appeared to climb the academic ladder with ease.

Pay equity: The pay gap differential for women compared to men is a major concern and largest for Pacific women (26 percent). Tertiary graduates, five years after graduation, women were earning up to \$10,000 less per year than men. The Public Services 2014 reported that men earn almost \$11,000 more than women.

Workplace harassment and discrimination: Lack of equal pay for equal work and absence of women from higher positions reinforces discrimination against women. Despite publicity campaigns women and men including LGBTI women continue to experience workplace sexual harassment and gender based discrimination. A culture of inappropriate sexist actions towards women was highlighted in 2016 with a woman sexually harassed during a professional performance at a rugby celebration. The Human Rights Commission acted, working with New Zealand Rugby to address issues. Many women regularly face workplace harassment with little or no redress.

Poverty: High housing costs especially in Auckland leading to increased living costs exacerbating levels of poverty, increased overcrowding, substandard living conditions including homelessness. Auckland house prices rose 16 percent in the twelve months to June 2016 and rentals over 5 percent. 92 percent sole parent beneficiaries are women. In the twelve months to June 2017 hardship grants increased by 30 percent (MSD). Non-European New Zealanders are disproportionately represented in lower socioeconomic groups and increasing poverty. PWW(NZ) is concerned that the laws for economic, social and cultural rights do not address the intersectional discrimination of disabled, minority and migrant women or their access to economic, social and cultural rights to ensure their full participation and enjoyment in life. PWW(NZ) supports the “Living Wage” movement encouraging government and employers to pay a Living Wage rather than a minimum wage.

Forced underage marriage: The Government has recently announced law changes including the criminalisation of forced marriage. While this is welcomed it must first be passed into law and accompanied by education and awareness campaigns with relevant ethnic communities and suitably funded culturally competent agencies. (Appendix 2 p3)

Gender and Youth Suicide: Migrant and refugee girls encounter ongoing stereotypes with many suffering discrimination based solely on gender. Young women may be forced to give up study,

prevented from working or to choosing their own partner, facing threats of honour-killing. This frequently results in mental health problems including self-harm attempts.

Māori Women and girls: Māori women continue to be marginalised in health, education, employment and social life. Issue of racism intertwined with discrimination and violence limiting opportunities demand action to redress wrongs. (Appendix 1)

Pacific women and girls: Pacific women and girls continue to face a cultural gender gap shown in expectations of the roles and family duties of girls. Pacific women are highly represented in lower paid occupations suffering high levels of poverty with poor health, obesity and lower life expectancy.

CEDAW, Beijing Platform for Action, Sustainable Development Goals are not promoted and linkages between the three not articulated by government.

ARTICLE 2 – Anti-discrimination Measures

CEDAW is not implemented in domestic law and government consistently refuses to develop and implement a Plan of Action for Women. Domestic violence rates remain stubbornly high, affecting all sectors. This despite efforts such as the “It’s not OK” campaign which has high visibility and considerable community involvement. Migrant and refugee women face domestic violence (e.g. forced marriage, dowry) often tolerated or ignored as being “part of their culture”. Disabled women face discrimination both as disabled and women. Disabled Māori women experience higher levels of discrimination than non-Māori. Limited access to legal aid, unconscious bias and institutionalised sexism in the justice system disadvantage women, especially Māori, Pacific, migrant and refugee women. Police have implemented programmes to promote cultural understanding, address and rising domestic violence. Women now hold all three Police District Commander positions in the Auckland region.

ARTICLE 3 – The Development and Advancement of Women

MfW provides significant information to inform policy with a requirement that all papers for the Cabinet Social Policy Committee include gender implications statement. However, gender analysis of policy in other areas is variable. There is considerable turnover of staff at the Ministry and level of funding is low. PWW(NZ) is concerned that present staff levels and funding do not permit the MfW to effectively promote its goals for women.

ARTICLE 4 – Acceleration of Equality between Men and Women

The New Zealand Government strenuously opposes the introduction of temporary special measures to accelerate equality between women and men, consistently refusing to develop a Plan of Action for Women.

ARTICLE 5 – Sex Roles and Stereotyping

The passing of the Marriage Amendment Act in 2013 enabling adult couples of any gender to marry, including same-sex and different sex couples is applauded. Homophobia and transphobia still exist with abuse experienced by those not identifying as heterosexual or clearly as either male or female. LGBTI are still marginalised, at increased risk of drug and alcohol misuse and self-harm. Transgender women experience further discrimination obtaining legal recognition of their acquired gender. Transgender women are incarcerated in male prisons if their birth certificate has not been changed. (Appendix 5) Access to medical services is limited for transwomen, few medical practitioners are experienced in addressing issues for them and training is lacking.

Statistics New Zealand is to be commended for the development of a statistical standard allowing for diverse gender identities to be accurately recorded. Women's Health Action and PWW(NZ) urge all government departments to implement this standard.

Women in the media: An investigation into gendered harassment of journalists showed those criticizing men were more likely to take issue with the content while women received more negative personal criticism focusing on their gender. (Charlotte Graham Spinoff 6 September 2017) Global Media Monitoring Project in 2015 across traditional media identified women represented 18 percent of news subjects in New Zealand. Portrayal of women in the media is regularly over-sexualised, women appearing in brief clothing with advertisements objectifying women rather than the product (Hannah McDonald August 12 2013) and recently promoting parcel post.

ARTICLE 6: Suppression of Exploitation of Women

Prostitution: The Prostitutes Collective report some students turning to sex work for financial support, including a small number from overseas on student visas. Immigration law forbids foreign students working in the sex industry. These women are fearful of deportation if discovered and less likely to report mistreatment or exploitation. (Appendix 2 p11)

Trafficking: Anecdotal evidence suggests that there is trafficking of workers into agriculture, horticulture, manufacturing and tourism as well as the sex industry. Government has acknowledged and vows to combat labour trafficking of migrant workers, but there appears to be reluctance to admit domestic sex trafficking of any kind occurs. Pacific Island and Māori youth are particularly at risk of sex trafficking through street prostitution and online portals. Legislation amended in 2015 addressed human trafficking but more resources required. Lack of cohesion between the Government and its agencies over handling and investigating cases led to an unwillingness to admit human, including sex, trafficking occurs in New Zealand. (NZ Herald 22nd September 2016)

ARTICLE 7: Political and Public Life

The CEDAW Committee in 2012 urged New Zealand to take measures to increase the number of women in decision-making positions at all levels. There are some gains particularly in gender representation in political parties for the 2017 general election. The representation of women in private sector governance and senior management in New Zealand remains dismal, well behind similar jurisdictions.

Latest research of the top 100 companies New Zealand Stock Exchange show female directors are 22percent, of which female corporate board chairs are seven and female Chief Executive Officers

only three. Māori, Pacific and other ethnic women board members are negligible reflecting a wider gender and diversity problem. Despite considerable efforts a quarter of the top 100 companies still have no women on their boards. This in stark comparison to the higher percentage of women on boards of government appointed bodies - 43.5 percent at 20 December 2016. There is no shortage of competent, governance ready women in New Zealand. (Appendix 7 p3)

ARTICLE 11: Employment

Pay equality and equal pay.

The lack of equal pay and pay equity have been fundamental barriers to a full expression of women's economic rights in New Zealand for many years. This despite ratification of the relevant international human rights treaties (UDHR, ICESCR, ICCPR, CEDAW and ILO Convention 100) promoting equal pay and pay equity. Treaty body committees and Universal Periodic Review have consistently raised concerns with government about ineffective legislation, inadequate policy and poor implementation in both public and private sectors.

The gender pay gap in New Zealand has dropped to 9 percent in 2017 (Statistics NZ) but worsens considerably by age, ethnicity (particularly for young Māori and Pacific women) and occupational sector. Since the 1990s New Zealand's equal pay history has been punctuated by successive administrations dismantling mechanisms or initiatives introduced in an ad hoc manner to address the breaches of women's human rights, lacking continuity of implementation of a basic and fundamental human right.

In 2017 the Government announced a \$2 billion pay equity settlement for 55,000 healthcare workers in aged and disability residential care and home and community support services. This followed a national inquiry into employment in the aged care sector and subsequent litigation to the courts which found in favour of the appellant. The settlement was hailed as positive recognition of the injustice of low pay undervaluing women's work.

Subsequent legislation (Pay Equity and Equal Pay Bill) to replace the Equal Pay Act of 1972 is widely regarded as regressive and not in keeping with agreed principles from the Joint Working Group. The legislation is seen as limiting the progress towards pay equity for other low paid mainly female groups. PWW (NZ) therefore concludes that New Zealand continues to have an ineffective legislative framework for equal pay and pay equity. (Appendix 7)

Disabled women are further disadvantaged by the Minimum Wage Exemption Act (1983) which allows pay below minimum rates for work restricted by impairments. (Appendix 3 p2)

ARTICLE 12: Health

Housing is a key determinant of health. Unaffordable housing, especially in Auckland, leading to overcrowded substandard conditions and homelessness is a major contributor to poor health for New Zealand women and children. High incidence of respiratory and infectious diseases stress families underpinning increasing mental health issues. Māori and Pacific women are overrepresented in homeless statistics. 2013 figures: 32 per cent of homeless women are Māori and 29 percent Pacific. More than half the homeless are families with children.

Mental health services continue to be underfunded. Women, especially younger women, disabled women and women from ethnic minorities experience difficulties and discrimination in accessing

culturally appropriate services. Mental Health, particularly the very high rate of suicide, requires commitment to innovative action and adequate funding.

PWW(NZ) is concerned about the ongoing marginalisation of immigrant women's health. Cultural and economic barriers limit access to health services for many migrants. Hidden costs such as ambulance charges, and distance add to barriers. Residential status is a concern – those without permanent resident status, (student visas), cannot access government subsidised health care including maternity and sexual health care. (Appendix 2 p2)

Sexual health: Some improvement with increased contraceptive funding but many women still face difficulties accessing safe reliable family planning services. Updated sexuality education guidelines for schools are welcomed. These are guidelines, not compulsory and no additional funding or support for schools for implementation. PWW(NZ) welcomes changes to the HPV33 Immunization programme now including adolescent boys.

Access to abortion: Abortion in New Zealand is illegal unless women meet criteria that the pregnancy will seriously harm her physical or mental health agreed by two certifying consultants. While most women can access safe abortion services, access may be limited for women outside the main centres. Other difficulties are shortage of service providers and perpetuation of stigma relating to abortion. Abortion should be decriminalised and available as any other health service. (Appendix 4 p2)

Violence against women: Domestic and sexual violence in all its forms and affecting all sectors are of grave concern. Gender based violence is a serious risk to women's health. Patriarchal traditions of many migrant/refugee families may cause women to be subject to violence and unable to access help. (Appendix 2 p6) Similarly, disabled women suffer a high level of violence and poor access to services. (Appendix 3 p2,4)

Women and girls with disabilities: Disabled women are more exposed to poverty, abuse and poorer health; as well as additional hurtful and demeaning treatment as they face tougher challenges in daily living than those not coping with disabilities. Disability is tied to health – disability seen as a health problem. Disabled women ask that disability is not seen as a health problem but rather an impairment that is a physical difference. (Appendix 3 p1)

Article 13 – Economic and Social Life

Inadequate housing continues to frustrate and worsen, Auckland having the greatest increases in prices and shortages. Auckland's population grew by 2.6 percent in 2016 (Statistics NZ). This equates to 46 percent of New Zealand's growth, putting enormous pressure on housing. Rents rose to over \$500 per week and the average house price is close to one million dollars. This has a huge impact on poorer families leading to overcrowding with reports of up to seventeen people living a three-bedroom house (Radio New Zealand 16 May 2016) and 43 percent of Pacific people live in overcrowded conditions. Poor, overcrowded housing has a huge impact on already impoverished families with poor health, interrupted education and the lack of decent employment impacting women and girls their whole life.

Article 15 – Law

PWW-NZ is concerned that racism in the justice system, changes to legal aid, and conscious and unconscious institutional sexism create barriers to justice for women.

Māori continue to be over represented in the justice system. Despite making up 15 per cent of the total population in New Zealand, almost 57 per cent of women prisoners sentenced are Māori. This has long reaching and inter-generational impacts for the children, families, whanau, and communities of women prisoners. Furthermore, the overrepresentation of Māori is not an anomaly but has been consistent over several decades, and represents a failure on the part of government to address conscious and unconscious prejudice in the judicial system and reduce inequalities between Māori and non-Māori. (Appendix 1)

To reduce spending on legal aid, government introduced changes from 2010 onwards targeting lawyers offering legal aid and those accessing legal aid. These include changes to how lawyers charge for their work and changes to the eligibility criteria for who can access legal aid, requiring legal aid to be repaid and introducing interest on legal aid. As a result, those lacking financial resources but unable to find a legal aid lawyer or are ineligible for legal aid, are forced to represent themselves undermining equal access to justice in New Zealand disproportionately affecting women, who (and particularly women of ethnic minorities) continue to earn less than men.

This is of particular concern in situations of domestic violence, as women may be forced to defend themselves against an abusive ex-partner in Family Court and can impact their success in court; applications for Protection Orders are more likely to be successful with the support of a lawyer.

Of particular concern to PWW(NZ) is how unconscious bias and institutional sexism disadvantage women using the Family Court to negotiate relationship breakdowns. Research shows the Family Court idealises shared care of children between separating parents. As a result, fathers' access to their children is prioritised over women's concerns for safety of their children in cases of conflict and domestic violence. In such circumstances, women who raise concerns are disbelieved or their concerns minimised by court professionals. In particular, the Family Court in New Zealand applies the concepts of Parental Alienation Syndrome and Situational Violence. Both minimise and discount domestic violence. Parental Alienation Syndrome was developed in the United States several decades ago, but has been discredited for many years there and in other countries. It is accepted that it does not actually exist, but the Family Court in New Zealand continues to apply this so-called syndrome. Essentially, the syndrome asserts that malicious mothers work to undermine their children's relationships with their fathers, including by making up false allegations of violence and abuse. This is utterly contrary to all the evidence and means that women and children do not receive the protection which the Family Court should provide under the Domestic Violence Act 1995, as violence is minimised or disbelieved. Situational Violence is used to discount domestic violence by asserting that violence which occurs at or near the time of separation is out of the ordinary and should be ignored. In fact, separation is the most dangerous time for women and the time at which they are most likely to be killed by their violent partners.

Anti-domestic violence advocates have long expressed concern about the interpretation and application of the Domestic Violence Act. It is very clear, excellent legislation which in two decades has never been properly interpreted and applied by Family Court Judges. They have consistently applied glosses and given strained meanings to the very clear wording in the act resulting in women being denied Protection Orders when they should have been granted. The Court of Appeal in July 2017 ruled that a Family Court Judge had wrongly interpreted the act in every way, and overturned his finding that a Protection Order was not required.

Anti-domestic violence campaigners are well aware that the Judge involved has ruled incorrectly on many other domestic violence cases, and that other Judges have similarly misinterpreted the law. In the wake of the Court of Appeal decision, comprehensive education for Family Court Judges is required about the Domestic Violence Act. There also needs to be a comprehensive review of earlier

decisions by this Judge and others Judges who have applied the law incorrectly, so that women and children can be granted the protection to which they are entitled under the Domestic Violence Act.

Responses to breaches of Protection Orders are inconsistent, reflecting a lack of understanding of the dynamics of domestic violence within the justice system. Offenders are rarely arrested for non-violent breaches of Protection Orders, making victims less inclined to report minor breaches fearing retaliation by their abuser. Even seemingly minor breaches are often part of a pattern of intimidation and should result in mandatory arrest and conviction, to better ensure women's basic human right of freedom from violence. (Appendix 6)

The Government, in response to a pay equity legal case brought by careworker Kristine Bartlett and her union, earlier this year reached a settlement costing \$2 billion and which will raise the pay of careworkers. It was found by the courts that careworkers had been underpaid over a long period because they were working in female-dominated occupations.

The Government in the wake of the case set up a Working Group to produce principles to guide the settlement of future pay equity claims. The Working Group published principles which Government accepted, but with one qualification to one principle. The principles have now been incorporated into a bill – the Employment (Pay Equity and Equal Pay) Bill. The bill departs even further from the recommendations agreed by the Working Group. If passed into law, the bill would make it difficult or impossible for other women to bring pay equity claims successfully.

The bill provides for a hierarchy of comparators to be used when pay equity claims are made, making it difficult to establish merit in law, extinguishes women's rights to seek back pay in pay equity claims, retrospectively requiring current claims to be dealt with under the new law. (Appendix 6 & 7)

New Zealand's benefit laws discriminate against women and have done so for decades. In order for single mothers to obtain benefit support, they must not be "in a relationship in the nature of marriage" under the Social Security Act. The test for this is very complicated and has been misapplied by the Ministry of Social Development in many cases. The Court of Appeal in the 1990s ruled in the case of *Ruka v Department of Social Welfare* that a relationship was not a relationship in the nature of marriage if there was no emotional commitment and no financial support. Ms Ruka had been found by the Department not to be entitled to her benefit, despite the fact that she was in an extremely violent relationship and had no control over when her partner came and went. He did not provide financial support.

Despite the Court of Appeal decision, the Department continued to apply the law incorrectly, leading to the 2001 Joychild Report, which recommended that 15,600 cases be reviewed to ensure the law had been correctly applied and women had not wrongly had their benefits cut and debts established against them.

The Ministry of Social Development continues to take an extremely punitive approach to mothers on sole parent support. They continue to be prosecuted and, even after serving jail terms, are pursued for the rest of their lives for debts they can never hope to repay. This in marked contrast to the lenient approach adopted to tax evasion, tax avoidance, non-payment of child support, and non-payment of fines and reparation. Inland Revenue between 2008 and 2013 wrote off \$5 billion in unpaid taxes. The Government in the 2015 Budget announced that it would write off up to \$1.7 billion in child support penalties. By contrast, benefit fraud debt totals \$182 million but the Government will not write it off.

Mothers are required by law to identify the fathers of their children under the Social Security Act. If they do not do so, their benefit is reduced initially by \$22 a week and then later permanently by \$28 a week. If more than one child's father is not identified, the benefit is reduced for each child. This is a massive amount of money taken away from families seeking to survive on unliveable benefits. Often the father is not identified because of threats and the fear of violence.

The sanctions apply almost exclusively to women and disproportionately heavily to Māori women. The sanctions are imposed 97.7 per cent on women and just over two per cent on men. 52.8 per cent of sanctions are imposed on Māori.

A campaign was run in 2016 asking the government to delete these sanctions from the law and stop applying them. The Social Security Act is currently being rewritten and this would accordingly be a good time to delete these provisions from the law. However, the Government refuses to do so. (Appendix 6)

Article 16 – Marriage and Family Life

Family Violence: Domestic and sexual violence against women and girls continue to cause concern for all women. Māori women are particularly noted in police statistics and compared with other groups. (Appendix 1) However, all groups, migrant and refugee women, disabled women, Pacific women and European descent women suffer high levels of violence. One in three women in New Zealand experience domestic or sexual violence in their life. Culturally appropriate specialised refuges and support services are needed to support victims. The government has been reluctant to adequately fund a number of these services with some receiving no support at all. Disabled women are often unable to access refuge services and those in residential homes or nursing homes are not protected by domestic violence legislation as the “home” is classified as a workplace for the non-disabled. (Appendix 3 p2)

Abortion: New Zealand law states that a legal abortion is able to be accessed *“if two certifying consultants agree that the pregnancy will seriously harm a woman’s physical or mental health.”* Abortion on any other grounds remains a criminal offence in New Zealand.

Abortion in New Zealand is not a woman’s choice. PWW(NZ) is also concerned that economic, geographical and time barriers may limit access to the two certifying consultations within the twenty-week period to agree to a termination. (Appendix 4 p2).

Sexuality Education and Sexual Health: Increased access to contraceptive funding contributed to a decrease in unplanned pregnancies. There are still significant barriers for many women accessing safe, reliable and affordable family planning (Appendix 4 p2).

Disabled women’s forum and PWW(NZ) are concerned that enforced, coerced sterilization and contraception are legal for disabled women and girls. This is justified as “being in the best interests” of the woman or child but violates basic human rights. (Appendix 3 p5)



APPENDIX 1



Indigenous (Māori) Women and Girls in New Zealand

This Appendix to Pacific Women’s Watch (NZ)’s NGO Alternative report to CEDAW has been prepared by Te Ropu Wahine Māori Toko i te Ora – Māori Women’s Welfare League, in collaboration with their Treaty of Waitangi partner, Pacific Women’s Watch (New Zealand).

Introduction:

Māori are the indigenous peoples of Aotearoa-New Zealand. The Treaty of Waitangi was signed in 1840 and affirmed the rights of Māori as tangata whenua. New Zealand is a bi-cultural and multi-diverse country of over 4.5 million peoples, of which 51.3 per cent of the total population are women; Māori make up approximately 15.4 per cent of the population.ⁱ

The United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) was ratified by the New Zealand Government in 1985 and is considered a blueprint for action to assist women and girls in New Zealand where there are issues of particular concern such as high levels of gender-based violence, the low status of vulnerable women and girls who struggle to have their voices heard, allied to the impact of social policy changes on women and girls and increasing pay inequality. For Māori women and Māori girls the continuing legacy of 177 years of colonisation can be viewed through the lens of government policies that actively marginalise Māori women and Māori girls within health, education, employment and social life.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the United Nations General Assembly on 13 September 2007. In April 2010, the New Zealand government signed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) at the United Nations. The Declaration aims to “enhance harmonious and co-operative relations between the State (New Zealand Government) and the indigenous peoples (Māori) based on principles of justice, democracy, and respect for human rights, non-discrimination and good faith”. The Treaty and Declaration are strongly aligned and mutually consistent. The Declaration assists with the interpretation and application of the Treaty principles of Partnership, Protection and Participation.ⁱⁱ

ⁱ Statistics New Zealand, December 2016.

ⁱⁱ ‘The Rights of Indigenous Peoples: What you need to know’, NZ Human Rights Commission, 2016. aka: ‘UNDRIP and the Treaty’; see: <https://www.hrc.co.nz/your-rights/indigenous-rights/our-work/undrip-and-treaty/>

2017's Unresolved Concerns:

New Zealand Government has abrogated its responsibilities towards Māori women and Māori girls under the human rights treaties including the Treaty of Waitangi, Convention and UNDRIP. Additionally, other human rights charters acknowledge that inequities between Māori women and Pākehā women are unjust and assert that where systematic inequalities exist governments have a duty to provide interventions such as affirmative action programmes and legislative protection (Bill of Rights Act 1990, NZ; Human Rights Act 1993, NZ; United Nations 1965, 1980, 2001). Despite these legal obligations to intervene, efforts to reduce and ameliorate violence in Māori communities continues. In Aotearoa – New Zealand there is no concerted rigorous strategy that addresses violence against all women and girls. Violence has been described as a physical manifestation of normalised racial discrimination against human rights.

In Aotearoa, the future direction for indigenous Māori women are especially for better social life outcomes, personal safety but there are overflows into their health status, both mental and physical, as well as education and employment opportunities. Te Puni Kōkiri (TPK) the Ministry for Māori Affairs also has responsibilities to ensure that the E Tū Whānau Programme of Action for Addressing Family violence 2013-2018 is funded adequately and implemented by the Maori Womens Welfare League on behalf of Māori women. Reid & Robson (2007) and Spoonley (1988) state that 'The issue of racism and ethnicity is a critical factor in Aotearoa adding to the complexities of violence and discrimination'.ⁱⁱⁱ

Māori women should be a priority too for the Ministry for Women given the United Nations CSW 2016 opening statement proclaimed: 'Leave no one behind' as a core human rights principle. The U.N. Committee on the Elimination of Discrimination against Women (CEDAW) requires 'States parties to act to protect women against violence of any kind occurring within the family, at work or in any other area of social life' (Recommendation No 12). In the absence of a concerted national plan of action against violence, including intimate partner violence, all women in Aotearoa, especially Māori women will continue to suffer violence at horrifying levels.

Challenges

- The current New Zealand Government expenditure-on violence prevention programmes is minimal at 1.5 per cent.^{iv}
- A true profile of Māori women and violence has been under-examined in previous studies or not examined at all.
- Data reporting on Māori women is primarily gained from the Police and the Department of Corrections and is inherently biased, therefore deficit in nature.
- Better and more balanced research by Māori female researchers that incorporates poverty, age structure, income, sole parenting, housing and connection to Te Ao Māori 'would better inform future policy directions with respect to Māori women. See also Associate Professor Leonie Pihama papers.^{vi}

ⁱⁱⁱ Reid P, Robson B. 2006. The state of Māori health. In: M Mulholland (ed) *State of the Māori Nation: Twenty-First Century Issues in Aotearoa*. Auckland: Reed.

^{iv} Anna Leask (#better than this) The New Zealand Herald: Tuesday, June 27, 2017, page A3

^v Hall, Alayne (2015). An Indigenous Kaupapa Māori Approach: Mother's Experiences of Partner Violence and Nurturing of Affectional Bonds with Tamariki. A Doctoral thesis submitted to Auckland University of Technology.

^{vi} Dr Leonie Pihama & Huriana McRoberts, Māori and Indigenous Analysts Ltd. (2009) Te Puawaitanga o te Kākano: Māori views and understandings of sexual violence, New Zealand Family Violence Clearing House (01.06.16).

- Difficulty of determining where and which services are delivered to Māori women who suffer violence. The E Tū Whānau Māori framework (2013-2018)^{vii} is one such programme that has not reached the potentiality of changing lives blighted by violence.

State funding

Currently there is no State commitment to funding the Maori Women’s Welfare League, NGOs or civil society organisations to address Minister Amy Adams’ statement made in April 2017 concerning violence in Aotearoa New Zealand. Of great concern is the reduction of funding to organisations, such as the nationwide Women’s Refuge movement, that are directly involved with assisting women and girls to escape violent situations. New Zealand Women’s Refuge statistics for 2015–2016 report that nationally 2,446 women accessed their services. The statistics were Pākehā 41 per cent, Māori 29 per cent, with all other groups totalling 30 per cent.^{viii}

Profiling

A critical reading on research reported by the New Zealand Family Violence Clearing House^{ix} on all aspects of violence against women and girls in Aotearoa reveals that one group, indigenous women, is consistently portrayed and compared with other groups of women. Of concern is that with a relentless focus on one group of women and violence, what goes largely unreported and ignored is the fact that other groups of women who are exposed to and are suffering ongoing violence remain invisible. Further, the severe challenges faced by other groups of ethnic women, who continue to suffer violence, are largely obscured and not discussed. There are no identity markers, or naming either ascribed to, or referenced, in general research on violence in New Zealand - except for indigenous women.

Victoria Tauli-Corpuz, UN Special Rapporteur in releasing her Report on the Rights of Indigenous Women and Girls to the Human Rights Council (2015)^x noted six categories of violence against indigenous women largely as a result of ‘endemic violations of collective, civil and political, and economic, social and cultural rights’ which ‘can be seen as constituting a form of structural violence against indigenous women and girls’.

Research and Data

Dr Ruth Gammon, Clinical Psychologist, Director of the Psychology Clinic at Massey University in Wellington, an expert in the implementation of wraparound social service provision through her work with the National Wraparound Initiative (NWI) in the US^{xi} describes violence in New Zealand in her article, ‘Family violence: New Zealand’s dirty little secret’. She states that... ‘Our people suffer one of the highest rates of family violence in the world’ and further ‘the statistics for intimate partner violence are grim too. New Zealand continues to rate among the worst countries for this, with one in three New Zealand women reporting having experienced physical and /or sexual intimate partner violence’. Gammon continued ‘Often, intimate partner violence is seen as a problem of lower social-economic groups, or the result of poor education, but the statistics do not support this’.

^{vii} E Tū Whānau <https://etuwhanau.org.nz>

^{viii} New Zealand Family Violence Clearing House. www.nzfvc.org.nz

^{ix} New Zealand Family Violence Clearing House National Centre. <https://nzfvc.org.nz>

^x UN Special Rapporteur Releases Report to Human Rights Council on the Rights of Indigenous Women and Girls (September 2015) in *Cultural Survival* <https://www.culturalsurvival.org>

^{xi} Future New Zealand, November 10, 2016

In 1995 Waikato University's Population Studies Centre completed the New Zealand: Women: Family, Employment and Education survey (NZWFEE). This study provided information on the fertility, family formation; education and employment histories of more than 3,000 women aged between 20 and 59 years and includes a self-prioritised main ethnicity question that enables distinctions to be made between women of multiple ethnicities^{xii}. To date, this 20-year old study remains the only detailed nationwide women's research on fertility and family formation. This is an example of the paucity of detailed and accurate research on women and girls in New Zealand.

A paper published in 2015 titled 'Confidence and Connectedness: Indigenous Māori women's views on personal safety in the context of intimate partner violence, reported that for indigenous Māori women 'confidence and connectedness' allied to culturally appropriate services were seen to deliver the best outcomes for Māori women and their whānau.^{xiii}

Social change

Violence is often sensationalised on television and in films; encouraged in electronic games, and sustained by frequent and regular media coverage. Media can; however; also, be utilised to promote positive anti-violence messages. In 2016, singer-songwriter Hollie Smith released a single titled *Please* with the message 'Know that you are not alone'. Smith said that family violence, particularly by men against women, was an issue which New Zealand 'needs to urgently address and prioritise'. And further, 'emotional manipulation and violence was not confined to the weak or the poor and is beyond race and religion'. All proceeds from the sale of the CD were donated to White Ribbon Day 2016^{xiv}. White Ribbon is an international campaign for the Elimination of Violence Against Women that aims to educate men about non-violent attitudes towards women and respectful relationships with women and girls.

Further national activities that highlighted White Ribbon Day were the New Zealand Defence Force aiming for 24/7 vigilance against violence to women. Activities involved 14,000 NZDF personnel showing their support for White Ribbon Day.

Domestic Violence – Victim Protection Bill 2016

Domestic violence is a significant problem in New Zealand and it requires a consistent society-wide response. Domestic violence reaches into workplaces all over New Zealand and includes stalking, constant emails, phone calls, and attacks in or outside the workplace. A significant number of victims who are killed have not been in touch with support agencies but their work colleagues have either known or suspected that domestic violence existed in these victims' lives. Violence can happen to people of any age, gender, sexuality, ethnicity and ability.

New Zealand's 'Domestic Violence - Victim's Protection Bill 2016' was/is an omnibus Private Member's Bill that provides legislation that domestic violence is unacceptable. Each year half of New Zealand's employers have staff affected by domestic violence in some way. Domestic violence does not easily fit the definitions and circumstances of other forms of violence in the workplace, such as workplace bullying or violence from customers or clients. The passing of this Bill will amend the Domestic Violence Act 1995, the employment Relations Act 2000, the Health and Safety at Work

^{xii} Kukutai, Tahu. The dynamics of ethnicity reporting: Māori in New Zealand, Te Puni Kōkiri, Ministry of Māori Development, January 2003.

^{xiii} Wilson, Denise, Jackson, Debra, Herd, Ruth. Confidence and Connectedness: Indigenous Māori women's views on personal safety in the context of intimate partner violence in Health Care for Women International, Volume 37, 2016 – Issue 7, pages 707 – 720.

^{xiv} Anna Leask: The New Zealand Herald, Friday, November 11 2016. A10.

Act 2015, the Holidays Act 2003 and the Human Rights Acts 1993 with a view to enhancing legal protections for victims of domestic violence.

The Domestic Violence - Victim's Protection Bill provides 10 days' paid leave for essential processes e.g. getting protection orders, attending court appointments, moving house for safety's sake, settling children into new schools. This Bill can help victims to stay in work; it makes the workplace a primary place for intervention. A reliable income means victims have choices which are critical to ending the cycle of domestic violence. Recent research funded by the NCIWR/ Women's Refuge, concerning women who had been in a violent relationship showed that while 60 per cent were in fulltime work before the relationship, fewer than half of those women managed to stay in work through the relationship.

Amy Adams, Minister for Justice, stated in March 2017, that 'Less well-known, however, is that we also top the world at the rate in which we beat our partners and kids. We have the highest rates of family violence in the developed world. This is a shameful record.' One would hope that this statement is not left in a policy void and that all female representatives currently in New Zealand Parliament come together as a cross-party collective to formulate a nationwide women's Aotearoa plan in collaboration with all the significant Māori and women's NGO groups.^{xv} It was announced on 1st August 2017 that the new Leader of the New Zealand Labour Party is Jacinda Ardern. The Deputy Prime Minister of the National Party is Paula Bennett an indigenous woman. Together these two high ranking women should provide optimism that an action plan for women in Aotearoa can be achieved in the near future.

Te Ropu Wahine Maori Toko I te Ora –Māori Women's Welfare League

The Maori Women's Welfare League (the League) was established in 1951, has three thousand members within eight regions and is the oldest national pan tribal Māori organisation in Aotearoa New Zealand. For the past sixty-six years the League has been at the forefront of efforts to improve the health, educational, employment and social life outcomes of Māori women and their whānau. As a consequence, the League has long been concerned with violence that affects and infects Māori women and Māori girls. In 2001 a collaboration between the New Zealand Women's Refuge Foundation, the University of Auckland International Research Institute for Māori and Indigenous Education, Ministry of Women's Affairs (as it was known then) and the Maori Women's Welfare League published a book and CD titled Mauri Ora: Māori Women's Stories 'Me aro koe ki te hā o Hineahuone' - Pay heed to the dignity of women... It detailed real life experiences of Māori women who have lived with violence in their homes and families. The stories tell of their journeys of discovery, the courage they found to cope, the people who helped them and their achievements in finding new lives free from violence. Within the opening mihi (salutations) are the words of hope and freedom 'We are powerful, we hold life, we create life, we bring life into the world and we nurture and feed that life ...' ^{xvi}

Past President of the League, Dame Georgina Kirby implemented the League's 'Decade of Health' from 1985-1995. At the conclusion of Dame Georgina's presidency Dame June Hinekahukura Mariu succeeded to the role of National President. Dame June initiated the Aotearoa Maori Netball Oranga Healthy Lifestyles (AMNOHL), 30 years ago. The philosophy of both these wonderful women

^{xv} International Day for the Elimination of Violence Against Women, IDEVAW, 25 November

^{xvi} Mauri Ora: Māori Women's Stories (2001) Maori Women's Welfare League.

has always been to uphold the League's principles and values of total wellbeing of Māori women incorporating the aspects physical, spiritual, emotional, mental and whānau (family) wellbeing^{xvii}.

The current National President Prue Kapua has been an outspoken critic of recent government policies that have the potential to discriminate against Māori women and their whānau including a lack of a Māori position on the former Child Youth and Family (CYF) Board (now the Ministry for Vulnerable Children established April 2017). Additionally, the new Ministry attempted to remove the whānau, hapū and iwi placement priorities for tamariki and rangatahi in care and protection. An indigenous solution to Sudden Infant Death Syndrome /SIDS^{xviii} which disproportionately affects Māori when parents bed-share with their babies, is for babies to sleep in a traditionally flax woven basket called a wahakura. The Ministry of Health had declined funding wahakura in favour of pepi-pods. Again, following a submission by National President Prue Kapua this decision too was reversed. While these policies have now been reversed precious time is taken up that should be dedicated to fulfilling League membership and community work.

Concluding remarks:

Violence or the capacity towards violence, primarily against women, resides in all ethnicities, age groups and within rural and urban populations. No single sector is immune and violence has no boundaries nor does it recognise class, status or wealth. Violence in Aotearoa – New Zealand is prevalent and permeates all social strata of New Zealand society. To situate, name and report on only one group of women who are exposed to violence is to ignore the wider implications of the extreme levels of all violence in Aotearoa and the wider implications of violence in homes, communities and civil society.

This report cannot provide a comprehensive profile on all aspects of violence pertaining to Māori women and Māori girls. For instance, the report precludes the violence of colonisation and settlement by Pākehā (European) in New Zealand in the late 1800's that includes rape, land loss through raupatu (unlawful confiscation) with the resultant loss of the Māori economy, health and citizenship rights. The State abuse^{xix}, in the second half of the 20th century against primarily Māori children taken into care for little or no reason has compounded problems with 73 per cent of Māori men currently in prison formerly being in State care. The statistics for Māori women in prison are strikingly similar.

The Waitangi Tribunal and its ongoing claims seek to redress the wrongs enacted against Māori, however Māori women and their whanau are still being left behind, discriminated against and ignored in policy initiatives. It remains with the women parliamentarians of all State parties to push for an action plan to advance all-Articles of CEDAW /Convention to achieve a targeted response for Māori women in Aotearoa – New Zealand.

^{xvii} He Kohikohinga Mahara: 20 Years Young! Aotearoa Maori Netball Oranga Healthy Lifestyles. 2007.

^{xviii} SUDI : Sudden Unexpected Death in Infancy

^{xix} Toby Manhire, (Opinion), We owe abuse victims rigorous inquiry, The New Zealand Herald: Friday, July 28, 2017.



Appendix 2

Shakti Community Council Inc. (New Zealand) NGO REPORT, August 2017

STATUS OF MIGRANT & REFUGEE WOMEN IN NEW ZEALAND

Shakti Community Council Inc., herein referred to as Shakti, recognizes the significant progress that the New Zealand government is making to ensure improved access to services and integration for ethnic populations, particularly migrant and refugee communities, within New Zealand society. National research across Shakti centres, 2015-2016, indicates that the status of ethnic minority (Asian, African and Middle Eastern) women and girls of colour is gradually improving. This was based on more migrant and refugee women attending school, their increased participation in English language classes and tertiary institutions; greater awareness of their rights; more immigrant women gaining some form of employment or being able to explore their entrepreneurship. However, the realities of equality with respect to access to critical services such as for violence against women, equal representation and participation in all sectors are still far away for many ethnic minority and migrant women and girls. A case in instance is the refusal of the government to hear the voices of ethnic minority immigrant women and recognize the need for a culturally specialist refuge in the capital, Wellington.

Despite government efforts to ensure social integration of migrant and refugee women, they remain seriously under-represented, marginalised, discriminated against and subjected to various forms of violence and oppression. Migrant and refugee women continue to face varying degrees of discrimination because of their inability to speak English, limited driving skills, isolation, cultural barriers etc. A critical lesson learnt is that for gender, socioeconomic and political equality to be fully recognized and enjoyed by migrant and refugee communities, especially by women, what is essential is serious political commitment from the New Zealand government to address the racism and structural inequality hidden in many systems. New Zealand is increasingly multicultural, ethnically diverse and continues to accept a large number of immigrants. This in turn places the onus on the New Zealand government to improve its settlement related services and review its legislation to accommodate issues that discriminate and violate immigrant women especially those from various ethnic minority cultures. Such action is required in order to ensure that current policies, laws and programmes address and protect minority groups as well as attending to specific cultural issues that are discriminatory.

Shakti was founded in 1995 as a women's organization to service ethnic minority women from Asian, African and Middle Eastern countries by promoting social justice and reducing discrimination against women through the provision of culturally competent specialist services in domestic/family violence intervention and prevention and through the promotion of women's empowerment and self-reliance. The organization was established after the realization that many minority ethnic women were falling through gaps within the New Zealand system and could not access appropriate services within a culturally competent framework. After more than 21 years in existence, Shakti bemoans the serious injustices and prejudices that still exist in various forms within New Zealand society, against women in general and particularly against migrant and refugee women. This report explores the following articles in a bid to lay out the concerns that remain unaddressed since the previous CEDAW reporting, and provides a summary of recommendations.

Between 2015 and 2016 Shakti conducted a series of workshops with Asian, African and Middle Eastern migrant and refugee women in various regions of New Zealand and most of the findings, comments and recommendations that follow are an outcome of these workshops

Ethnic minority and migrant women in leadership

Migrant and refugee women continue to be significantly under-represented in political and public life - there is need to address structural and institutional forms of racism that hinder these women and young women from participating in political and public spaces. The New Zealand government should put in place a specific quota (percentage) system to encourage and provide space for the political and public participation of ethnic minority women.

Participation of migrant and refugee women on boards within New Zealand, in the public sector and private sector is still wanting. Active leadership and decision-making continue to remain in a domain that excludes immigrant women.

Employment

Migrant and refugee women still face serious challenges in the employment sector, whether or not they have overseas qualifications recognized in New Zealand or New Zealand obtained qualifications. Limited knowledge of English, varied English accents, vernacular names (non-English), visa status which is often linked to educational opportunities and lack of childcare support are but some of the challenges that increase ethnic minority women's vulnerabilities. The government needs to introduce specific employment programmes or quotas within the government and private sectors in order to facilitate equal access to employment at all levels {including so-called 'white-collar' jobs} by all communities in New Zealand.

Ethnic minority women experience racism in both public and private sectors which leads to their further marginalisation. Heightened public awareness of the local population regarding the needs and core rights of other ethnic populations, especially women, is essential. Change is needed in discriminatory policies together with the introduction of best practice models.

The government needs to work on this gap in reality to increase employment and economic opportunities for all migrant and refugee women. Local government bodies need to engage widely with different community organisations to assist migrant and refugee women to achieve their full potential e.g. English language courses, employment and budgeting courses, driving skills and so on. Further, there is urgent need for better representation of minority ethnic people (particularly women) at local and national government levels who can strongly raise minority communities' issues and be able to address them.

Women, Health and Wellbeing

Access to healthcare for women and young women remains a major challenge to migrant and refugee women in spite of efforts to provide information in different languages. There are hidden costs associated with dental services, ambulance services, cervical smears, breast cancer screening (especially for non-permanent resident women) and long waiting lists to access specialist services. Current public health systems are deficient in providing appropriate and culturally competent responses, hence further limiting migrant and refugee women's access to their services. Sex workers from the migrant and refugee community continue to face many health challenges because of the high health risks due to their work. Most of them work undercover in massage parlours and salons and do not want to disclose their status because of confidentiality issues. The government needs to facilitate and provide culturally sensitive health systems, remove hidden costs and ensure increased access to health services within the public sector. There is also concern for women on student visas working illegally in the sex industry. Not only do they face difficulties accessing health services but are at increased risk of abuse and discrimination.

Youth Health and Wellbeing

The government must improve support systems in high schools by providing more resources for health professionals working in schools who are under-resourced and over-worked; furthermore, a

wider variety of health professionals working in schools is needed to mirror the students' diverse backgrounds. With regards to students' rights within the health care system, they need better access to information that is straightforward and culturally sensitive, as well as general information to help them stay well mentally, physically, emotionally and spiritually. Access to affordable and culturally sensitive and appropriate health services is essential, but gaps continue. For positive outcomes, professional health practitioners deserve to receive more comprehensive training including a more nuanced understanding around cultural competency. A strong accountability process is missing and is essential to deal with racism or medical malpractice. Treatments, medicines and healing should not be limited to hegemonic western methods and understandings of the body and health, there needs to be a more pluralistic approach to health and wellbeing. 'Alternative medicine' options and understandings should be neither dismissed nor invalidated, but be accessible, available and practised. Secondary and tertiary Student Councils should be proactive so that youth can actively contribute to the decision-making processes concerning the health services that they require.

Marriage and family life

Forced marriage, under age marriages, female genital mutilation (FGM) and honour based violence are some of the practices that happen within New Zealand based communities. There are also cultural practices such as dowry, polygamy, patriarchy and the culture of male privilege all of which put women at further and increased risk of family violence. New Zealand is a signatory to core international human rights instruments that abhor practices like forced and under-age /cultural marriages; however, oppression, violence and discrimination against migrant and refugee women, traditionally endorsed through culture, religious beliefs and society, continue to prevail. New Zealand needs to strengthen legislation and ensure strict adherence to it against these cultural but inhumane practices and to impose severe penalties on any individuals or communities practicing them. The Marriage (Court Consent to Marriage of Minors) Amendment Bill, 2017, designed to protect women and girls from forced marriage, is currently before the NZ Parliament; however, this bill needs to be passed and also institutionalized to ensure its full implementation. Such steps include training of police officers, public prosecutors and judges as well as wide dissemination of information in the communities where this violence and discrimination occurs. The government needs to work co-operatively with culturally competent organisations such as Shakti to expose and mitigate the effects of forced marriage, dowry abuse, FGM and honour based violence. In addition, the government should undertake regular monitoring of religious institutions as in most cases the paper work/documentation of forced marriages remains within these institutions which sanction such 'cultural' but irregular, illegal marriages.

Economic and social life

Social welfare assistance, education and housing are some of the critical services that migrant and refugee women require within the broad spectrum of services which relate to family violence. Against this background service providers working with these communities need to be culturally competent and be able to offer non-judgmental, unbiased and professional services to these diverse ethnic communities. Coupled with this, government needs to improve social housing and accommodation supplements rather than referring women to the private market, which is very competitive and expensive, beyond the reach of most migrant and refugee women, even more so when they are solo mothers. Ongoing discrimination within the private tenancy sector against solo mothers and victims/survivors of different ethnic origins is rampant and racist, finding private housing tenancies has become extremely challenging.

New Zealand's migrant and refugee communities continue to grow; with most migrants finding themselves working in the rural areas or still in search of employment. Several immigrant women in rural areas have become trapped on farms and are facing domestic violence. They have little or no exposure to New Zealand laws and practice/systems and are therefore easily deprived of their due

income and support services. These women account for a high percentage of victims seeking legal assistance after their partners withdraw sponsorship because the women have reported domestic violence.

Ref: Task Force for Action on Violence within Families: <https://www.msd.govt.nz/about-msd-and-our-work/work-programmes/initiatives/action-family-violence/>

Violence against women

Violence against women remains a big challenge among migrant, refugee women and children in New Zealand. The government introduced a pilot model termed 'Integrated Safety Response' (ISR) in a region in South Island with a view to ensure integration of family violence services and information sharing among agencies in order to curb the increasing numbers. The ISR "one-size fits all" risk assessment tool does not work well for migrants and refugees because a number of cultural issues exacerbate family violence. Shakti's ongoing advocacy has recently prompted them to appoint women of colour within their administration, however this has not translated to statutory funded positions for the position of 'First Respondents' for migrant and refugee communities in the NGO sector. Active solicitation and co-option of appropriate ethnic specialist representation/views is needed within various government bodies associated with family and sexual violence such as the Task Force, other than engaging in mere tokenism. In addition, specialized cultural training is needed for government agencies, police, public prosecutors and judiciary system for them to competently address the complex issues they come across.

Ref: Task Force for Action on Violence within Families: <https://www.msd.govt.nz/about-msd-and-our-work/work-programmes/initiatives/action-family-violence/>

Youth, health and well being

Through Shakti's work servicing of clients of all ages from Asian, Middle Eastern and African backgrounds, it is clear that a number of gaps exist within the health system for youth from migrant and refugee backgrounds. These are significant gaps including health professionals turning a 'blind eye' to violence and cultural abuse; also, healthcare for immigrant youth who are not permanent residents is unaffordable and inaccessible. In 2016, Shakti Youth Unit conducted a series of interviews and a focus group for a Health Systems Consultation Report for the Ministry of Health. Broadly, the issues that arose in interviews and focus groups in relation to NZ's health system for immigrant youth were: inadequate education for both students and health professionals, and a lack of culturally responsive services available to youth.

Inadequately trained health professionals, insufficient education offered concerning student health and inappropriate responses from the schools in dealing with students' health are major issues for migrant and refugee youth. In the Youth Health Systems Report, participants shared experiences of health professionals minimizing their pain or ignoring it altogether; this contributed to youth avoiding seeking help to manage their health, worsening their medical conditions or, in extreme cases, putting themselves in life-threatening situations. This kind of medical neglect can be interpreted as a form of institutional racism e.g. pain experienced by migrants from Asian, Middle Eastern and African backgrounds is not validated at the same rates as for Pākehās/Europeans. Wide research shows that ethnic minorities are less likely to be either believed or prescribed pain killers as frequently as those from the majority ethnic population²⁰²¹. For instance, as incident reported in the Youth Health Systems report: A student informed her teacher of a physical injury, but the teacher

²⁰ Green, C. R., Anderson, K. O., Baker, T. A., Campbell, L. C., Decker, S., Fillingim, R. B., Kaloukalani, D. A., Lasch, K. E., Myers, C., Tait, R. C., Todd, K. H. and Vallerand, A. H. (2003), The Unequal Burden of Pain: Confronting Racial and Ethnic Disparities in Pain. *Pain Medicine*, 4: 277–294.

²¹Wandner, L. D., Scipio, C. D., Hirsh, A. T., Torres, C. A., & Robinson, M. E. (2012). THE PERCEPTION OF PAIN IN OTHERS: HOW GENDER, RACE, AND AGE INFLUENCE PAIN EXPECTATIONS. *The Journal of Pain*, 13(3), 220–227.

did not believe the student and forced her to participate in a sporting event, thereby worsening the injury. In general, youth felt as though adults do not trust them, and indicated that they felt the adults in their lives had more control over their bodies and decisions than they had themselves. Most students' contacts with the healthcare system were through their schools, and there was an overwhelming response from migrant youth that the actual school environment has/had a negative impact on their health. Many reported that schools value physical health and give students access to sporting activities as well as educating them on their physical wellbeing, but that there is lack of resources and support for mental, emotional, spiritual health, which are aspects of the students' wellbeing that the students believed to be more important. This indicates the need for a more inclusive system where students have more input into which health services need developing in schools.

There is a great deal of stigma around mental health in migrant communities, so migrant youth rely heavily on public health systems to address any issues that arise. Unfortunately, there is a severe lack of culturally appropriate healthcare services available to migrant and refugee youth in New Zealand, especially in the areas of mental health and counselling. Many youth felt that they receive more affirming consultations when General Practitioners (GPs) are the same gender and from the same cultural backgrounds as themselves. Cultural competency extends beyond being respectful of another person's culture, and migrant youth found that they felt more comfortable with the health services they received when their health professional was aware of specific cultural behaviours and attitudes, as well as being understanding about intergenerational cultural clashes. Particularly in relation to sexual health, youth found it reassuring and vital that health professionals emphasised and respected patient confidentiality. Non-western models of understanding illness and healing are actively discouraged by local health systems in New Zealand. Migrant youth noted that treatment consistently offered to them is in the form of pharmaceuticals, with health professionals actively dismissing alternative forms of culturally specific treatment. It is common for migrant youth to have issues around cultural identity and belonging, and maintaining their culture's way of healing is an important avenue for them to engage with their cultural heritage. In order for migrant youth to feel valued and validated by the health systems in New Zealand, it is imperative that they have access to alternative health services.

Women, health and wellbeing

Shakti is concerned about the continual marginalisation of immigrant women's health, low access and use rates of health services as a result of structural, economic and cultural barriers. Despite efforts to provide information in different languages, access to health care remains a challenge for most migrant women. Women, both residents and non-residents, lament the high costs associated with health care which is resulting in reluctance to access these services. Hidden costs surround some health care services in New Zealand - one migrant woman pointed out that: "I called an ambulance, people said it was free but two days later, I got a bill for \$80. How can I catch a bus at 2am? How can I walk from hospital to home when it's a long way away?"

Residential status remains a big concern for immigrant women as it affects their access to healthcare. The issue of dental services is another big area of concern among migrant and refugee women as these are expensive. Financial cost is a huge barrier to accessing dental care services (Stuart K, 2011). In addition, if one wants to access specialist services through public hospitals, there are usually long waiting lists. Furthermore, migrant women without 'permanent residency' i.e.: 'non-PR' persons cannot access government subsidized healthcare, which includes but is not confined to general healthcare and maternity care and which further makes migrant and refugee women vulnerable in terms of their health outcomes.

Women are able to access cervical and breast screening, but there is a room for improvement, for instance, many women who are not residents (holding a student visa) cannot access it for free. New

government-supported initiatives are required through collaborations with culturally competent networks to 'spread the word' and encourage women to undergo these screenings.

Shakti has reported cases whereby women have received treatment for maternity care, only to receive a huge bill afterwards that they have been unable to pay. There is concern that immigrant women will be reluctant to access healthcare because of its cost and this will put both them and their new born children into serious danger in direct violation of CEDAW Article 12.

Reproductive rights: The majority of ethnic minority women, including Shakti clients, have very little /no information and are not aware of their reproductive rights. Pre-marital sex in many minority ethnic communities is still 'taboo', never talked about and as a result women and girls lack any knowledge of contraceptive use. In cases where girls fall pregnant outside marriage, there is a huge risk of them becoming victims of honour crimes such as honour killings or forced marriage; or being deported to their home country. Women also indulge in self-harm behaviour in order to protect their family's honour - Shakti has worked on cases where clients tried to harm themselves because they fell pregnant before marriage. Therefore, better awareness programmes around sexual and reproductive health and rights need to be regularly run throughout all minority ethnic communities. Further, it should be noted that reproductive decisions (number of children, when to have a child and when not, use of contraception) among ethnic communities are made by men because of the patriarchal nature of family settings. Women's choices are not free, but controlled. Women and girls need to be empowered not only to gain knowledge of and access to resources, but also to be able to use these in a healthy and safe manner - to enjoy choice. It must be noted that: women who do not have 'Permanent residency status' in New Zealand have to pay a huge amount to procure an abortion. In addition, these services are not covered under medical insurance.

More women are able to access cervical and breast screening, but there is a room for improvement. For instance, many women who are not residents (student visa) cannot access it for free. New government-supported initiatives are required through collaborations with culturally competent organisations to 'spread the word' and encourage women to go through these screenings.

Emotional/Mental well-being: The area of mental health as it relates to migrant women remains a grey area within the health spectrum. There are many glaring gaps when it comes to accessing mental health services; this is an area that needs special attention in the wake of employment challenges, structural racism, social isolation and difficulties in accessing health services and lack of culturally appropriate services in general. Women from minority ethnic backgrounds have limited or no family support here; they are either on sponsored visas, or many of them, have arranged marriages and are isolated even although they are permanent residents. It takes time for them to gradually get acquainted with a new environment and people. Women have to work through both life transitions and huge cultural shock, and they struggle for basic survival while facing discrimination on various fronts. Further, because of patriarchal traditional mindset, women are not encouraged to go out and make friends and dependency on their partners/husbands remains predominant, resulting in isolation. Marriage outside their communities continues to be discouraged especially for young women and those that enter into relationships with Pakeha/European men have reported further racial abuse from the Pakeha communities while facing disapproval from their own families.

Seeking support for mental health or even seeking a counsellor is viewed in a negative light. Women believe that by agreeing to meet a Counsellor they will be categorized as 'mentally ill'. Women have felt they could not express themselves articulately in what they wanted to say. Cultural differences have also played a role in the manner in which counselling services are provided. From Shakti's experience, a large percentage of women who sought Shakti's services have suffered some sort of trauma or depression and some had even attempted suicide. Clearly, there is a real and urgent need for funding culturally sensitive counselling and awareness programmes enabling ethnic minority women to readily access mental well-being services. Government resourcing for counselors is very poor in New Zealand. Nevertheless, Shakti has set up one such specialist counselling service and

delivers psycho-educational safety programmes for protected (those who have Protection Orders) immigrant women, children and their families. The Psycho-educational Safety Programme is funded by the Ministry of Justice.

Immigrant women continue to face serious impediments in accessing health care services. The government needs to provide culturally sensitive health responses, remove any hidden costs and ensure increased access to health services within the public sector. According to the Concluding Observations of the Committee on the Elimination of Discrimination against women for New Zealand (27 July, 2012), the Committee urged the State party to address mental health issues for migrant and minority communities, improve access to health services, including sexual, reproductive health and rights education. To date, no concrete actions have been taken to address these issues.

Employment

Employment is an important concern for Shakti as migrant women continue to face a variety of barriers while seeking and gaining employment. The 2012 CEDAW Committee noted its concerns in the context of high unemployment rates among ethnic minority women. The picture, even after almost five years, is that overall, there is still a lower rate of participation by female migrants from Asian, African and Middle Eastern background suggesting their ongoing exclusion from the main job market. The majority of migrant women remain concentrated in low skilled and profiled jobs such as cleaning and care-giving.

No matter how educated ethnic minority women are or what higher qualifications they hold, their overseas degrees are rarely recognised by employers in New Zealand. Women's skills are not being recognised and utilised for the benefit of New Zealand's market. Pursuing higher education in New Zealand can be expensive and those who are not permanent residents must pay international fees which are almost two-three times more than domestic fees. Even when women are residents or citizens of New Zealand, pursuing education remains a distant dream for many, especially for single parents as all the responsibilities for child rearing and meeting everyday expenses fall on women.

Nationwide workshops conducted by Shakti in 2016 collected data on the different forms of discrimination faced by women while trying to enter or survive in the job market. The most important concern is institutional racism:

- Institutional racism is very prevalent in New Zealand.... When migrant women from all backgrounds are racially profiled, more than 80% of women mention that they are marginalised and discriminated against because of their different (non-English) names, different clothes (hijab, sari, Indian suits), different accents, limited English skills, no driving skills, and lack of knowledge on how and where to find a job. Women found difficulty accessing jobs both in both the private and public sectors.
- This ongoing exclusion is not only limited to the first generation of migrants or newly arrived migrants; women of second and third generations also face racism and exclusion at workplaces. For instance, a participant narrated that despite being born and brought up in New Zealand, she was considered as 'non-Kiwi' and, further, that she who would not know how to cook the traditional cultural food of her country.
- Ethnocentric values tend to dominate the New Zealand job market. 2014 Migrant Settlement and Integration Strategy (the Strategy) of New Zealand Government itself identifies: "employment, education and training, English language, inclusion, and health and wellbeing as important needs for immigrant women for their settlement. "

Since the majority of ethnic minority women have to face racism in the regular job market; attaining a leadership position is a distant dream. Ethnic minority women are still looking for role- models like them with whom they can associate (Tan, 2017)²². In 2012 CEDAW's Concluding Observations to NZ

²² http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11799853

Government concerns were raised regarding facilitating women's progress concerning women's leadership positioning and economic development. Despite this, Asian and other immigrant women are under-represented at most levels of public sector, private sector, and political life. Only a handful of minority ethnic women are public representatives within their communities or in the public sector or politics, even though there are many first and second generation ethnic minority women with ability to do so. This situation is indicative of lack of opportunities and discrimination against ethnic women in achieving leadership positions.

Women working with local NGOs earn poor salaries with the majority earning less than the national median salary of \$ 48,000 per annum (Statistics New Zealand, 2016). Industry wage standards are recommended within this sector, it is also recommended that the government increase vital funding to ensure NGO women working for/with vulnerable women are not grossly underpaid.

Domestic violence

A report in New Zealand Herald (2016) noted that 80% of the domestic violence cases in New Zealand go unreported. New Zealand police attended about 110,114 domestic violence incidents in 2015 (latest statistics available) and issued 13,997 police safety orders out of which 8% were breached²³. However, the data does not throw any light specifically on Asian, African and Middle Eastern communities. Ironically, the CEDAW Concluding Observations, 2012 highlighted the same problem in regards to the scarcity of data on violence against women in regards to minority ethnic women.

CEDAW Concluding Observations to NZ Government, 2012 also stated that the government needs to run awareness programmes and training for human services providers to make them familiar with different forms of violence against women.... This is a huge gap in current New Zealand social services and Shakti often has to intervene to raise ethnic minority women's issues in regards to culturally specific abuses such as dowry, honour-based violence, female genital mutilation (FGM), and female foeticide. Shakti itself regularly runs community-based programmes and seminars to raise awareness regarding different forms of cultural based violence among the community members and different human services providers.

Shakti provides specialist culturally competent services to New Zealand's migrant and refugee communities. During 2015-2016, through our nation-wide centres more than 27,000 women and their children in domestic violence situations accessed services through our toll free 24/7 crisis line, refuge accommodation (five specialist refuges), children's and family services, counselling and psychoeducational programmes, legal advocacy, skills development towards self-reliance and sustainable living as well as outreach and home-based care services.

Domestic violence against migrant and refugee women has increased. Shakti believes that domestic violence continues to be under-reported within immigrant communities, even though we have seen an increased number of referrals. Women, including young ones, have lost their lives - in one case the offender was one of their close family members and the murder was committed to avenge the family honour.

Immigration abuse is one of the most distinct and important forms of abuse that ethnic minority women experience. Many Shakti clients raised concerns over immigration issues and discussed how some of them were abused and controlled since they were listed on their partner's 'dependent' visas. Often women are on the 'dependent' visa, while their children are 'citizens' or 'residents'... and owing to these complex situations abusers frequently often threaten women with deportation while keeping their children in New Zealand. Shakti deals with such cases on a regular basis and intervenes to provide women with the best available immigration advice and support.

²³ <https://nzfvc.org.nz/datazsummaries/violencezagainstzwomen>

We recommend that New Zealand Immigration legislation which permits women to be brought into New Zealand for the purpose of marriage (as declared on their visa forms) be monitored rigorously until the marriage is registered and subsequent to that, that the women be granted residency.

The government is piloting a new family violence system in Christchurch since July, 2016, known as Integrated Safety Response (ISR). Whilst we appreciate government efforts to introduce new models in order to ensure integration of services and information-sharing among government agencies and non-governmental agencies, we are extremely worried by the use of a 'one-size fits all' approach with respect to the risk assessment framework. Shakti understands the complexities that minority ethnic women from Asia, Africa and Middle East face in terms of family violence stemming from cultural issues such as patriarchy, female subordination, dowry, forced marriages, underage marriages, honour based violence and female genital mutilation among other practices.

It is our understanding that for ethnic minorities family violence interventions to be successful it is essential to use risk assessment tools that are culturally appropriate, also to acknowledge the organisations that are best placed to deal with such issues. According to the Concluding observations of the Committee on the Elimination of Discrimination against Women on New Zealand (27 July, 2012:6), the Committee calls upon the state party "to provide adequate assistance and protection to women victims of violence, including Māori and migrant women ..." Use of a generic family violence risk assessment tool which does not address the cultural specific needs of ethnic minority women and their children within the ISR only serves to expose ethnic minority women and increase their vulnerabilities; ref: www.police.govt.nz/about-us/publication/integrated-safety-response-isr-resources.

The ISR model takes us back two decades to when women's organisations were advocating for women's rights, equal participation and representation of other ethnic communities. Iskander (2015)²⁴ pointed out the lack of cultural understanding within support organisations and public institutions of cultural issues within the context of family violence in African, Asian and Middle Eastern populations.

Further, the Police Safety Order (valid for up to 5 days during which the perpetrator is asked to leave the family home) is being used widely and is almost taking the place of Protection Orders. A Police Safety Order is temporary and does not necessarily keep the victim safe as if/when the perpetrator returns home after 5 days, there is little option given to the women and her children to seek refuge services. Shakti believes this is a deliberate attempt by the government to show a decline in Protection Order requests. However, for immigrant women, already bound by cultural inhibitors to leaving violent relationships, their decision to call the police remains unfruitful.

Funding for NGOs in the domestic violence sector continues to be static even though government requirements in terms of reporting and data submission have increased. We urge the Committee to recommend to the government to increase funding in the domestic violence sector, particularly for migrant and refugee intervention and refuge services. Although the government has made substantial funding increases in the sexual violence sector, this is not so in the domestic violence arena.

Forced Marriage, Dowry Abuse, Female Genital Mutilation (FGM), Honour based Violence

Forced marriage associated with honour-based violence are two common issues among African, Asian and Middle Eastern women. According to Statistics NZ (2014), New Zealand's major ethnic communities continue to grow. During 2006 to 2013, there was a population increase of 30% for Middle Eastern and African groups, and 33% for Asian groups. This raised the need to put in place adequate systems and support structures to address practices such as forced marriage, FGM and

²⁴ <https://ir.canterbury.ac.nz/bitstream/handle/10092/11183/Sandra%20FM.pdf?sequence=1&isAllowed=y>

honour-based violence. Many communities have begun to be more secretive and less conspicuous about these practices and this is a big reason for concern. Some migrants practise cultural norms which are not accepted under New Zealand's law and most of the time their practices are illegal within their own home countries. Shakti often deals with forced marriage cases but in most of the cases such issues are not discussed outside families and communities, and the paper work for the marriage remains with the religious institutions (mosques, temples). After more than 10 years of lobbying, the New Zealand government has recently announced a series of changes to family violence law, including the criminalisation of forced marriage. However, this law change must be supported with education and awareness campaigns around forced marriage within ethnic minority communities as a form of its prevention; culturally specialist agencies need to be funded for such intervention and casework.

With regards to female circumcision in New Zealand, some young girls in high schools have undergone this procedure. In a workshop facilitated by Shakti, one respondent discussed an incident of a high school girl who went to the toilet and did not return for a long time. On being asked by others on what took her so long, she mentioned that she had undergone FGM and urinating was slow and very painful. The government needs to take cognisance of such practices and create a wider awareness campaign so that these practices do not occur here or when NZ girls are taken overseas, which seems to be the trend

Honour-based violence practices also continue to be practised with women, particularly young women being forced to give up the right to exercise their choice to study, to work and to choose their own partners. Many such young women end up in the mental health system having attempted self-harm.

Dowry abuse cases continue to be visible as women brought into New Zealand for culturally arranged marriages are made to give large amounts in cash and kind. Many of them are abused and violated with Shakti noting at least once incident of grievous bodily harm when a young woman was forced to swallow drain cleaner and sustained life-long injuries. The government needs to engage in initiatives that create greater public awareness of such culturally oppressive practices and the legal consequences of such abuse.

Legal Affairs and Access to Justice

Migrant women continue to face significant hurdles in accessing justice in New Zealand. Their barriers are the result of discrimination against this section of society and also arise out of lack of understanding of what is essential to progress here. Issues such as resources being available in only English, inadequate explanation of the law, insufficient advice/assistance being available, discrimination within the legal system and financial barriers are all contributing factors to failure. One of the pressing issues is the failure of the legal system to accommodate the various languages used in New Zealand whilst pushing towards self-representation in the early stages of Family Court process. Many forms such as Parenting Application Forms are only available in English.²⁵

The Family Legal Advice Service is offered to low income earners to assist them in navigating the early Court process, but it is only available in English and Chinese. This significantly disadvantages migrant women not proficient in these languages from accessing the applicable information and from taking the required course of action. Other strictly applied rules, such as the requirement that applicants who are not proficient in English write and swear the affidavit in their own language²⁶ even for 'without notice' applications, hinders the ability of migrant women to bring their applications expeditiously before the Court. Furthermore, affidavits written by an applicant unfamiliar with the Court process frequently fail to relay with clarity and accuracy not only the abuse suffered but also the applicant's circumstances for the presiding Judge; thereby affecting the

²⁵ <http://www2.justice.govt.nz/careofchildrenform/>.

²⁶ Family Court Rules 2002 section 160.

applicant's chances of obtaining an order without notice. Legal Aid moreover does not provide funding for the forms to be translated, leaving the cost on the woman who usually does not have the means to meet these costs. The expectation that all applicants should be able to understand the English material is discriminatory against those who have English as a second language or who do not speak English at all, and bars their access to basic justice services.

Many new migrant women also have no understanding of the New Zealand legal system, yet the system is designed with the expectation that everyone can understand the system and procedures. For example, when applying for an 'On notice Parenting Order', applicants are expected to represent themselves and act solely without the assistance of a lawyer. In the case of many migrant women this is virtually impossible. In such situations, not only are migrant women faced with a language barrier, but also their unfamiliarity with the system is heightened by cultural differences.

Shakti's Ethnic Legal Service is seeing an increase in Police Safety Orders being made against non-English speaking women, some are being made unjustly against a non-English speaking party who is not able to explain her side of the story. Police Safety Orders issued are unclear and are not suitably explained. Shakti Legal Services has dealt with multiple cases where the woman has attempted to contact her child, unaware that children are also covered by the safety order. This contact has subsequently been reported as a 'Breach of Protection Order', resulting in the woman's arrest. This breach of 'Safety order' has further been relied upon to obtain 'protection' and 'parenting' orders against the woman. More attention needs to be paid to ensuring that all parties are given a clear explanation of procedures relevant to them. The authorities should not presume that all parties have sufficient knowledge of the legal system and also the capabilities to represent themselves; whenever necessary, assistance should be allowed so that justice is done.

Recent changes in Family Court Rules show a lack of understanding of a woman's position in domestic violence situations and this is exacerbated in the case of migrant women. Introducing a distinction for funding between 'on-notice' applications and 'without-notice' applications means that women need to apply for non-urgent orders without access to legal support!²⁷ This creates significant barriers for many migrant women who are culturally not used to standing up for their rights, let alone in a Court of Law. There is frequently an imbalance of power in these women's relationships and they require a strong support system to enable them to seek access to justice. Legal support should be available when applying for both 'on-notice' and 'without-notice' applications.

Financial costs also remain a significant barrier for migrant women to access justice services. Cut backs on Legal Aid funding limit the assistance both permanent and non-permanent residents are eligible for. These cuts also affect woman in the "middle class" but poorly paid where they fall in a category in which they cannot have their costs waived, yet do not also have the means to afford the fees. Legal Aid currently requires applicants to provide 3 months' proof of income. For many migrant women who have come out of an abusive relationship and are seeking help, this is incredibly hard to provide. Further legal aid needs to be made available to ensure access to basic justice services.

Also prevalent are:

Discrimination within the legal system plus neglecting to deal with the specific issues migrant women face. In cases of domestic violence when a migrant woman is fighting for justice as a non-permanent resident in the family court, the Respondent will often try to discredit the Applicant by saying that the domestic violence proceedings are being brought simply 'to get a visa'. Such wrongfully held perceptions further obstruct a migrant woman's path to justice and equality under the New Zealand legal system.

²⁷ Family Court Rules 2002 section 23.

Most members of the Judiciary have a limited understanding of culturally specific forms of abuse such as dowry abuse and how it affects migrant women. There is little recognition that a dowry is not a gift but a demand, amounting to financial abuse. Shakti regularly assists women who have been victims of this abuse, but are unable to take any action legally as they are refused help under the current legal system. Legislation updates are required to protect women against dowry abuse.

TRAFFICKING

In a report to Radio New Zealand (RNZ) it was noted that some migrant students were turning to sex work because they could not find other employment. New Zealand Prostitutes' Collective reported that a small number of students from a variety of countries are working in New Zealand's sex industry. Leaders of the Collective report that the students are comfortable with the work, though they would not do it in their own country. The Collective is concerned that the women were vulnerable because immigration law forbids foreign students from working in the sex industry. They feared deportation if their work was discovered and were less likely to complain about mistreatment or exploitation. The law was created to prevent trafficking of sex workers, but it should be reviewed.

APPENDIX 4: Women's Health Action



Submission to be included in the Pacific Women's Watch NGO alternative report to the CEDAW 70th Pre-Sessional Working Group ahead of New Zealand's review at the 70th session.

June 2017

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Introduction

Women's Health Action is a women's health promotion, information and consumer advisory service. We are a non-government organisation that works with health professionals, policy makers and other not for profit organisations to influence and inform health policy and service delivery for women. We are highly regarded as leaders in the provision of quality, evidence-based, consumer-focused and gender based information and advice to ensure health policy and service delivery meets the needs of diverse women, and has intended and equitable outcomes.

Women's Health Action views women's equitable access to health services, and the enjoyment of health and wellbeing including the ability to prevent disease, as important human rights issues. Understanding and addressing barriers to women's engagement with health services and their enjoyment of health benefits the whole community. New Zealand's ratification of CEDAW has provided us with an important international human rights mechanism for encouraging government action to eliminate discrimination against women in the field of health care and in relation to their sexual and reproductive health. Periodic reporting to the CEDAW Monitoring Committee provides an opportunity to assess Government progress and identify areas for on-going action. While there have been many gains towards achieving equality for women in Aotearoa New Zealand, this briefing paper outlines key areas for future Government action to address remaining sites of discrimination.

1. Abortion decriminalisation

We would like to clarify the points made by the New Zealand government in their 2016 Common Core Document (CCD). It is highlighted in item 144 that a legal abortion is able to be accessed "*if two certifying consultants agree that the pregnancy will seriously harm a woman's physical or mental health.*"¹ Abortion on any other grounds remains a criminal offence in New Zealand.²

We note the economic, geographical and time barriers that many women face in accessing two certifying consultants within the 20week window to agree to a termination. This barrier of time and resources to be able to access two certifying consultants creates significant stress in terminating a pregnancy.

The New Zealand government also notes in the 2016 CCD in item 145 that abortion rates have fallen to a 17-year low.

While we applaud the increase in access to contraceptive funding that has contributed to the declining rates of unplanned pregnancies in New Zealand would like to highlight the significant barriers that many women in New Zealand still face in accessing safe, reliable and affordable family planning services.

2. Gendered impacts of welfare reform, specifically children dependant on welfare

The New Zealand government mentions in item 153 the significant welfare reforms that have come into effect from July 2013. We would like to comment on the gendered impacts of these welfare reforms with specific regard to children of parents receiving support from the state.

We would like to highlight the strict penalties in place for missing an appointment or failing to adhere to one of the many requirements of being "work ready" while raising children on the newly adjusted jobseeker support benefit and the sole parent support benefit.

¹ CEDAW/C/NZL/8

² <https://www.womens-health.org.nz/health-topics/abortion-termination-of-pregnancy/>

In October 2015 Radio New Zealand revealed that *“about 2000 children on any one day are living in households where their parents have lost up to half their benefits because in most cases they have failed to turn up to an appointment.”*³ While we welcome the decision of the government to not completely cut off a benefit to a household with dependent children we argue that cutting the household income in half severely impacts the family’s ability to pay rent, make bill payments and put food on the table. We know that these reforms disproportionately affect women and children.

We are concerned with the focus of the New Zealand government⁴ of “getting people off benefits” without taking into account the important work of raising children.

3. Violence against women and the family court

We commend the government's implementation of recommendation 24C to introduce training on the particular dynamics of domestic violence for police and family court staff.

We echo the concerns raised in the April 2017 report by The BackBone Collective⁵ that there is no independent oversight of family court proceedings. While we applaud efforts to upskill existing staff on the complexities of family violence we note the need for specialised family court judges, lawyers and lawyer for child services experienced in working with situations of family violence. This report also highlights the violence and re victimisation that many women experience by abusive partners through family court proceedings and the financial debts that these proceedings create for low income women.

We highlight to the committee that New Zealand has one of the high rates of childhood, family and intimate partner violence. Almost half of all homicides in New Zealand occur within a family relationship⁶. New Zealand has a long way to go in making sure that all women and children are safe from family violence. We hope that the family court system can be enhanced to create positive change and effective protection from violence for all families.

4. SOGISC: Sexual orientation, gender identity and sex characteristics.

We note the New Zealand government’s discussion in point 137 of the updated sexuality education guidelines for schools. We support the development of this curriculum guideline and we applaud the community consultation that supported the development of this document. However, we note that this is only a guideline for schools and is not a compulsory curriculum standard for teaching sexuality education. We also highlight to the committee that there has been no funding or support for principals, boards of trustees and teachers to learn about the updated guidelines.

We note in point 24 that the New Zealand government explains the work of Statistics New Zealand in developing a statistical standard that allows for diverse gender identities to be accurately recorded. We commend this work but we note the lack of engagement by other government departments in implementing this standard.

³ <http://www.radionz.co.nz/news/political/286553/about-2000-children-hit-when-parents-lose-benefits>

⁴ https://www.national.org.nz/more_research_into_off-benefit_outcomes

⁵ <https://nzfvc.org.nz/news/backbone-collective-releases-first-report-family-court>

⁶ Family Violence Death Review Committee. (2014). Fourth Annual Report: January 2013 to December 2013. Wellington, Health Quality and Safety Commission. <http://www.hqsc.govt.nz/our-programmes/mrc/fvdrc/publications-and-resources/publication/1600>

We note the discussion on the high prevalence of bullying experienced by LGBTI+ young people in point 23. While small grants to community organisations supporting gender and sexual minority youth are appreciated, longer term investment is needed in these vital support organisations⁷.

We would like to highlight to the committee and to the New Zealand government the lack of inclusion of the diversity of sexual orientation, gender identity and sex characteristics in the recently released draft “*Strategy to prevent suicide in New Zealand*”⁸. We note that the same lack of visibility was drawn to the attention of the Ministry of Health and Associate Minister of Health (Hon Dr Jonathan Coleman) in 2013 on the publication of the previous suicide action plan.

Conclusion

We welcome the opportunity to provide additional information the committee may require on any of the issues highlighted in this submission. We submit our position statements below to the committee for your consideration:

Questions submitted by Women’s Health Action

What steps will the New Zealand government take to remove abortion as a criminal offense and implement an informed consent model for terminations of pregnancy?

What steps will the New Zealand government take to expand eligibility criteria for access to subsidised family planning services and contraception costs?

How will the state ensure the security of welfare benefits for women headed households with dependent children?

What steps will the state take towards developing an independent oversight mechanism for the family court?

Will the state make available specialist family violence legal experts available at low to no cost for all families accessing the family court?

Will the state fund training for all schools in New Zealand on the updated sexuality education guidelines for principals, boards of trustees and teachers?

Will the state implement the new sexuality education guidelines into the New Zealand Curriculum?

Will the state to ask the Education Review Office (ERO) to assess a school's competency in adhering to the updated sexuality education guidelines in their reports on New Zealand schools?

When will the state implement the new statistical standard for gender identity across health, justice and social development services in New Zealand?

What steps will the state take to enable larger scale and long-term funding of support organisations advocating for the needs of people with diverse sexualities, gender identities and sex characteristics?

Will the state reflect the needs people with diverse sexualities, gender identities and sex characteristics in the development of the national strategy to prevent suicide in New Zealand?

⁷ http://www.arataiohi.org.nz/images/uploads/general/Ara_Taiohi_Snapshot_Report_Final_5_April_2016.pdf

⁸ <http://www.health.govt.nz/publication/strategy-prevent-suicide-new-zealand-draft-public-consultation>

Appendix: 5

CEDAW for Trans Women Human Rights

To Be Who I Am (published in 2008 by the Human Rights Commission) recommended clarifying the Human Rights Act in terms of gender identity. Two recent attempts have been made to achieve this, but the Government believes that transgender people are already covered by the Human Rights Act, and is too controversial to add gender identity to the Human Rights Act. But the fact that the Government see this as controversial begs the question that trans people are not fully covered by current Human Rights Act.

Having gender identity explicitly in the New Zealand Human Rights Act would help start to build an inclusive society.

Some improvements in society with some schools developing gender neutral uniforms and providing gender neutral toilets and change rooms.

Legal Recognition

Legal recognition or acquired gender is very important. Current system is complex, and has a high medical threshold to go through. Needs to be simplified, to become an administrative process – but needs to retain the current Declaration as to Sex (court order) because it has significance in other jurisdictions. For example, a Declaration as to Sex from the NZ Family Court allowed applicants to change their UK birth certificates.

The Citizenship Act 1977 needs to be amended to ensure that citizenship certificates that are amended for trans people are legal documents. Operational policy came into effect 2113/14 that allows gender to be changed on citizenship certificates. The Minister of Internal Affairs is aware of this, but no time frame has been put in place. Needs pressure to actually get this done.

Principle 3 of the Yogyakarta principles indicate that All States should “Take all necessary legislative, administrative and other measures to fully respect and legally recognise each person’s self-defined gender identity;”

http://www.rfsl.se/public/yogyakarta_principles.pdf

Prison

Trans Women are incarcerated in male prisons, if their birth certificates have not been changed.

More information <http://www.radionz.co.nz/news/national/287712/are-trans-inmates-safe-in-prison> . It makes trans women feel like it’s ok to be who we are in society, but once behind bars, we are reminded we are not women. Another recent article,

http://www.gaynz.com/articles/publish/3/article_17620.php shows very similar problem in the UK.

The UN has commented that this is a form of torture.

Health and Disability:

Complaints to the Health and Disability Commission are not made by trans women, because we feel they are not inclusive; we don’t feel included.

Appendix 6: Law Issues

Pacific Women's Watch New Zealand (PWW(NZ)) is concerned that racism in the justice system, changes to legal aid, and conscious and unconscious institutional sexism have created barriers to justice for women.

Māori continue to be over represented in the justice system. Despite making up about 15 per cent of the total population in New Zealand, almost 57 per cent of women prisoners sentenced are Māori.¹ This has long reaching and inter-generational impacts for the children, families and whanau, and communities of women prisoners. Furthermore, the over representation of Māori is not an anomaly but has been consistent over several decades,² and represents a failure on the part of government to address conscious and unconscious prejudice in the judicial system and to reduce inequalities between Māori and non-Māori.

In a bid to reduce spending on legal aid, the government introduced changes from 2010 onwards targeted at both lawyers offering legal aid and at those accessing legal aid. These include changes to how lawyers can charge for their work and the expansion of the Public Defence Service, as well as changes to the eligibility criteria for who can access legal aid, requiring legal aid to be repaid and introducing interest on legal aid.³ As a result, those who lack financial resources but either cannot find a legal aid lawyer or are ineligible for legal aid, are forced to represent themselves. This undermines equal access to justice in New Zealand and disproportionately affects women, as women (and particularly women of ethnic minorities) continue to earn less than men.⁴

This is of particular concern in situations of domestic violence, as women may be forced to defend themselves against an abusive ex-partner in Family Court and can impact whether or not they are successful in court, for example, applications for Protection Orders are more likely to be successful with the support of a lawyer.⁵

Another area of particular concern to PWW-NZ is how unconscious bias and institutional sexism disadvantage women using the Family Court to negotiate relationship breakdowns. Research has shown the Family Court idealises shared care of children between separating parents.⁶ As a result, fathers' access to their children is being prioritised over women's concerns for the safety of their children in cases of conflict and domestic violence.⁷ In such circumstances, women who raise concerns are disbelieved or their concerns minimised by court professionals. In particular, the Family Court in New Zealand applies the concepts of Parental Alienation Syndrome and Situational

¹ Waitangi Tribunal *Tū Mai te Rangi! Report on the Crown and Disproportionate Reoffending Rates - Pre-Publication Version* Wellington: Waitangi Tribunal, 2017. Downloaded from www.waitangitribunal.govt.nz. 11

² Waitangi Tribunal *Tū Mai te Rangi! Report on the Crown and Disproportionate Reoffending Rates - Pre-Publication Version* Wellington: Waitangi Tribunal, 2017. Downloaded from www.waitangitribunal.govt.nz. 11-13

³ New Zealand Law Society *Legal Aid and Access to Justice* <https://www.lawsociety.org.nz/lawtalk/lawtalk-archives/issue-868/legal-aid-and-access-to-justice> 2 July 2015

⁴ Statistics New Zealand *2013 Census QuickStats about income* <http://www.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-income.aspx> 9 September 2014

⁵ Women's Refuge. *Protection Orders*. <https://womensrefuge.org.nz/protection-orders/>. Accessed online 10 January 2017.

⁶ Tolmie, Julia ; Elizabeth, VB ; Gavey, Nicola. 2010. *Is 50:50 Shared Care a Desirable Norm Following Family Separation? Raising Questions about Current Family Law Practices in New Zealand*. New Zealand Universities Law Review 24(1):136-166

⁷ Tolmie, Julia ; Elizabeth, VB ; Gavey, Nicola. 2010. *Is 50:50 Shared Care a Desirable Norm Following Family Separation? Raising Questions about Current Family Law Practices in New Zealand*. New Zealand Universities Law Review 24(1):136-166

Violence, both of which minimise and discount domestic violence. Parental Alienation Syndrome was developed in the United States several decades ago, but has been discredited for many years there and in other countries. It is accepted that it does not actually exist, but the Family Court in New Zealand continues to apply this so-called syndrome. Essentially, the syndrome asserts that malicious mothers work to undermine their children's relationships with their fathers, including by making up false allegations of violence and abuse. This is utterly contrary to all the evidence and means that women and children do not receive the protection which the Family Court should provide under the Domestic Violence Act 1995, as violence is minimised or disbelieved. Situational Violence is used to discount domestic violence by asserting that violence which occurs at or near the time of separation is out of the ordinary and should be ignored. In fact, separation is the most dangerous time for women and the time at which they are most likely to be killed by their violent partners.

Anti-domestic violence advocates have long expressed concern about the way in which the Domestic Violence Act is interpreted and applied. It is excellent and very clear legislation, but has never in two decades been properly interpreted and applied by Family Court Judges. They have consistently applied glosses and given strained meanings to the very clear wording in the act. This has resulted in women being denied Protection Orders when they should have been granted. The Court of Appeal in July 2017 ruled that a Family Court Judge had wrongly interpreted the act in every way, and overturned his finding that a Protection Order was not required.⁸

Anti-domestic violence campaigners are well aware that the Judge involved has ruled incorrectly on many other domestic violence cases, and that others Judges have similarly misinterpreted the law.⁹ In the wake of the Court of Appeal decision, comprehensive education for Family Court Judges is required about the Domestic Violence Act. There also needs to be a comprehensive review of earlier decisions by this Judge and others Judges who have applied the law incorrectly, so that women and children can be granted the protection to which they are entitled under the Domestic Violence Act.

Responses to breaches of Protection Orders are inconsistent, reflecting a lack of understanding of the dynamics of domestic violence within the justice system. Offenders are rarely arrested for non-violent breaches of Protection Orders,¹⁰ which makes victims less inclined to report minor breaches out of fear of retaliation by their abuser.¹¹ However, even seemingly minor breaches are often part of a pattern of intimidation and should therefore result in a mandatory arrest and conviction,¹² to better ensure women's basic human right of freedom from violence.

The New Zealand Government, in response to a pay equity legal case brought by careworker Kristine Bartlett and her union, earlier this year reached a settlement costing \$2 billion and which will raise the pay of careworkers. It was found by the courts that they had been underpaid over a long period because they were working in female-dominated occupations.

The Government in the wake of the case set up a Working Group to produce principles to guide the settlement of future pay equity claims. The Working Group published principles. The Government accepted these, but with a qualification to one of the principles. The principles have now been incorporated into a bill – the Employment (Pay Equity and Equal Pay) Bill. The bill departs even

⁸ *SN v MN* [2017] NZCA 289.

⁹ Catriona MacLennan, Finally, hope for victims of domestic violence, 8 July 2017, Newsroom, <https://www.newsroom.co.nz/2017/07/07/37783/catriona-maclennan-template>

¹⁰ Women's Health Action. *Submission to the Ministry of Justice on the Family Violence Law Review*. Sep 2015. <http://www.womens-health.org.nz/resources/publications/#submissions>. Accessed online 9 January 2017

¹¹ Tait, Morgan. *Abusers refusing to stay away*. New Zealand Herald. 10 August 2016. http://m.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11690474. Accessed online 17 January 2017.

¹² Women's Health Action. *Submission to the Ministry of Justice on the Family Violence Law Review*. Sep 2015. <http://www.womens-health.org.nz/resources/publications/#submissions>. Accessed online 9 January 2017

further from the recommendations agreed by the Working Group. If passed into law, the bill would make it difficult or impossible for other women to bring pay equity claims successfully.

The bill provides for a hierarchy of comparators to be used when pay equity claims are made, makes it difficult to establish merit in law, extinguishes women's rights to seek back pay in pay equity claims, and retrospectively requires current claims to be dealt with under the new law.

New Zealand's benefit laws discriminate against women and have done so for decades. In order for single mothers to obtain benefit support, they must not be "in a relationship in the nature of marriage" under the Social Security Act. The test for this is very complicated and has been misapplied by the Ministry of Social Development in many cases. The Court of Appeal in the 1990s ruled in the case of *Ruka v Department of Social Welfare* that a relationship was not a relationship in the nature of marriage if there was no emotional commitment and no financial support. Ms Ruka had been found by the Department not to be entitled to her benefit, despite the fact that she was in an extremely violent relationship and had no control over when her partner came and went. He did not provide financial support.

Despite the Court of Appeal decision, the Department continued to apply the law incorrectly, leading to the 2001 Joychild Report, which recommended that 15,600 cases be reviewed to ensure the law had been correctly applied and women had not wrongly had their benefits cut and debts established against them.

The Ministry of Social Development continues to take an extremely punitive approach to mothers on sole parent support. They continue to be prosecuted and, even after serving jail terms, are pursued for the rest of their lives for debts they can never hope to repay.¹³ This is in marked contrast to the lenient approach adopted to tax evasion, tax avoidance, non-payment of child support, and non-payment of fines and reparation. Inland Revenue between 2008 and 2013 wrote off \$5 billion in unpaid taxes. The Government in the 2015 Budget announced that it would write off up to \$1.7 billion in child support penalties. By contrast, benefit fraud debt totals \$182 million but the Government will not write it off.

Mothers are required by law to identify the fathers of their children under the Social Security Act. If they do not do so, their benefit is docked initially by \$22 a week and then later permanently by \$28 a week. If more than one child's father is not identified, the benefit is docked for each child. This is a massive amount of money to be taking away from families which are seeking to survive on unliveable benefits. Often the father is not identified because of threats and the fear of violence.¹⁴

The sanctions apply almost exclusively to women and disproportionately heavily to Maori women. The sanctions are imposed 97.7 per cent on women and just over two per cent on men. 52.8 per cent of sanctions are imposed on Maori.

A campaign was run in 2016 asking the Government to delete these sanctions from the law and stop applying them. The Social Security Act is currently being rewritten and this would accordingly be a good time to delete these provisions from the law. However, the Government refuses to do so.

¹³ Catriona MacLennan – Kathryn's Story How the Government spent well over \$100,000 and 15 years pursuing a chronically-ill beneficiary mother for a debt she should not have, Child Poverty Action Group, July 2016 <http://www.cpag.org.nz/assets/Publications/3-0%20Kathryn%27s%20Story-web.pdf>

¹⁴ Catriona MacLennan – Fear and violence behind decision to keep dad's name secret, New Zealand Herald, 20 September 2016 http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11712674

Recommendations:

- Prioritise efforts to reduce Māori offending and recidivism with a specific Māori strategy, with measurable targets and a dedicated budget
 - Address financial barriers to justice by increasing access to legal aid
 - Provide regular and ongoing training on gender issues to judges, psychologists, counsellors, lawyers, police and other legal professionals. Issues covered should include: gender stereotyping, coercive control, and psychological abuse
 - Address cultural barriers by employing a culturally diverse workforce and funding organisations that work with ethnic minorities
 - Allocate appropriate resources to the police and courts to introduce mandatory arrests and convictions for breaches of Protection Order.
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Appendix 7: Right to Work and Participation in political and private life.

Pay equality and equal pay.

The lack of equal pay and pay equity have been fundamental barriers to a full expression of women's economic rights in New Zealand for many years. This is despite ratification of the relevant international human rights treaties (UDHR, ICESCR, ICCPR, CEDAW and ILO Convention 100) that refer to the equal pay and pay equity. Treaty body committees and the Universal Periodic Review have consistently raised concerns with the government about ineffective legislation, inadequate policy and poor implementation in both the public and private sectors.

The gender pay gap in New Zealand is currently 9.4 per cent overall, down from 12 percent in 2016, but still more than the 9.1 per cent in 2012 (Statistics NZ). It worsens considerably by age, ethnicity (particularly for young Māori¹ and Pacific women) and occupational sector. Since the 1990s New Zealand's equal pay history has been punctuated by successive administrations dismantling mechanisms or initiatives introduced in an ad hoc manner to address the breaches of women's human rights. There has been a lack of continuity of implementation of a basic and fundamental human right.

In 2017 the Government announced a \$2 billion pay equity settlement for 55,000 health care workers in the, aged and disability residential care, and home and community support services. This followed five years of equal pay feminism sparked by a New Zealand Human Rights Commission national inquiry into employment in the aged care sector in 2012 that identified several breaches of human rights relating to equal pay and pay equity. The inquiry was the catalyst for successful trade-union led litigation (Employment Court, Court of Appeal and Supreme Court)² and lobbying by women's coalitions throughout the country for government action to close the gender pay gap.

The settlement represented a positive recognition by the State Party, following the lead of the judiciary, of the injustice of low pay for systemically undervalued women's work. It represented a 21 per cent pay rise to at least NZ\$19 an hour for those women (over 90 % of carers are female) on the 2017 minimum wage of NZ \$15.75 an hour. It was widely welcomed by unions, employers and women and celebrated for a common-sense approach through a negotiated settlement that would prevent further costly and long running litigation on equal pay and pay equity.

The settlement followed the agreement between trade unions, employers and government representatives in a Joint Working Group of a set of agreed principles that would guide other settlements, in areas where groups of women were pressing claims for pay equity such as education support workers, midwives, mental health workers and so on.

Despite the positive impact and size and scale of the settlement, the proposed accompanying legislation, the Employment (Pay Equity and Equal Pay) Bill, introduced for its first reading prior to the 2017 general election, is highly unlikely to see similar gains for women in other sectors seeking equal pay and pay equity. It is widely regarded by academic, legal, feminist and union researchers as regressive and not in keeping with the agreed principles.

The proposed legislation, which replaces the Equal Pay Act 1972, places too onerous a burden on individual female complainants, restricts the male comparators in a way not anticipated by the courts, in particular the Court of Appeal, and is widely predicted to slow down or even halt further equal pay progress. It is opposed by the majority of opposition parties, trade unions and the

¹ Statistics NZ (2017) New Zealand Labour Market Statistics.

² *Terranova Homes & Care Ltd v Service and Food Workers Union Nga Ringa Tota Inc and Kristine Bartlett S/C* 1272014(2014) NZSC 196; *Terranova Homes & Care Ltd v Service and Food Workers Union Nga Ringa Tota Inc* CA6312013(2014) NZCA 516 [28 October 2014].

coalitions of women interested in equal pay such as the Pay Equity Coalition (Auckland) of which Pacific Women's Watch (NZ) is a member.

While New Zealand has anti-discrimination legislation such as the Human Rights Act 1993 it has proved to be ineffective as strategic litigation for equal pay. The HRA anticipates individual complainants rather than groups of women, and this limitation has not materially reduced structural discrimination. Nor does the HRA contain a positive duty or obligation on employers in relation to equal pay. PWW (NZ) therefore concludes that New Zealand continues to have an ineffective legislative framework for equal pay and pay equity.

PWW (NZ) believes that several of the specific recommendations contained in the Concluding Observations to New Zealand from the Committee on the Elimination of Women in 2012³ remain outstanding and remain urgently required.

To that end Pacific Women's Watch (NZ) asks the Committee to recommend to the New Zealand Government that it introduces effective legislation in line with Article 11 (d) of the Convention. The legislation should be accessible for women to use and provide for appropriate, non-restrictive male comparators as anticipated by the courts.

The Committee should also repeat its unfulfilled recommendations of specific measures and indicators with time frames to reduce pay inequality in different sectors; hardened accountabilities for public service chief executives on equal pay and pay equity; and policy measures to eliminate occupational segregation both vertical and horizontal.

The CEDAW Committee is asked, too, to recommend an effective monitoring mechanism within an appropriately resourced Ministry for Women that regularly publicises its audits to raise awareness and accountability.

We believe the Committee should congratulate the Government on the care pay settlement and request that the momentum be sustained. It would be useful in light of the Sustainable Development Goals and the CSW theme in 2017 of women's economic empowerment that equal pay and pay equity be identified as priority actions for the New Zealand Government.

Participation in political and private life.

The CEDAW Committee in 2012 urged New Zealand to take measures to increase the number of women in decision-making positions at all levels in light of general recommendation no.23 on women in political and public life. It wanted the State party to review targets, goals and time frames for women's representation.

While gains have been made in some areas such as gender representation of several political parties at the 2017 general election, the representation of women in private sector governance and senior management in New Zealand remains dismal and well behind similar jurisdictions.

The latest research shows that the percentage of female directors of the top 100 companies by market capitalisation listed on the New Zealand Stock Exchange is 22.17%.⁴ This represents a rise of less than two percentage points since 2016 and a 7.42 percentage point gain in five years. The number of corporate board female chairs has remained the same over the past five years at seven of

³ Committee on the Elimination of Discrimination Against Women (27 July 2012). Concluding Observations of the Committee on the Elimination of Discrimination against Women. CEDAW/C/NZL/CO/7.

⁴ McGregor, J., and Sikuea, S. (2017). New Zealand Census of Women on Boards 2017. AUT University.

the 100 companies and the number of female Chief Executive Officers has not moved beyond three. The number of Māori, Pacific and other ethnic women who are board members of top 100 companies is negligible reflecting a wider gender and diversity problem.

Despite decades of political, business and public concern about women's representation in the private sector, extensive publicity of the problem and voluntary reporting measures by the Stock Exchange, a quarter of the top 100 companies still have no women on their boards.

The figures provide a stark comparison to the higher percentage of women who are board members of government appointed statutory bodies at 43.5% ministerial appointments as at 20 December 2016, which demonstrates that there is no shortage of competent, governance ready women in New Zealand.

In the absence of special temporary measures or quotas which the New Zealand Government steadfastly opposes, PWW (NZ) believes the Committee should recommend that the Ministry for Women is urged to prioritise proactive awareness raising, advocacy and monitoring of the private sector.

Additionally, the Ministry of Women's nominations service should be resourced and mandated to be more accessible to the private sector to urgently redress the low and unsustainable level of women's representation in corporate governance. This should include advertising its services to publicly listed and private companies.
