

Input for the report of the Special Rapporteur on Violence Against Women and Girls on violence against women and children in custody cases

This document responds to the United Nations Special Rapporteur's call for inputs to inform a report on custody cases, violence against women and violence against children. The information is drawn from the work of Aotearoa New Zealand's Family Violence Death Review Committee (the Committee).

The Committee is based in the Health Quality & Safety Commission (the Commission) and provides independent advice to the Commission Board on how to reduce the number of family violence deaths. In the Committee's terms of reference, family violence is defined as:

any behaviour that coerces, controls or harms, an (ex) intimate partner and/or family member(s) by the means of deprivation, negligent treatment, isolation, intimidation, threats, violence, and/or causes them to fear for their own, or another family member's safety or well-being. It can include physical, sexual, psychological, emotional, and economic abuse, as well as neglect and exploitation... children's exposure to these forms of abuse and the effects of abusive behaviour. It is understood as a pattern of abusive behaviour and can also span multiple relationships and generations.

A family violence death is defined as:

the unnatural death of a person (adult or child) where the suspected offender(s) is a family or extended family member, caregiver, intimate partner, previous partner of the victim, or previous partner of the victim's current partner, and where the death was an episode of family violence and/or there is an identifiable history of family violence.

The Committee conducts in-depth reviews into family violence death events. A life-course approach is taken to understanding the victim, the offender and their wider family, as it has been our experience that responses to present-day offers of service or support are shaped by past actions of helping agencies. Past punitive responses from agencies act as a barrier to identifying the agency as a support option in the present.

The Committee's work is grounded in the Treaty of Waitangi (Te Tiriti o Waitangi). Through this, the over-representation of Māori families in family violence homicides is understood as a reflection of multiple and repeated breaches of Te Tiriti. Te Pou, an indigenous framework for the interpretation of mortality data, is used to ensure that recommendations produced are cognisant of, and do not reinforce, pre-existing inequities.^{1,2}

¹ Roguski M, Grennell D, Dash S, et al. 2022. Te Pou: An Indigenous Framework to Evaluate the Inclusion of Family Voice in Family Violence Homicide Reviews. *Journal of Family Violence*. DOI: 10.1007/s10896-022-00459-6

² Cram F, Cannell H, Gulliver P. 2022. Getting the Story Right: Reflecting on an Indigenous Rubric to Guide the Interpretation of Mortality Data. *Journal of Interpersonal Violence* 37(21–22): NP19599–NP19623. DOI: 10.1177/08862605211042565



The Committee takes a system perspective. Our reviews highlight that problematic practice by one agency will be built on by the behaviours of partner agencies. Mistakes (biased, punitive or minimising responses) beget mistakes.

1. Manifestations and specific types of domestic and intimate partner violence experienced by women and children

Our data shows that there are different experiences of violence, dependent on ethnicity, migration status, disability status and rurality. For Māori women, in particular, structural violence compounds the impact of intimate partner violence (IPV). A clear illustration of this is the incarceration of primary victims who have killed their predominant aggressor partner. For the period 2009–19, Māori accounted for 38% of IPV homicides, yet Māori women accounted for 77% of primary victims who killed their predominant aggressor intimate partner. The Committee views IPV as a form of social entrapment, where the social isolation, fear and coercion created through violence are compounded by ineffective responses. Coercive control is aggravated by structural inequities of gender, class and racism.³ Wilson and colleagues⁴ have highlighted the additional impact of discriminatory responses for Māori women, which contributes to their over-representation among primary victims who kill their predominant aggressor intimate partners:

- Fear their children will be removed for child protection concerns.
- Fear of encountering people who display prejudice, negative stereotyping and racist attitudes and behaviours, leading to disrespectful and ineffective responses and deficit framing.
- Unhelpful and dismissive responses.
- Ineffective and unsuccessful access to the support required.

Social context is fundamentally important in understanding differential experiences of violence for women and children. In-depth reviews have led to the following findings:

Women experiencing disabilities: Their voice can be minimised, silenced or not believed. There are expectations of a safe and supportive family environment, and a lack of understanding of the impact of legal mechanisms that can contribute to violence experience (such as employing an Enduring Power of Attorney to control access to resources). There is a lack of understanding of the importance of having the capacity and capability to access resources. Family support in the absence of adequate community support for people experiencing disabilities is critical. Poor service design and limited service availability compound the impact of violence.

³ Family Violence Death Review Committee. 2016. *Fifth Report: January 2014 to December 2015*. Wellington: Family Violence Death Review Committee.

⁴ Wilson D, Mikahere-Hall A, Sherwood J, et al. 2019. *E Tū Wāhine, E Tū Whānau: Wāhine Māori keeping safe in unsafe relationships*. Auckland: Taupua Waiora Māori Research Centre. URL: https://niphmhr.aut.ac.nz/_data/assets/pdf_file/0011/330302/REPORT_E-Tu-Wahine,-E-Tu-Whanau-Wahine-Maori-keeping-safe-in-unsafe-relationships.pdf (accessed 5 October 2021).



Women who have migrated to New Zealand: Affidavits for protection orders contain detailed information about serious violence, including threats to kill. However, the significance of these documents are frequently underestimated.⁵ The women are aware of the cultural norms of their homeland and are often threatened by their partner's family. The shame and stigma of reporting a partner's violence can isolate a woman and tenuous immigration status will increase vulnerability.⁶

For rural women: In-depth reviews have highlighted the impact of patrilineal misogyny within New Zealand rural communities and a sense of entitlement over land rights and family structures.^{7,8} These contribute to a silencing of women's experience of violence and an ability to use non-physical forms of violence (financial abuse, destruction of property, manipulative parenting, overuse of gendered roles) to control women in these environments. Such experiences are difficult to prosecute. With the interconnected nature of rural communities, there are fewer opportunities to establish safety and women can be exposed to judgemental and stigmatising attitudes.

2. The role that professionals play

The Committee has highlighted the impact of professional practice on keeping women and children safe.⁹ Professionals think within the confines of their statutory role, creating an alternate reality rather than providing an accurate description of the circumstances or the situation. For example, a woman seeking safe and stable housing may be described as 'transient' and considered an ineffective parent, rather than understanding her desire to remove herself from a controlling partner who undermined her parenting ability. Compounding this is the use of 'situational assessments', rather than a comprehensive understanding of the dynamics in play. From one of our in-depth reviews (in which custody played a significant role):

... this resulted in her parenting being judged on an on-going basis, while agencies failed to consider her responses in the context of the controlling behaviours displayed by either [partner]. Long-term safe, stable environments are required for women experiencing violence to be able to make informed choices about their future. Underestimating the impact of violence on the quality of social relationships, psychological wellbeing, and the ability to access legal, health and social services

⁵ Family Violence Death Review Committee. 2020. *Sixth Report | Te Pūrongo Tūaono: Men who use violence | Ngā tāne ka whakamahi i te whakarekerekere*. Wellington: Health Quality & Safety Commission.

⁶ F Sultana, Founder, Shakti New Zealand, personal communication, 4 September 2019.

⁷ Henaghan M, Short J, Gulliver P. 2021. Family violence experts in the criminal court: the need to fill the void. *Psychiatry, Psychology and Law* 29(2): 206–22. DOI: 10.1080/13218719.2021.1894262

⁸ DeKeseredy W, Donnermeyer J, Schwartz M, et al. 2007. Thinking critically about rural gender relations: toward a rural masculinity crisis / male peer support model of separation / divorce sexual assault. *Critical Criminology* 15: 295–311.

⁹ Family Violence Death Review Committee. 2022. *A duty to care: Me manaaki te tangata*. Wellington: Health Quality & Safety Commission.



results in agencies placing unrealistic expectations on women's help-seeking capabilities in the presence of violence exposure ...

In the time leading up to [the baby's] death, although there was information shared between agencies, the information was again primarily focussed on concerns about [the mother's] ability to parent rather than hearing [the mother's] concerns about the safety of [her baby] ...

With the proliferation of electronic data collection systems and the focus on information sharing, it is important that robust, accurate information is both collected and shared. This review highlighted the potential for an alternate narrative to be created about [the mother]. One that, over time, was able to mask her experience of trauma growing up and pathologise her help-seeking.

The Committee has also highlighted the role of professionals in the criminal justice process. While psychiatric or psychological reports are included to understand mental health and behavioural contributions to criminal behaviour, there is currently no process for the inclusion of family violence experts:

Unique skills and experience are necessary for an accurate description of a history of family violence. Experience working with survivors and offenders provides an understanding of the nature and dynamics of violence experienced within a relationship and allows experts to address myths and misconceptions, particularly in relation to the effective nature of the current family violence safety system. Without a contemporary, comprehensive understanding of family violence across police prosecution, judges and lawyers, expert evidence from trained and experienced specialists is required.¹⁰

3. Recommendations

In September 2022, the Committee presented a submission on a proposed initiative to improve the timeliness of the Family Court in Aotearoa New Zealand. Part of this submission is directly relevant to the current request for input and so has been reproduced here:

by cherry-picking aspects of the work undertaken by the court and subsequently siloing them into 'family violence', 'care of children' or other matters, we lose sight of the potential for each of these issues to play into a wider pattern of violence ... Pertinent issues such as the ability to use the Family Court as a tool of abuse (either by an abusive ex-partner,¹¹ or by statutory agencies¹²) are not addressed in the

¹⁰ Henaghan et al, 2021, *op. cit.*, abstract.

¹¹ Johnston K. 2022, 21 August. 'The court can't stop him': how a woman's abusive ex-husband filed 100 court claims against her, and counting. *Stuff*. URL: www.stuff.co.nz/national/crime/300665850/the-court-cant-stop-him-how-a-womans-abusive-exhusband-filed-100-court-claims-against-her-and-counting (accessed 22 August 2022).

¹² Boulton A, Wikaira M, Cvitanovic L, et al. 2020. *Te Taniwha i Te Ao Ture-ā-Whānau: Whānau Experience Of Care And Protection In The Family Court*. Te Kopu Ed.



proposed reforms. Neither are prolonged relationship property litigation, or family trust and enduring power of attorney issues which may be used to abuse, isolate and increase the vulnerability specifically of disabled people,¹³ but also in other communities where such tools are used to control access to resources (including rural communities) ...

The Committee drew on a proposal from the Pou Tangata Iwi Leader's Group¹⁴ as providing the potential for a more full and complete understanding of the history of violence and abuse, and to restore dignity and human rights:

The alternate models highlighted draw attention to effective work that is being undertaken by the Courts in collaboration with Iwi and Police, allowing for community representation and ensuring accessibility for people from a range of cultures. They also centre on an inquisitorial process of resolution, allowing for shared decision-making in the presence of a full and complete understanding of the context being reviewed. By drawing on Iwi-Māori Partnership Boards, it is possible to reflect on a precedent for culturally appropriate service delivery utilising mātauranga Māori.

¹³ Phare J. 2022, 23 July. Family Court 'unsafe' and 'brutal': UN human rights committee calls for inquiry. URL: www.nzherald.co.nz/nz/family-court-unsafe-and-brutal-un-human-rights-committee-calls-for-inquiry/UQWBKZIR54J3NSINAKJO53JC2A/ (accessed 22 August 2022).

¹⁴ Pou Tangata Iwi Leaders Group – Te Ora o Te Whānau and Justice. nd. Submission to the Justice Committee: Family Court (Family Court Associates) Legislation Bill. URL: www.parliament.nz/resource/en-NZ/53SCJU_EVI_125435_JU227566/4d37eaa5b41acdce01060d22a550b2fa45ad84c (accessed 18 November 2022).