A HISTORICAL ANALYSIS OF THE STATUS OF WOMEN IN NEW ZEALAND: HAS CEDAW HAD AN IMPACT?

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Abstract

This thesis analyses the current and historical status of women in New Zealand for the purpose of discovering why full equality between men and women has not yet been achieved. This object will be accomplished by analysing, comparing and contrasting the international Convention on the Elimination of all forms of Discrimination Against Women ("CEDAW") with changes successive New Zealand Governments have made to the status of women so as to discover the degree of intent such Governments have had to implement equality.

This thesis is in chronological order, beginning from an analysis of the creation of the status of women dating pre 1300 B.C., detailing degradations, changes and improvements in the status up until 2012 A.D. The main divisions are based on general periods of importance for women; chapter one investigates how the secondary status of women originated and evolved in ancient eras. Chapter two examines the significant international and domestic women's rights movements during the mid-twentieth century. Chapter three discusses the importance of an international instrument as a comparative tool; illustrated by CEDAW's contrast to the New Zealand status of women during the mid-1980s. Chapter four analyses the Governmental changes made over the next quarter century to discover whether New Zealand was moving closer towards a reflection of the international instrument. Chapter five evaluates the contemporary status of women in New Zealand; and finally, chapter six details recommendations for the State with the intention of raising the status of women to full equality.

The conclusions reached are, first; that the current status of women in New Zealand is not one of equality with men because their original status was seen as secondary. Therefore the goal of attaining equal (formal) legal rights to gain equality is not appropriate as it merely gives women what were considered "men's rights" without giving them the opportunity to practice them in full equality. Secondly; the use of CEDAW as a comparative instrument is shown to provide a more effective strategy of gaining equality that does not always involve giving women gender-neutral "men's rights" but needs to be given greater power to be proved effective.

The comparison with an instrument that provides for perfect equality contributes to a thorough understanding of the status of women in New Zealand as the comparison provides a clear and objective view of why the original premise that formal rights would achieve substantive equality was an incorrect supposition. The thesis also contributes alternative action to be undertaken by the Government to effectively achieve equality for women.

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List of Abbreviations

APHR	New Zealand Action Plan for Human Rights
APW	Action Plan for New Zealand Women
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
Commission	Commission on the Status of Women
Committee	Committee on the Elimination of Discrimination Against Women
CTU	New Zealand Council of Trade Unions
DEDAW	Declaration on the Elimination of Discrimination against Women
DHB	District Health Board
ECOSOC	Economic and Social Council
ECE	Early Childhood Education
EEU	Pay and Employment Equity Unit
EEO	Equal Employment Opportunities Program
ERA	Employment Relations Authority
GDP	Gross Domestic Product
GST	Goods and Services Tax
HDI	Human Development Index
HIV	Human Immunodeficiency Virus
HRC	Human Rights Commission
INSTRAW	International Research and Training Institute for the Advancement of Women

IWC	International Women's Conference
Ministry	Ministry of Women's Affairs
MMP	Mixed Member Proportional
NCEA	National Certificate of Educational Achievement
NCW	National Council of Women
NCWNZ	National Council of Women New Zealand
NGO	Non-Governmental Organization
NZBORA	New Zealand Bill of Rights Act 1990
OECD	Organisation for Economic Cooperation and Development
PPL	Paid Parental Leave
UN	United Nations
UNIFEM	United Nations Fund for Women

Introduction

A Historical Analysis of the Status of Women in New Zealand: Has CEDAW had an Impact?

Part I: Purpose and Aims of Thesis

The subject of women's rights in New Zealand has been extensively discussed in numerous forums over the years, including those that are international, in Parliament, Government and the judiciary, by academics and philosophers, in secondary and tertiary education and in the media. One needs only type the words into an online search engine to discover a plethora of information on its history and current position. However, as much of the focus has been merely on women's "rights", the scope of the topic and its conclusions have been somewhat limited.

The first reason for these limited conclusions lies in the examination of "women's rights" as a subject. "Women's rights" are defined as: "the effort to secure equal rights for women and to remove gender discrimination from laws, institutions and behavioural patterns."[1] Securing equal rights and removing discrimination from laws indicates that it is necessary for women to 'catch up' to a level of rights previously prescribed by others. "Others" in this case, are men. Using this logic, "women's rights" is therefore the struggle for women to catch up to or gain "men's rights." The primary instance of this in New Zealand is women's suffrage in 1893, in which women gained the right to vote in the same capacity as men.[2]

However, the premise that women need men's rights to attain an equal society is flawed. After suffrage, women gained equal legal rights to the

[1] Farlex "Define: Women's Rights" The Legal Dictionary http://legal-dictionary.thefreedictionary.com/Women's+Rights.
[2] New Zealand History Online "New Zealand Women and the Vote" Ministry for Culture and Heritage http://www.nzhistory.net.nz/politics/womens-suffrage.

point that legislation is currently gender neutral[3] and there is no difference between the capacity of women and men. Nevertheless, women in New Zealand do not practice of full "equality" – that is, the "state of being equal, especially in status, rights or opportunities"[4] – by virtue of being women[5] (if such a status existed, government reports and independent studies discussed in this thesis would not consistently find that women as a group remain discriminated against).[6]

Therefore, to understand why equal rights have not translated into equality, it is necessary to understand what originally made women distinct from men. If this reason is understood, action (other than granting women "men's rights") can be taken with the goal of providing women with equality of outcome. Thus, this thesis will focus on the evolution of the status of New Zealand women throughout history rather than women's rights as from the period around suffrage. It is intended that this analysis will give an indication of potential improvements that can be made by the Government that does not necessarily reflect the previously accepted "gender-neutral" ideology.

The second reason conclusions about "women's rights in New Zealand" may have been limited is based on the fact that an incorrect scale of comparison has previously been used. As mentioned above, there is established awareness that New Zealand women do not practice full equality regardless of gender neutral practices instigated by the State.

However, most analysis compares legal equality with full equality and aims to progress from one to the other. It is suggested that this is an incorrect

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[3] New Zealand Law Commission *Matters of Style* (New Zealand Legal Institute, Report R 35), at Gender-Neutral Expression.
[4] Oxford English Dictionary "Equality" http://oxforddictionaries.com/definition/english/equality.
[5] Ricardo Hausmann, Laura D Tyson and Saadia Zahidi "The Global Gender Gap Report 2011" World Economic Forum (Geneva, Switzerland, 2011) http://www.ncwnz.org.nz/assets/Uploads/WEF-GENDER-GAP.PDF.
[6] See New Zealand Government *Seventh Periodic Report on the Convention on the Elimination of All Forms of Discrimination Against Women* (2010) CEDAW/C/NZL/7; New Zealand Human Rights Commission "New Zealand Human Rights Commission's Report to the Committee on the Elimination of Discrimination Against Women (CEDAW)" (New Zealand Human Rights Commission, October 2011) http://www.hrc.co.nz/wp-content/uploads/2011/10/CEDAW-report-Oct-2011-final.pdf; and Human Rights Commission "New Zealand's Census of Women's Participation" (Human Rights Commission, 2012) <http://live.isitesoftware.co.nz/neon2012/documents/hrc_womens_census2012.pdf>.

format to use as it follows the similar trend of women attempting to "catch up" to men's rights. A more effective strategy would be to compare the status of New Zealand women to a template of equality that recognises the differences between the statuses of genders and aims to reach equality from this perspective. If a template that contained a full discussion of changes necessary to achieve "perfect" equality was used as a comparison to the current status of women, impartial views and recommendations for equality (that are not based on a goal to gain "men's rights" for women) would be able to be formed. It is not implied that a different conclusion will necessarily be made as regards gender equality using this format; instead, a different perspective will be given which will alter the interpretation of the conclusion, resulting in a deeper understanding of the status of women in New Zealand and more effective recommendations.

This thesis analyses CEDAW[7] as well as the international bodies and conferences surrounding its creation and adoption to demonstrate the international "perfection" of the status of women. CEDAW and its governing body will then be used as a sounding board to scrutinise changes in status that occurred for New Zealand women. As a perfect model, the impact of CEDAW on the successive New Zealand governments (as a ratified Member State to CEDAW)[8] will demonstrate how much dedication the Government has had, and continues to have towards establishing full equality between women and men. This, in turn, will indicate how soon it will be before New Zealand women have full equality and equal status – a benefit for at least half of the population if not all.

[7] UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: http://www.unhcr.org/refworld/docid/3ae6b3970.html [accessed 22 January 2012] (Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979. Entry into force 3 September 1981, in accordance with article 27(1)).

[8] United Nations "Chapter IV(8): Convention on the Elimination of All Forms of Discrimination against Women; Ratification, Accession and Succession" United Nations Treaty Collection http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en.

Part II: Relevance and Impact on New Zealand Today

New Zealand women have fought for equal status in both public and private spheres for well over a century. This goal remains unachieved and the gap between the status of men and the status of women is closing only by tiny increments.[9] The current economic climate and the National Party, as leaders of the present government, has a 'zero-budget' policy focus[10] which relegates apparent "human rights" issues like the status of women, into the background, regardless of the fact that equality is substantively linked to enhanced economic outcomes.[11]

This thesis explains the current stagnation of improvement to the status of women in New Zealand and demonstrates that a change in focus of how to attain full equality may be necessary before any significant advance occurs. It is hoped that this work will assist in representing to this (or a successive) Government that endorsing action that improves the status of women will most likely increase the general welfare of the New Zealand public, but may also facilitate a better economic performance.

Part III: Scope of Thesis

The scope of this thesis will focus on the status of women in New Zealand as a whole. While there are differences amongst racial groups within New Zealand such as Maori or Pacific Islanders, the goal is to analyse women in general, so as to provide basic recommendations that raise the general status of women in New Zealand. A further reason for this narrowed scope is based on the volume of information on cultural differences available. Understanding and comparing different cultures as well as aiming to elevate each sub-group to a similar level of equality is a subject far too

[9] See the bulk of the New Zealand Governmental reports to CEDAW in Chapters Four and Five below.
[10] National Party "Budget 2012" national.org.nz http://www.national.org.nz/Budget2012/PBMI_Newsletter.pdf.
[11] Greg Pellegrino, Sally D'Amato, and Anne Weisberg "The Gender Dividend; Making the Business Case for Investing in Women" Deloitte (2011) http://www.deloitte.com/assets/Dcom-Greece/dttl_ps_genderdividend_130111.pdf; Matthias Doepke, Michèle Tertilt and Alessandra Voena "The Economics and Politics of Women's Rights" (December 2011) Institute for the Study of Labour IZA DP 6215.

broad and lengthy for this project. The intention here is to identify ways to raise the status of New Zealand women as a whole to as close to equality as possible. By attaining this goal, particular discriminatory cultural practices will be more easily identified as the only remaining factor for discrimination specific to certain cultures rather than inherent in humanity.

A second scope limitation for this thesis is the need to focus primarily on legalities and overarching laws that governing bodies (including monarchy and democracy) have initiated. Again, specific treatment of different groups of women would provide an endless topic. Governmental changes and their general effect on women will be the aim of discussion as, for the most part, policies and laws have the widest impact on a population. They are also technically the easiest to modify (in comparison to an individual attempting to change culture), therefore recommendations for change will be achievable rather than only theoretical.

Part IV: Overview of Chapters

(A) Chapter One: Historical Overview of the Original Development of the Status of Women

The first chapter explores the development of women's status during ancient eras. This will give a basic background of custom that relegated women to be valued less than men, and more often than not, the property of men. The chapter will also explore the foundations of women's rebellion against this treatment during the seventeenth to nineteenth centuries in Great Britain. This period marks an important era for women, as the Industrial Age revolutionised traditional hierarchies, evolved modern Western systems of democracy of which New Zealand is currently a part, and forced women out of customary domestic roles and into those conventionally held by men. Finally, this chapter will discuss the similar revolution that occurred in New Zealand during the early twentieth century. The demand for equal treatment in employment eventually led to a demand for equal rights for women and began the contemporary

conundrum of equal legal rights without the opportunity to take advantage of them.

(B) Chapter Two: The Evolution of Modern Legislative Equality in New Zealand During the Mid-Twentieth Century; National and International Influences

Chapter two investigates the creation of internationally accepted basic human rights. These rights led to interest in the worldwide secondary status women suffered, and resulted in several international conferences to discover whether the situation could be rectified. The analysis of the three conferences held during the United Nations Decade for Women, as compared to and contrasted with domestic changes in New Zealand during this period, will demonstrate the significant differences between a relatively unbiased international ideal and a country steeped in Western cultural customs. The comparison will illustrate that an international concept regarding the status of women is necessary for the betterment of women in New Zealand, as the international concept reached an idea of "perfect equality" with far more ease, clarity and neutrality than any country in the world.

(C) Chapter Three: The International Model: CEDAW and the Optional Protocol

Based on the previous chapter's conclusion that New Zealand's best approach is to use the international comparison as a benchmark for women's rights, this chapter will analyse CEDAW in detail, as the instrument that contains the most succinct collation of actions necessary to raise the status of women to equality. As a Member State of CEDAW, New Zealand's first periodic report will be compared to the rights and obligations contained in the instrument to categorically determine the status of women in New Zealand during the early 1980s. Chapter three will also examine the benefits and faults that CEDAW and its Optional

Protocol (as a more recent addition to the instrument) have in terms of direct impact on their Member States.

(D) Chapter Four: The Transition; Recent Historical Changes to the Status of Women and the Impact of CEDAW in New Zealand since Ratification

Chapter four will move the discussion of the status of women in New Zealand to the recent changes from the late 1980s until the mid-2000s. The text will focus consecutively on each of the four reports submitted to CEDAW during this period. Although culture within the private sector played a significant part in the continued unequal status of women, the emphasis within this section will be on legal and policy changes made by successive Governments as actions implemented by these bodies affected all of the New Zealand public. The aim in this chapter will be to conclusively determine how much impact CEDAW and its administering body has had on the New Zealand Government, and therefore how much intention New Zealand had (by comparing actions taken based on its obligations to CEDAW) in enforcing equality for women.

(E) Chapter Five: New Zealand Women Today; How Close is New Zealand to Conforming to CEDAW and Achieving Substantive Equality?

As the final chapter in the argument pertinent to the status of women in New Zealand, chapter five examines the current situation of women in political, economic and private sectors. The most recent report submitted to CEDAW is discussed, to discover whether CEDAW's impact has increased since the last report and whether the current National Government has had any improvement in attitude towards equality. These investigations will contribute to the supposition that obtaining "men's rights" has not been an effective strategy; gender neutrality in legislation and policy has often either resulted in women being unable to fully practice

equal rights, or minimised gender-related issues which in fact detracted from equality.

(F) Chapter Six: Conclusions and Recommendations

Chapters one through five will have shown that the historical attempt to give women “men’s rights” failed on the basis that culture is so firmly entrenched in a dominant patriarchal hegemony, that regardless of legal equal rights, women are still unable to obtain full equality. CEDAW will be proved a more appropriate and unbiased scale on which to compare equality. However, New Zealand’s lack of adherence to its obligations as a Member State will demonstrate that the instrument has little impact on the Government and that raising the status of women is not, by any means, a priority.

Recommendations will be provided with the aim of raising the status of women in New Zealand to full equality. They will be based on propositions that will likely benefit the economy in the long term as well as the welfare of the public. It is hoped that these recommendations will furnish the Government with a positive motivational influence to make a greater effort towards achieving equality in New Zealand.

Chapter 1

Historical Overview of the Development of the Status of Women

(1300 B.C. – 1970 A.D.)

The history and development of the status of women originated with customary practices. As the human race evolved into pairings or families (one man and at least one woman as well as children), so too did the sexual division of labour – briefly, in which the man hunted and the woman gathered.[12] The hypotheses, arguments and exceptions to this broad understanding are not relevant to this thesis as this section is intended to paint only a basic picture of the origins upon which the history of humanity as a culture began.

This thesis requires an investigation of societal rather than individual behaviour. Societal behaviour was developed by the unison of families with similar perspectives and desires to create larger family groups (regardless of the reasons). A number of family groups combined to make clans and tribes, and in such a matter, societies were born. Civilisations founded societies and societies built custom through belief, necessity, expectations and/or "just because that's how it has always been done." Essentially, custom[13] dictated five of the six "W's"; who could do an act, what they could do, when they could do it, how they could do it and where they could do it. The "why" of any custom frequently did have explanations (although not necessarily good or logical ones) but the explanations were often unknown to those who practiced the custom. Custom defined who

[12] Frank W Marlowe "Hunting and Gathering: The Human Sexual Division of Foraging Labour"(May 2007) 41 Cross Cultural Research 170.

[13] "Custom" (noun):

1. A traditional and widely accepted way of behaving or doing something that is specific to a particular society, place, or time;
2. A thing that one does habitually;
3. Established practice or usage having the force of law or right.

Dictionary.com "Custom" www.dictionary.com.

each person was in relation to the rest of society; their status, their place, their history and in most cases even their future.

Custom was eventually codified into law.[14] Law was custom – strengthened with rights, entitlements and obligations that had binding force on each individual within a society.[15] Custom, which was a changing, evolvable system passed on by word of mouth and action, became frozen in time, to be taken down in writing so as to make each person's role in society a static position, unchangeable except by the preference of those in positions of power and influence.

This chapter contains a short briefing on the history of the status of women from the time societal custom defined it up until laws were introduced to formalise women's position. It begins by exploring gender differences in the roots of ancient history of the first world and is limited to the larger civilisations and what is positively known of society at that time.

The next section fast-forwards through a thousand years of custom in which women's status remained relatively unchanged and examines the 17th to 19th centuries, during which Western legality originated. The pivotal focus in this chapter is on British changes, because of Great Britain's past and present influence on New Zealand's political history. The remainder of the chapter discusses an early 20th century introduction to New Zealand politics as well as social beliefs with regard to gender equality.

Part I: Ancient History

This Part of the chapter gives glimpses at several different ancient civilisations' perspective on the status of women. Although it may seem irrelevant to the equality of contemporary women or even women's rights (which were nonexistent during these eras), it is an important building

[14] "Law" (noun):
1. The system of rules that a particular country or community recognizes as regulating the actions of its members and may enforce by the imposition of penalties;
2. A thing regarded as having the binding force or effect of a formal system of rules

Dictionary.com "Law" www.dictionary.com.

[15] John Henry Merryman and Rogelio Pérez-Perdomo *The Civil Law Tradition* (3rd ed. Stanford University Press, Stanford, 2007).

block upon which much of humanity has constructed its ingrained concept of what it is to be a woman.

In effect, comprehending history is similar to understanding a house. A person can tell a lot about a house just by examining the foundations or origins. Just like the layout of the cornerstones will show the dimensions of a house, a discussion of particular histories will eventually map the development of the status of women in New Zealand. The strength and depth of the foundations will show how difficult it will be to demolish or modify the building should future years require adaptation. Custom built layer upon layer of durable material, to be concretely set into the successive 'understanding' that women were property at worst and second-class citizens at best, with the result that improvement on this status was to be vastly difficult.

It is interesting to note that many cultures and customs gave more rights to women than those given when law was being introduced. However, it appears that there has never been a time where women have enjoyed equal rights in all areas of life and society. The reasonable explanation for the early disparity is relatively simple. Power and societal dominance in ancient times was held either by birth, established as a result of nobility, or otherwise through sheer brute strength. Most work, including warmongering, was labour intensive, so it was only logical that the strongest would succeed, and women very rarely fell into the 'strongest' category (at least in the physical sense). The 'weaker' community, comprised of women, children, the sick and the elderly, slowly ceded their rights in exchange for protection, to the 'stronger' males for the sake of their own safety. 'Weaker' eventually came to mean 'inferior' in every sense (such as mentally and academically) with the result that choice was confiscated by those who were not 'inferior'.[16]

In ancient Egypt, a woman's culturally expected focus was to be her home and her domestic duties.[17] The men and older boys would work to bring in

[16] Sue Blundell *Women in Ancient Greece Volume 2* (Harvard University Press, Harvard, 1995).
[17] Cultural View "Legal Rights of Women in History" (UK) Women's History www.culturalview.com, at 20.

wages or food, and the women would cook, clean and raise the children in the safety of the home. Harems were introduced (for those men who could afford it) for the enlarged reproductive potential, the lust factor – to have as many women as possible available for sexual gratification, and also as 'tools' for political alliances.[18] International threats were nullified if they sent their daughters to the harem of a ruler; both because a woman gifted in such a way would be presented as a peace offering, and also because the possible children that would come from such a union would often unite both nations.[19] Already, women were known as 'objects' of beauty and/or use rather than beings in their own right.

There is, however, an argument that women were given some similar rights as men in certain circumstances[20] – some women could own property, real and personal, and they had a right to take someone to 'court' (or the equivalent at the time) without necessarily always requiring a male relative for representation on their behalf. As there were several women pharaohs throughout Egypt's history, it can also be deduced that at least a few women had substantial political standing.[21] Despite these exceptions, the majority of cases suggest that most positions of power and choice were held by men. This is understandable, as during this era, such positions were often given or taken by those who had physical strength, or at least had an ancestor with such strength who could carve out an easier lifestyle for his descendants.

In most areas of ancient Greece, such as Athens, women were under the full guardianship of men. Women were denied civil and political rights. A woman could not own property in her name, nor was she entitled to vote.[22] In some cases even male slaves had more rights than women since it was possible the slaves could be freed and subsequently be entitled to engage in citizen's rights. Women could only engage in trading up to a certain measure of grain's worth, and all other trade beyond this was not

[18] Pharaonic Egypt "The Harem in Ancient Egypt" (April 2010) www.reshafim.org.il/ad/egypt/institutions/harem.htm.
[19] Above n 18.
[20] Cultural View, above n 17, at 20.
[21] Cultural View, above n 17, at 20.
[22] Blundell, above n 16, at 114.

permitted.[23] Most philosophers,[24] including Plato and Aristotle, also believed in the inferiority of women.[25] As these were thought some of the greatest minds in the civilised world, their assertions that women lacked any 'good' attribute in comparison with men was seen as a legitimate reason to curtail their rights and freedom. In this way those who had education entrenched the lower cultural status of women by providing 'logical' and 'infallible' proof that women were inferior.

In a few other regions of ancient Greece, the status of women was higher than in Athens. In Sparta, women were respected because men were often at war, and were expected to be good at fighting. For example, a woman was able to manage or administer her brother's property while he was away,[26] and both boys and girls were thought to have been given a similar education, at least in terms of unwarlike activities.[27] The women were left to run much of the land and properties, however, only when their male counterparts were unavailable.

In Rome, women were generally considered citizens but were without civil or political rights. While wealthy women would have had some influence in social and employment spheres, they could not participate in politics.[28] A free woman remained under the authority of her husband or father and was not responsible for others but gained some right by being responsible for her self.[29] These matters were heavily complicated by the introduction of Christianity into Rome. Some of the rulers made life a lot harsher for women, while others made it only a little more difficult. For example, in Constantine's time, a woman would be punished by death for adultery, whereas Justinian merely required an adulteress to be banished to a convent, which was considered a lenient punishment at that time.[30] Punishments for women were commonly more stringent and harsher in these societies where a man's word or life were considered more

[23] Blundell, above n 16, at 114.
[24] Other than the the Stoics and the Cynics.
[25] Blundell, above n 16.
[26] Helen Tierney *Women's Studies Encyclopaedia Volume 2* (Greenwood Publishing Group, Connecticut, 1999), at 609.
[27] Sarah B. Pomeroy *Goddess, Whores, Wives and Slaves; Women in Classical Antiquity* (Schoken Books, New York, 1975), at 60-62.
[28] Cultural View, above n 17, at 20.
[29] Cultural View, above n 17, at 20.
[30] Cultural View, above n 17, at 21.

important than a woman's. Rome acknowledged free women as 'people', meaning 'citizens', but gave them few of the associated rights – instead their limitations and expected subservience linked them closer to servants and slaves.

It is from these periods in history that many of the principles of our Western first-world culture are based, which cultures created the status of women. Although there are some rare recorded cases of women having more rights during the Victorian and other eras, the general ground state was nothing approaching equality. Through reasoning, logical or illogical, the disempowerment and dehumanisation of women evolved and was so socially accepted as a norm that it was not successfully challenged by either men or women for thousands of years.

Part II: The Beginnings of Formalised Legality

The seventeenth and eighteenth centuries in Britain brought about revolutionary changes which effectively created, and continues to influence, modern Western society. It was a time when objection to discrimination began, but chiefly with regard to class differences. Raising the status of women did not become an issue until the end of the latter century. This historical period highlighted an important change, however. First, it marked the rise of the idea of equality in general – that all *men* should be equal under the law. Secondly, it was the time when custom began to be laboriously transcribed into formal written law, so that women's status was cemented in statutes as one that could not function as the equal of man.

A "middle class" of society emerged for the first time to challenge the declining aristocracy.[31] The Civil War (or Great Rebellion) in the mid-seventeenth century began the transition from feudalism and the medieval, to capitalism and modernity. However, after the Restoration (or Glorious Revolution) late in the century, aristocracy was reinstated

[31] David Cannadine *The Rise and Fall of Class in Britain* (Columbia, Columbia University Press, 1999), at "Introduction."

throughout the rest of the century and most of the eighteenth century. Nonetheless, in this later stage there was a shift of rule by the quasi-bourgeois elite of capitalists, which did show some significant reshuffling in class structures.[32]

The dominant, ruling class had traditionally been male nobility who had also held, but steadily lost much of the wealth of the country. The other dominant class or authority, which also owned vast wealth, was the church. Senior positions within the church were usually held by younger sons of the nobility[33] – so that the two groups were intertwined or enmeshed, and hence protected and supported the dominant hegemony in all ways. Below this class was the rapidly growing new moneyed 'middle' class (who had no vote but were gaining legal rights),[34] and the 'peasant' masses who made up the lowest class of the social hierarchy. Within the middle class group were a small number of males who closely guarded a semi-privileged status within the church, law, and university – all of which professions were closed to women – and were largely economically dependent on the ruling classes.[35] Within this entrenched framework, the cultural hegemony firmly disparaged the idea of educating women.

Almost the entirety of Great Britain was of the Christian faith during these centuries. This faith focussed on keeping each person in their correct place throughout the social upheaval. Women acknowledged themselves, as did men, as the 'Weaker Vessel' as noted in a translation of the New Testament in the Bible.[36] She was a secondary person, needing the knowledge of man to 'fill her up' so that she could become worthy.[37] Women were expected to have domestic responsibility, and any other education was considered a waste in that it neither fitted with such duties,

[32] At "class as history."
[33] Patrick Wallis and Cliff Webb, "The education and training of gentry sons in early modern England" Social History <www2.lse.ac.uk/economicHistory/pdf/Wallis/GentrySons.pdf> at 1.
[34] Cannadine, above n 30.
[35] Wallis, above n 32.
[36] King James Bible (Cambridge Ed.), at 1 Peter 3:7.
[37] John S. Taylor *Women, Rights and Society; Three Centuries of Elusive Emancipation* (Book Guild Publishing, Brighton, 2011), at 4.

nor could be used outside of the home.[38] Females were generally excluded from having any rights of engagement within the political, scientific, educational or religious arenas. Without education in these areas, they remained ignorant and their ignorance then validated their inferior status.[39]

By this time, the law of the land confirmed women as the property of either their husband or father, and as such they had no further legal status.[40] For 150 years, women could only legally exist through their male counterparts.

It was during the beginning of the industrial revolution in the 1770s and 1780s that society and politics started facilitating more significant transformations. Middle class strengthened, aristocracy faded and capitalism ruled the British Empire. A class of people called proletariats, previously found only in ancient Rome, evolved.[41] They were the exploited working-class who had few benefits in life, with miserable working conditions, little pay, unsanitary and crowded housing and few advocates effective enough to bring any change.

It was a particularly difficult time for women. If a woman was not under the authority of a man she was either a spinster or a widow – neither of which were enviable positions. The mass workshops in the cities led to crowding and high prices, which meant that many women could not afford to stay at home, but were forced into work. They were paid less than their male counterparts but were still expected to keep up with their domestic duties.[42]

Despite an inauspicious start, a formal education was one of the first positive changes to the inequality of gender status. A smattering of women were given an education by liberal (and usually rich) fathers. The term 'bluestocking', meaning "an intellectual or literary woman"[43] was a

[38] Jessica Bomarito, Jeffrey W Hunter (eds.) "Women in the 16th, 17th, and 18th Centuries - Introduction." (Gale Cengage, 2005) 1 Feminism in Literature <http://www.enotes.com/feminism-criticism/women-16th-17th-18th-centuries/introduction-2>.
[39] Bomarito, above n 37.
[40] Hardwicke's Act 1754, at chapter 2.
[41] Cannadine, above n 30, at "class as history."
[42] Bomarito,above n 37.
[43] Dictionary.com "Bluestocking" www.dictionary.com.

derogatory expression applied to them by both men and women, but out of it the idea germinated that women could be educated (on some subjects) as well as men could.[44] This, in turn, led Mary Wollstonecraft to advocate for equality between men and women, as she realised that women only appeared inferior because of their lack of education.[45] However, this radical position and ideal was eclipsed by her lifestyle, which included a totally socially unacceptable two affairs and illegitimate child. Her lifestyle inadvertently destroyed her reputation as an activist for almost a hundred years.[46] Mary's philosophies on women would not be revived until the beginning of the twentieth century and the emergence of feminism.

The seventeenth and eighteenth centuries were ones of great change for the Western world, but not for the status of women. Women's position with regard to law was firmly established as one necessarily under the guidance and dominion of men. The next century was to further formalise this status but would also introduce some rebellion to the status quo.

Part III: Status Questioned – 19th Century Britain

Nineteenth century England brought normality to the concept and class of women in full employment. Although this became accepted, it did not alter the reality that husbands still owned full rights over any benefits received by his wife.

Previously, a man owned everything surrounding a woman's life as he had paid for it all (or inherited it) and 'kept' the woman.[47] Now, a woman could contribute significantly to the annual income but she was still without any rights of ownership for her efforts. Reform for a woman's right to 'keep' herself was advocated throughout this century and only partially obtained in the final decades.[48]

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[44] Taylor, above n 36.
[45] Mary Wollstonecraft "Rights of Women" (England, 1793).
[46] William Godwin *Memoirs of the Author of A Vindication of the Rights of Woman* (London, 1798).
[47] Hardwicke's Act 1754, at chapter 2.
[48] John S. Taylor *Women, Rights and Society; Three Centuries of Elusive Emancipation* (Book Guild Publishing, Brighton, 2011).

The nineteenth century in Great Britain began with a society that forbade gender equality within its very legislation. 'Virtual Representation'[49] was practiced, where a non-democratic Parliament created laws and rules that applied to women and their carers – brothers, fathers, husbands and uncles.[50] In England and Wales, the laws constraining women were stricter; when married, the legal existence of a woman was suspended; "she can't sell, let, give away or alienate anything without her husband's consent. Her very necessary apparel, by law, is not hers in property."[51] If she did wrong, the consequences could fall on her husband's shoulders (since, under the eyes of the law, she did not exist), Common Law and case law suggested it was thus acceptable to chastise her with "a stick no thicker than his thumb and longer than his forearm" to discourage her from committing any crimes that her carer would be punished for.[52]

Scientific opinion of the time coincided with the legal campaign against equality. Notable characters such as T.H. Huxley, Charles Darwin and later Alexander Walker and Johann Jakob Bachofen all claimed "obvious" inferiority in women's physical and mental being.[53] The suggestions of these notable scholars once again gave rise to 'legitimate' reasons for ensuring the lack of status women remained static.

Unfortunately, the widespread belief of women's inferiority did not reside only with men. Many women would condemn the 'radical' woman that led her household or who wanted to be involved in politics. Even Queen Victoria,[54] the only woman with acknowledged influence over the Government, was against the idea of women's rights, believed that women should not be given the vote, and should remain in their 'rightful' place at home.[55] This was during the time when the right to vote was a highly topical argument, eventually resulting in the Great Reform Act of 1832,

[49] The idea that Parliament represented even those who were not entitled to vote.
[50] Taylor, above n 47, at foreword.
[51] The Laws Respecting Women 1777 (UK).
[52] Jennifer Freyd and JQ Johnson "Commentary: Domestic Violence, Folk Etymologies, & "Rule of Thumb" (University of Oregon, October 1998) <www.http://dynamic.uoregon.edu/~jjf/essays/ruleofthumb.html>.
[53] Taylor, above n 47 at 15.
[54] Queen Victoria ruled the United Kingdom of Great Britain and Ireland from 20 June 1837 until January 1901.
[55] Dorothy Marshall "The Life and Times of Victoria" *(Life & Times Series) Series: Kings & Queens of England* (Pennsylvania State University, July 1982).

which almost doubled the amount of men allowed to vote but gave no such right to any women.[56]

A married woman, regardless of her property beforehand, ceded all right to her husband on marriage. They could not make wills, dispose of any property (especially real property) or be a party to a contract without their husband's consent and involvement.[57] Divorced women were almost universally left destitute; she had no rights over any of her previous property, over any contact with her children, and even, as in the famous Case of Caroline Norton,[58] no rights to money she earned *after* the divorce.[59]

Single women (including those widowed, but not divorcees) in Britain technically had more rights and protections from the law than married women and if property was settled on a woman before marriage, she retained some rights of ownership to it.[60] However, social prerogative dictated that a single woman was a person of ridicule or pity and therefore, regardless of rights, it was better to be married and without legal recourse.

These laws for married and single women enshrined in the common law of England were described in Sir William Blackstone's "Commentaries on the Laws of England."[61] The reason given for women's rights to be so ceded upon marriage was both religious and apparently rational; if a man and a woman become 'one' in the eyes of God,[62] they should also be one person

[56] Cannadine, above n 30, at "class as history."
[57] Hiam Brinjikji, "Property Rights of Women in Nineteenth-Century England" Pip's World (1999) (Accessed 9 November 2012) <http://www.umd.umich.edu/casl/hum/eng/classes/434/geweb/PROPERTY.htm>.
[58] Caroline Norton "English laws for women in the 19th Century" (London, 1854); Norton attempted to separate from her husband in 1836. After leaving her marital home, her husband prevented her from seeing their three sons and severed her financial support. After her husband's unsuccessful attempt to prove her guilty of an adulterous affair, Caroline filed for divorce on the ground of cruelty. Her claim was rejected, as English law did not recognize cruelty as just cause for divorce. She then began writing to support herself. However, because she was still married, her husband was legally able secure much of her earnings for himself.
[59] Brinjikji, above n 56.
[60] Brinjikji, above n 56.
[61] Sir William Blackstone (1769) "Of Husband and Wife" *Commentaries on the Laws of England (1765-1769)* Lonang Institute.
[62] King James Bible (Cambridge Ed.), at Mark 10:8: "And they twain shall be one flesh: so then they are no more twain, but one flesh."

under the law. That person was represented by the husband.[63] As there was no such representation for a single woman, she was able to be in control of her assets until a more suitable arrangement was made.

Reform began to be called for, but was without much strength. The Dower Act 1833 illustrates this. It was introduced to allow married women to re-own their property once widowed, but ultimately, it proved to favour men as an individual woman got nothing other than what her husband had privately elected to bestow on her.[64]

In the beginning of the 1800s, if a woman became pregnant without being married, the man named as the father of the child had to pay the mother maintenance for their child. This maintenance law changed in 1834 as a result of the Poor Law Amendment Act 1834, which attempted to promote female chastity. Although that Act was repealed ten years later by the subsequent Conservative Government,[65] the cost for a woman to search for the absent father was often too high and little could be done to enforce any maintenance payout.[66]

By the mid 19th century, individual perceptions began to change and many women decided not to marry. This presented a social conundrum: on the one hand, the establishment still considered women unable to be autonomous and yet, on the other, women *chose* to be 'spinsters' (also a socially derogatory term).[67] The lawmakers did not know how to respond to such behaviour. A working woman, single or married eventually became relatively socially acceptable and in many cases a necessity for the survival of the family. This transition marked the official beginning of interest in equality by women.

Caroline Norton was a catalyst for progress by publishing a pamphlet in 1855 titled "A Letter to the Queen on Lord Chancellor Cranworth's Marriage and Divorce Bill," in which she explained the unacceptability of

[63] Susan Staves *Married Women's Separate Property in England, 1660-1833* (Harvard University Press, London, 1990), at 133.
[64] At 49.
[65] Taylor, above n 47, at 18.
[66] At 18.
[67] At 24.

the lack of rights for women.[68] The support for this pamphlet eventually led to the Divorce and Matrimonial Causes Act 1857, which established new divorce and matrimonial property laws.[69] However, since the Act did not affect the rights of women who continued to live with their husbands or those who were deserted by their husbands but not officially divorced, more effective rights for women were still sought.[70]

In the mid-to-late-nineteenth century, a woman's wage for doing the same work as a man in a factory, was around half of his.[71] A woman's work was limited to the labouring and housekeeping sectors, so most professions and many jobs were denied to her. The problem by this time was not that women were denied the right to work, but were rather denied the right to work for reasonable pay, and the right to choose what sector of work in which they could participate. However, as most women were not permitted to have a valid contract without their husband's consent, it was an issue that could not be resolved until other changes had eventuated.

Reforms for the rights of married women continued and finally resulted in the Married Women's Property Act 1870. Although this Act was seen as "fraught with compromise and contradiction"[72] because most property remained under the control of the husband, it did represent a small improvement and gave incentive to women to push for further rights.[73] Between 1857 and 1882, eighteen Married Women's Property Bills were introduced in Parliament[74] culminating in an ultimate and impressive success for women in the Married Women's Property Act 1882 that gave the power for a wife to own, buy, and sell her separate property – meaning that a husband and wife were officially considered two separate entities.[75]

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[68] Letter from Caroline Norton to the Queen regarding Lord Chancellor Cranworth's Marriage and Divorce Bill (London, 1855).
[69] Brinjikji, above n 56.
[70] Brinjikji, above n 56.
[71] Taylor, above n 47 at 25.
[72] Elizabeth R Helsinger, Robin L Sheets, and William Veeder *The Woman Question: Social Issues 1837-1883* (New York, Garland, 1983), at 21.
[73] Brinjikji, above n 56.
[74] Trevor May *An Economic and Social History of Britain: 1760-1970* (Longman, New York, 1987), at 276.
[75] Brinjikji, above n 56.

In essence, science, religion, philosophy, education, nature, reason, utility and history had all corroborated to agree that women should not be autonomous. It would have been practically impossible for women to be able to deny any of these charges had it not been for the Industrial Revolution. Necessity forced thousands of women into ‘men’s’ work. With this came the hope (only realised many years later) that women could equal men in other areas of life. It indicated that the strict rules for their ‘protection’ might be unnecessary and gave rise to the desire to be self-accountable by owning what wage they had earned.

Thus, the foundations were measured and set, so that any house or future built upon them would logically follow the dictates of their dimensions or history. The nineteenth century began with an upheaval and denial of all that had been previously set in stone, in terms of class structure, social expectations and new technology. On a background of complete rejection of the supposition that women could function without a man, impressive progress was made by the small gain in some autonomy married women achieved. Although the improvement was significant based on a standard that had never been changed throughout history, it was in reality a small success in comparison to the effort that went into attaining it. Because of the successive eras steeped in the ideology of male hegemony, it was to be essentially the first in an endless line of examples that would go to show the difficulty women had in trying to change this culture by even a small amount.

What transpired in Great Britain also became the basis of the status of women in New Zealand. Although it was not an ideal foundation, it was the best, as it were, of a bad lot. England was one of the first countries to reach the Industrial Age, and thus, to recognise that the accepted status of women was not necessarily correct. By building on this bedrock, New Zealand was given a good chance to be a woman’s rights leader of the world – as indeed it was for some time.

Part IV: The Beginning of New Zealand Women’s Rights

(A) The First Wave of Feminism in the Late Nineteenth and Early Twentieth Centuries

From the Age of Enlightenment up until the early twentieth century, the European and Western world saw the rudimentary beginnings of a global attempt at defining and extending human rights.[76] However, most of these definitions and discussions ignored half the human race by proclaiming them the rights of *man*.[77] Just prior to the twentieth century, the women's movement gained strength by rebelling against laws that constrained their lives. Women in many of the first world countries, such as Britain and America fought against what was effectively the legal status of a child, and instigated the demand for equality.[78]

In a survey of women's writings throughout these movements, it was shown that the changes in gender status began with a debate on economic issues, such as women wanting greater property rights, employment opportunities and education.[79] The concept of equality and the strength of the movement led to the understanding that the only way women would be able gain other human rights was through political liberalisation.[80] Hence, women's suffrage became the major focus of campaigns as it symbolised their inequality.[81]

The same arguments found in British and American history were echoed in New Zealand. Women's demands for the vote in New Zealand were more successful than that of any other country in the world. In 1893, New Zealand women were the first in the world to be given it.[82] Although a momentous step forward for gender equality, there was a thorn in the sheep's wool – women were given the right to vote for which man they

[76] Samuel Moyn, *The Last Utopia: Human Rights in History* (Harvard University Press, 2010).
[77] Amnesty International *Women's Rights; Changing Attitudes 1900-2000* (Wayland Publishers Lt,; England, 1999), at 4.
[78] Van Wingerden and Sophia A *The women's suffrage movement in Britain, 1866-1928* (Macmillan Press, 1999).
[79] Charlotte MacDonald *The Vote, the Pill and the Demon Drink; a History of Feminist Writing in New Zealand 1869-1993* (Bridget Williams Books, Wellington, 1993), at 7.
[80] Margaret Wilson "Women and Politics" Raymond Miller (ed.) *New Zealand Politics in Transition* (Oxford University Press, Oxford, 1997), at 4.
[81] At 4.
[82] Amnesty International, above n 76, at 8.

wanted to represent them, but were not given the right to represent and stand for Parliament until almost three decades later.[83]

It was previously incorrectly presumed that legal incapacity was the only barrier to equality.[84] Capacity may have been the biggest barrier to the creation of women's rights but it did not follow that with similar political rights, other inequalities would also be rectified. The distinction between the right to vote and the right to represent voters illustrates that little enough damage was envisioned for New Zealand society as long as women could only elect a patriarchal leader for the country, but the line was drawn at the suggestion (or fear) that women would elect women if given the chance.

The early 1900s has often been called 'the black hole' of New Zealand feminist history.[85] This was a reasonable analogy bearing in mind the vote was won and the issue of woman's rights was, by some, considered to be dealt with and any further action rendered unnecessary. However, throughout the rest of the developing industrial countries, suffrage was being gained with the result that New Zealand, Britain and the United States of America were some of the last Western countries to give women full political emancipation.

In New Zealand, the National Council of Women ("NCW")[86] attempted to remove the obstacles to women's parliamentary candidature. It was made up of representatives of 11 women's groups from around New Zealand that got together with the aim to:[87]

> Unite all organised Societies of Women for mutual counsel and co-operation, and in the attainment of justice and freedom for women, and for all that makes for the good of humanity.

It had some successes, such as the repeal of the Contagious Diseases Act 1869 in 1910, which Act subjected any woman deemed to be a

[83] Margaret Wilson "Challenging Law and Legal Processes – An Introduction and Overview" (New Zealand Law Society Seminar, 1993).
[84] Wilson, above n 79, at 4.
[85] MacDonald, above n 78, at 8.
[86] Established in 1886.
[87] New Zealand History Online "National Council of Women – Women and the Vote" Ministry for Culture and Heritage (Updated 30 August 2012) Accessed 12 November 2012 http://www.nzhistory.net.nz/politics/womens-suffrage/national-council-of-women.

'common prostitute' to forcible medical examination and detention.[88] Other achievements included the passing of the Criminal Code Amendment Act 1896, which raised the age of sexual consent from 14 to 16; the Female Law Practitioners Act 1896, which enabled women to become lawyers; and the Divorce Act 1898, which made conditions of divorce equal for men and women. The final goal of being able to stand for Parliament was won in 1919.[89]

Perhaps more importantly than the legislative changes, the NCW provided women with networking and public speaking opportunities that they would not have had without such a large contingent united by the same aims. Nevertheless, the Council did not last for long. Not all women had the same goals since the overarching aim had been achieved. Some campaigned for equal employment opportunities, while others demanded sexual autonomy.[90] Many of the conservatives were content with the status quo and believed that winning the right to stand for Parliament as the final necessary fight. The NCW went into recess in 1906.

New Zealand led the world in giving women suffrage, while most countries were only just beginning to seriously consider the idea. In England, the battle for suffrage appeared to be a lot fiercer. The creation of the Women's Social and Political Union in 1903 was well attended and used high-profile, direct-action campaigns to promote equality for women.[91] Some of their actions included chaining themselves to Parliament building, putting acid in poll boxes, going on hunger strikes and attempting to stop the King's horse during the Derby races.[92] There were, however, many more peaceful movements led by women who could not afford to be arrested and/or lose work.[93] These responses included protest marches, picketing, and joining other social or political organisations that were not so antagonistic.

[88] Eldred-Grigg S *Pleasures of the Flesh: Sex and Drugs in Colonial New Zealand 1840-1915* (A H and A W Reed, Wellington, 1984).
[89] New Zealand History Online, above n 86.
[90] Amnesty International, above n 76, at 8; New Zealand History Online, above n 86.
[91] Amnesty International, above n 76, at 10.
[92] Amnesty International, above n 76, at 10.
[93] Amnesty International, above n 76, at 10.

In America, there was greater positive progress. Fifteen states had granted women the right to vote by 1915, but the campaign to change the US Constitution to allow women full citizenship was consistently ignored.[94]

After the First World War was declared in 1914, change had forced the hand of many countries. Women began to enter the workforce in much greater numbers than previously known, not only in domestic service, but all other trades, since there were not enough men to fill the empty posts created by the war. By 1918, at the end of the war, many men arrived home expecting life to return to normal. However, women found working life outside of the home more fulfilling than domestic duties and as many of the men were physically and mentally unwell, these changes became fixed. As women stayed in their employment even after there were enough men to replace them, women's suffrage was more easily adopted in other countries. Australia, Finland, Russia, Norway, the Kingdom of Denmark (as it was then), Canada, and Austria[95] all gave women the vote on or before the 1920s. Britain finally ceded women over 30 the right to vote in 1918 and, seemingly one of the last, the United States of America gave all women in all States the vote in 1920.[96]

In New Zealand, the NCW was revived again by women such as Kate Sheppard, Jessie Mackay and Christina Henderson after the First World War.[97] Apart from anxiety at the moral decline of the country's youth, the reason for this revival was that many women had taken employment where they learned important administration and organisational skills which some of them wanted to continue to utilise.[98]

In the 1920s, New Zealand was led by William Massey and the Conservative 'farmer's' Government which gave little attention to the status of women's rights other than an attempt to improve the conditions of giving birth.[99] Women were, however, campaigning for equality, especially for those political rights such as standing for parliament, joining political

[94] At 10.
[95] At (1902), (1906), (1917), (1913), (1915), (1917) and (1919) respectively.
[96] Amnesty International, above n 76, at 15.
[97] New Zealand History Online, above n 86.
[98] New Zealand History Online, above n 86.
[99] MacDonald, above n 78, at 8.

campaigns and establishing women's organisations.[100] Their limited success in these areas may be the explanation behind the dismal naming of this time period as the 'black hole.'

(B) The Mid-Twentieth Century

By the 1940s, the Second World War forced economic issues, rather than political ones, to return to the forefront of discussion. More than a quarter of New Zealand's women were in the workforce so at the forefront of women's political lobbying was the goal of obtaining better rates of pay.[101] The new National Council of Women New Zealand ("NCWNZ") established 14 branches nationwide and coordinated women's petitions to give to the government.[102] The Women Jurors Act 1942 was introduced to allow women aged between 25 and 60 to sit on the jury if they chose.[103] The Women Jurors' Amendment Act of 1963 provided that the names of all women be included in the Jury List, albeit with an absolute right of withdrawal.[104] It is fascinating to note that after decades of demanding political rights, very few women took advantage of the right to represent, whether on juries or in government.[105] It confirms the fact that although political rights were recognised as the first and foremost necessity, they had always been an indirect way of gaining other, seemingly more important rights such as equal pay, rather than an object in and of itself. Women's groups continued to campaign for legislative change (specifically in the public sector) as the impression that legal rights would translate to equality had not yet been discovered ineffectual.

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[100] At 8.
[101] Dorothy Page *The National Council of Women: a Centennial History* (Auckland University Press Bridget Williams Books, 1996).
[102] National Council of Women New Zealand "Our History" (Retrieved 13 November 2012) http://www.ncwnz.org.nz/our-history-2/.
[103] New Zealand History Online "1942 – Women Jurors Act allows women to sit on juries" Ministry for Culture and Heritage (Updated 30 August 2012) (Retrieved 13 November 2012) http://www.nzhistory.net.nz/the-women-jurors-act-allows-women-to-sit-on-judicial-juries-for-first-time.
[104] An Encyclopaedia of New Zealand 1966 "Women' role in New Zealand Society; Civic and National Services" (Updated 23 April 2009) (Retrieved 13 November 2012) http://www.teara.govt.nz/en/1966/womens-role-in-new-zealand-society/7.
[105] New Zealand History Online, above n 101.

By 1957, the Council for Equal Pay and Opportunity was formed. NCWNZ, unions and influential affiliated societies joined the Council in which it was successful in supporting the enactment of the Government Service Equal Pay Act 1960, which, though relatively ineffective in providing equal pay in the public sector, is still in force today.[106]

After the World Wars, when international financial depression hit, there was a growing interest in women's issues increasingly based around the notion of better employment opportunities. The media became an important and a dangerous tool, as it discussed aspects of women's rights yet simultaneously propagated the stereotypical woman in many viewings. Higher educational facilities such as universities began to allow women to join which led to some professional women in the employment sector as well as labourers. However, by 1965, statistics show women were still earning only up to 60% of men's earnings,[107] firstly because there were few (if any) women in managerial roles with qualifications and secondly, because their labour was not considered as valuable as a man's labour.[108]

In the 1960s, in some part because of the reintroduction of relative prosperity, the focus began to change from economic values to social ones. Women wanted to change their image beyond the successful and efficient housewife, to someone independent in their own right. The boundaries and expectations of marriage and sexual individuality were challenged, eventually leading to the Women's Liberation's movement in the 1970s in both New Zealand, and the wider Western world.[109]

In the late 1960s, the NCWNZ, through its president, Mavis Tiller (1966-1970) moved into its modern role. The Parliamentary Watch Committee, clarified in 1968, acted as the most effective political action group for women by making submissions on most bills and many discussion papers.[110]

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[106] National Council of Women New Zealand, above n 100.
[107] This statistic refers to women in the United States and is assumed to have been similar in countries such as New Zealand.
[108] Amnesty International, above n 76, at 35; MacDonald, above n 78, at 8.
[109] MacDonald, above n 78, at 9.
[110] National Council of Women New Zealand, above n 100.

Women were encouraged by women's groups to seek membership on boards and organisations in order to continue to campaign for equal employment rights.[111] Progress was uncommon and limited in nature, which introduced the understanding that without power, equality was not going to be handed to them. Power was originally seen as the ability to vote. But as there were practically no women in any positions of authority in New Zealand, there was no one to advocate for equality in other areas and no interest from those that it did not affect.

Conclusion

This chapter has shown how the status of women in New Zealand and in the world had an origin that indicated, implied and stated that they were worth much less than a man and of no more value than property. Gender differences began by being embedded in culture, religion and society's belief in the greater status of men and therefore the lesser status of women. The starting point evolved somewhat in the latter centuries, but only after culture had been modernised into law. However harsh the original laws were, they gave a handhold to the potential for change that culture did not – law was more easily improved and affected a wider group than a culture of centuries that only changed with each successive generation.

However, despite being easier to change, it was also less effective. The status of women changed little until culture itself changed with the Industrial Age and the World Wars when these external circumstances forced women to work outside of the home. This resulted in an enlightenment of women to an understanding of the current status quo, and it was found both wanting and unacceptable. Social norm had been distorted but social foundations remained similar; it was conceded that women could survive on their own, but they were still not an 'equal' of men. Other than achieving suffrage, most laws relating to women created afterwards were relatively empty of effective rights.

[111] National Council of Women New Zealand, above n 100.

This chapter is pivotal to the status of women in New Zealand today as it details the foundational history upon which ‘equal’ rights have been superimposed. Accordingly, when equal treatment or ‘equality’ is discussed, it is important to be mindful that equal treatment of two classes of people with different starting points will not necessarily result in equal outcomes.

Chapter 2

Evolution of Modern Legislative Equality in New Zealand During the Mid-Twentieth Century:

National and International Influences

By the mid-twentieth century, the status of women's rights was relatively uniform in many Western countries, such as Great Britain, the United States of America, Australia and New Zealand. The two World Wars brought human rights, such as civil, political and warfare rights to the forefront of international discussion. The prominence of these other rights eventually led to the birth of international women's rights.

International human rights bodies were created to police signatories to human rights documents. Both the Geneva Conventions and the Lieber Code in 1864 provided the basis for general international humanitarian rights which were first given effect to during the First and the Second World Wars.[112] This included the introduction of the modern human rights instruments currently in force as well as the Treaty of Versailles established by the League of Nations at the end of the First World War.[113] Later, in the 1945 Yalta Conference, a new body was created to supplant the League, a body known as the United Nations ("UN"). The UN has since played a pivotal role in all aspects of international human rights.[114]

Broad international human rights documents, such as the Universal Declaration of Human Rights (UDHR),[115] the International Bill of Human

[112] International Committee of the Red Cross "State Parties/ Signatories: Geneva Conventions of 12 August 1949" (Retrieved: 22 January 2013) <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=375&ps=P>.
[113] Malcom Shaw *International Law* 6th ed. (Cambridge University Press, Leiden, 2008).
[114] Shaw, above n 111.
[115] UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: http://www.unhcr.org/refworld/docid/3ae6b3712c.html

Rights[116] (which consisted of the UDHR and the International Covenant on Civil and Political Rights)[117] and the International Covenant on Economic, Social and Cultural Rights were introduced.[118] These wider instruments attempted to further delineate the rights referenced in the original United Nations Charter[119] which were to "reaffirm faith in fundamental human rights, and dignity and worth of the human person" and committed all members to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."[120]

International instruments targeted at sector specific rights were also launched in the mid-twentieth century, such as the Convention on the Prevention and Punishment of the Crime of Genocide,[121] the Convention Relating to the Status of Refugees,[122] the Convention on the Elimination of All Forms of Racial Discrimination[123] and finally, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).[124]

[accessed 22 May 2012] (Adopted by the United Nations General Assembly on 10 December 1948 at Palais de Chaillot, Paris).

[116] UN General Assembly, *International Bill of Human Rights*, 10 December 1948, A/RES/217(III)A-E, available at: http://www.unhcr.org/refworld/docid/3b00f08b48.html [accessed 22 May 2012].

[117] UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: http://www.unhcr.org/refworld/docid/3ae6b3aa0.html [accessed 22 May 2012].

[118] UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: http://www.unhcr.org/refworld/docid/3ae6b36c0.html [accessed 22 May 2012].

[119] National Coordinating Committee for UDHR50 "Drafting and Adoption; The Universal Declaration of Human Rights; Cataclysm and World Response" (27 August 1998) http://www.udhr.org/history/overview.htm#Cataclysm and World Response; National Coordinating Committee for UDHR50 "Didn't Nazi tyranny end all hope for protecting human rights in the modern world?" (28 August 1998) <http://www.udhr.org/Introduction/question4.htm>.

[120] United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, available at: http://www.unhcr.org/refworld/docid/3ae6b3930.html [accessed 12 March 2012], preamble and article 56.

[121] UN General Assembly, *Prevention and punishment of the crime of genocide*, 9 December 1948, A/RES/260, available at: http://www.unhcr.org/refworld/docid/3b00f0873.html [accessed 22 May 2012].

[122] UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: http://www.unhcr.org/refworld/docid/3be01b964.html [accessed 22 May 2012].

[123] UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, available at: http://www.unhcr.org/refworld/docid/3ae6b3940.html [accessed 22 June 2012].

[124] UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: http://www.unhcr.org/refworld/docid/3ae6b3970.html [accessed 22

This chapter focuses on the events that led up to the adoption of CEDAW, both internationally and domestically.

In totality, the international instruments provided formidable mechanisms that attempted to codify and advocate full rights to the majority of people.[125] However, the idealism of the declaration of these rights has been diminished by their lack of direct power of influence: the ideal was limited by the inability of the UN to take substantive action to protect such rights. In an objective forum, the collective states, NGOs, experts and individuals within the UN could uphold particular basic rights each individual or group should be entitled to, but they could not force each sovereign power to cede the control or policing of those rights within their territories.[126] Each country could choose whether to be a member state of an international instrument and then had to regulate the principles of the instrument themselves.

This chapter explores the influence and impact of international discussion on the status of women, as to whether it affects New Zealand domestic legislation. Such an investigation is necessary to this thesis for two reasons. First, because New Zealand took part in the international conferences which focused on improving the status of women and thus formed a link between international movements and domestic ones and secondly to show that although the foundations of international views on the status of women were not perfect, the international perspective still provides best practice and a model for New Zealand against which it can be compared and improved.

January 2012] (Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979. Entry into force 3 September 1981, in accordance with article 27(1)) – [CEDAW].

[125] All fully consenting adults – as the Convention on the Rights of the Child (UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: http://www.unhcr.org/refworld/docid/3ae6b38f0.html [accessed 12 May 2012] adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 and Convention on the Rights of Persons with Disabilities (UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 13 December 2006, A/RES/61/106, Annex I, available at: http://www.unhcr.org/refworld/docid/4680cd212.html [accessed 22 May 2012]) were not adopted at this point.

[126] Samuel M Makinda "The United Nations and State Sovereignty: Mechanism for Managing International Security" (1998) 33 Issue 1 Australian Journal of Political Science 101.

The main issue surrounding the transferability of international women's rights to domestic ones is the same as the difficulty between formal and substantive equality.[127] Formal equality (with regard to the status of women) denotes equal rights accorded to women formally, using such means as legislation and texts that are gender-neutral, that provide for a minimum equal state without regard to sex and specifically outlaw action taken (negative or positive) based solely on discriminatory reasons.[128] This is also known as "like cases must be treated alike," in this case, men and women are treated as "like" and therefore should be treated "alike."[129] It provides for equal opportunity for each group without taking into account history of a particular group and whether that group has been discriminated against to the point that equal *opportunity* does not provide equal *outcomes*.[130] Substantive equality is the achievement of equal outcomes for both women and men, even if that requires inequality of opportunity.[131] Once substantive equality is practiced, formal equality can reflect a greater role in a society in which there are no separate and distinct 'starting points' or discriminations against either men or women.

The corresponding histories of growth of international and domestic law are significant, as both evolved in a theoretically similar way as regards the equality of gender and the recognition that women's lack of equal status should be rectified. However, conclusions do not necessarily correspond to action, so when the United Nations and New Zealand found that formal rights did not translate into substantive equality, New Zealand did not take action that gave women substantively equal rights to men, and formal rights continued to be implemented. International law focussed on equality and rights, and because it did not have an inherently biased

[127] The definition of the terms "formal" and "substantive equality" have been the subject of much legal and philosophical debate, the purpose of which does not interfere with the aim of this Thesis. The remainder of the paragraph expresses the general understanding of the terms.
[128] J Gregory Sex *Race and the Law: Legislating for Equality* (Sage Publications Inc, United States, 1988) ISBN 0-8039-8107-4.
[129] Robin West "Re-Imagining Justice: Progressive Interpretations of Formal Equality, Rights, and the Rule of Law" (Dartmouth, 2003) Georgetown Public Law and Legal Theory Research Paper No. 12-074, at 107.
[130] Michel Rosenfeld "Substantive Equality and Equal Opportunity: A Jurisprudential Appraisal" (1986) 74 Issue 5 California Law Review Article 3.
[131] Catherine Barnard and Bob Hepple "Substantive Equality" (2000) 59 Cambridge Law Journal 562, at 563.

culture, formal and substantive equality mirrored each other in terms of outcomes and opportunities. International law however did not focus on the enforcement of the right to equality, which was the challenge for domestic jurisdictions.

The chapter covers the years from the mid to late twentieth century and is laid out in chronological order. There are three parts, reflecting the different eras of change in the status of women and based loosely around important dates within the United Nations Decade for Women. Each part is made up of two main sections; first, an international perspective of the changes and significant conferences on women's issues within the UN; and secondly, a domestic perspective and link to the changes made within New Zealand for that corresponding period.

Part I: The First International Women's Conference

The first section of this part gives a background as to how the status of women came to be a major concern in the United Nations beginning from the mid-1940s. This period overlaps the period reviewed in the previous chapter to create an understanding of the development of international women's rights that happened parallel to New Zealand's changes after World War II.

The second section examines the first International Women's Conference ("IWC") in 1975 which officially kick-started the United Nation's attempt to raise the status of women to equality with that of men. In the final section, detail is given on women's rights in New Zealand around the time of the first IWC.

(A) Global Changes

The UN was founded in 1945 to replace the failed League of Nations.[132] Its purpose was to "maintain international peace, to promote cooperation in

[132] United Nations "History of the United Nations" (Retrieved: 11 November 2012) <http://www.un.org/en/aboutun/history/sanfrancisco_conference.shtml>.

solving international economic, social and humanitarian problems and to provide a platform for dialogue."[133] Support for the advancement of women is thought to have originated with the United Nations Founding Charter[134] which in its preamble reaffirms "faith in fundamental human rights, in the dignity of the human person, in the equal rights of men *and women* [emphasis added] and of Nations large and small."[135] The Charter also stated intention to;[136]

> Achieve international co-operation… in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

With these two purposes, the UN provided a promising launch to develop international human rights that seemingly lacked any discrimination against women. Nevertheless, while intentions for equality appeared flawless, the UN was made up of men (in the majority) whose history and culture was based in that of the real world.[137] Women's issues would not be discriminated against so much as left unconsidered without prompting.

The few women that were involved believed that women's issues should be deliberately brought to the fore and challenged. The UN General Assembly was established by the UN Charter. It is one of the six principal organs of the UN and the only body in which every member of the organization is represented and allowed to vote.[138] During its inaugural meeting on the 12th of February 1946, women took the first stand to encourage equality for women within the UN. Eleanor Roosevelt, a United States delegate, read an open letter addressed to "the women of the world" stating that women should be encouraged to more actively participate in politics and that participation in the UN should grow.[139] Within days of this address, a Sub-Commission dedicated to the Status of

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[133] United Nations, Above n 130.
[134] United Nations "Women" (2010) Global Issues www.un.org.
[135] United Nations, above n 118, Preamble.
[136] At Article 1.
[137] United Nations, above n 130.
[138] Encyclopædia Britannica Online "United Nations General Assembly" (Retrieved: 21 November, 2012) <http://www.britannica.com/EBchecked/topic/228351/United-Nations-General-Assembly>.
[139] United Nations Special 2012 *An open letter to the women of the world* (retrieved 21 November 2012) http://www.unspecial.org/2012/03/an-open-letter-to-the-women-of-the-world/.

Women was established under the Commission on Human Rights.[140] However, many women delegates believed this was not enough and that an entirely separate body specifically dedicated to women's issues was necessary for true support of the advancement of women.[141]

This was achieved a few months later. The application for full Commission status had to be approved by the Economic and Social Council ("ECOSOC") as much of its work is to establish functional commissions on topics such as human rights.[142] The Sub-Commission therefore requested full Commission status from ECOSOC in May 1946.[143] The application was successful and the Commission on the Status of Women ("Commission") was established on 21 June, 1946; making it the leading global, policy-making body on women's rights.[144] Its mandate was to "prepare recommendations and reports to [ECOSOC] on promoting women's rights in political, economic, civil, social and educational fields" and to make recommendations "on urgent problems requiring immediate attention in the field of women's rights."[145]

The Commission had similar status as other commissions under ECOSOC, such as the Commission for Social Development and the Commission on Crime Prevention and Criminal Justice,[146] which indicated that women' issues were being treated as a serious concern. The relative ease with which this status was achieved, demonstrated the significant differences between countries that had a history of underrating women and an international body, with little history and an overarching intention to gain equality and peace.

The Commission made its first major impact during the time the UN Declaration was being drafted. In 1948, the UN Declaration reaffirmed the purposes of Human Rights in gender neutral language, as a result of the Commission's arguments against (and defeat of resistance to) such

[140] United Nations "Short History of the Commission on the Status of Women" (2000) Women's Watch <www.un.org>, at 1.
[141] At 1.
[142] Encyclopædia Britannica Online, above n 140.
[143] United Nations, above n 138, at 1.
[144] At 2.
[145] United Nations, above n 132; United Nations, above n 138, at 2.
[146] United Nations Economic and Social Council "Subsidiary Bodies of ECOSOC" (2012) <http://www.un.org/en/ecosoc/about/subsidiary.shtml>.

phrases as “men” as a synonym for humanity and phrases like “men are brothers.”[147] Although the Commission was successful in this instance, it shows that women’s historical international status was also imperfect in that there was lingering discrimination even within the UN. Again, there was nothing to imply that the drafting was done to deliberately exclude women. Rather, it appeared to be an inadvertent fallback whereby ‘man’ *could* be synonymous for ‘humanity’ or ‘mankind’ because half a century previously, men were the only part of humanity that could actively participate in life outside the home. In the UN, the first argument women had and won was against male exclusivity in language.

Global awareness of women’s issues became the focus of the Commission’s attention. However, codification of action that would raise the status of women to equality could only be accurately negotiated once the global position of women was known. The Commission consequently led an immense research and polling effort to assess the status of women worldwide.[148]

The data collected indicated that full participation in the political arena was explicitly denied to women in at least 22 countries and in more where women had the legal rights but no real practical application of them.[149] After significant debate, the Commission succeeded in convincing the General Assembly to adopt the Convention on the Political Rights of Women in 1952.[150] The Convention recognised and protected the rights of women’s entitlement to vote in any election, run for election to any office, and hold any public office or exercise any public function under national law.[151]

The Convention was the first in a series that the Commission petitioned to be adopted. Other data that had been collected confirmed that most women were still facing discrimination in all areas of family life –

[147] Devaki Jain *Women, Development and the UN*: *A Sixty-year Quest for Equality and Justice* (Indiana Press University, Bloomington, 2005), at 19-20.
[148] The United Nations Blue Books Series *The United Nations and the Advancement of Women, 1945-1996* (Rev. ed, New York, 1996) Vol 6, at 4.
[149] At 4.
[150] UN General Assembly *Convention on the Political Rights of Women* (20 December 1952) A/RES/640(VII) (Meeting Record A/PV.409, C.1 plenary, 7th sess., Agenda Item no. 61).
[151] UN General Assembly, above n 149.

specifically in that of marriage, divorce and family residence.[152] The Commission drafted three documents for adoption by the General Assembly: the Convention on the Nationality of Married Women in 1957,[153] the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages in 1962,[154] and the Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages in 1965.[155] That the Commission was generally successful in its applications revealed its power and influence in relation to other women's movements during this time. When compared to much of the rest of the Western world in which political equality had in fact been accepted although not enacted, women had little, if any, political power to influence their governments.

In an effort to consolidate all women's rights issues in one document, in 1963, the General Assembly asked the Commission to draft a Declaration on the Elimination of Discrimination against Women ("DEDAW").[156] It was noted that, at the time, although some progress had been made to eliminate gender discrimination, in fact, if not in law, there remained considerable discrimination against women in most aspects of life.[157] In this recognition, there was the understanding that formal rights of equality often did not automatically link with substantive rights and therefore, this discrepancy could be highlighted and hopefully reduced. DEDAW challenged UN Member States to look at the whole picture of discrimination, rather than focusing on only the legal aspect.

The drafting of DEDAW began in 1965 with help from women's rights activists who provided expertise. It was adopted by the General Assembly

[152] United Nations, above n 132; United Nations, above n 138, at 5.
[153] UN General Assembly *Convention on the Nationality of Married Women* (29 January 1957) A/RES/1040 (XI) (Meeting Record A/PV.647, C.3 plenary, 11th sess., Agenda Item no. 33.).
[154] UN General Assembly *Convention and draft Recommendation on Consent to Marriage, Minimum Age for Marriage Registration of Marriages* (07 November 1962) A/RES/1763 A (XVII) (Meeting Record A/PV.1167, C.3 plenary, 17th sess., Agenda Item no. 44).
[155] UN General Assembly *Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages* (01 November 1965) A/RES/2018 (XX) (Meeting Record A/PV.1366, C.3 plenary, 20th sess., Agenda Item no. 59).
[156] Jain, above n 146, at 52.
[157] United Nations, above n 138, at 7.

on the 7th of November, 1967.[158] Although the document appeared to successfully encompass women's rights to equality, it was ineffective, based on the fact that the reporting procedure for Signatory States was only voluntary, and thus, little reporting was actually done.[159] There was also no process for implementing, follow up or evaluation. This indicated there was practically no improvement on the status of women as there was a paucity of information from each member state that could be collected and highlighted. The scarcity meant that there was little to go on to determine whether or not there was inequality and thus encourage improvements.[160] Recognition of this error led to a need to create a document that ensured a reporting procedure was mandatory to Member States. However, after DEDAW was adopted, there was negligible improvement to women's issues throughout the UN, other than suggestion by the Commission, and eventual preparation for the first IWC to take place seven years later.

(B) The First International Women's Conference (1975 +)

In 1975, on the 25th anniversary of the Commission at an IWC organised in Mexico City, the UN General Assembly declared 1975 as 'International Women's Year'. The declaration was intended to serve as a reminder to the international community that discrimination against women was still entrenched in law and deeply rooted cultural beliefs. The declaration was also an encouragement to governments and non-governmental organisations ("NGOs") to promote gender equality.[161]

As a result of this, two of the three key objectives for the Conference had been identified by the Commission. The General Assembly had identified

[158] United Nations, above n 138, at 7; UN General Assembly *Declaration on the Elimination of Discrimination Against Women* (07 November 1967) A/RES/2263 (XXII) (Meeting Record A/PV.1597, C.3 plenary, 22nd sess., Agenda Item no. 53).
[159] United Nations Blue Books Series, above n 147, at 30.
[160] At 30.
[161] United Nations, above n 138, at 8.

a third and final key objective that would form the basis of the UN's goals for women. The objectives were:[162]

1. Full gender equality and the elimination of gender discrimination;
2. The integration and full participation of women in development; and
3. An increased contribution by women in the strengthening of world peace.

At the time, it was to be the largest acknowledgement and gathering for raising the status of women in the world. Over 130 governments participated in the IWC, while approximately 4,000 NGO representatives made up a parallel forum called the 'International Women's Year Tribune'.[163] All agreed that it was necessary to adopt a 'World Plan of Action' with minimum targets that each state should try to achieve. These targets focussed on equality of education, employment opportunities, political participation, health services, housing, nutrition and family planning rather than obtaining only formal legal opportunities in these areas.[164] It was clearly an idealistic expectation to suppose countries would be able to realize these goals completely; nonetheless, the IWC had highlighted each area where discrimination was taking place and created goals for future improvement so that direct and specific action could take place. Although unrealistic for some countries, these aims set a difficult target to ensure effort would be made by all, rather than just those who were behind the leaders in equality.

The Conference approached the issue of women's equality by assuming women were not passive recipients, and recognised for the first time that any significant development of women would require full participation from women themselves. In a follow-up a few months later, the Commission added the years 1976-1985 as 'women's years' and thus declared the "UN Decade for Women: Equality, Development and Peace."[165]

[162] Department of Economic and Social Affairs "Four Global Women's Conferences 1975-1995; Historical Perspective" (May 2000) United Nations www.un.org; United Nations Blue Books Series, above n 147, at 30.
[163] United Nations, above n 138, at 9.
[164] Department of Economic and Social Affairs, above n 161.
[165] United Nations, above n 132.

One of the major goals for the Commission during that decade (mandated as part of the Plan of Action during the Conference) was to draft a CEDAW.[166] The text was prepared during 1976, but edits were carried out until 1979 by a working group of the Third Committee of the General Assembly (whose purpose was to consider social, humanitarian and cultural issues).[167] In 1979, 130 Member States voted for CEDAW to be adopted, while 10 Member States abstained. It entered into force on 3 September 1981; just 30 days after the twentieth state had ratified it — faster than any previous human rights convention.[168]

The Convention defines what 'discrimination against women' entails, while targeting culture and tradition as some of the main means of keeping the negative influences of gender roles. Unlike the Declaration, it created legally binding obligations to all Member States whereby all appropriate measures to stop discrimination against women had to be taken, and also to report regularly on this obligation.[169] Chapter Three will provide further discussion on CEDAW.

The Conference and the creation of CEDAW marked the principal recognition of the necessity to improve the status of women. Although CEDAW's and the UN's history had some foundational bias against women, the treaty was formally accorded the same legal status as any other international treaty. It confirmed the supposition that if history within each country was not so predisposed to discriminate against women, it may have been easier for countries to accord women equality, as there was little direct and determined opposition that tried to negate the creation and adoption of CEDAW.

(C) New Zealand: The 1970s

New Zealand had previously proved itself to be a world leader on women's rights. An examination of the decade beginning from 1970 demonstrates

[166] United Nations, above n 138, at 9.
[167] United Nations Blue Books Series, above n 147.
[168] United Nations, above n 138, at 10.
[169] CEDAW.

that it retained some activism which resulted in the continuing establishment of formal equality. In general, the New Zealand Government believed human rights to be sufficiently protected in New Zealand and was, at the time, against ratifying human rights treaties and formally legislating similar domestic law[170] to prove its commitment to international bodies, as this was viewed as unnecessarily cumbersome.

(i) Political Movement

During the early 1970s in New Zealand, significant emphasis was placed on educating the general public about women in an attempt to evolve the customary views that society held. They were partially successful because of the large amount of women's groups that had become relatively sector specific. New Zealand had seen a split of factions that fought for raising the status of women. One group were for more radical changes and were known as women's liberation groups.[171] The other women's rights groups sought less extreme methods - for women to have a full place in society, rather than fundamentally changing society itself.[172]

By arguing "personal is political," the liberationist movement stipulated total change for women; demanding an end to patriarchy and dichotomous sex roles.[173] They introduced matters such as women's health, sexual behaviour and domestic violence[174] that had never been previously discussed in political forums. The Liberation groups demonstrated an understanding that women could never participate on any level at an equal status until their personal lives and expectations had been radically improved. However, as a more extremist group, it demanded more than

[170] Margaret Wilson "The Politics of Citizenship in the Era of Human Rights: An International Research Workshop" (Presented at The Politics of Citizenship in the Era of Human Rights: An International Research Workshop, Whitlam Institute, August 2012), at 6.
[171] Megan Cook "Women's movement - The women's liberation movement" Te Ara - the Encyclopedia of New Zealand (Updated 7 April 11) <http://www.TeAra.govt.nz/en/womens-movement/6>.
[172] Cook, above n 170.
[173] Cheris Kramarae, Dale Spender (eds) "Global Issues and Women's Knowledge; Education: Health to Hypertension" Routledge International Encyclopaedia of Women Volume 2 (Retrieved 20 November 2012), at 719.
[174] Cook, above n 170.

possible without chaos. Their views were successful in encouraging little discussed topics into mainstream ideals, but the attempt to reach formal equality by essentially re-starting history was not successful.

Women's networks and groups attracted massive improvements in attendance. At the National Women's Conventions, numbers jumped from over 400 in 1972 to over 2,000 in 1975 with hundreds turned away.[175] The first United Women's Convention was held in the main centres in 1973, where the 1,500 attendees' purpose was to raise the status and confidence of women.[176] The next year, an introduction of Women's Studies courses was made in Victoria and Waikato Universities. The Women's Electoral Lobby was set up in 1975 to increase the participation of women in politics.[177] The Working Women's Alliance formed and also educated women on trade issues, health, childcare and the cost of living,[178] which was helpful both from an individual educational perspective and from the viewpoint of women as a group; if more women were made aware of potential rights such as better health and easier childcare opportunities, more women would demand these rights and the movement could be more successful. Formal and substantive equality were not argued for per se, but these movements fought for improvements for women specifically, rather than trying to only obtain legal formal equality.

The resurgence of feminism during this decade was an important factor in the election of the Labour Government in 1972, which had, in turn, implemented a variety of reforms aimed at improving women's legal, economic and political position.[179] Some women looked to the Government to redress the inequalities between the sexes and ameliorate the effects of male power, while others questioned whether such governmental support would result in co-operation. This would have been

[175] Cook, above n 170
[176] Ministry of Women's Affairs "Timeline: 1970-1980" (May 2008) <www.mwa.govt.nz>.
[177] Ministry of Women's Affairs "History: The Ministry" (Accessed 03 December 2012) <http://www.mwa.govt.nz/ministry-0>.
[178] Ministry of Women's Affairs, above n 175; Melanie Nolan *Bread Winning; New Zealand Women and the State* (Canterbury University Press, Christchurch, 2000).
[179] Kramarae, above n 172, at 720.

a negative result for some, as it would have negated the intention of overthrowing the patriarchal system.[180]

The 1973 Select Committee for Women's Rights produced the report on the "Role of Women in New Zealand" that provided the basis for the policy agenda for Labour women to pursue. The Committee on Women was established after the UN declaration of International Women's Year in 1975. [181] It found that one of the main causes of gender inequality was the customary expectations of what a woman *should* be, and the acceptance of this by both men and women.[182]

In 1977, the Human Rights Commission Act legislated against discrimination of women. It established the Human Rights Commission and empowered it through a limited range of functions to protect human rights.[183] It only provided narrow remedies, although these were later extended in the 1993 amendment.[184] The original Act had some impact in places where job advertisements were displayed; there were no longer 'men's' and 'women's' job sections, which encouraged less division in the workforce, but as a whole, did not improve women's lives on a daily basis.[185] As the third Labour Government lost the elections from 1975 to 1984, the National Government under Robert Muldoon was little interested in substantial improvements to the status of women in New Zealand.

(ii) Employment Struggles

The Equal Pay Act was established in 1972 for the private sector, and came into force in 1977. It had been long petitioned by the women's movement but disappointed many on its achievement. Although the Act officially prohibited gender discrimination in all areas of paid employment where women and men had the same (or substantially similar) skills,

[180] Kramarae, above n 172, at 719.
[181] Ministry of Women's Affairs, above n 175, at [1973].
[182] At [1973].
[183] Human Rights Commission "Human Rights Act" (2008) <http://www.hrc.co.nz/human-rights-environment/human-rights-legislation/human-rights-act>.
[184] Ministry of Women's Affairs, above n 175.
[185] Charlotte MacDonald *The Vote, the Pill and the Demon Drink: A History of Feminist Writing, 1869-1993* (Bridget Williams Books Limited, Wellington, 1993), at 164.

responsibilities and service, it had little real effect on rectifying the barriers to entry into the workforce and promotion for women.[186] It was suggested that the main reason that this Act was difficult to fully implement was the complexity in defining 'equal' or 'comparable' work between men and women. It was also practically impossible to ensure that equal pay was given in employment that was either male or female dominated.[187]

Women's participation in employment at higher levels of management was especially low. As a way to collect information, monitor and promote women's representation on statutory boards and committees, the Women's Appointment File was established. It did this by collecting a database of women who were available and qualified enough to be nominated, whose names were then passed on when a suitable position became available. In 1992 it became the 'Nomination Service' and is currently administered by the Ministry of Women's Affairs. [188]

During the mid-70s, almost all workers in the lower-paid sectors were covered by trade unions. In most cases, however, the unions did not give women any specific support in terms of accommodating their demands for work that deviated from the normal 8 hour day, or 40 hour week.[189] There was little encouragement for part-time or flexible work hours around caring for their children until 1975.[190]

The Working Women's Council, led by Sonja Davies, promoted a bill of rights for working women, the 'Working Women's Charter' and a Sub-Committee within Wellington was formed to educate other unions about these rights.[191] This was one of the first introductions of a demand for childcare and paid parental leave – an issue the World Conferences later also agreed on – although this would not be successful in New Zealand for decades. A Women's Advisory Committee was introduced by the Federation of Labour on acceptance of the Charter and from pressure

[186] Joyce Herd *Cracks in a Glass Ceiling: New Zealand Women, 1975-2004* (University of Otago Print, Otago, N.D), at 32; Coalition of Equal Value Equal Pay, "A summary of Equal Pay Legislation in New Zealand since 1960" (February 2004) (Retrieved 28 November 2012) http://www.cevep.org.nz/paylaw/index.html.
[187] Herd, above n 185, at 48.
[188] Ministry of Women's Affairs, above n 175.
[189] Herd, above n 185, at 45.
[190] At 45.
[191] Ministry of Women's Affairs, above n 175.

from union leaders – some of whom were women by this stage.[192] It was further expanded in 1979, when a National Advisory on Women and Education was set up.[193]

Some women's liberation groups, including the Working Women's Alliance and the Women's Unions (set up in 1975) argued that much of the women's movement had ignored the working class[194] despite the fact that the demand for equality originated within the employment sector. These socialist-feminists focussed on working women, as well as publicising and trying to improve their situation. Women's rights groups, such as the National Council of Women and the Business and Professional Women's Clubs particularly conflicted with the liberationists as they were opposed to the extreme view that had been taken and preferred to encourage women to integrate themselves into the already structured society.[195] However, later, the groups' differences lessened and they worked together on campaigns focussed on women's health and employment.[196] While the women's groups were popular at the time, they had little political sway – especially if they found no favour with the government. The necessity of gaining political power was understood to an extent, but there were wider and newer arguments (such as equality within the private sector) that took up the time and effort of feminists. The arguments were important as such issues had not been brought to light before and had had impact on the difficulty of improving the status of women.

(iii) Domestic Rights

The introduction of the Matrimonial Property Act 1976 meant that matrimonial property was equally divided at the end of a marriage. This gave recognition to contributions made by women within a marriage, such

[192] Erik Olssen *Unions and employee organisations - Unions after 1960* (Te Ara - the Encyclopaedia of New Zealand, updated 26 November 2010) Accessed: 10 November 2012 <http://www.TeAra.govt.nz/en/unions-and-employee-organisations/7>.
[193] Ministry of Women's Affairs, above n 175.
[194] Cook, above n 170.
[195] Cook, above n 170
[196] Cook, above n 170.

as raising children and maintaining the household.[197] The Citizenship Act 1977 also affirmed the rights of women to be able to pass their nationality onto their husbands or children.[198] The Domicile Act 1976 provided that a woman did not have to live with her husband. Although a de-facto relationship was much less common in the 1970s than today, these Acts did not include de-facto couples, which continued to present problems when those relationships were ended.

The Domestic Purposes Benefit ("DPB") was set up in 1973 with the intention to provide financial support for battered wives and unmarried solo mothers (where previously there had only been support for working women). The DPB was not as successful as intended as the criteria for selecting suitable candidates was relatively stringent. By 1976, there were 70,000 solo parents from various causes, less than a quarter of whom received this benefit.[199] Some argued that those who were on the benefit, or "solo mums" as they were termed, were exploiting the system and deliberately not working.[200] Others insisted that it was an important right for women: it gave them independence to free themselves from failed or abusive relationships.[201] Both were partially correct, but the benefit to those who gained independence was deemed to outweigh the loss to those who chose to abuse the system, and the DPB system was not withdrawn.

(iv) Health

Women's groups in the 1970s demanded sexual autonomy. They wanted the right to choose how many children they wanted and when they could have them on the basis that almost all mothers' lives were determined by the care of their children. Some of the biggest limitations to the status of women were limited job security for pregnant women and no child care and support once the child was born.

[197] MacDonald, above n 184, at 164.
[198] Ministry of Women's Affairs , above n 175.
[199] Herd, above n 185, at 20.
[200] Ministry for Culture and Heritage "DPB legislation introduced" (Updated: 30 August 2012) http://www.nzhistory.net.nz/page/legislation-introduce-dpb.
[201] Ministry for Culture and Heritage, above n 199.

By 1975, the contraceptive pill had been widely used and accepted for almost 15 years but was only available to those over 16 years old which meant that most unwanted pregnancies were either self-terminated (which was dangerous), or the young woman was sent away to give birth and her child was put up for adoption.[202] The Crimes Act 1961 prohibited abortion, unless the mother was in grave mental or physical danger (as it continues to do today). If women wanted to terminate a pregnancy, they had to travel to Australia to do it – which obviously excluded all but those who could afford such a trip.[203] However, after a privately formed abortion clinic was acquitted after prosecution, a Royal Commission of Inquiry became involved and the Contraception, Sterilisation and Abortion Act 1977 was introduced as a result.[204] However, the Act was still restrictive and support services were created to help women travel to Australia to have the procedure done. After massive public pressure from groups such as the Abortion Law Reform Association of New Zealand, the Act was amended in 1978 to give doctors the means to carry out abortions if women requested them and if certain criteria were met, which massively reduced travel overseas for this purpose.[205]

The 1970s was a time where foundations were being laid so that New Zealand could begin building a more equal society. This mostly involved bringing to public discussion such issues as domestic violence, women's health and the demand for sexual autonomy. Without political equality (but not power), these issues would not have been discussed, so it showed and improved understanding of women by women. It also implied that without equality in these private sectors, it would be difficult to achieve equality in the public sphere. In terms of creating greater substantive equality, women's lack of political power to put such reforms into action led to inaction at worst, and frustration at introduced legislation at best. The Abortion Act in 1977 was a positive move by the government, but it was

[202] MacDonald, above n 184, at 163.
[203] At 163.
[204] Herd, above n 185, at 53; Nolan, above n 177.
[205] Te Papa, Museum of New Zealand "Diversity and Civil Rights; Feminist Movement" (Accessed: 20 November 2012) <http://www.tepapa.govt.nz/WhatsOn/exhibitions/SliceofHeaven/Exhibition/Diversity/Pages/Feministmovement.aspx>.

only with repeated outcry and amendment that any real improvements were made.

Part II: The Second World Conference

The main issue during the Conference was that the ideals and goals set during the first IWC could not be realised without specific national measures being put in place. The first section of part two examines the middle of the International Women's Decade by evaluating the new suggestions made within the second IWC in 1980. The second section discusses domestic changes. With the reintroduction of a Labour Government, many legislative changes were introduced that were intended to raise the status of women.

(A) Global Changes (1980+)

In 1980, five years after the Mexico City Conference, the second World Conference on Women was held in Copenhagen, Denmark. The numbers grew slightly, with 145 Member States attending and 8,000 NGO representatives.[206] During the Conference, in addition to reaffirming the importance of the CEDAW, there was an aim to review progress in implementing the goals of the IWC of the International Women's Year and to revise its Plan of Action.[207] It had been realised that there was a disparity between rights secured by women and the ability of women to exercise those rights. Thus, the original goals set during the first Conference were seen as too vague.[208] The factors that created this disparity included: [209]

- A lack of sufficient involvement of men in improving women's role in society;

[206] United Nations "Short History of the Commission on the Status of Women" (2000) Women's Watch <www.un.org>, at 11.
[207] At 11.
[208] Department of Economic and Social Affairs "Four Global Women's Conferences 1975-1995; Historical Perspective" (May 2000) United Nations www.un.org.
[209] Above n 207.

- Insufficient political will;
- A lack of recognition of the value of women's contributions to society;
- A lack of attention to the particular needs of women in planning;
- A shortage of women in decision-making positions;
- Insufficient services to support the role of women in national life, such as co-operatives, day-care centres and credit facilities;
- An overall lack of necessary financial resources; and
- A lack of awareness among women about the opportunities available to them.

All of these factors demonstrated that any goals that were set needed to be sector specific and detailed to have any substantive affect on women.[210] Thus, employment, health and education became the three main areas that were the focus of the IWC. It was decided that to lessen the discrepancy between the status of women and men and to give women more ownership and controlling rights in property, child custody, and freedom of nationality with less stereotyping and more domestic action within each country was necessary,[211] which was a similar viewpoint to those of liberationists in New Zealand.

By the 1980s, the Commission was one of many entities working on international women's issues. New organisations had been established, such as the United Nations Fund for Women ("UNIFEM")[212] and the International Research and Training Institute for the Advancement of Women ("INSTRAW")[213] among other UN regional commissions, specialized agencies and funds. The Commission had only been meeting biannually and had not been the officially designated preparatory body for the IWCs.[214] Arguments were made by some states to abolish the Commission, and transfer its functions to ECOSOC as it had relatively little

[210] United Nations, above n 205, at 11.
[211] United Nations "Women" (2010) Global Issues www.un.org.
[212] In 1984, the General Assembly transformed the Voluntary Fund for the United Nations Decade of the United Nations Development Programme into a permanent, autonomous body: UNIFEM.
[213] Established in 1975.
[214] United Nations, above n 205, at 12.

power of input, despite still being the focus of the UN's support for women.[215] However, during the Conference, these suggestions were overruled with the opposite effect; the Commission was to be strengthened and given full responsibility for the organisation of the end-of-the-decade Conference, the World Conference to Review and Appraise the Achievements of the UN Decade for Women in 1985.[216] The Commission's success in retaining its position illustrated that women's issues had relevance to many countries and because of its full Commission status; it was able to argue for its retention on an equal level as any other Commission could. This gave it power, something that was denied to most women within their own countries.

The mid-decade IWC argued that women's rights were impossible to achieve solely through an international forum. The international meetings became a place that States and NGOs could come from all over the world and compare the barriers to equality that they each faced. This improved data collection and distribution. Its information provided greater insight to what action would need to be taken to reduce inequality. However, even with its increase in position and its understanding of equality barriers, the Commission continued to have a lack of power within countries, and could only provide suggestion for action rather than any direct impact.

(B) New Zealand: After the Copenhagen Conference

In one of the most significant political actions since granting women suffrage, New Zealand signed CEDAW on the 17th of July in 1980 – the year of the second IWC and before CEDAW entered into force.[217] It did not, however, ratify the Convention for another five years. International human rights treaties and domestic bills of rights were understood to be

[215] The United Nations Blue Books Series *The United Nations and the Advancement of Women, 1945-1996* (Rev. ed, New York, 1996) Vol 6, at 52.
[216] United Nations, above n 205, at 12; UN General Assembly *Preparations for the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women* (3 December 1982) A/RES/37/60 (Meeting Record A/37/PV.90, C.3 plenary, 37th sess., Agenda Item no. 91); Devaki Jain *Women, Development and the UN*: *A Sixty-year Quest for Equality and Justice* (Indiana Press University, Bloomington, 2005), at 132.
[217] United Nations "Chapter IV: Human Rights: 8. Convention on the Elimination of All Forms of Discrimination Against Women" (10 June 2012) United Nations Treaty Collection <www.treaties.un.org>.

recognising rights that already existed, rather than acknowledging previously unrecognised rights and remedying them. Investing in human rights instruments only materialised in the new millennium.[218] The Government's belief that it was not required to formally acknowledge treaties began to erode. It was realised that obligations to the global community made it part of the community. New Zealand was able to sign CEDAW and be recognised as a 'good international citizen'.[219]

However, before New Zealand committed itself to reviews by an international body it would attempt to put measures in place so that most commitments had already been fulfilled. [220] This indicated less necessary domestic change would need to be made on ratification, and as a consequence, New Zealand would gain a positive public international image of a country that supported human rights.

During the first half of the 1980s, New Zealand continued to be led by a National Government. It stated that women had an equal status to men, and as proof had signed CEDAW. The Government was incorrect, as although formal equality had improved in some ways and most legislation was enacted in gender-neutral language, substantive equality was as far from realisation as ever. As a result of this incorrect understanding and focus on other priorities such as the economy, little improvement was made to the overall status of women in these years.

Until 1980, the Committee on Women had the power to advise Parliament on issues in more detail than in the House of Representatives, provide the public with an opportunity to comment on and suggest changes to impending legislation, to participate in other parliamentary functions such as inquiries, carry out public scrutiny of Government spending plans and the performance of New Zealand's Government departments, Crown entities and State enterprises.[221] In 1981, most of these powers were

[218] Law Commission (2006) Converging currents: Custom and human rights in the Pacific, p. 60.
[219] Wilson, above n 169, at 9.
[220] New Zealand Government *First Periodic Report on the Convention on the Elimination of All Forms of Discrimination Against Women* (1986) CEDAW/C/5/Add.41, CEDAW/C/5/Add.41/Amend.1 and Corr. 1.
[221] Office of the Clerk of the House of Representatives, New Zealand Parliament "Select Committees" (Updated 2010) Accessed 03 May 2012

stripped and it was given the title "Advisory Committee on Women's Affairs."[222] It was thought, however, that the women's movement needed a formal voice at Cabinet level, so the Advisory Committee reported to the Minister for Justice who was established as 'spokesperson for women.'[223] The Advisory Committee would later become the Ministry of Women's Affairs in 1985.[224]

The decaying of women's political influence was in contrast to that of the Commission on Women in the international arena. There were some legislative changes that were not specifically aimed at improving the status of women so much as providing formal equality, but nevertheless had some effect. This included the Minimum Wage Act 1983, the Factories and Commercial Premises Act 1981, which allowed women to be employed on night-shift in factories, and the Equal Employment Opportunities Program ("EEO").[225] It stated that equal work must result in equal pay. It was a similar gesture to that of signing CEDAW: the New Zealand government fostered formal equality and introduced legislation that coincided with the Convention by making what was originally "men's rights" into gender-neutral legislation and calling it equality. It was thus able to ratify the document and be seen as a 'good' international citizen even though substantive equality had not yet been attained and women could not take full advantage of the bestowed rights based on their lower cultural status.

Legislation enacted that was gender-specific included the Maternity Leave and Employment Protection Act 1980, which protected women from dismissal due to pregnancy and granted up to 26 weeks of unpaid maternity leave before dismissal could occur.[226] The statute did not improve the rights of women in the workplace by a significant amount as it was unpaid, and therefore a woman had to rely on a partner (or herself) to support both her and the newborn child. It also did not coincide with effective childcare schemes in which the mother could return to work after

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<http://www.parliament.nz/NR/rdonlyres/FDB2C1CD-25E6-47A9-BED7-D97AAC853A9B/151045/selectcommittees2010_1.pdf>, at 1.

[222] Ministry of Women's Affairs "Timeline: 1970-1980" (May 2008) <www.mwa.govt.nz>.

[223] Ministry of Women's Affairs "History: The Ministry" (Accessed 03 December 2012) <http://www.mwa.govt.nz/ministry-0>.

[224] Ministry of Women's Affairs, above n 221.

[225] Above n 221.

[226] Above n 221.

the 26 week period. Furthermore, as childcare was expensive, it usually left the mother no choice but to continue at home, which gave the employer the right to dismiss her.

The Family Proceedings Act 1980 made marriage separation less adversarial, where it could occur only with 'irreconcilable differences', proven by living apart for two or more years. It gave a 'no fault' principle, which lessened the problems of having to prove one partner had been the cause of the end of the marriage.[227] This made separation a less costly and a less complex process wherein relationships could be mutually ended. In 1981, an amendment to this Act, and that of the Social Security Act 1964, known as the 'Liable Parent Contribution Scheme', provided for an assessment against the other parent of each child to be included in the benefit for a contribution towards the cost of the benefit.[228] Sole parents not on a benefit could agree on maintenance of their children, or they could apply directly to the court under the Act for a level of maintenance to be decided on.[229]

One problem with this change (which was not amended until 1992) was that parents who could not agree on their child support financial arrangements had to go through the courts for a solution, which made for a costly, time consuming process in which the welfare of the child was not predominant.[230] A second problem was that the process was complex. Many parents escaped contributing and consequently the objective of recovering from liable parents a proportion of the cost of the benefits paid to sole-parent beneficiaries was not met in many cases.[231]

In 1982, there was an attempt to halt domestic violence with the Domestic Protection Act 1982, which made provision for non-molestation orders and

[227] Herd, above n 185, at 9.
[228] Inland Revenue, New Zealand, Policy Advice Division *Supporting Children: A Government discussion document on updating the child support scheme*" (Wellington, 2010) ISBN 978-0-478-27175-1 Accessed: 15 June 2012 <http://taxpolicy.ird.govt.nz/publications/2010-dd-supporting-children/overview>, at Appendix 1.
[229] At Appendix 1.
[230] At Appendix 1.
[231] At Appendix 1.

emergency occupation and tenancy orders.[232] The Act also introduced a non-violence order that allowed the police to become involved directly in a domestic dispute and gave the police powers of arrest without formally having to charge the perpetrator with a criminal offence, but the measure of relief were seen as relatively restrictive.[233] Recorded acts of domestic violence rose considerably, but it was uncertain as to whether this was because a previously private matter had become one of concern for the public, or that the actual incidence of violence was increasing.

In 1984, the Labour Party won the election, ousting the long standing National Party's rule under Robert Muldoon and established the Fourth Labour Government.[234] A change from a conservative Government gave the feminist movement more of a chance to influence policy in the years to come.

Part III: The Third World Conference

The last Part of this chapter discusses the final IWC. The domestic section shows effective changes in legislation had increased and there was a marked improvement in women's education, employment and health issues from the years 1985-89 under a Labour government. While complete equality was not achieved, New Zealand had ratified CEDAW and thus pledged itself to eventually reach the final goal.

(A) Global Changes (1985+)

When the International Women's Decade ended in 1985, a further IWC was held in Nairobi to review the achievements for women's equality, development and peace that had happened within the last decade. The first 'World Survey on the Role of Women in Development' had been made

[232] Ministry of Women's Affairs "Timeline: 1980-1990" (May 2008) <www.mwa.govt.nz>; Christine Dann *Up from Under; Women and Liberation in New Zealand 1970-1985* (Port Nicolson Press, Wellington, 1985).
[233] Ministry of Justice "Domestic Violence Act 1995: Process Evaluating August 2000" (2000) <http://www.justice.govt.nz/publications/publications-archived/2000/domestic-violence-act-1995-process-evaluation-august-2000/introduction> .
[234] MacDonald, above n 184, at 206.

by questionnaires to 121 governments and was used as a background report to the Conference.[235]

At the World Conference to Review and Appraise the Achievements of the UN Decade for Women: Equality, Development and Peace, there was a huge increase in participation numbers. As a reflection of the global growth in interest for these issues, there were 157 governments that participated in the IWC, a further eight specialized agencies, 17 intergovernmental organizations, four national liberation movements and 163 NGOs.[236] Twelve thousand representatives of NGOs participated in the parallel Forum to the IWC which was later described as the 'birth of global feminism'.[237] It was at this Conference that *all* issues were declared to be women's issues.[238] By this declaration the UN indicated that each issue discussed globally should have an aspect that related to women, including issues that relate to both their public and private lives.

The IWC did not achieve total success with regard to the goals set in the preceding half-decade. Data had indicated that during the whole decade, only a few women had benefitted by the efforts of the UN to reduce discrimination.[239] In the developing world, there had been even less effect.[240] The 127 Member States had created some domestic incentives to promote women's advancement, but it was decided that the original goals set in Mexico City had not been adequately met, so the 'Nairobi Forward-Looking Strategies for the Advancement of Women' were adopted to dramatically improve the execution of the goals by the year 2000. The strategies were again narrowed down to attempt to achieve equality at a national level. Three basic categories and measures were given; constitutional and legal steps, equality in social participation, and equality in political participation and decision-making.[241]

At the end of the Decade for Women, the ideals since the first IWC remained similar, but the ways of making them effective was seen as less

[235] United Nations, above n 205 at 12.
[236] At 13.
[237] United Nations "Women" (2010) Global Issues www.un.org.
[238] Above n 236.
[239] Department of Economic and Social Affairs, above n 207.
[240] Department of Economic and Social Affairs, above n 207.
[241] Department of Economic and Social Affairs, above n 207.

than successful. By introducing further strategies and new entities for the advancement of women it was hoped that a greater number of women would benefit. The IWCs and Commission relied on influence and hope rather than power over countries and member States. This scope meant that ideals to raise the status of women were plentiful and reasonable, while action was difficult to enforce.

(B) New Zealand: After the Nairobi Conference

The Fourth Labour government of New Zealand was in power from 1984 until 1990. Labour's primary campaign message for election was one of 'change.' It was obvious that Muldoon and the National government had been growing increasingly unpopular as Labour had only lost the previous elections by a narrow margin, and there was a 97.3% turnout rate for the snap election – the highest ever recorded in New Zealand.[242]

It was a time of major social and economic reforms in which it was said that New Zealand had moved "from what had probably been the most protected, regulated and state-dominated system of any capitalist democracy to an extreme position at the open, competitive, free-market end of the spectrum."[243] Labour radically reformed New Zealand's economic policies through "Rogernomics," a market-led restructuring and deregulation and the control of inflation through tight monetary policy, accompanied by a floating-exchange rate and reductions in the fiscal deficit.[244]

Other changes included a significant social policy reform, in which women's movements and those with high political positions initiated and supported the raise in status of women. One of the most important improvements made towards this end was the promotion of the Advisory

[242] Ministry for Culture and Heritage "Muldoon calls snap election" (Updated: 30 August 2012) <http://www.nzhistory.net.nz/snap-election-called>.
[243] Jack H Nagel, "Social Choice in a Pluralitarian Democracy: The Politics of Market Liberalization in New Zealand" (1998) 28 Issue 2 British Journal of Political Science 223.
[244] Brian Easton (ed) *The Making of Rogernomics* (Auckland University Press, Auckland, 1989) ISBN 1-86940-041-0, at 53.

Committee on Women's Affairs to the Ministry of Women's Affairs ("Ministry").

The Ministry was established in 1984 as an official and separate department of state. Its purpose was to advise government on the impact of policies on women, as well as to initiate and support legislation that promoted equality for women.[245] It opened in 1986. The establishment of the Ministry was part of a policy to ensure not only state recognition of the right of women not to be discriminated against, but also an attempt to influence state policy making to implement equality for women.[246] It was the first stand-alone policy advice agency and had a focus on developing policy highlighting gender-related social differences between men and women in New Zealand, and being in touch with, and responsive to, women in the community.[247]

Over the decade of the 1980s, The Labour Party encouraged and increased the number of women in high political positions. Some of these included: Sonja Davies as the first woman vice-president of the Federation of Labour,[248] Margaret Wilson as the first woman president of the Labour Party, Diana Shand as a Human Rights Commissioner,[249] Mary O'Regan as Secretary of Women's Affairs, Anne Hercus as the Minister of Women's Affairs,[250] Nadja Tollemache as an Ombudsman,[251] and finally, with the highest political position ever attained by a woman at the time, Helen Clark became the first female Deputy Prime-Minister in 1989.[252]

The social policies led to acceptance as being part of, and somewhat accountable to, the UN international community. On the 10th of January 1985, New Zealand ratified CEDAW, five years after signing it.[253] This meant that New Zealand acknowledged the importance it placed on gender equality to the world, and accepted compulsory reporting

[245] Ministry of Women's Affairs, above n 231
[246] Wilson, above n 169, at 2.
[247] Ministry of Women's Affairs "History: The Ministry" (Accessed 03 December 2012) <http://www.mwa.govt.nz/ministry-0>.
[248] In 1983.
[249] Both in 1984.
[250] Both in 1985.
[251] In 1986.
[252] Ministry of Women's Affairs, above n 231.
[253] United Nations, above n 216.

procedures which would demonstrate whether the country was fulfilling the duties noted within the CEDAW text. The text and the reporting procedures will be further discussed in chapter three below.

Domestic legislation was also improved. The Parental Leave and Employment Protection Act 1987 (which superseded the Maternity Leave and Employment Protection Act 1980) provided one of the first instances of anti-gender discrimination towards men. It gave fathers the right to take leave after the birth of their child, and extended the leave taking time to up to 52 weeks, for a combination of both parents.[254] As child care was easier to find for infants rather than newborns, this was a step in the right direction for giving women better access to equality in employment. Although fathers had the right to take leave, it did not have much effect as most men continued working as the mother took leave.

The Homosexual Law Reform in 1986 decriminalised and legalised consensual sex between men over the age of 16, although lesbianism had never been officially illegal.[255] The Bill presented in 1985 had had two parts. The second, which provided for anti-discrimination measures to protect homosexuals of both genders failed, while the first was only narrowly passed, with 49 votes for it, and 44 against.[256] New Zealand would not protect same sex relationships specifically until the Human Rights Act in 1993, which gave those who were discriminated against an outlet of complaint –the Human Rights Commission.[257]

Some further legislation relating to gender equality was introduced in the five years after 1984. These included: the Crimes Amendment Act (no 3) 1985, which made the rape of a spouse a criminal offence, the Coal Mines Act 1952 was repealed to allow women to work in underground mines, and importantly, the State Sector Act 1988 required equal employment opportunities to be put in place in the public service.[258] A Royal Commission on Social Policy, from 1986-88, re-emphasized the value of

[254] Ministry of Women's Affairs, above n 231.
[255] Herd, above n 185, at 14.
[256] Laurie Guy *Worlds in Collision: The Gay Law Reform Debate in New Zealand: 1960-1986* (Victoria University Press, Wellington,2002); Dann, above n 234.
[257] MacDonald, above n 184, at 209.
[258] Ministry of Women's Affairs, above n 231.

the unpaid work many women were doing. It had changed from a 'fringe' area promoted only by the extreme feminists to a mainstream discussion within the media.[259]

In education, there was an improvement in the numbers of women successfully studying. For example, while 25% of medical students in 1975 were female, by 1988 this number had increased to 60%.[260] Similar increases happened with those training to be lawyers, dentists, accountants and those in middle management. Although in some areas more women were qualifying than men, in most sectors women were almost completely absent from the top positions.[261] A trend surfaced in that as women dominated a certain profession, those professions would be demeaned and less money was earned by both men and women, such as with teaching.[262] It illustrated the failure of the previous attempts to gain equality through gender-neutral legislation based on giving women "men's rights".

During this decade, a significant change was made to health that affected women particularly. In 1987, an article was published in the *Metro* magazine.[263] It provided evidence of an experiment beginning in 1966 in New Zealand's premier women's hospital. Medical professionals observed the development of major cervical abnormalities in women without treating them or making the women aware of their lack of medical intervention. Many of these same women had developed cervical cancer by the time the article was published and some had died.[264]

The Committee of Inquiry, headed by Judge Silvia Cartwright, provided a report that showed the lack of accountability from doctors. The report, made in 1988, became widely recognised as a 'blueprint' for patients' rights for informed consent. It was also known as the "cornerstone for women's health" where it "encapsulate[d] all the issues about

[259] Charlotte MacDonald, above n 184, at 207.
[260] Herd, above n 185, at 43.
[261] At 43; Dann, above n 234.
[262] Herd, above n 185, at 43.
[263] At 58.
[264] At 58.

powerlessness for women [and] about the difficulties for women to be in control of their health."[265]

The changes made during these years showed that formal women's rights had impacted many women as the necessity to improve their status had often been specifically targeted. Although substantive equality was not a matter of particular interest for the Government, this section demonstrates the impact women have when they are in positions of power, rather than only trying to influence power as had been done previously. Although the Labour Party's stance on rights in general showed a greater inclination to give voice to some of the discrimination New Zealand women had been facing in addition to the influence political women had, and while the reforms improved the lives of some women, they did not negatively affect much of the male population and in part, may have been why many were passed with little resistance.

Conclusion

The score of years between the 1970s and late 1980s made some of the biggest advancements both internationally and within New Zealand. Not only was CEDAW written and adopted by the United Nations in an almost unanimous vote; New Zealand both signed and ratified the Convention so as to be domestically bound. While the Convention itself did not play a very important role in impacting New Zealand during this time, it marked a change and a dedication by New Zealand to be influenced by it in the future.

During the late 1970s, goal setting and attempting to define what women's rights were had been the most important activities of the Commission. The goals were general, but provided a foundation for Member States to work with, and directions to help change social perceptions. Both the global community and New Zealand realised that for women's rights to work, women needed to be active participants rather than passive ones.

[265] At 58.

In the early 1980s, it began to be understood that ideals were not enough to make effective changes to women around the world. Changes of a more specific nature were necessary, thus, the conclusion the second IWC came to was that national measures needed to be put in place. New Zealand's policy lacked any great improvements at this time, due to the lack of response by the National Government women had little political influence and the Government ignored the women's movements.

Finally, the late 1980s showed a disappointing realisation that the ideals of the original UN Conference had not affected many women at all. However, participation was up in huge numbers, so with the Nairobi Forward Thinking Strategy, it was hoped that the interest in women's rights would make more positive changes to more women in the future. Nevertheless, the lack of influential power to force Member States into action was beginning to be widely acknowledged. New Zealand began the most difficult process of incorporating rights into domestic law. Social perception was changing however, with women taking and being encouraged to take higher positions in governmental sectors than ever and purposeful authority for their lives and rights.

Although this period was the best in terms of intentions, in practical measures the initiatives were largely unsuccessful for promotion of substantive equality. The global emphasis provided a platform for positive shifts to women's rights but due to the UN's lack of influential power, the position of women only benefited a small amount in developed countries. The time when the rights of women had great political weight has been and gone, and unfortunately, not enough gains were made during this time. The New Zealand government finished this period on a positive note, but did not provide women with the foundations of a substantively equal future between men and women. The political climate to come would be more difficult for women to make inroads into their quest for equality and would continue a pattern begun in the 1980s – improvements made while the Labour Party held Government and regressions maintained when the National Party won elections.

In effect, following the construction metaphor, international human rights instruments are similar to a mansion that is being built next door. The owner (or builders, such as the liberationists in New Zealand) of the partly built house beside the idealistic mansion may want to imitate it, but without the same foundations, architects, engineers and resources, only a weak replica is possible.

However, imitation of the “perfect” mansion will provide, at the very least, an aim of eventually achieving perfection on the house. Equality in New Zealand should be compared to a model of success, such as the mansion, rather than continually building on a culturally restrictive foundation without a direct plan for the future. If no plan is made to diverge from a history that discriminates against women, a house (that represents the final status of women and men in New Zealand) will be built to the same dimensions and continue to be discriminatory. Conversely, if the house is modelled on the mansion (that represents substantive equality found within the UN), although the house’s foundations are unable to be changed, the final building will more closely resemble the mansion and substantive equality in New Zealand. This thesis will therefore compare the UN attitude to the status of women (specifically focussing on CEDAW as the instrument that gives effect to the status of women within the UN) with the changes made to New Zealand law and policy with the intention of detailing how far away from substantive equality New Zealand women are.

Chapter 3

The International Model: CEDAW and the Optional Protocol

The United Nations Convention on the Elimination of All Forms of Discrimination Against Women, otherwise known as the "International Bill of Rights for Women" or "CEDAW"[266] was originally described as the "definitive international legal instrument requiring respect for and observance of the human rights of women; [being] universal in reach, comprehensive in scope and legally binding in character."[267] It is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as areas that shape gender roles.[268]

The Convention defines discrimination against women as well as setting up an agenda for Member States to take national action to end such discrimination.[269] The United Nations website notes:[270]

> [CEDAW] provides the basis for realising equality between women and men through ensuring women's equal access to, and equal opportunities in political and public life... as well as [in] education, health and employment.

However, the practical effects of CEDAW have not been as revolutionary as intended. Amongst other limitations, Member States are permitted reservations which appear to defeat the object and purpose of the treaty and although regular reporting is compulsory, there are few consequences

[266] United Nations *Short History of the Commission on the Status of Women* Retrieved 21 November, 2012, http://www.un.org/womenwatch/daw/CSW60YRS/CSWbriefhistory.pdf.
[267] Rebecca J Cook "Reservations to the Convention on the Elimination of all forms of Discrimination Against Women" (1990) 30 Virginia Journal of International Law 643.
[268] Department of Economic and Social Affairs; Division for the Advancement of Women "Convention on the Elimination of All Forms of Discrimination Against Women" (2000) United Nations www.un.org.
[269] Above n 266.
[270] Above n 266.

if a state does not comply.[271] These issues are discussed in more detail below.

Regardless of political influence and legal power, CEDAW has a significant impact in other areas. It provides a framework and a language which gives a basis for a two-way working relationship between States and the Committee on the Elimination of Discrimination Against Women ("Committee"), which is the UN leading body on aspects of CEDAW. The Committee leads the process through dialogue, advice and examples of good practice for addressing obstacles and works toward full implementation within a country.[272] In essence, CEDAW acts as an ideal model which countries are encouraged to resemble, although in effect it is only a tool put into use once the state has demonstrated the political will to comply with the Convention.[273]

New Zealand is a Member State. As one of the earlier members to sign the Convention, New Zealand indicated to the world that it agreed with the treaty's objectives to raise the status of women to one of equality with the status of men. However, this declaration appeared to be given only on the understanding that no considerable changes were necessary on ratification in 1985, as the New Zealand government believed the law already gave equal rights to men and women.[274]

This chapter explores the whole of CEDAW and the Optional Protocol in detail, as well as the main benefits and faults of CEDAW. For reference, the chapter also briefly looks at the first report New Zealand made to CEDAW in 1986. The reasons for analysing the report in this chapter rather than the previous one are; first, to give the perspective of the government towards international bodies so as to illustrate the fallible belief that legislative (and other) equality was already in place; and

[271] Julie A Minor "An Analysis of the Structural Weaknesses in the Convention on the Elimination of all forms of Discrimination Against Women" (1994-1995) 24 Georgia Journal of International and Comparative Law 137, at 137.
[272] Meena Shivdas, Sarah Coleman *Without Prejudice: Cedaw and the Determination of Women's Rights in a Legal and Cultural Context* (Commonwealth Secretariat; London; 2010), at 7.
[273] At 7.
[274] New Zealand Government *First Periodic Report on the Convention on the Elimination of All Forms of Discrimination Against Women* (1986) CEDAW/C/5/Add.41, CEDAW/C/5/Add.41/Amend.1 and Corr. 1 [NZ CEDAW Report 1].

secondly, to exemplify how CEDAW succinctly quantifies and qualifies each right a woman should have, so as to be the perfect comparison to determine whether such rights are practiced in New Zealand, and if not, how to rectify the imbalance of inequality.

Part I: CEDAW: Rights and Obligations

The first part of this chapter examines in detail the purposes and rights expressed in the Convention. The aim of this part is to analyse whether the treaty effectively encompasses *all* rights that are necessary for women to gain equality, and also to discuss which rights have been given more weight and emphasis so as to fulfil its purpose. As the object of this thesis is to determine whether New Zealand women have equality, each section will use examples from the first New Zealand report to the Committee on CEDAW.

As will be discussed below, the lack of loopholes in the main body of the instrument highlights the main effect of CEDAW; that when a country such as New Zealand reports on the status of women, it is impossible (without deliberate fabrication or ignorance) to assert that equality exists in all spheres if it does not. As each aspect of public and private life will be shown to have been succinctly drafted within the document, CEDAW provides no “back-door” to gloss over a sector of women that face discrimination without requiring reasons given for the lack of equality, action taken to reduce it, or open acknowledgement that the government has no intention to change. This makes the process of improving the status of women more transparent and accountable to the public within a Member State.

This part is made up of five main sections: the first examines the purposes of CEDAW and the remaining sections analyse each subsection of CEDAW that contains rights of the public and obligations of Member States in relation to the various political, public and private spheres. Within each section, a brief description is given on how the New Zealand government responded to the obligations within the Articles.

(A) Intentions and Opinions: Preamble of CEDAW and New Zealand's First Report

The preamble to CEDAW reintroduces the underlying principle of the UN, which is categorically in opposition to discrimination of any sort.[275] It acknowledges that despite the specialised agencies within the UN (such as other international treaties and the bodies attached to them) whose purposes are to stop discrimination against women or men, extensive discrimination against women continues to exist, especially in impoverished communities.[276] Most violations of women's rights take place in the 'home', yet the home, the family and the workplace had been consistently left out of other international treaties.[277] Despite that this abuse had been recognized as hampering the growth of the prosperity of the country, its communities and families,[278] most governments at the time of drafting CEDAW were not willing to be held accountable for its cultural practices, especially if discrimination was 'justified' in the name of well established cultural traditions.[279]

As world peace and security were some of the objects of the first IWC,[280] they were also an object of CEDAW. However, in an interesting "catch-22" situation, the preamble affirms that the strengthening of international peace and security and mutual cooperation of all Member States will promote social progress and a consequence of this will be the attainment of full equality between men and women.[281] However, the UN is 'convinced' that equal participation of women and men are needed for complete peace and security within countries and within the world.[282] Thus equality can be seen as either a tool *towards* peace or a goal *of* peace, but

[275] CEDAW, at preamble.
[276] At preamble.
[277] Anu Saksena "CEDAW: Mandate for Substantive Equality" (December 2007) 14 Indian Journal of Gender Studies 481, at 482.
[278] CEDAW, at preamble.
[279] Saksena, above n 275, at 482.
[280] Department of Economic and Social Affairs "Four Global Women's Conferences 1975-1995; Historical Perspective" (May 2000) United Nations www.un.org; The United Nations Blue Books Series *The United Nations and the Advancement of Women, 1945-1996* (Rev. ed, New York, 1996) Vol 6, at 30.
[281] CEDAW, at preamble.
[282] At preamble.

it is still, according to the UN, a necessity regardless of which way it is viewed.

By acknowledging women's contribution to raising families throughout history, CEDAW became one of the first official documents that realized the social significance of such a contribution. The preamble also declares that the upbringing of children should be shared between men and women (through the changing of traditional roles) as a mutual responsibility, with the state also having appropriate tasks of responsibility.[283] Through these acknowledgments, the Convention has made a significant attempt not only to bring civil and political rights to women (which many countries had already legalised but only practiced in part), but also confirmed its main emphasis on eliminating discrimination in the entire private sphere, including in the economic, social and cultural sectors[284] which formed the main barriers to equality for the majority of women in Westernised countries.

(i) New Zealand's First Report in 1986

New Zealand submitted its first report in 1986 as required by the Convention, one year after it had been ratified.[285] The introduction of the report is a particularly interesting one, as it states in definite terms that through established practice, New Zealand only ratifies international conventions when the provision of those conventions are already implemented by New Zealand law and practice (other than where it enters formal reservations).[286] The New Zealand government thus believed that New Zealand law met the requirements of the treaty before it was ratified.[287] However, as indicated in the previous chapter, the equality of women, although improving, was not yet implemented by law and practice. While the law by this time was not gender-biased in its wording, custom still significantly impacted the status of women so that both law and

[283] At preamble.
[284] Saksena, above n 275, at 484.
[285] CEDAW, Art 18.
[286] NZ CEDAW Report 1, at 3.
[287] At 4.

concomitant 'practice' often discriminated against them in political, social, cultural and economic fields.

The New Zealand government acknowledged that only the *legal* position of men and women was the same, with women increasingly taking advantage of opportunities in employment and society generally.[288] However, the government also acknowledged that women and men did not practice full equality in these spheres.[289] This acknowledgement aligned with the focus of CEDAW in which civil and political rights were noted, albeit briefly, whereas public and private rights were provided for in more detail. Civil and political rights may have been understood to be less emphasised and background to the rest of the treaty as other international human rights instruments had already provided for equality of gender in civil and political arenas.[290] While this could be seen as a failing in the drafting of CEDAW in its attempts to succinctly encompass the total rights of women, it does not fail significantly in terms of effect. The countries that do not provide women civil and political rights can be more easily criticised by those international documents which have a sole focus on said rights (such as the International Covenant on Civil and Political Rights) so as to give a starting point to equality. The countries that already provide women these rights have little need for repeated detailed discussion on them but rather require a document that formalises women's right to equality within all other sectors of life.

(B) CEDAW Part 1- Definition and Overarching Rights

Part one of CEDAW is based on affirming and defining the right of women not to be discriminated against, in relatively vague language. It is the most important section of the treaty as it limits potential loopholes in the rest of

[288] At 9.
[289] At 9.
[290] See UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: http://www.unhcr.org/refworld/docid/3ae6b3712c.html [accessed 22 May 2012] (Adopted by General Assembly Resolution 217 A(III) of 10 December 1948); UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: http://www.unhcr.org/refworld/docid/3ae6b3aa0.html.

CEDAW by defining what constitutes discrimination in general and giving wide scope to the obligations of Member States.

(i) Definition of "Discrimination"

Article one defines discrimination of women as:[291]

> Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

The 'fundamental freedoms' are more fully expanded on in later articles, but this article is the foundation on which the discussions on rights in the treaty are based. The definition is comprehensive as it includes direct and indirect discrimination (intent and effect), equality of opportunity as well as equality of outcome (formal and substantive), and disadvantageous discrimination that nullifies or impairs enjoyment by women of their human rights.[292] It is closely linked to the definition found in the Convention on the Elimination of all Forms of Racial Discrimination.[293] CEDAW's definition has been adopted by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights and is now widely accepted as the authoritative international law definition.[294]

In the initial New Zealand report, particular areas in which full equality was not achieved were listed as sectors of employment, top executive positions and in politics. [295] This indicated that New Zealand believed most discrimination occurred within semi-private sectors of life – although

[291] CEDAW, Art 1.
[292] Shivdas, above n 270, at 5.
[293] See UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, available at: http://www.unhcr.org/refworld/docid/3ae6b3940.html [accessed 22 June 2012].
[294] Shivdas, above n 270, at 5.
[295] NZ CEDAW Report 1, at 9.

there was little discussion in the report on private areas as they were not well documented during the 1980s.

Reasons given for discrimination in these sectors included; women preferring to be at home rather than in the workforce, day-care for children not being readily available and that there had not been enough time for women to qualify being in the top positions.[296] It is uncertain where the Government obtained this information. However, as the government acknowledged that lack of childcare led to a lack of equality, it indicated to feminists, politicians and the general public that the government would either make improvements on this front or admit that it was at least partially indifferent to raising the status of women.

The Human Rights Commission Act 1977 provided remedies to ensure that the principle of stopping discrimination was complied with in practice.[297] However, as mentioned in the previous chapter, this Act had little power and effect. The Ministry of Women's Affairs, the National Advisory Committee on the Employment of Women, the Women's Advisory Committee on Vocational Training Council and the Equal Employment Opportunities Unit in the State Services Commission were the bodies that were in control of promotion of full equality.[298]

(ii) Overarching Rights

Article two of CEDAW consists of eight courses of action State parties are expected to undertake to condemn any discrimination against women. These mainly legal changes are listed in the descending order of major change necessary for a Member State.

The first expected course of action is for a State to change its constitution (or similar legislation) of the country to follow the principle of non-discrimination. The next three follow in a related vein; to make legislative change to prohibit discrimination, to enact legislative protection to provide

[296] At 10.
[297] At 7.
[298] At 8.

gender equality and to ensure the judiciary and other public institutions protect women from discrimination - all of which coincides with the creation of formal equality. The fifth action bars future changes to the law that are discriminatory (except temporary measures as provided for in article four). The final three actions are based on eliminating discrimination in the private sector, in customary practice and in penal provisions, given in general language.[299] These provisions effectively encompass most potential measures a democratic state can take. As New Zealand did not recognise certain documents to be "constitutional documents" as it does today, (such as the Treaty of Waitangi and the Constitution Act 1986) the initial report does not discuss measures of change to the constitution.

Article three of CEDAW provides another overarching principle, that each State must take *all* appropriate measures in *all* fields (specifically, the political, social, economic and cultural sectors) to ensure the full development of women.[300] This article provides for a positive right that demands states take action to improve the status of women, rather than merely prohibiting discrimination. It is opined that this is one of the least adhered to obligations of CEDAW. The New Zealand report states that some government departments have set up 'positive' or 'affirmative action' policies to promote gender equality (which were similarly applied to Article 5,)[301] but no direct laws regarding this provision were in force that did not require individual complaint before action could be taken.[302]

Article four provides that temporary special measures designed to accelerate equality between men and women should not constitute discrimination provided that they are only temporary measures (unless they are maternity related) and are to be repealed immediately their purpose has been achieved.[303] Article four is a little used and little liked provision in New Zealand,[304] although the New Zealand report notes that the Human Rights Commission Act 1977 provided for article four of

[299] CEDAW, Art 2.
[300] CEDAW, Art 3.
[301] NZ CEDAW Report 1, at 11.
[302] At 11.
[303] CEDAW, Art 4.
[304] See New Zealand's periodic reports (all) and further chapters, especially chapters four and five.

CEDAW. The Act had a provision in which a programme for the advancement of either gender could be considered by the Human Rights Commission if that group reasonably required assistance to achieve equality with other members of the community,[305] although for the most part, this provision went unused.

The fifth article is a directive to State parties to take all appropriate measures to modify cultural and customary prejudices based on stereotypical roles for either men or women. This includes the education of children to ensure they understand the common responsibility of men and women in raising a child.[306] This is a unique provision in human rights law, with an educative and social engineering function.[307] However, "all appropriate measures" differ for each Member State and there have been arguments for balancing the right to preserve culture with right to attain equality. As several cultural practices negatively and disproportionately impact women, it is clear that these particular practices should not be preserved according to CEDAW, as the right to live a decent and equal life is found to trump retaining culture based on the provisions within the instrument.[308] New Zealand's efforts included media campaigns to encourage women into the workforce, and attempt to eliminate sexist vocabulary and stereotyping from state and educational publications.[309]

In the sixth and final article of part one of CEDAW, State parties are required to suppress all forms of trafficking in women and exploitation of women in prostitution.[310] This is an interesting provision as it is the only one in the first part of CEDAW that protects specific rights in a specific sector. In most countries, the women with the least rights and the most discrimination are those in the sex industry – regardless of whether they do it by choice or not.[311] The New Zealand report noted that while slave dealing was illegal,[312] prostitution was not – although it was an offence to

[305] Human Rights Commission Act 1977, s 2B.
[306] CEDAW, Art 5.
[307] Shivdas, above n 270, at 6.
[308] At 10.
[309] NZ CEDAW Report 1, at 11.
[310] CEDAW, Art 6.
[311] Kamala Kempadoo, Jo Doezema (eds.) *Global Sex Workers: Rights, Resistance, and Redefinition* (Routledge, United States, 1998).
[312] Crimes Act 1961.

live off the earnings of a brothel or procure sexual intercourse for reward.[313] It did not protect the rights of sex workers.

(C) CEDAW Part 2 - Political and Public Spheres

Part two of CEDAW contains only three articles, all of which are based on eliminating discrimination, primarily in political and public spheres. Article seven ensures that women are given the right to vote in any arena of public voting, to participate in all forms of government within all levels of government and to participate in any NGOs that focus on the public or political situation of the country.[314]

The discussion in the initial New Zealand report mostly revolved around the participation rate of women in politics, in which there was a 10% proportion of women in Cabinet, 13% of members of Parliament, 14% of the local bodies were women representatives and 7% of mayors were women. [315] It did note that while there were no legal barriers for women's participation in NGOs focussed on public and political life, there were still attitudinal barriers in some areas.[316]

Article eight attempts to ensure that equal participation within government and international organisations take place within Member States.[317] Finally, Article 9 requires States to give the same nationality rights to women that men have – including the right to pass their nationality on to their children.[318]

None of these articles provided any barriers to already-made New Zealand law. Women had been able to participate in all these sectors of life for years, although the participation rate was very low because of other factors such as social and cultural expectations. Most Western countries were in a similar position, so these articles appear to be particularly for the

[313] Crimes Act 1961.
[314] CEDAW, Art 7.
[315] NZ CEDAW Report 1, at 13.
[316] NZ CEDAW Report 1, at 13.
[317] CEDAW, Art 8.
[318] CEDAW, Art 9.

benefit of third-world countries where traditional roles of women had not evolved to any great degree.

(D) CEDAW Part 3 – Public and Private Spheres

The third part of CEDAW provides articles that require States to abolish discrimination against women in public/private relationships such as education, employment, health and other areas of economic or social life (including those women who live rurally). As other international treaties do not cover such public and private sectors in any great detail, this is one of the main focuses of CEDAW. It tackles the idea of cultural stereotyping and prejudice and requires States to take measures to modify social measures and the dominant hegemony of patriarchy.[319]

Article 10 of CEDAW centres on education, the particular rights focussed on are: [320]

> (a) Having access to the same conditions for career guidance and studies at educational levels at all levels from school to high technical education and vocational education;
>
> (b) Having access to the same standard of school, teaching staff and equipment as men;
>
> (c) Elimination of anything stereotyped in education, such as vocation, level and learning materials;
>
> (d) Having the same opportunities to benefit from scholarships as men;
>
> (e) Being given the same opportunities for further (such as adult) education, and raising the level of women's education to that of men's;
>
> (f) Reducing the female dropout rate at education facilities;
>
> (g) Having equal opportunities to participate in physical activities; and
>
> (h) Giving specific education to women on the health of families, including family planning.

[319] Shivdas, above n 270, at 6.
[320] CEDAW, Art 10.

The New Zealand report noted that all spheres of education were open to both women and men, although there was some extra encouragement needed for areas where women were traditionally underrepresented (such as in math and science dominated topics), even though women were more likely to have a higher level of secondary education than men.[321] The main area of contention was the conservative community and to a lesser extent, the teaching force.[322] The programs that were male dominated often had a hostile working environment towards women, such as having an assumption that women were not as good as men in math and science. It was difficult to encourage women to take these options, and often difficult for qualified women to find employment once qualified as many sectors on the workforce had similar prejudices.

Article 11 examines employment discrimination issues. Specifically, it requires equal rights to be employed by examination of the same criteria, to choose which employment to enter, to have equal remuneration for equal work, to have equal social security at work, and the right to have equal health and safety in the workplace. It also mentions that States should employ means to ensure that no discrimination on the basis of marriage or maternity should take place for women. Finally, it notes that periodic reviews of legislation put in place for these purposes should be made, due to changes in science or technical knowledge.[323]

The Human Rights Commission Act 1977 is again listed as the solution in the New Zealand report, where (other than reservations such as in the armed forces) it is unlawful when employing to discriminate based on the grounds of gender.[324] It noted that New Zealand had not yet legislated for maternity leave with pay, although a committee was to examine whether to add this suggestion in a review of the Maternity Leave and Employment Protection Act 1980. The New Zealand report also admitted a shortage of child care facilities for children under two, but the Government increased the overall funding of child care services by 70% in 1985 which was aimed

[321] NZ CEDAW Report 1, at 13.
[322] At 13.
[323] CEDAW, at Art 11.
[324] NZ CEDAW Report 1, at 15.

at alleviating some of the child care issues.[325] Although this increase may have contributed to improving the lives of children, it was not aimed at doing the same for the status of women, and therefore had little effect on employment issues surrounding birth and childcare. Paid maternity leave and subsidised early childhood education would not be introduced for years to come.

Article 12 briefly states that equal rights and access to health should be available to women – except on the basis of pre, during and post-natal periods where as many services for as little cost as possible should be provided by the State.[326] New Zealand fulfilled these criteria. Women received free pre and post-natal care and free medical and hospital services during pregnancy, but other than this, there was no lawful discrimination against women in healthcare.[327]

As a further and final safeguard to all potential areas not covered, article 13 covers discrimination in any "other areas of economic and social life" specifically including family benefits, banking and any recreational activities.[328] The New Zealand report stated that there was no legal discrimination for women to obtain social welfare or credit. However, there were still some cultural barriers in relation to women's participation in recreational activities such as sport, although no mention was made of what improvements were made to alleviate this issue.[329]

The final article in part two of CEDAW is sector specific, by way of reemphasising that all the above rights apply to women in the rural areas as well. It maintains that States should take appropriate measures to provide equal access to services such as health, training, community services, self-help groups, credit and loans, and to ensure that rural women enjoy adequate living conditions.[330] Rural women were given the same legal rights as urban women in New Zealand, although, not unexpectedly, transport and distance limited New Zealand's ability to fulfil

[325] At 17.
[326] CEDAW, Art 12.
[327] NZ CEDAW Report 1.
[328] CEDAW, at Art 13.
[329] NZ CEDAW Report 1, at 17.
[330] CEDAW, Art 14.

the article's requirement. Article 14 of CEDAW has not – to any great extent – been a barrier to New Zealand women as the country is small and most women are able to obtain any necessities without much extra effort.

These articles in CEDAW provide a complete set of rights relating to the public lives of women, especially as it, again, provides a catchall provision in article 13. The section is one of the most heavily emphasised, based on the recognition that no other international documents have recognised the importance of giving Member States the obligation of raising the status of women in employment and educational sectors. By giving States this duty, the social and cultural biases against women in these areas are also under the direct influence of the Government, and thus can be directly and intentionally improved by Government initiative.

(E) CEDAW Part 4 – Private Spheres

Part four of CEDAW relates to discrimination in private dealings, such as in contractual relationships. It is one of the hardest sectors for States to effectively regulate. Article 15 provides that State parties should ensure than all women and men have equal status under the law, including equal capacity to conclude contracts, administer property, go to the judiciary and have the freedom to choose their residence.[331]

Article 16 is a long article that mandates that women should have equal rights both to, and within marriage. In particular, the rights to enter into marriage, choose a spouse, be treated equally at the dissolution of marriage, have the same responsibilities as parents, have freedom of choice in when and how many children they have, have the same rights of guardianship to their children, have the same rights to choose a family name, and to have the same rights as to property. Finally, provision in this article was also made for children – in which the interests of a child are paramount and any betrothal or marriage of a child should be null and void.[332]

[331] CEDAW, Art 15.
[332] CEDAW, Art 16.

New Zealand women were given full legal capacity to satisfy the rights provided in Article 15,[333] although there remained some difficulty in translating these rights into substantive equality. These rights were perhaps the best evidence that despite some shortfalls, New Zealand was in fact a world leader in providing formal rights for women. Article 16 of CEDAW notes that marriages need to be consented to by both parties or else the marriage becomes void. Both women and men had the same rights in terms of having or choosing not to have children.[334] Although contraception was widely accepted by this time, choosing not to have children was usually based on the woman's decision to use contraception rather than the man's, as condom use (one of the only male contraceptives) was unpopular.[335] The report does not discuss the continued cultural barrier in that responsibilities as parents was not usually equally divided.

CEDAW appears to have covered almost all possible ways that discrimination on the basis of gender can take place. Where it does not cover every possible situation in particular circumstances, the overarching rights fill the gaps provided Member States are actually committed to achieving them. There are no sectors of life that it disregards and as it is a living instrument with some generalised provisions, it can make additional General Recommendations should new issues arise. For example, CEDAW does not refer specifically to gender-based violence, but in 1992 the Committee clarified that such violence is inherently discriminatory and undermines women's enjoyment of all other rights.[336] It is the latter sections of CEDAW that give rise to issues resulting in the former sections not being complied with by many Member States.

While New Zealand had implemented most of the legal requirements CEDAW demands, and had outlawed open discrimination, by the time it had ratified the instrument there was still significant discrimination taking place in practice and culture. The limited effect of CEDAW is apparent

[333] NZ CEDAW Report 1.
[334] At 18.
[335] K Libbus "Women's Beliefs Concerning Condom Acquisition and Use" (1995) 12 Public Health Nursing 341.
[336] Shivdas, above n 270, at 6.

when examined in context of New Zealand's continued reports. Chapter four discusses this impact.

Part II: The Benefits and Faults of CEDAW

(A) The Benefits of CEDAW

While other international human rights standards are transcribed in gender-neutral language and thought to be universal in application, most of them represent certain interests and exclude many others – in particular, women's rights.[337] CEDAW focuses on the rights that are by and large ignored by the international community, specifically aimed at raising the status of women to equality. It improves on DEDAW and is intended to implement the principles that had been previously declared, (but not achieved based on the previous voluntary reporting procedures) through compulsory and regular reporting by the states.[338]

The principle effect and impact that CEDAW has is the raising of awareness and categorising of women's issues on a global scale.[339] It demands this awareness in sectors of the community that had not traditionally been considered the State's responsibility. As the greatest obstacle in reaching gender equality is cultural norms,[340] CEDAW recognises discrimination outside the public sphere so that there is an acknowledgement that many of the discrimination issues that arise are not totally State regulated, yet still places the obligation on the States to

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[337] Saksena, above n 275, at 482; Susanne Zwingel, *How do international women's rights norms become effective in domestic contexts?: An analysis of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)* (2005) <http://www-brs.ub.ruhr-uni-bochum.de/netahtml/HSS/Diss/ZwingelSusanne/diss.pdf> at 13; Spike V Peterson 1992: "Transgressing Boundaries: Theories of Knowledge, Gender and International Relations" (1992) 21(2) Millennium, Journal of International Studies 183.

[338] UN General Assembly, *Declaration on the Elimination of Discrimination against Women*, 7 November 1967, A/RES/2263, available at: http://www.unhcr.org/refworld/docid/3b00f05938.html [accessed 30 January 2013]; CEDAW, preamble; United Nations, above n 264.

[339] Julie A Minor "An Analysis of the Structural Weaknesses in the Convention on the Elimination of all forms of Discrimination Against Women" (1994-1995) 24 Georgia Journal of International and Comparative Law 137, at 152.

[340] At 152.

eliminate discrimination from private spheres.[341] It bridges the traditional divisions between civil and political rights, and socio-economic rights.

A second positive impact CEDAW has is that it defines discrimination against women in terms of its effect, and this definition is internationally accepted.[342] Thus, regardless of original intent of an action, if any result is discriminatory against women, the principles of the treaty have been breached.[343] This concept of substantive equality is achieved by requiring Member States to ensure the practical realisation of rights through positive action and through the understanding that women's status is often disadvantaged from the start.[344] Thus, to merely pass gender neutral legislation is not likely to create gender equality, but will simply reinforce or continue the existing gender bias

A third benefit and an improvement on DEDAW is the inclusion of compulsory state reporting. Article 18 provides for this, in which State parties are required to submit reports to the UN and the Committee that comments on the legislative, judicial, administrative and other measures they have adopted to give effect to CEDAW. These reports take place one year after entry into force for the State, and every four years after that, unless the Committee requests more.[345] This reporting requirement provides the Committee with constant new information on each Member State so it can collate and analyse each report on an individual and a global basis of the status of women and their rights. However, if a country is a signatory but does not send reports, little is done in the way of punishment for the breach. International enforcement is weak as Member States have not ceded their autonomy to the Committee. This therefore connotes that the Committee is reliant on the State's 'honour' to fulfil its declared obligations found in CEDAW.

A suggested shortcoming of CEDAW has been its reluctance to adopt formal recommendations and its lack of power to interpret the substantive

[341] Saksena , above n 275, at 484.
[342] CEDAW, Art 1.
[343] Minor, above n 337, at 139.
[344] International Women's Rights Action Watch (IWRAW)–Asia Pacific "The CEDAW Convention" (2005) Accessed: 15 December 2012 http://www.iwraw.ap.org.
[345] CEDAW, Art 18.

provisions in the Convention, of which it can only make suggestions and General Recommendations as found in article 21 of the treaty.[346] In the past, the Committee had been reluctant to interpret substantive provisions, preferring instead to give recommendations on content of reports or reservations. However, in the last score of years, the Committee has made CEDAW a living instrument,[347] and has adopted General Recommendations on specific issues, such as domestic violence, AIDS and the right of women to have access to safe abortion procedures.[348]

Finally, as part of its improvement and as a rarity among international treaties, CEDAW has encouraged and developed relationships with NGOs globally, even though they are not mentioned in the instrument itself. The NGOs provide shadow reports of the state party reports to the Committee, which contain information allowing groups to express their concerns and highlight discriminatory practices.[349]

(B) Criticisms of CEDAW

There are suggestions that progress for equality for women in New Zealand has been impeded by one main factor relating to the acceptance of reservations. However, discussion on more minor faults of CEDAW will be given first, to be followed by an analysis of the issue surrounding reservations.

The first instance of a minor impediment is that the Committee is only given a limited authority. The purpose of the Committee is to consider the progress made for the implementation of CEDAW. The Committee's meetings to discuss State reports cannot take place for more than two weeks each year.[350] The short meeting time had resulted in a backlog of reports, taking up to three years from the time a State submitted its report

[346] Minor, above n 337, at 148; CEDAW, Art 21.
[347] Shivdas, above n 270.
[348] Saksena, above n 275, at 487; Convention on the Elimination of Discrimination of Women *Reporting Guidelines: General Recommendations* (1991) watch/daw/cedaw, accessed 12 May 2012: www.un.org/women.
[349] Saksena, above n 275, at 487.
[350] CEDAW, Art 20.

until the Committee reviewed that report.[351] As reports must be submitted once every four years, it partially defeats the purpose of the reporting procedure when the Committee cannot give feedback and advice for change in due time for the next report to take place – reducing its original feedback to obsolete information.

The introduction of a pre-session work week improved the backlog, but not in a way that brought it up to the standard of other UN instruments. In contrast, almost all of the other international treaties do not limit their respective committees' reporting times.[352] This implies in part that the women's treaty was expected to take less time in its reporting procedures than the other treaties, and as a consequence is a less important treaty.

Another practical issue was that until 1993, the meetings of the Committee took place at the UN Headquarters or Vienna, as opposed to Geneva, where the other treaties were serviced by the Centre for Human Rights. This meant that the Committee could not obtain the legal expertise that the other treaty bodies could.[353] In 1993 this was partially rectified by shifting the Division for the Advancement of Women (a body merged in 2010 to "UN Women", created to accelerate the UN's goals on gender equality)[354] to New York, where there was also an office for the Centre of Human Rights, so it now has an equal ability to get expertise as other treaty bodies. Nevertheless, its geographical separation from other UN human rights bodies in Geneva have left it outside mainstream human rights discussion.[355] Lack of ability to mainstream has been one of the greatest challenges to the Committee, although it has tried to alleviate this by participating in intergovernmental conferences on human rights and in the meetings of chairpersons of the principal human rights treaty bodies (the only formal mechanism provided).[356]

[351] Minor, above n 337, at 148.
[352] At 148.
[353] Committee on the Elimination of Discrimination Against Women *Report of the Chairperson* (1994) CEDAW/C/1994/L.1/Add. 5 XIII.
[354] United Nations "About UN Women" UN Women http://www.un.org/womenwatch/daw/daw/.
[355] Saksena, above n 275, at 488.
[356] Saksena, above n 275, at 488; Marie R Bustelo "The Committee on the Elimination of Discrimination Against Women at the Crossroads" Philip Alston and James Crawford

(i) Criticism on Reservations

The most significant issue that negates CEDAW's impact considerably (other than its lack of direct control over Member States) is the widely drafted provision for reservations. Reservations are able to be withdrawn at any time by notification to the Secretary-General of the UN.[357] A reservation is[358]

> A unilateral statement... by a State when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in application to that State.

The reservations New Zealand originally entered into included; not supplying maternity leave with pay; excluding women employed in armed forces or law enforcement forces where there is the possibility of violence taking place; and finally, denying employment of women in underground mines in which New Zealand was still bound by the International Labour Organisation Convention 45 that prevented this.[359] The reason these reservations were entered into was that the New Zealand government (at the time) had no intention of taking action that would provide women with these options, and therefore did not want to be questioned on it by the Committee. It showed intention not to give substantive (or even formal) equality to women in these spheres.

The main flaw of the CEDAW is that it has a vague policy on reservations. Any reservations are acceptable provided they do not conflict with the 'object and purpose' of the instrument. No guidelines are given to determine whether this requirement has been met.[360] Because of this,

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(eds.) *The Future of UN Human Rights Treaty Monitoring* (Cambridge University Press, Cambridge, 2000) 79.

[357] CEDAW, Art 28.

[358] Daniel N Hylton "Default Breakdown: the Vienna Convention on the Law of Treaties: Inadequate Framework on Reservations" (1994) 27 Vanderbilt Journal of International Law 419.

[359] International Labour Organisation *Convention concerning the Employment of Women on Underground Work in Mines of all Kinds (no. 45)* 19 Geneva (Adoption: 21 June 1935, Entry into force: 30 May 1937); NZ CEDAW Report 1, at 5.

[360] CEDAW, at Art 28.

CEDAW had, and continues to have, one of the highest numbers of reservations for any international treaty.[361] Examples of CEDAW's failure to limit reservations that breach the purpose are discussed below.

In essence, CEDAW allows Member States to make almost any reservations. This has resulted in countries claiming to support CEDAW, while making a reservation that blatantly opposes the object and purpose of the Treaty.[362] CEDAW's effectiveness is therefore undermined dramatically.[363]

Many states claim these reservations are based on cultural or customary values, citing the treaty as holding 'Western" conceptions of human rights that are inapplicable to their countries.[364] However, CEDAW was drafted to protect a minimum standard of women's rights, worthy of legal protection on a similar scale.[365] In the same way that most countries now accept slavery is below a minimum standard of human rights – even though it was inherent to many cultures, so too, should it be accepted that CEDAW is a universal standard rather than a culturally biased one. The treaty drafters were aware that this would cause conflict, so specifically drafted that signatories must take measures to modify social and cultural patterns that lead to discrimination.[366]

The most obvious examples of failure to comply are in countries where women have customarily held second-class citizen status. Egypt made a reservation to article 9 stating that women would not receive the same rights as men as regards passing their nationality on to their children. The reason given for this was that a child with two possible nationalities may be prejudiced. Thus, taking the father's nationality is most suitable since this is the norm of custom.[367] This reservation was withdrawn in 2008.

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[361] Cook, above n 265, at 664.
[362] Minor, above n 337; Saksena, above n 275, at 488.
[363] Belinda Clark "The Vienna Conventions Reservation Regime and the Convention on Discrimination Against Women" (1991) 85 American Journal of International Law 281.
[364] Saksena, above n 275, at 489.
[365] At 489.
[366] Aaron X Fellmeth "Feminism and International Law: Theory, Methodology and Substantive Reform" (2000) 22(3) Human Rights Quarterly 658.
[367] United Nations Treaty Collection "Chapter IV: Human Rights; 8: Convention on the Elimination of All Forms of Discrimination Against Women" (2012) United Nations www.un.org.

Nevertheless, the reservation was originally accepted, even though it directly opposed an article in CEDAW for reasons based on custom – thereby also opposing article 2, one of the most important and overarching articles in the whole instrument.

Another example is the accepted reservation of Libya to CEDAW, where its accession "cannot conflict with the laws on personal status derived from the Islamic *Shariah*."[368] The principle sources of this belief are the Quran, Hadiths, and Sunnah, which are the sayings, practices, and teachings of the Prophet Mohammed.[369] As one example of the law in these texts, it states that a woman's testimony in court is worth half that of a man. Thus, two women giving testimony would only be as persuasive as one man.[370] Again, this reservation openly denies women' equality with men based on customary inequality.

The International Court of Justice established that a reservation must be tested for validity by looking at the object and purpose of the treaty. This was later reaffirmed by the Vienna Convention on the Law of the Treaties in article 19(c).[371] The problem with this test is that it is partially decided by the State that wishes to add the reservation. Other parties can reject the reservation, but if they do not do so within 12 months, it is considered tacit accession.[372]

If claiming to reserve the right to minimal or limited compliance with the main articles in CEDAW (i.e. promote discrimination against women, such as the reservations that Egypt and Libya made) is within the 'object and purpose' of CEDAW (i.e. to stop discrimination against women), it is difficult to know what proposed reservations could be rejected. The CEDAW Committee itself has commented that it was dismayed at the

[368] At 33.
[369] Australian Islamist Monitor "Islamic Sharia Law in Brief" (2011) Syed Kamran Mirza www.islammonitor.org.
[370] Above n 368.
[371] *Reservations To The Convention On The Prevention And Punishment Of The Crime Of Genocide (Advisory Opinion)* 1951 I.C.J. 15; United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, available at: http://www.unhcr.org/refworld/docid/3ae6b3a10.html [accessed 30 January 2013].
[372] Richard W Edwards "Reservations to Treaties" (1989) 10 Michigan Journal of International Law 362.

large number of reservations that are incompatible with the object and purpose of the Convention,[373] but does not have the power to assess the compatibility of any reservations.[374]

Historically, reservations to treaties used to have to be unanimously approved by all member states, and where it was not approved, the State could sign the treaty without the reservation or could choose to not sign the treaty.[375] This black-or-white approach did not encourage potential Member States to become full Member States on the basis that the State may have wanted to withdraw from one article of a treaty.

However, to achieve a better integrity for CEDAW, the drafters could have used the Convention on the Elimination of all forms of Racial Discrimination as a model which allows reservations only provided that they are approved of by two-thirds of all other State parties.[376] The Race Convention has very few reservations in comparison with CEDAW.[377]

It is possible that the object of the CEDAW reservations policy was for maximum participation over maintaining the integrity of CEDAW. With 137 State parties being involved and 99 signatories, it has a similar amount of States involved in comparison to other treaties, but a high number of signatories.[378] With a greater number of signatories, CEDAW is given a greater force and understanding in the global community. However, the value of signatories is much lessened with so many reservations denying the principles of the Treaty.[379]

In a case for another treaty, it was decided by the International Court of Justice that when participation is sought to be maximised, minor

[373] Jennifer Riddle "Making CEDAW Universal: A Critique of CEDAW's Reservation Regime under Article 28 and the Effectiveness of the Reporting Process" (2002-2003) 34 George Washington International Law Review 607,
[374] United Nations Secretariat "Ways and Means of Expediting the Work of the Committee" (2001) CEDAW/C/2001/11 XXV, at 7.
[375] Riddle, above n 371.
[376] International Convention on the Elimination of All Forms of Racial Discrimination, above n 291, Art 20.
[377] United Nations Treaty Collection "Chapter IV: Human Rights; 2: International Convention on the Elimination of all forms of Racial Discrimination" (2012) United Nations www.un.org.
[378] United Nations, above n 365; United Nations Treaty Collection "Chapter IV: Human Rights" (2012) United Nations www.un.org.
[379] Riddle, above n 371.

reservations should not prevent State ratification.[380] CEDAW has been successful in terms of participation; however, the participation in some cases is in name only, since the decision of how major a reservation is, mainly rests in a subjective test in the opinion of the State in question.[381] In general, the net effect is the widespread view that international obligations to CEDAW are somehow less binding than those of other human rights treaties.[382]

A suggestion for improvement is giving the Committee the power to judge the compatibility of the reservations with the object and purpose of CEDAW, just as the Human Rights Committee under the International Convention of Civil and Political Rights has done.[383] Reservations that are deemed invalid are severed, meaning the State becomes party to the full Treaty without any reservations (unless it has an acceptable one).[384] This would force Member States to consider the strength of their commitment to the treaty, although it is acknowledged that the practical effect of such severance would be minimal as the enforcement powers under CEDAW lack authority.

Part III: CEDAW: The Optional Protocol

The Optional Protocol to CEDAW was adopted on the 6th of October 1999 by the General Assembly.[385] A few months after New Zealand signed and ratified it (on the 7th of September 2000), the Protocol came into force, and a call was made for all States that were parties to the Convention to ratify the new instrument.

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[380] *Reservations To The Convention On The Prevention And Punishment Of The Crime Of Genocide (Advisory Opinion)* 1951 I.C.J. 15, at 24.
[381] At 26.
[382] Saksena, above n 275, at 490; Steiner J Alston and Philip Alston *International Human Rights in Context* (Clarendon Press, Oxford, 1996), at 919.
[383] Office of the High Commissioner for Human Rights *General Comment 24* (1994) U.N. GAOR, Hum. Rts. Comm. LII.
[384] Above n 381.
[385] Department of Economic and Social Affairs; Division for the Advancement of Women "Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women" (2000) United Nations www.un.org.

The Protocol essentially gives the Committee the power to receive and consider complaints from individuals or groups within signatories' jurisdiction.[386] It was purposed to raise the status of CEDAW to that of other International conventions.[387]

The reason it was created was so that an individual person or organisation could have access to a body that could protect them on violation of their rights, while the Treaty itself only provided for State reports and inter-State complaints. It means that even after the reporting procedure has taken place, more State-specific guidance can take place to improve an individual country where it has aspects of gender discrimination. It also provides some incentive to States to ensure they properly implement CEDAW, so complaints will not be made against them.[388]

It contains two main procedures in which a State is party to both the Convention and the Protocol. The first is a communications procedure established in articles two to seven in which claims of violations of rights contained in CEDAW are able to be submitted to the Committee. However, for these claims to be made, several criteria have to be met – including demonstration of how all possible domestic remedies have been exhausted. The reason for this clause is to avoid duplication of legal remedy.[389] Where the complaint is found admissible, the Committee confidentially brings the complaint and the recommendations suggested to the knowledge of the State party, in which the State is then given six months to review the complaint and provide a written explanation of remedial steps taken.[390] However, in terms of practical effect, if the State chooses to ignore this request, it may do so without ramifications other than continual questioning by the Committee.

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[386] Above n 383; United Nations General Assembly, *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women* A-20378 UNTC (opened for Signature 6 October 1999, entered into force 22 December 2000).

[387] Margaret Wilson "The Internationalisation of Women's Rights: The Case for the Optional Protocol to CEDAW" (Lawasia Comparative Constitutional Law Third Biennial Conference on *Constitutions in an Interdependent World: Impact of Internationalisation on Governance in the Asia/Pacific Region*, Macau, 1996), at 9.

[388] Department of Economic and Social Affairs, above n 383.

[389] Wilson, above n 385, at 11.

[390] United Nations General Assembly, above n 384, at Art 6-7.

This clause is different from the original draft, which contained no requirement that all domestic remedies be exhausted. The inclusion of this clause is unfortunate given the victimisation suffered by many women seeking to use the law as in many countries the law is biased against women, and punishes them if complaints of discrimination are made public.[391]

However, the procedure also creates greater public awareness of gender rights within different and smaller communities. Action can be taken by bodies other than the state, although obligation remains with the State to ensure substantive equality is being achieved.[392] The ability to complain to an international organisation infers that the individual, group or organisation has influence and another outlet should domestic law be found wanting in terms of stopping discrimination.[393]

The second procedure is contained in the Optional Protocol's articles eight to nine. These articles create an inquiry procedure, whereby the Committee can initiate inquiries of grave or systematic violations of women's rights.[394] This procedure is useful as it allows an international body of experts to investigate any substantive abuse of women's rights. It also means that if individual women are not able to complain publicly through fear of possible punishment, investigation can still take place.[395]

However, while no reservations are accepted in regard to the Protocol,[396] an opt-out clause is provided in article 17, in which a State party may refuse to allow the Committee to begin the Inquiry Procedure. An opt-out by a State may be later withdrawn by written notice. In effect, this clause works in a similar way as the reservations policy and severely detracts from CEDAW's impact. If a Member State is aware of obvious discrimination towards women and has made it difficult for women to 'exhaust domestic remedies' – it merely needs to opt out of this provision so CEDAW has no power to investigate the issue and gives no viable

[391] Saksena, above n 275.
[392] Saksena, above n 275, at 486; Alston, above n 380, at 90.
[393] Saksena, above n 275.
[394] Department of Economic and Social Affairs, above n 383.
[395] Above n 383.
[396] United Nations General Assembly, above n 384, at Art 17.

option to women to fight for improvement. In this case, the Optional Protocol has little or no effect.

The Protocol has a similar status to the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, and the Convention against Torture[397] (The last two both have communications procedures). The inquiry procedure is the equivalent of that under the Convention against Torture.

The Optional Protocol gives CEDAW more impact within its Member States, provided States do not take advantage of the opt-out clause. The procedures for these investigations had been recommended previously and have improved the scope of CEDAW. The issue with the Protocol is that it gives no greater practical effect for those who request an investigation. Only a confidential report is made, which means that if a member State chooses to ignore it, it could do so with little adverse consequences.

Conclusion

CEDAW is an idealistic international treaty. It is effective in promoting the spread of understanding of women's rights globally, but it is not effective in terms of impacting individual women by forcing Member States to give them the rights contained in the instrument.

New Zealand is proof of this. Its first report to the Committee of CEDAW even begins with the fact that it only signs a treaty after having (apparently) implemented all of the expectations already. New Zealand was not correct in this assumption – even today there is inequality between the genders.

[397] UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: http://www.unhcr.org/refworld/docid/3ae6b3a94.html [accessed 30 January 2013]; UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, available at: http://www.unhcr.org/refworld/docid/3ae6b3940.html [accessed 22 June 2012].

Nevertheless, despite evidence that CEDAW is not an effective tool for creation of equality, it is a tool for encouragement and notice to a State of situations in which that State should implement further rights for women. CEDAW also provides an effective comparison of equality between a Member State and substantive equality – regardless of how much direct impact the Committee may have.

It is difficult to quantify the exact amount of impact CEDAW has had on a country such as New Zealand, because countries that are conducive to reasonably sound human rights practices in any case will enjoy the benefits of rights in the absence of international treaties and obligations.[398] Even if it were possible to quantify the direct effect of an international instrument, as CEDAW requires reports from the state, it is unlikely that the state will report its own transgressions, and even if it does, the Committee has little power to force the state to rectify the imbalance.[399]

The rights contained in CEDAW appear to be complete and are safeguarded by overarching and general rights that prevent loopholes, while the Optional Protocol gives some better reporting power to the Committee. However, even if there were a need to close loopholes then CEDAW would be limited as a practical measure, because in real terms the Committee has restricted power. A further downfall is that essentially any reservations (even ones that go against the purpose of the CEDAW) can be entered by Member States. This significantly reduces the integrity of the Treaty.

However, for all its lack of substantive and intended effect, research has indicated that ratification of CEDAW in general improves women's status (especially political) in the country of ratification.[400] CEDAW compares favourably with treaties such as the International Convention of Civil and Political Rights and the Convention Against Torture, in which ratification

[398]Daniel W Hill Jr. "Estimating the Effects of Human Rights Treaties on State Behaviour" (October 2010) 72(4) The Journal of Politics 1161, at 1161.
[399] Hill, above n 396, at 1162; Emilie Hafner-Burton and Tsutsui Kiyoteru "Human Rights in a Globalizing World: The Paradox of Empty Promises" (2005) 110(5) American Journal of Sociology 1373; Linda Camp Keith ''Constitutional Provisions for Individual Human Rights: Are They More Than Mere ''Window Dressing?'" (2002)b 55(1) Political Research Quarterly 111.
[400] Hill, above n 396, at 1172.

has been shown to lead to worse practices within the treaties' specific areas.[401]

In conclusion, CEDAW and the Optional Protocol are useful for raising the profile of women's rights internationally. Its primary failings are that it does not appear to have much impact on its member States, nor much power over them. This limitation will be further investigated in the following chapter, in which further New Zealand reports to the Committee will be examined.

[401] At 1172.

Chapter 4

The Transition; Recent Historical Changes to the Status of Women and the Impact of CEDAW in New Zealand since Ratification

Chapter four is a final examination of the history of women's status in New Zealand. It focuses on the period from the late 1980s to the mid 2000s, which leaves the following chapter to deal with the contemporary status of women. This chapter differs to the previous ones as it focuses solely on the New Zealand modifications as the domestic situation in this country is the basis for this thesis and the international background pertaining to revolutionary changes for women has already been provided as discussion on CEDAW.

The chapter has two main goals; the first is to demonstrate how much, and what sort of impact CEDAW has had on New Zealand in the given timeframes by analyzing how many of the changes to women's rights in New Zealand have been directly influenced by the goals of CEDAW or the comments by the Committee. The second goal is to continue to examine the status of New Zealand women and whether or not equality of gender had been reached or established. This will be achieved by comparing formal equality as found in New Zealand legislature and substantive equality as detailed by CEDAW.

The chapter will be divided into four main parts, each representing, in chronological order, a report New Zealand has made to the CEDAW body. The recommendations that CEDAW gave New Zealand (that were able to

be retrieved)[402] will be analysed, and comments will be made on whether these recommendations influenced New Zealand in any way. This will include examination on some of the replies New Zealand made on the Committee's comments.

The four main parts of the chapter are described as follows: part one of this chapter contains the second CEDAW report submitted to the CEDAW Committee in 1992 as well as the Committee's reply to the report; part two examines the third and fourth CEDAW report (which was combined into one single report) submitted in 1998. The third part looks at the fifth CEDAW report made in 2002 along with the Committee's comments and the New Zealand Government's responses to the comments and the fourth and final part of this chapter investigates the second to last report, made to CEDAW in 2006.

Part I: The Second CEDAW Report

This part is divided into two main sections; the first examines changes to the status of New Zealand women during the second CEDAW report in the period from 1987 to 1993. It is split into separate sectors of society, as reflected in the spheres of politics, employment and health. The second section looks at how influential CEDAW has been since it has come into force in New Zealand.

By the time of the second report, it was apparent that the major 'movements' of feminism were drawing to a close.[403] The formal rights of equality were continuing to be legislated for in the form of gender-neutral language, and substantive equality was still elusive. The feminist groups had split into factions, each espousing their specifically favoured agenda in terms of political, public or private areas.[404] Thus, fewer major

[402] NOTE: not every report made by the Committee and every reply from New Zealand was able to be retrieved. Requests were made to the UN body and the New Zealand Government for some of these but at the time of printing were not made available.
[403] Charlotte MacDonald *The Vote, the Pill and the Demon Drink: A History of Feminist Writing, 1869-1993* (Bridget Williams Books Limited, Wellington, 1993), at 210.
[404] At 210.

upheavals for women took place from this point onwards, and the changes made became sector specific.

(A) Changes to Equality in New Zealand During the Second CEDAW Report

(i) Politics

The fourth Labour Government which led New Zealand from 1984 to 1990 had enacted a major social and economic reform coined "Rogernomics" after the then finance minister, Roger Douglas, which essentially provided for drastic deregulation.[405] The fourth National Government continued some of these trends on its election in 1990, through to 1993. Rogernomics opened New Zealand to the deregulated market in trade and economics from what had been considered one of the most protected, regulated and state-dominated systems of capital democracy.[406] National continued the movement by selling state-owned-enterprises and introducing market forces into the running of hospitals, schools and universities.[407] The Government's objectives were to reduce expenditure using the 'mother of all budgets' – a pun on the concept of having the first woman finance minister, Ruth Richardson, and on the fact that it introduced major cuts in social welfare spending, and user-charges for universities and hospitals were initiated for the first time.[408] The Goods and Services Tax was introduced ("GST") at 12.5% along with a floating exchange rate. New Zealand experienced what was considered a 'poor economic performance',[409] with little growth in the economy and

[405] Paul Dalziel and Brian Easton (eds.) *The Making of Rogernomics* (Auckland University Press, Auckland, 1989), at 53.
[406] Jack H Nagel "Social Choice in a Pluralitarian Democracy: The Politics of Market Liberalization in New Zealand" (1998) 28(2) British Journal of Political Science 223.
[407] Marcia Russell *Revolution: New Zealand from Fortress to Free Market* (Hodder Moa Beckett Publishers Ltd., Mairangi Bay, 1996).
[408] Ministry for Culture and Heritage "The state steps in and out-housing in New Zealand" (February 2012) New Zealand history online http://www.nzhistory.net.nz/; Patrick Allen "'Bankrupt' Western Governments Need 'Ruthanasia'" (Article, 8 September 2010) CNBC http://www.cnbc.com/id/39054360>.
[409] New Zealand Government *Second Periodic Report on the Convention on the Elimination of All Forms of Discrimination Against Women* (1992) CEDAW/C/NZL/2 and Add.1, at 3 [NZ CEDAW Report 2].

unemployment having risen to 11.6% by 1991.[410] With deregulation and massive budget cuts, there were few significant improvements made for women who represented that part of the population most in need of regulation for equal treatment, and state support.[411]

Formal equality as well as accountability and transparency of government were promoted in constitutional legislation and policy under such statutes as the Constitution Act 1986 (which recognises the Separation of Powers in the Executive, Parliament and the Judiciary) and the New Zealand Bill of Rights Act 1990 ("NZBORA"), as well as a few other lesser Acts.[412] NZBORA endorsed a right of fundamental freedom to all New Zealanders, and provided an anti-discrimination measure in section 19 - which formalised the right for men and women to be treated equally in both public and private spheres.[413] However, it was a negative right rather than a positive one in which the onus of proof of discrimination was to be borne by the victim, rather than putting the onus on employers (for example) to provide equal treatment.[414] This did not provide a substantive right to equality for women, as the concept had already been a previously understood principle of New Zealand, although it was thought unnecessary to formalise until 1990. It was not an attempt to revolutionise the rights of those discriminated against and had little effect on individual women's lives.

(ii) Employment

The census collected in 1986 was interesting in that, for the first time, it had gathered information and given official recognition for women's unpaid work.[415] While this subject had once been only considered legitimate by 'extreme feminists' in the 1970s, it had become mainstream by the late

[410] At 3.
[411] Margaret Wilson "Towards a Feminist Jurisprudence in Aotearoa" *Feminist Voices: A Women's Studies Text for Aotearoa/New Zealand* (Oxford University Press, 1992), at 9.
[412] NZ CEDAW Report 2, at 2.
[413] New Zealand Bill of Rights Act 1990, s 19.
[414] Calum Bennachie "Controlling Anti-gay Hate Speech in New Zealand; The Living Word Case from beginning to end" (DPhil Ed. University of Wellington 2009).
[415] Royal Commission on Social Policy *The April Report: New Zealand today* (Wellington, 1988).

1980s, not only in the political arena, but also overtly in the public arena.[416]

The changes to institutions and authorities are mostly relative to the Employment Contracts Act which debuted 1991, cancelling the system of union privilege and mandating bargaining rules. This Act significantly reduced the power of employees both individually and as a collective.[417] However, the report to CEDAW states the Act provided means for an employee to pursue a personal grievance for discrimination or sexual harassment. Although the Act provided for such an action, in practice it had little effect because of the drastically reduced powers of employees who could be fired at will if they failed to please their employer. Since it was a relatively new piece of legislation, its lack of impact in repudiating discrimination in the workplace was unknown, although there was skepticism even then on the likelihood of it benefitting employees.[418] If an employee had been sexually harassed in any manner, their only right of recourse was either through the personal grievance procedures under the Act, or through a complaint to the Human Rights Commission, but not both.[419] The Act has since been widely considered to be ineffective in promoting employee's rights and to provide too much power to employers.[420] In the returning report from the CEDAW Committee, an issue was raised as to whether the Employment Contracts Act was beneficial to women. Rather, it was suggested that it probably undermined the effectiveness of trade unions, many of whose members were women[421] - which showed considerable foresight based on the later introduction of the Employment Relations Act 2000 which negated the 1991 Act.

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[416] MacDonald, above n 401, at 207.
[417] Roger Kerr "Bargaining Under the Employment Contracts Act 1991" (25 August 1995) Employment Law Bulletin http://www.nzbr.org.nz/site/nzbr/files/speeches/speeches-95-96/barg-eca.doc.htm.
[418] NZ CEDAW Report 2, at 7.
[419] At 54.
[420] Tonia Novitz "New Zealand Industrial Relations and the International Labour Organisation: Resolving Contradictions Implicit in Freedom of Association" (1996) 21(2) New Zealand Journal of Industrial Relations 119.
[421] Committee on the Elimination of Discrimination Against Women *Summary Record of the 243rd Meeting* (10 Feb 1994) CEDAW/C/SR. 243 XIII, at 12.

During this period women earned on average 81% of men's hourly wage. This disparity was primarily attributed to the fact that women had a high representation in lower income employment, while men's employment statistics were concentrated in a higher pay range.[422] It was believed that the Employment Contracts Act would significantly change these statistics.[423] This belief was shown to be incorrect and, as hinted at by the CEDAW Committee, the lack of union power actually served to accentuate the gender pay gap. Regardless of the legislation, the deregulation and market freedom determined that discrimination against female-dominated professions would continue as gender norms in social, political and cultural forces appeared to agree that women's work was worth less than men's.[424]

One improvement in the employment sector was the withdrawal in early 1989 of the reservation to exclude women from underground mines, although in practical terms, this removal proved largely ineffectual because the culture within the sector itself was relatively closed to women.[425]

(iii) Women's Health and Domestic Violence

The main focus of the health section in the second CEDAW report was the changes in recorded violence towards women. The number of Trial Court convictions for sexual violation almost doubled from 106 in 1986 to 209 in 1990. It was not known whether this rise in figures corresponded with a rise in violence or merely an increase in successful prosecutions. However, the figures were estimated to represent as little as 5% of all violent sexual offences in New Zealand.[426] The New Zealand report does not give figures for changes in domestic violence but notes that while previously the most prevalent punishment for domestic violence offences

[422] NZ CEDAW Report 2, at 39.
[423] At 40.
[424] Deborah Figart "Gender as More than a Dummy Variable: Feminist Approaches to Discrimination" (1997) 55(1) Review of Social Economy 1; Diane Elson "Labor Market as Gendered Institutions: Equity, Efficiency and Empowerment Issues" (1999) 27(3) World Development 611.
[425] NZ CEDAW Report 2.
[426] At 52.

resulted in a fine, it was becoming more common to give probation, periodic detention or a jail sentence to those convicted.[427] This increase in punishment severity showed some attempt to increase deterrence for domestic violence, but with so little recording done at the time, and even less previously, it is difficult to determine whether this made any substantive difference to women. The Committee condoned the measures taken to stop violence, but requested that information be submitted on increases and decreases in violence in future reports.[428]

Women's right to have a choice in sexuality had been a relatively successful campaign with the widespread and cheap use of contraception and free healthcare. The focus of activists changed to increasing the public awareness of the dangers of sexual relationships, such as the continued vulnerability of women to male violence and also the spread of sexual diseases – considering that AIDS had been virtually unknown at the beginning of the 80s, it had spread quickly by the end of the decade.[429]

It was a difficult time for those in New Zealand who wanted to raise the status of women. As the National Government was almost exclusively occupied with reducing expenditure, and women were least likely to be high earners or contributors, little change was made to substantive equality during the second report. Formal equality was improving and it was still hoped (or assumed by those with little interest in the matter) that formal equality would lead to substantive equality eventually.

(B) The Influence of CEDAW in New Zealand

In the second CEDAW report, the influence of CEDAW or the Committee to make changes in New Zealand was relatively insignificant. Within the report itself, it is noted (repeating the comments in the first CEDAW report) that the 'actual impact' of CEDAW was not significant. The purpose of the years between signing the Convention and ratifying it were, from New Zealand's perspective, to ensure legislation was substantially in

[427] At 52.
[428] Committee on the Elimination of Discrimination Against Women, above n 419, at 13.
[429] MacDonald, above n 401, at 208.

compliance with CEDAW's requirements. Therefore, the government considered that further changes were unnecessary.[430]

Against the repeated advice of the Committee, the reservation not to provide maternity leave with pay remained.[431] Not only this, but a new reservation was added; it concerned recruitment of women into active combat roles and as aircraft or ship crew in the armed forces. However, women had been permitted to perform 'all combat roles in peacetime' in the Royal New Zealand Air Force.[432] In this regard New Zealand had not withdrawn rights women previously had had; it just admitted that this was the current situation, and notified its intention not to change them in the near future. This was similar to the reservation on women in underground mines.

There was a belief that statutory compliance with CEDAW was all that was required by the Treaty. This obviously incorrect view (based on the language of the Convention noted in the previous chapter) gave rise to the negligible importance placed on the Committee's comments and recommendations.

The Committee did influence New Zealand in a small way, by prescribing the layout of reports to be submitted. The Committee noted that the report must have regard to the Committee's proceedings and guidelines for this and later reports.[433] Although it is not a substantive change in that it has no effect on women's rights, it does make for much easier reading of the report itself and showed willingness on New Zealand's part to, at least in some respects, take note of the Committee's comments.

Using the Treaty of Waitangi[434] as a reference, reducing inequality between Maori women and New Zealand European women was cited by the Committee as one of the significant changes that needed to be

[430] NZ CEDAW Report 2.
[431] Committee on the Elimination of Discrimination Against Women, above n 419, at 12.
[432] NZ CEDAW Report 2, at 5.
[433] NZ CEDAW Report 2, at Introduction; Committee on the Elimination of Discrimination Against Women, above n 419, at 13.
[434] Treaty of Waitangi (6 February 1840).

made.[435] It was also advised that the next report should contain a clearer and more frank discussion of the critical areas of discrimination that New Zealand women faced[436] as well as a detailed analysis of the remaining obstacles to total equality for women.[437]

The CEDAW body was openly acknowledged to have little influence on New Zealand. Although it was not an economically perfect time to be introducing human rights, from appearances, CEDAW still remained little more than a platform from which New Zealand expected to receive acknowledgement on semi-perfect compliance and was not required to make many improvements or take any action.

Part II: The Third and Fourth (Combined) CEDAW Report

(A) Changes to Equality in New Zealand up until Third and Fourth (Combined) CEDAW reports

The second New Zealand report was submitted to the Committee in 1993, while the third and fourth reports were combined and submitted to the Committee in one document five years later in 1998. It is not certain why there were not two reports made separately, however many countries have taken similar action as regards their third and fourth reports and it does not appear to have had any effect on the reports themselves.[438]

(i) Politics

Dissatisfaction with the major parties had led to a reform of the New Zealand electoral system from the traditional First-Past-the-Post method to a proportional one in which smaller parties could represent smaller

[435] New Zealand Government *Third & Fourth (Combined) Periodic Reports on the Convention on the Elimination of All Forms of Discrimination Against Women* (1998) CEDAW/C/NZL/3-4, at 5 [NZ CEDAW Report 3-4].
[436] Committee on the Elimination of Discrimination Against Women, above n 419, at 14.
[437] At 13.
[438] NZ CEDAW Report 3-4.

factions of society in New Zealand.[439] The introduction of the Mixed Member Proportional ("MMP") system for elections had resulted in a coalition government of the National Party and New Zealand First. It was hoped that women's interests would be represented more effectively in this way. Women made up 30% of the New Zealand Parliament, in which both the Prime Minister and the Leader of the opposition were women by the time the coalition failed in 1999.[440]

The economic standpoint had effectively reversed by this time, with New Zealand in a strong economic position of growth, budget surpluses, low inflation, falling unemployment and reduced Crown debt.[441] While this improvement in the economy was generally favourable to New Zealand, action taken for the improvement of the status of women was reduced. The Ministry of Women's Affairs continued to be the Government's main provider of gender-specific advice, but it only had 39 employees – 6 less than existed at the time of the previous report.[442]

It was noted in the report that there were no substantive changes to institutions in New Zealand to encourage further compliance with CEDAW other than changes to the Equal Opportunities Tribunal, because of the new Human Rights Act 1993. The Tribunal was given jurisdiction under the new Act, the Privacy Act 1993, and the Health and Disability Commissioner Act 1994, along with empowerment to award a maximum of $200,000 damages.[443]

The Human Rights Act, although providing for much more definitive and explanatory protection from discrimination on the basis of gender, also provided for a negative rather than a positive right.[444] While it strengthened the ability of individuals to make a complaint, it did not raise the status of women in any significant way.

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[439] Elections New Zealand "From FPP to MMP" Elections New Zealand Retrieved January 2013 <http://www.elections.org.nz/voting/mmp/history-mmp.html>.
[440] NZ CEDAW Report 3-4, at 25.
[441] At 5.
[442] NZ CEDAW Report 3-4.
[443] At 6.
[444] Human rights Act 1993, Part 1A and 2.

The 1993 Act resulted in part of the reservation restricting women in combat being alleviated by allowing women to be active on aircraft and ships; however, discrimination against women in active combat was still an exception to the anti-discrimination provisions. The reservation from the requirements of paid parental leave remained, although the government had published research on parental leave policies and on the use of the existing parental leave provisions. These publications made recommendations on future actions, but had little effect as the reservation remained in place.[445]

(ii) Domestic Violence

The Domestic Violence Act 1995 provided important legislative changes and gave women (who were most likely to be on the receiving end of domestic violence) better protection. Some of the changes included: changing the definition of 'violence' to include psychological abuse; allowing all family members the ability to apply for protection orders; free legal aid for protection orders; and recognition that abuse can occur by members of the wider family group other than just domestic partners.[446] These amendments were an effective measure in improving formal equality. The widening of the definition of abuse improved the ability of women to prove that abuse had taken place regardless of physical violence. However, formal equality in this case potentially gave rise to substantial inequality. As the Committee would later report, domestic violence was, on the whole, perpetrated by men against women (and children).[447] To have legislation that was gender-neutral would therefore minimise these issues as women's issues by assuming both men and women had the same 'starting point' with regard to violence in the household.

[445] NZ CEDAW Report 3-4.
[446] At 13.
[447] Committee on the Elimination of Discrimination Against Women *Draft report Consideration of reports of States parties* (18 July 2003) CEDAW/C/2003/II/CRP .3/ Add .6/Rev .1 XXVIII, at 6.

(iii) Beijing Platform for Action

During this reporting period, the final international meeting for women's rights had taken place in 1995 in Beijing, called the 'Beijing Platform for Action'.[448] The Government's response to the meeting was to use the actions outlined in the Platform as the basis for developing a strategy for New Zealand women in terms of the areas of legislative, administrative and attitudinal change that still needed attention.[449]

Six core themes for further action to improve the status of women were introduced. These were:[450]

(a) Mainstreaming a gender perspective in the development of all policies and programs;

(b) Dealing with Women's unremunerated work;

(c) The gender pay gap;

(d) The need for more and better data collection on all aspects of women's lives;

(e) The Platform's recommendations which were relevant to Maori women and girls; and

(f) Enhancing women's roles in decision-making

Among the actions taken to fulfill these goals was the inclusion of a publication of "The Full Picture, Guidelines for Gender Analysis"[451] by the Ministry of Women's Affairs. There were also over twenty seminars on gender analysis for other governmental departments. A training program and the development of a research program on corporate governance for potential Crown Company Directors were instigated. Funding had been

[448] UN Women "Fourth World Conference on Women: Platform for Action" http://www.un.org/womenwatch/daw/beijing/platform/.
[449] NZ CEDAW Report 3-4, at 6.
[450] At 6.
[451] Ministry of Women's Affairs *The Full Picture: Guidelines for Gender Analysis: How to Achieve Quality in Policy and Services = Te Tirohanga Whanui: Nga Aratohu mo nga Rereketanga ira Tangata: Me Pehea e Taea ai nga Kaupapahere me nga Ratonga Pai* (Ministry of Women's Affairs, Wellington, 1996).

secured for collection of improved statistical information about women's lives (which included a survey on childcare and income dynamics).[452]

The six core themes expressed a greater interest by New Zealanders in women's rights, but disappointingly, the responses to them were mainly varied types of data collection and supply. This information, although necessary in its collection, served only to inform the government and the public of areas of segregation of women's and men's status and potential solutions to these problems, rather than leading to the creation of actual solutions or even promises of action that would be taken.

From 1993 until 1998, there were not many changes in the New Zealand government's aims that were specifically related to women's rights. The introduction of the Human Rights Act 1993 gave some leverage for future changes in public and private arenas, and the Domestic Violence Act 1995 widened the definition of abuse, both of which were positive changes that affected women.

(B) The Impact of CEDAW in New Zealand

The Committee's comments for the second report on substantive issues such as the remaining reservations had remained unchanged for the most part. As noted above, the reservation from the requirement to provide maternity leave with pay remained static.

This report did contain one of the first admissions that New Zealand needed to make changes to the status of women, as can be seen through the government's response to the Beijing Platform for Action. The admission did not directly show any influence of the Committee's recommendations, but did show an attitudinal change within New Zealand government that acknowledged effort was still required to improve the status of women, and gave indirect acknowledgment that gender equality had in reality not been attained.

[452] NZ CEDAW Report 3-4.

Again, the CEDAW body appeared to have little direct influence on the New Zealand government. It is possible that through some of the criticisms received from the Committee, the New Zealand government began to accept that ratifying CEDAW was more than a symbolic gesture, and instead required on-going action rather than the achievement of perfunctory formal equality. Although legislatively New Zealand did comply with the convention in terms of gender-neutrality, in practice there remained significant discrimination against women. As the Committee accepted that most of the larger provisions of CEDAW were legislated for, it focused, in its reply reports, on less overt issues so as to promote substantive equality.

Part III: The Fifth CEDAW Report

Part Three follows a different layout to the previous two Parts. It contains one section that both discusses the changes to equality and analyses the impact of CEDAW in New Zealand.

(A) Changes to Equality in New Zealand up until the Fifth CEDAW report and the Impact of CEDAW

The fifth report New Zealand made to CEDAW was published in 2002 and covered the period from March 1998 until this time. It was noted that 'significant' advances had been made in legislative reform, policy development and the delivery of services and programs during the reporting period.[453] During this reporting period, New Zealand had also ratified the Optional Protocol to CEDAW.[454]

(i) Politics

[453] New Zealand Government *Fifth Periodic Report on the Convention on the Elimination of All Forms of Discrimination Against Women* (2002) CEDAW/C/NZL/5, at 4 [NZ CEDAW Report 5].
[454] Committee on the Elimination of Discrimination Against Women *Draft report Consideration of reports of States parties* (18 July 2003) CEDAW/C/2003/II/CRP .3/ Add .6/Rev .1 XXVIII, at 5.

With the failure of the National Party's alliances, its popularity weakened and in the 1999 election, the Labour Party easily became the largest single party in the House of Representatives. It formed a coalition with the Alliance Party with support from the Green Party.[455] Women in decision-making positions were more prominent. The Governor-General, the Prime Minister, the Attorney-General, the leader of the opposition and the Chief Justice were all women at various stages of Labour's majority until 2008.[456]

Although many of the highest political positions in New Zealand were held by women, the Committee noted that there had been a decline generally in political participation by women, in both the public and private spheres. It was with concern to positively altering these statistics that a comprehensive strategy (including temporary measures) to strengthen the efforts of change was suggested.[457] However, the Government had consistently rejected the recommendation of temporary measures throughout multiple reports, on the basis that it believed that this would not be effective in changing the status of women.

In contrast to some of the previous reports, the period of time discussed in the fifth report had seen some significant legislative and social reforms, including the Human Rights Amendment Act 2001, the Employment Relations Act 2000 (which replaced the Employment Contracts Act 1991), and the amendment of the Matrimonial Property Act 1976.[458]

Few of these reforms were specifically targeted at raising the status of women. However, as many of them aimed at a minimum standard of equality, those most likely to have less than the minimum standard (such as women) gained the most by having these standards raised. It did not

[455] Elections New Zealand "1999 General Election – Official Results and Statistics" Retrieved: January 2013 <http://www.electionresults.govt.nz/electionresults_1999/>.
[456] Committee on the Elimination of Discrimination Against Wome , above n 452, at 2; Jonathan Boston *Left Turn: The New Zealand general election of 1999* (Victoria University Press, Victoria, 2000).
[457] Committee on the Elimination of Discrimination Against Women , above n 452, at 6.
[458] Stephen McTaggart "Monitoring the Impact of Social Policy, 1980-2001: Report on Significant Policy Events" (December 2005) Social Policy Evaluation and Research Committee (SPEAR) Occasional Paper Series, Resource Report 1; Helen Clark, Prime Minister "Closing the gaps: giving all New Zealanders a chance to participate" (Press Release, 15 June, 2000) www.beehive.govt.nz.

rectify the historical cultural imbalance, and therefore was not able to introduce substantive equality. Nevertheless, the reforms provided a more equal forum on which equality could be built.

Totaling 169 pages, the fifth report more than doubles the previous report – showing an enhanced attempt by the Government to include everything of relevance as well as following the recommendations of the Committee. It also demonstrated the increased amount of information available which could be used to improve the status of women.

In New Zealand's CEDAW report, the Government included submissions made by NGOs and independent women's groups through public consultation during the preparation of the CEDAW report. Workshops were held before the draft report to CEDAW was submitted, to inform women about the report process and to stimulate related discussion.[459] Feedback on the workshops as well as the draft report itself, was circulated with forms on which the public (or NGOs) could make responses and comments. The final report included the addition of some of the responses as well as a section that summarized public commentary, called 'Women's Views'.[460] Public consultation previous to the submission of the report made significant impact on the information collected and opinions expressed which improved the scope and accuracy of the report in comparison to previous ones.

Further improvements were made as per the recommendations and the six core themes under the Beijing Platform for Action that had been mentioned in the combined third and fourth CEDAW reports.[461] Some of the changes included: a requirement that all papers submitted to the Cabinet Social Equity Committee include a gender analysis and impact statement; the launching of the discussion paper "Next Steps Towards Pay Equity", in which the Ministry of Women's Affairs were to collaborate with New Zealand women to develop policy options for pay equity; and restructuring the Nominations Service database to increase the

[459] NZ CEDW Report 5, at 11.
[460] At 12.
[461] At 5.

participation of women on statutory boards.[462] The policy options for pay equity remained ineffective as the pay gap remained static, while the Nominations Service helped restore the political participation of women to a similar percentage as previously recorded at around 30%.

Interestingly, the Committee criticised the Government, the Committee recommended enacting a statute on CEDAW to achieve proper domestic implementation. The implication was that New Zealand domestic law had not (contrary to multiple statements in New Zealand reports) complied with the treaty because of its failure to implement substantive equality as well as legislative.[463] Formal equality was not, in the Committee's opinion, sufficient. In a similar way that the reforms had promoted the welfare of Maori in order to raise their overall status, the Committee suggested that women needed a similar (although legislative) boost so that they would be given the ability to reach substantive equality alongside men.[464] This recommendation was not acted on by the government.

(ii) Employment

The biggest improvement since the last report was the introduction of a paid parental leave scheme – effectively lifting the reservation on this that New Zealand previously had submitted, without formal withdrawal. This scheme was a radical development for working women, who, although previously protected from being terminated from employment, usually needed some other means of income to support themselves during and after pregnancy. It had been one of the most encouraged changes by the Committee; however, it is unclear as to the extent to which these suggestions were influential in introducing the scheme.

The Committee had issue with New Zealand's remaining reservations. The response from New Zealand was that since the last report it was possible to receive maternity leave with pay, and the armed forces had changed

[462] At 10.
[463] Committee on the Elimination of Discrimination Against Women, above n 452 at 6.
[464] Committee on the Elimination of Discrimination Against Women, above n 452 at 6.

enough that, although the reservations remained static, the Government was considering lifting them.[465]

A survey had been taken on the gender pay gap which similarly to the last report, was static at women earning at around 80% of men's wages. Reasons for this gap were suggested, such as women's dominant role in taking on the duties of childcare which meant they were likely to lose out on employment opportunities and rewards as a consequence, but 50% of the gap had no reasonable or valid explanation.[466] It was believed that the parental leave scheme would help reduce the gap so as to give mothers the opportunity to continue in their employment after having children. Each report to the Committee indicated new reasons for the pay gap, yet no remedial action was found to reduce it by any significant amount. This lack of substantive improvement demonstrated that formal equality would not be sufficient in the long term and substantive equality as provided by CEDAW was necessary.

The new Employment Relations Act 2000 had not had enough time in force to be able to analyse its success. However, it was quickly seen as a huge improvement on the previous Act, and has somewhat rectified the power imbalance between employers and employees by being more friendly towards unions and offering collective bargaining.[467] As women in the workforce continued to be concentrated in employee rather than employer positions, this gave them greater power to negotiate equal treatment with employers.

(iii) Women's Health and Domestic Violence

A further reform the government made was in relation to the public health sector. It was re-organised into partially elected District Health Boards

[465] NZ CEDAW Report 5, at 4; Committee on the Elimination of Discrimination Against Women *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women; Fifth periodic report of States parties* (14 Oct 2002) CEDAW/C/NZL/5 XXVIIII, at 14.
[466] Committee on the Elimination of Discrimination Against Women , above n 462, at 89.
[467] Margaret Wilson "The Employment Relations Act: A Framework for a Fairer Way" Erling Rasmussen (ed.) *Employment Relationships: New Zealand Employment Relations Act* (Auckland University Press, Auckland, 2004) 9.

("DHBs") through the New Zealand Public Health and Disability Act 2000, a concept that had been introduced by Labour in the 1970s but never achieved until this point in time. DHBs, in contrast to the previously existing system, were created to be non-profit providers.[468] They are given a set of objectives by the Ministry of Health but given autonomy on how to act on them. Discussion on women's relative equality in the health sector has been given. The DHBs provided a cheaper and more easily run health system, which provided more efficient services for both men and women.

An investigation on the impact of privatisation of social services (such as health related services) on the poor and Maori women in particular was encouraged by the Committee. However, the Government replied that it had no intention of investigating the impact of these changes,[469] demonstrating the lack of impact that the Committee had had when New Zealand's views were not aligned with CEDAW's.

On other health issues, namely the continued exploitation of prostitution, concern from the Committee was noted even though prostitution had been decriminalised.[470] There also remained the issue of the prevalence of gender based violence within the family. Recommendations were given to collect more data on abused women in these situations, to raise public awareness (especially those of public officials) and to increase the number of shelters or 'safe houses' for victims.[471]

(B) Conclusion

This report shows significant progress on many women's rights issues that were not seen in earlier reports. In this case it was because the majority government was changed to be led by the Labour Party – whose policies were more rights focused than those of the National led Governments. At

[468] Ministry of Health "District health boards" (June 2011) <http://www.health.govt.nz/new-zealand-health-system/key-health-sector-organisations-and-people/district-health-boards>.
[469] Committee on the Elimination of Discrimination Against, above n 462, at 17.
[470] Committee on the Elimination of Discrimination Against Women *Draft report Consideration of reports of States parties* (18 July 2003) CEDAW/C/2003/II/CRP .3/ Add .6/Rev .1 XXVIII, at 7.
[471] At 7.

this time, the New Zealand economy was also in a good position, so rights-based issues could be catered for without as much attention to cost. Again, the changes made were not as major as those made before the 1980's, but within the sectors had positive influence and relevance to the daily lives of many women.

The improvement within the different sectors could have resulted from a greater impact by the CEDAW Committee, but there seems a more likely explanation. In effect, the Committee's comments and New Zealand's replies show that when the New Zealand government has wanted to make change, this has occurred. This did benefit women and was noted as a success in the report, but not with any direct influence from the Committee. Where the Committee made suggestions the government did not want to deal with, it simply did not, and this was openly admitted. Threat of the disapprobation from the Committee was not enough to force change. Although it was apparent that the policy of the Government had some similar goals as the Committee, the impact of CEDAW remained low.

Part IV: The Sixth CEDAW Report

This Part contains an examination of the final report New Zealand made to CEDAW before the most recent one submitted in 2010. It follows a similar layout to the other Parts above by analysing the changes made within New Zealand during this period of time, as well as how much impact CEDAW has had on these changes.

The sixth CEDAW report was submitted to the Committee in 2006. It covered the period from March 2002 until March 2006.[472] It is one of the first reports to specifically note that New Zealand has a responsibility to rectify social failures rather than just implementing formal change.[473]

[472] New Zealand Government *Sixth Periodic Report on the Convention on the Elimination of All Forms of Discrimination Against Women* (2006) CEDAW/C/NZL/5 [NZ CEDAW Report 6].
[473] At 5.

The public's belief in stereotypical roles had slowly changed, with 18% of New Zealanders in a poll supporting the traditional role of a man working and a woman caring for the house and children.[474] By early 2007 New Zealand ranked sixth overall for women's rights among the 57 countries surveyed by the World Economic Forum.[475] Unemployment was at its lowest level for 22 years, at 3.6%.[476]

(A) Changes to Equality in New Zealand between the Fifth and Sixth CEDAW reports

(i) Politics (The Action Plan for New Zealand Women)

Helen Clark, leader of the Labour Party, had led (as a coalition government) New Zealand for two terms and had recently begun its third. The coalition formed during the second term was with the Progressive Party and had support from the centrist party, United Future.[477] It too, contained further social and constitutional reform. The foremost of these reforms was establishing a Supreme Court to take over the role of the Privy Council in New Zealand.[478]

By this time, 32% of Parliament was made up of women, a number which had not increased much since the previous reports.[479] However, the Minister of Women's Affairs at the time, the Hon Lianne Dalziel introduced the report stating that there have been improvements since the last report, and that New Zealand's focus is now on strengthening the legal and policy framework and ensuring that women do not experience de-facto discrimination.[480] It notes that during this report period, no changes to the

[474] At 19.
[475] A Bulleyment "Women Experiencing Discrimination Aotearoa NZ Non-Governmental Organisations " (January 2007) National Council of Women of New Zealand, at 27.
[476] Joyce Herd *Cracks in a Glass Ceiling: New Zealand Women, 1975-2004* (University of Otago Print, Otago, 2005), at 38.
[477] Jonathan Boston, et al. *New Zealand Votes: The 2002 General Election* (Victoria University Press, Victoria, 2004).
[478] Courts of New Zealand "The History of the Supreme Court" Retrieved: January 2013 <http://www.courtsofnz.govt.nz/about/supreme/history.html>.
[479] Ministry of Women's Affairs *New Zealand Government Response to Questions from the Committee on the Elimination of All Forms of Discrimination against Women on New Zealand's Sixth Periodic Report* (27 April 2007) www.mwa.govt.nz, at 14.
[480] NZ CEDAW Report 6, at 5.

legal framework in New Zealand were made, but policies within those frameworks had been modified. This demonstrated rejection of the suggestion by the Committee for a statute specifically aimed at improving women's status, and again, its lack of real influence.

Changes made since the last report showed an increasing tendency to refine smaller issues towards equality. The main improvement was an Action Plan introduced in 2004 by the Ministry of Women's Affairs. The *Action Plan for New Zealand Women* was a five year, whole-of-Government plan. It stated the Government's commitment to improving equality between men and women. The three priority outcomes for this plan included; giving women economic sustainability, having a work-life balance, and improving the well-being (health and social outcomes) of women.[481] However, it was acknowledged that these changes would have to be imbedded in the New Zealand work culture to have any chance of success in the private sector.[482]

When questioned by the Committee for concrete examples of cross-government programs where gender issues were being addressed, the replies were given as: a five-year *Pay and Employment Equity Plan of Action* in the public service and public health and education sectors; the development of a five-year action plan for out of school services; and the Taskforce for Action on Violence within Families which aimed to reduce domestic violence.[483] The Government stated that results that had been achieved by 2004 included: increases in women's earnings, although women still earned less on average than men, increases in women's participation in paid employment and reductions in the pay gap between men and different groups of women.[484]

NGOs believed that this Action Plan had not been well promoted. Anti-Discrimination measures would not have been as effective in sectors which did not experience enough public awareness of action that could be

[481] At 14.
[482] Herd, above n 473, at 49.
[483] Ministry of Women's Affairs, above n 476, at 2.
[484] At 4.

taken to eliminate this discrimination.[485] Thus, although some of the policies may have been successful, changing the perceptions of New Zealand work culture about women was not, or at the least, not as effective as it might have been.

A further Action Plan was introduced by the Human Rights Commission. The *National Human Rights Action Plan* (separate from the *Action Plan for New Zealand Women*) did not include a specific set of actions relating to women's rights. However, it did contain action plans that would affect women such as the right to work, access to security and access to justice.[486] The Civil Union was created[487] to allow same sex relationships in such a way that provided an unmarried (but committed) couple with the same rights as they would enjoy in marriage.

The 2005 *Action Plan for Human Rights* was seen as a great step towards improving the lives of New Zealanders; however, it was thought that the coverage of women's issues was limited, and that there were few processes provided that would address these issues other than in a broad context.[488]

(ii) Employment

The pay gap between men and women by 2005 had increased from 87.1% to 82% of men's earnings.[489] It was thought that increasing the minimum wage would lessen the gap somewhat.[490] Discussion on why there was an increase in the pay gap did not occur, nor was action taken to discover it. This is a major failure of the Committee's directives on better reporting and further indicates the lack of power CEDAW has in implementing its ideals.

As discussed in the previous report, the biggest improvement would have been the Parental Leave and Employment Protection (Paid Parental

[485] Bulleyment, above n 472, at 27.
[486] NZ CEDAW Report 6, at 10.
[487] The Civil Union Act 2004.
[488] Bulleyment, above n 472, at 24.
[489] At 61.
[490] At 61.

Leave) Act 2002, which provided for paid parental leave – the lack of which, in previous reports, the Committee had repeatedly found to be inconsistent with CEDAW.[491] Nevertheless, the reservation to paid parental leave remained – giving the Committee no right to investigate or criticise any related scheme, other than to recommend that the reservation be lifted.

(iii) Women's Health and Domestic Violence

Measures taken to eliminate family and domestic violence included schemes and programs (such as *Te Rito: New Zealand Family Violence Prevention Strategy*[492]). Under questioning by the Committee however, these schemes had not, collected significant data on whether they were working as predicted.[493]

Prostitution was decriminalised to protect the human rights of sex workers.[494] In reply to the Committee's concern that prostitutes were still being exploited, the government replied that New Zealand Prostitute's Collective ass contracted by the Ministry of Health to give education on sexual health (including HIV/AIDS) and to create drop-in centers.[495] This arrangement provided safe places and authorities that sex workers could go to if they felt that they were being exploited. There was also an *HIV/AIDS Action Plan* published in 2004 that provided a guide to health and safety for those in the sex industry.[496]

(B) The Impact of CEDAW in New Zealand

As has been mentioned repeatedly in this chapter, CEDAW and the Committee for CEDAW has had little direct impact on New Zealand.

[491] NZ CEDAW Report 6, at 18.
[492] At 4.
[493] Ministry of Women's Affairs, above n 476, at 6-10.
[494] The Prostitution Reform Act 2003.
[495] NZ CEDAW Report 6, at 22.
[496] Ministry of Women's Affairs, above n 476, at 23.

Again, when CEDAW's application to reports has required change and there is no real intention by the government to make that change, the Committee has no power to ensure New Zealand complies. One example is that the sixth report to CEDAW sidesteps the right and recommendation to use special temporary measures, by noting that New Zealand prefers to address inequality through legal and policy framework rather than this given option. It states that using the existing framework means having a more comprehensive approach to improving the situation for women, but it does not explain how.[497] This statement and preference seems hypocritical when considering that the Committee asked New Zealand to further explain and was told that the *Action Plan for New Zealand Women* was a temporary measure.[498]

(C) Conclusion

The sixth report to CEDAW from New Zealand is a good example of sector specific changes still required. The *Action Plan for New Zealand Women* covered a wide range of intentions to provide women effectively with complete equality, but in reality, action was specifically required in particular areas, such as domestic violence or employment.

The more momentous changes made in the previous report are in a similar vein, but in a watered down form in this report. Much of the report also required information gathering that had not yet been analysed so this may have had something to do with the lack of concrete action or success within the report.

The Committee appeared more investigative, with more detailed questions on specific points rather than wide ones on general successes. In this way it was easier to see that New Zealand had little more to report than it had already given. It did not, however, impact New Zealand any more than in any of the other reports. If there was no more movement on a particular topic, New Zealand's reply would be exactly the same as they had already given in the report, rather than making any promises of change.

[497] NZ CEDAW Report 6, at 18.
[498] Ministry of Women's Affairs, above n 476, at 3.

Conclusion

This chapter discussed the improvements made to women's rights in New Zealand and gauges the impact CEDAW has had to make those changes happen. Although the aim of the reports to CEDAW is to improve the position of women, an analysis of the reports is unable to provide a conclusive summary, in which women can be said to have categorically gained a step forwards towards equality.

Even so, there was a significant amount of small changes which affected many, if not most, women's individual lives. Women have been successful in some of the highest political positions in the country, although the actual percentage of political participation has not risen much and participation in the lower ranks of politics is minimal.

There was improvement for women in employment – paid parental leave has had a particular impact on New Zealand women and the Employment Relations Act 2000 gives a much better opportunity for complaints relating to sexism and harassment in particular, to be heard and dealt with. However, the pay gap between men and women did not change much during all four of these reports, and can still be seen as the biggest problem that women face in employment. What makes this issue considerably worse is that there are few (and inconsistent) reasons provided in the reports that can concretely explain the reason for the gap and the government's relative disinclination to correct it.

Issues surrounding domestic violence remain unresolved, especially relating to data gathering, in which many problems are of a sensitive nature. However, legislative improvements on reducing domestic violence have been made. If it is difficult to know whether domestic violence is being reduced, it is positive that many more cases are being reported and people are aware that it is a problem that needs to be fully confronted and stopped.

The Committee's recommendations were not very successful during these reporting periods. CEDAW effectively points out each area in which

women should have equality with men, but the Committee has little influence or power to makes suggested changes happen within New Zealand. From the way the information has been presented, New Zealand has followed its own policies and plans without much reference to the suggestions of the Committee. In most cases, the directions of the policies have been in accordance with CEDAW, so this has not proved much of an issue. Where CEDAW makes a recommendation that New Zealand does not approve of, there is little to force New Zealand into that action, and the reports have openly noted that the actual impact of CEDAW has been small.

Chapter 5:

New Zealand Women Today; How Close is New Zealand to Conforming to CEDAW and Achieving Substantive Equality?

The metaphorical house, which represents the status of women in New Zealand, has by this time, almost been finished. Although the foundations, the floors, the roof and the placement of the walls had all been previously designed by men with little effective input by women, the final touches are being completed with almost equal participation by both genders.

Although women have been 'on site' and participating since the placement of the floorboards and have theoretically been given a voice and equal capacities within the building process since then, men have continued to manage the building work. With patriarchal entrenchment, men apparently remain more naturally qualified to continue to oversee the work, despite the fact that women exhibit the same acumen, expertise, knowledge, qualifications and interest as men. This governance methodology is not necessarily a deliberate refusal to share the workload so much as an inherent lack of awareness. The opinions of women who feel the layout of the house will be better served if the main bedroom is *here* instead of *there,* is neither considered, valued nor adopted. The minimal number of women in senior management gives rise to a further physical imbalance of power. History has not yet changed - women have an interest and desire to share the workload which is only granted by the beneficence of men – often only because men's wishes coincide with those of women.

The mansion next door, the treaty and governing body of CEDAW, has provided hints and suggestions as to improvements that could be made on the house. As a comparative ideal model, the house that is New Zealand lacks any close resemblance. However, without access to the blueprints and without any major influence within the management team to enforce

such suggestions, the recommendations are only implemented as inclinations and resources allow.

This chapter will discuss the current state of equality and discrimination within New Zealand. It will explore the political, economic and private sectors and compare this reality to the findings in the latest report to CEDAW New Zealand has made as well as the Committee's comments on New Zealand's progress.

The seventh and latest CEDAW report was submitted to the Committee in March 2010. It covers the time between March 2006 and the date of the report's submission.[499] Before this period, New Zealand eliminated formal discrimination against women in civil, political, economic and social categories. Across New Zealand, each of public and private, governmental and NGO, would acknowledge "that there is a growing system of legislation and institutional arrangements, policies and practices which would not have come about without an increased level of awareness and political and public acceptance of women's rights."[500] Although, it was also admitted that progress in implementing substantive equality through this awareness has been "slow, incremental and unspectacular."[501]

Part I: Political Equality

This part discusses how removed New Zealand women are from political equality during the period of the 7th CEDAW report. It is a relatively short section for two reasons: first, because the current government believes that New Zealand's legislation has full compliance with CEDAW's

[499] New Zealand Government *Seventh Periodic Report on the Convention on the Elimination of All Forms of Discrimination Against Women* (2010) CEDAW/C/NZL/7 [NZ CEDAW Report 7].
[500] New Zealand Human Rights Commission "New Zealand Human Rights Commission's Report to the Committee on the Elimination of Discrimination Against Women (CEDAW)" (New Zealand Human Rights Commission, October 2011) http://www.hrc.co.nz/wp-content/uploads/2011/10/CEDAW-report-Oct-2011-final.pdf, at 3.
[501] Human Rights Commission "New Zealand's Census of Women's Participation" (Human Rights Commission, 2012) <http://live.isitesoftware.co.nz/neon2012/documents/hrc_womens_census2012.pdf>, at 1.

provisions and therefore has little intention of improving on such an apparent full compliance.[502] Secondly, because other parts of this chapter deal with potential political issues within sector specific areas.

Specifically, this part will examine the changes to women in leadership roles, changes of law and changes of policy which detract from or support equality of gender within the political arena. It will have regard to the Committee's comments and some of New Zealand's responses to the Committee's recommendations.

The National Party was elected to lead the New Zealand Government in 2008 and continues to do so at the date of this thesis.[503] As a result of the recession of the late 2000s,[504] New Zealand ended nine years of domination in Parliament by the Labour Party. John Key, the new Prime Minister, led a National minority Government with confidence-and-supply support from several other parties.[505] In 2011, when National gained the majority of seats once again, it had increased its share of votes to only two seats short of a majority – mostly at the expense of its support parties rather than its opposition.[506] Based on a consistent goal during both terms in Parliament; to have a sustainable economic recovery from the global recession,[507] little progress has been made as to the status of women as this remains a "human rights" area and therefore has little of the national budget allocated to it.

The 2012 Census of Women's participation in New Zealand suggests that "New Zealand now follows, rather than leads, other countries in active measures to improve women's representation and that the benchmarks being set are often lesser than those introduced overseas." [508] The lack of recent significant initiatives introduced to improve the status of women

[502] NZ CEDAW Report 7.
[503] At iii.
[504] Charles Gore "The Global Recession of 2009 in a Long-Term Development Perspective" (2010) 22(6) Journal of International Development.
[505] Electoral Commission *New Zealand General Election, 2008 – Official Results* (Chief Electoral Office, November 2008).
[506] Electoral Commission *Party Votes and Turnout by Electorate – Statistics – 2011 General Election* (Electoral Commission, 2011) http://www.electionresults.govt.nz/electionresults_2011/e9/html/e9_part9_1.html.
[507] NZ CEDAW Report 7, at i.
[508] Human Rights Commission, above n 498, at 2.

supports this viewpoint, and while remaining within the top five countries that provide women equality,[509] few improvements have been implemented that would relocate New Zealand back to a "leader."

(A) Women in Representational Positions

The National Party's goal for women during its terms in power has been to give them "real choices and [to use] their strengths to maximise social and economic success," with a focus on improving the number of women on boards and in leadership roles.[510] The New Zealand report notes that this should affect women in a positive way, as without women reaching their full potential (due to having their skills and experience under-valued); the New Zealand economy is "not getting the best out of the skills of half the population."[511]

Despite being midway through National's second term in Government with this aim, women's representation in politics has essentially remained unchanged since early in the new millennium. New Zealand currently ranks 15th out of 134 countries for women's representation in Parliament, 18th for proportion of women in ministerial positions and 19th for legislators, senior officials and managers.[512] Women hold 34% of seats in Parliament, a rise of only 2% since the 2005 election and 30% of Cabinet compromises women.[513] In 2007, 32% of elected local body positions were held by women.[514] By 2010, the number of women judges was 28% of the total, with 24% in the higher courts such as the High Court and the Court of Appeal. Currently two - of the five-member Supreme Court - are women, including the Chief Justice.[515]

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[509] World Economic Forum "The Global Gender Gap Report 2009" (World Economic Forum, 2009) www.weforum.org/pdf/gendergap/report2009.pdf.
[510] NZ CEDAW Report 7, at 3.
[511] At iii.
[512] NZ CEDAW Report 7, at 8; World Economic Forum, above n 505.
[513] Ministry of Social Development *The Social Report 2009* (2009) www.socialreport.msd.govt.nz/index.html; Ministry of Social Development *The Social Report 2010* (2010) www.socialreport.msd.govt.nz/index.html.
[514] Ministry of Social Development, above n 510.
[515] Human Rights Commission , above n 498 at 71; Courts of New Zealand "The Judges of the Supreme Court" Retrieved: January 2013 <http://www.courtsofnz.govt.nz/about/supreme/judges>.

With regard to the elected positions, these relatively low statistics for women show one of three possibilities: either women are not putting themselves forward for election; or the public or relative authority do not find them fit for the post (where votes are applicable) or a combination of both of these. In any case, and especially the last, this shows continued alarming prejudice against women (by both women and men) at the highest and lowest levels throughout the whole of New Zealand.

Considering New Zealand's rank at fifth place overall internationally, the figures continually show a disinclination to provide women with substantially equal political status. The lack in this sector gives illustration to the surprising lack of initiatives the Government has introduced; without women to equally lead the country, their interests are unequally represented and are thus rarely acted on. This is demonstrated by the Government's low target setting; it has set a target for 45% of state sector boards to be made up of women by 2015 (currently at 41%), and 25% on the boards of the top 100 companies in New Zealand.[516] Both of these aims are so close to the present status that they will likely rise to the targeted value within two years without any positive action taken – indication of the Government's lack of interest in real improvement to the status of women.

There has been opposition to the Government's singular focus on improving the number of women on boards and in leadership roles. The New Zealand Council of Trade Unions ("CTU") calls this view "at best insufficient and misguided, and at worst negligent"[517] based on the view that other focuses are also necessary.

It is proposed that that the CTU is correct in this opinion, as the continuation of the inequality of women has been shown to have various origins and therefore needs multiple remedies. Failure of attainment of

[516] Honourable Jo Goodhew *Committee on the Elimination of All Forms of Discrimination against Women: Consideration of the report submitted by New Zealand; Statement by the Minister of Women's Affairs,* the Honourable Jo Goodhew (2010) <www2.ohchr.org/english/bodies/cedaw/docs/statements/StatementNewZealand_CEDAW52.pdf>, at 8.

[517] New Zealand Council of Trade Unions (2011) "Submission to the 2011 NGO Report on CEDAW; Module 4: Discrimination in law and the application of it" (CEDAW Project 2010, 2011), at 5.

equality through one main directive can be demonstrated by the early attempt of creating formal equality with the expectation that this would automatically lead to substantive equality. However, although placing women into leadership roles should not be the only intention of the government, it is significantly more important than this objection implies. Women in high political positions are given more power and influence to improve the status of women on the whole. While they may not deliberately disabuse the cultural prejudice against women, it may influence society to begin to comprehend (and accept) equality.

(B) Legislative Changes

During this reporting period, New Zealand withdrew its last remaining reservation to CEDAW. In 2007, the Human Rights (Women in Armed Forces) Amendment Act came into force with the result that women are no longer prevented from actively serving during combat.[518] It has not had any major effects for those women in the Police force or the Armed Services in this period because, prior to the reservation being lifted, all of these organisations had already begun procedural changes to the same effect. The change does show a gradual improvement on New Zealand's position when CEDAW was ratified. However, it is difficult to tell whether or not these changes would have been implemented in CEDAW's absence.

This final withdrawal from New Zealand's reservations from CEDAW has been a long time coming and confirms that New Zealand agrees to full compliance with CEDAW without any exceptions. When making a speech about this last step, the Hon Lianne Dalziel (at that time the Minster of Women's Affairs) noted that "sometimes success is merely holding on to gains previously made in the face of pressure from some conservative quarters to roll back women's rights. And sometimes you can point to a milestone that marks real progress."[519] The fact that New Zealand now has no internationally acceptable excuse not to give women full and equal

[518] NZ CEDAW Report 7, at 2.
[519] Lianne Dalziel "International Caucus: Lifting New Zealand's last CEDAW reservation" (The New Zealand Government, 17 July 2007) www.beehive.govt.nz.

rights is a significant one, as it provides CEDAW with a more investigative and authoritative scope on all fronts of New Zealand society.

Other legislative changes made during this period are discussed within their specific sections below. The CEDAW Committee commended New Zealand on the positive changes that New Zealand had made during the reporting period, but added that remaining areas of principal concern included the fact that gender neutral language has been used with respect to gender-based issues such as domestic violence, pay inequality and equity. [520] The Committee also noted that there is no specific prohibition against indirect and direct discrimination against women and recommends that there should be one within the constitutional documents rather than having anti-discrimination legalisation that provides protection in gender-neutral language.[521]

The Committee has repeatedly recommended special temporary measures to improve equality in New Zealand, both in past reports, in its latest report and again, in its later concluding comments.[522] The New Zealand Government believes that this proposal will not be an effective way of dealing with the remaining gaps in equality between women and men.[523] The Government insists that changing policy, providing better access to information and better allocation of resources would be more effective, even though it noted in its most recent report that "many of the remaining gender gaps in New Zealand are proving to be intractable"[524] using these 'more effective' measures.

Constant rejection by the Government of this suggestion emphasises the lack of impact CEDAW has in New Zealand. The Committee is an internationally respected authority on the subject of women's equality with potentially the most information on initiatives that are successful. Repeated instances of failure to attain equality (as an obligation of New

[520] UN 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, at 2.
[521] At 3.
[522] At 5.
[523] NZ CEDAW Report 7, at 5.
[524] At 5.

Zealand through CEDAW) should support some sort of consideration for suggestions previously (and consistently) rejected by the Government.

(C) Policy Changes

The *New Zealand Action Plan for Human Rights* ("APHR") supported by the Human Rights Commission ("HRC") and originating from the Labour Government in 2005, does not appear to have created significant changes for women's equality. The current Government has merely encouraged dialogue between the HRC and Government departments to implement some of the actions formulated in the APHR as a part of their core business, [525] but it is really only a token effort on the part of the Government. "Encouraging dialogue" is a failure by the Government to commit to any positive action given in the HRC's recommendations as required by its obligations to CEDAW.

The *Action Plan for New Zealand Women* ("APW") that had been launched in 2005 was concluded in 2009. Some progress had been made in all areas that had been prescribed mostly in the form of collection of data on sectors of women.[526] Further steps have been taken by the Ministry of Women's Affairs to collate information on the social and economic status of women through its *Indicators for Change: Tracking the progress of New Zealand women* programme.[527] This collation is updated regularly and provides Government policy makers with a way to both track the progress women have made, and also focus on the public and private sectors in which women are not as successful.

The Committee was concerned that there was no new *Action Plan for Women* to be introduced, and that the Ministry of Women's Affairs had an insufficient budget to do what is required to instigate further change for women.[528] However, the Minister of Foreign Affairs had agreed to a *New*

[525] At 2.
[526] At 3.
[527] Ministry of Women's Affairs *Indicators for Change: Tracking the progress of New Zealand Women* (Ministry of Women's Affairs, Wellington, 2009).
[528] UN Committee on the Elimination of Discrimination Against Women, above n 517, at 4.

Zealand 1325 National Action Plan as promoted by the UN[529] to demonstrate New Zealand's commitment to women, peace and security.[530] The Minister of Foreign Affairs has only recently been granted permission by the Government to develop this Plan.[531]

The Committee also expressed concern about the impact of policy changes, such as the inadequacy of targets and benchmarks to advance women's rights based on the projected figures of women on state and private boards by 2015 and the insufficient promotion and dissemination of the Convention.[532] These concerns are similar to the thoughts and commendations of the HRC.[533] Because of the current economic climate, a lot of data collection and analysis has been possible but few recommendations have been implemented – the budget for doing so is not a priority.

Within the political sphere, many issues have been identified that require change, but few improvements have been made and the ones that have can only be considered nominal. If the Government's main objective of putting more women in decision making positions eventuates, an analysis of the effects throughout the wider community will be necessary to examine whether it improves the status of women in New Zealand.

Further policy changes are mentioned in their appropriate sections below.

Part II: Public/Economic Equality

This part is the largest in the chapter as it affects the broadest category of women in New Zealand. It is divided into two measures of equality: education and employment.

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[529] Inter-Agency Network on Women and Gender Equality "Taskforce on Women, Peace and Security; National implementation of Security Council resolution 1325" (2000) <http://www.un.org/womenwatch/ianwge/taskforces/wps/national_level_impl.html>.
[530] Goodhew, above n 513, at 6.
[531] Jo Goodhew "Statement to UN Committee on the Elimination of All Forms of Discrimination Against Women" (Press Release, 18 July 2012) <http://www.beehive.govt.nz/speech/statement-un-committee-elimination-all-forms-discrimination-against-women>.
[532] UN Committee on the Elimination of Discrimination Against Women, above n 517, at 2.
[533] New Zealand Human Rights Commission, above n 498.

(A) Education

In New Zealand, women generally do better in most educational spheres than men.[534] They have higher levels of participation and achievement within the education system. The education system of itself does not discriminate against women; rather, it provides a stepping stone to future equality. However, there are still some important improvements that can be made which are discussed below.

(i) Early Childhood, Primary and Secondary Education

More than 90% of new school entrants had participated in early childhood education ("ECE") during the term covered by New Zealand's most recent report. This is a high percentage in comparison with other OECD countries.[535] In terms of gender, there is little difference in participation of this education, but there is a noteworthy ethnic and socio-economic difference, in that Maori and Pacific Island children and those from low socio-economic areas are the least likely to participate.[536]

In primary and secondary schools, a curriculum has been established since 2007 to promote non-sexist, non-racist and non-discriminatory educational content and methodology.[537] In secondary schools, the main qualifications are three levels of the National Certificate of Educational Achievement ("NCEA"), in which further educational prospects and job opportunities are comprehensive if the student attains NCEA Level two or above. Currently, more young women are achieving Level two than young men, with about 80% of women attaining this Level, compared with two-thirds of men.[538] Maori and Pacific Island women are much more likely than European or Asian women to leave school with less than Level two

[534] NZ CEDAW Report 7.
[535] Ministry of Education *Prior Participation in Early Childhood Education: New Entrants'* www.education.govt.nz/indicators/student_participation/early_childhood_education/1931.
[536] Above n 533.
[537] NZ CEDAW Report 7, at 15.
[538] Ministry of Education *School Leavers 2008* (Ministry of Education, 2009) www.educationcounts.govt.nz/statistics/schooling/school_leavers2/school_leavers, at Table 1.

NCEA qualifications; however, these discrepancies are decreasing dramatically.[539] The 2016 aim is to have 85% of 18 year olds (of both genders) pass NCEA level two, and a rise of 3% of children going through early childhood education (currently at 96% participation rates).[540] This aim should be disaggregated between men and women as the current one provides little incentive to take action to improve young women's educational participation. As young men have lower participation levels, to achieve this aim, focus will mainly (if not only) be on them.

It is hoped that these generations will impact the current status of women, based on their higher education levels and relative equality with young men. However, if employment discrimination still occurs, this will indicate even greater discrimination in real terms than previously, as women will remain lower income earners despite having higher education levels.

Another distressing and relevant point to note (which, strictly speaking is related to the employment sector rather than education) is that men make up 16.4% of the teaching service in primary schools, but 46% of principal positions.[541] In secondary schools, 60% of the teachers are women, yet only 20% of principals are women.[542] Thus children, from the very beginning of their education, are being exposed to the inherent cultural ideology that men are 'supposed' to be decision makers, and women are 'supposed' to be in predominantly subservient positions. It creates a subliminal prejudice against women.

Historically, teaching was one of the first "respectable" positions of employment for women in Western society, but is has been almost always under the authority of a man. This employment subservience is another long-standing cultural tradition that should be eradicated. Based on the long-standing predominance of women in this profession, there is no legitimate argument to be made that there are not enough women with the required experience and skills to take on the position of Principal and bring the statistics to a level of equality. This is a blatant discrimination and needs to be halted as soon as possible, so that future generations do not develop the same unquestioning prejudices about women's status.

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[539] Above n 565.
[540] Goodhew, above n 513, at 8.
[541] New Zealand Council of Trade Unions, above n 514, at 6.
[542] At 6.

(ii) Tertiary Education

Women have a greater participation in tertiary education than men by a small margin. [543] Maori women have a high participation rate at around 22% of the total population of Maori women, in comparison to European women having half of this rate at 11%.[544] This is one of the few areas where Maori participation rate is higher than the Pakeha (the term to designate non-Maori). The statistics indicate that the reason for this is the high percentage of mature Maori women returning to education later in life.[545]

While women are more likely to be participating and completing tertiary education than men, in total, women hold less tertiary qualifications than men in New Zealand.[546] This is probably because of the low level of participation women had in, and before, the 1960s. These figures are likely to change into a more balanced representation as the later generation's influence is taken into account.

In some disciplines, women and men still have disproportionate numbers in training for certain careers, such as sciences and engineering (favouring men), and human resources and nursing (favouring women). Both women and men are being encouraged to enter into professions that were historically exclusively gender specific,[547] although social customs have not been altered enough for any significant change and the action taken by the Government is not enough to combat it.

In totality, the education system in New Zealand appears to be an appropriate platform to achieve gender equality, although the results thus far are not necessarily evidence of its success. With a higher percentage of women currently qualifying, the next few decades will reflect whether education is one of the main barriers to equality and needs an overhaul, or whether changing institutional and other factors are key to arriving at equality.

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[543] NZ CEDAW Report 7, at 17.
[544] Ministry of Education *Statistics related to Maori students in tertiary education* (Ministry of Education, 2010) www.educationcounts.govt.nz/statistics/maori_education.
[545] Ministry of Education, above n 541.
[546] NZ CEDAW Report 7, at 17.
[547] At 17.

(B) Employment

With regard to the employment sphere, the gender pay gap remains. However, in general, statistics show that the gap has gone from around 12% to 9.6% (the lowest figure ever to be recorded in New Zealand).[548] This is not a substantial improvement across an entire decade; nevertheless it indicates that the gap is not static and shows vast improvement from the circa 20% gap that existed at the time New Zealand ratified CEDAW.

In total, 76% of Pakeha men are in paid employment, while around 70% of Maori and Pacific Island men work. In comparison, 64% of all women, including 61% and 55% of Maori and Pacific Island women respectively are in paid work.[549] The recession worsened men's employment rate more than women's, as it affected male dominated areas of employment such as manufacturing more than female dominated areas such as health and social assistance.[550] This is believed to be one of the primary factors influencing the reduced wage gap between men and women. While the reducing gap appears to show an improvement in women's equality, it may merely be the result of a reduction of men's incomes and no actual increase that has benefitted women.[551] Although prima facie evidence of greater equality, this comes at the expense of men, as opposed to gains for women. It should not necessarily be celebrated, as better economic conditions are likely to revert the situation to the old status quo.

(i) Pre and Post Natal Support

[548] Goodhew, above n 513; Statistics New Zealand *New Zealand Income Survey – June 2011 Quarter* (Wellington, 2011) <www2.ohchr.org/english/bodies/cedaw/docs/statements/StatementNewZealand_CEDAW52.pdf>, at 9.
[549] New Zealand Human Rights Commission "Tracking Equality at Work" (Human Rights Commission, 2011) www.ncwnz.org.nz/assets/Uploads/Tracking-Equality-at-Work-Summary-Report2.PDF, at 12.
[550] NZ CEDAW Report 7, at 19.
[551] New Zealand Council of Trade Unions, above n 514, at 6.

An evaluation of the Paid Parental Leave scheme ("PPL") took place in 2006, to test how effective the legislation was. The evaluation found that PPL was generally supported by mothers, fathers and employers. It also noted that there was room for improvement.[552] Suggestions for improvement included providing more than the 14 weeks paid parental leave usually available (after all other leave options are exhausted), arranging paid spousal and partners' leave and encouraging employers to be more flexible about parental working hours in the long term after a birth.[553] The Government is not considering any extensions to the time or level of payment in the near future,[554] and although the reasons for this decision are not given in the report to CEDAW, it is likely that the costs associated with such recommendations do not align with the Government's "zero-budget" plan.

PPL and the issues surrounding it are acknowledged to be one of the greatest setbacks to equality of women in the employment environment. From a financial perspective, it can be understood that the Government has little interest in improving the status of the majority of women when it involves expenditure without apparent immediate economic gain: but this is a viewpoint with limited vision and unacceptable logic. It is not only morally repugnant to suggest that any human rights are less valuable than the bottom line, but there is also great potential for substantial economic gain in the long term if women's position in the economy and society is bolstered. This is because women will be better able to hold onto their employment and use their position in the workforce to contribute to efficiency, lift savings and stimulate expenditure – all of which appear to be the National Party's goals for New Zealanders. This will have multiple future positive outcomes for family and for the Government: economic growth, growth in the workforce, a fully productive population, men and women maintaining an equal role in the workforce and being equally promotable – which in itself will eventuate in more women in senior positions. Each of benefits are not only beneficial to New Zealand, but also

[552] NZ CEDAW Report 7; Paul Callister *Parental Leave in New Zealand 2005/2006 Evaluation* (Ministry of Business, Innovation and Employment, 2007) www.dol.govt.nz/publications/research/parental-leave/index.asp.
[553] Callister, above n 549.
[554] NZ CEDAW Report 7; Calliester, above n 549.

what CEDAW recommends, and the government is obligated to achieve.[555] The government's current stance on this issue is at best short-sighted and a failure to meet the needs of the people – predominantly women – that it serves.

(ii) Subsidised Early Childhood Education

The government currently funds 20 hours of early childhood education each week for those in play centres, and three to five year old children in kindergarten or equivalent.[556] ECE not only improves the education and lives of the children, but also improves opportunities for mothers, who are usually the primary caregivers of children this age. Subsidised ECE is an excellent initiative and many women benefit from it, however it could be improved. The limitation of ECE is not the education itself, but the limit on number of subsidised hours and funding ceiling which make it more expensive for parents to procure than 20 hours per week for their child (and 20 hours a week they can be engaged in the workforce).[557] The problem is the effect on parents of having only 20 hours a week of free ECE, and especially as noted above, on mothers who are usually the primary caregiver. More hours would give parents a choice as to whether they return to paid employment. Without more hours, there is little choice for most families who cannot afford to fund further childcare and one parent must remain at home during the early years of a child's life.

Some legislation has been introduced to improve conditions of carers (who are also usually women), both in terms of flexible working arrangements and for women in employment who specifically need to sustain their infants through breastfeeding. One statute enacted was the Employment Relations (Flexible Working Arrangements) Amendment Act 2007, the purpose of which was to increase carers' participation in employment by offering flexible working opportunities if they are eligible. A review of this new legislation took place in 2011, the conclusion of which was that it had

[555] Jafnrettisstofa "Gender Equality in Iceland" Centre for Gender Equality Iceland (February 2012) <http://www.jafnretti.is/D10/_Files/Gender_Equality_in_Iceland_2012.pdf>, at 23.
[556] NZ CEDAW Report 7, at 14.
[557] New Zealand Council of Trade Unions, above n 514, at 11.

made little actual improvement to flexible working conditions in New Zealand. Those who enjoyed the working conditions envisaged by the Act usually had them without reference to it, which indicated the legislation had little, if any, effect.[558]

A second piece of legislation, the Employment Relations (Breaks, Infant Feeding and Other Matters) Amendment Act 2008, was passed to ensure workers have time for rest, refreshment and to attend to personal needs during their work time. The Act also requires employers to provide appropriate facilities for those women who wish to breastfeed (including expressing breast milk) as far as reasonably practicable.[559] There has been suggestion of amending the rigidity assigned breaks, but this has not been met with approval; the counter argument being that if breaks are not rigid, they will not be taken with expected regularity and may lead to a decline in health.[560] This Act, similar to the one mentioned above, has not had much impact on those who wish to take these breaks or their employers.[561]

In totality, the few changes made to the law that surround employment, infants, young children and carers had minimally improved during the period covered by the report. The situation is not likely to have improved for the next report because although there are obvious routes to enhancement, such as increasing the free ECE hours, the Government has no intention of taking such action at present.

(iii) Public and Private Sectors of Employment

The National Government has control over public sectors, which is why legislation such as the Government Service Equal Pay Act 1960 has been long established to provide equal pay for men and women in the State's

[558] Ministry of Business, Innovation and Employment *Review of Part 6AA; Flexible Working Arrangements* (Department of Labour, 2011) www.dol.govt.nz/er/bestpractice/worklife/flexiblework/part-6aa.
[559] NZ CEDAW Report 7, at 20.
[560] Christy Parker (prepared by) "CEDAW NGO Perspectives; Revised Briefing Paper" (Women's Health Action, September 2011) www.womens-health.org.nz.
[561] Dr Roopali Johri and Louise Fawthorpe *The 2008 Infant Feeding Amendment to the Employment Relations Act 2000; a snapshot of the impact in the first year* (Ministry of Business, Innovation and Employment, 2010) <http://www.dol.govt.nz/publications/research/infant-feeding-2010/infant-feeding-2010.pdf>.

service. Despite this long-standing legislation, it is curious to note that equality remains unachieved in the public sector. For example, the average pay gap varies from 38.81% in Defence, 29% in Treasury, 27.2% in the Office of Prime Minister and Cabinet to 14.9% in the Ministry of Labour, and 11% in Social Development.[562] Such gaps show that improvements need to be made to the public service before excuses such as social norms are presented, as usually done with regard to the pay gap in the private sector.

In the private sector, around 47% of women work in occupations that are at least 70% female-dominated.[563] The latest report suggests that occupational segregation is being 'addressed', but little information is given that will rectify this problem other than the government is trying to attract women into these positions and retain them once they are there by promoting flexible work practices and showing businesses how utilising women in their business is good for them as well as good for New Zealand, although no 'quick fixes' have been projected.[564]

Statistics show that one year after entering employment, the average income gap between men and women, with a bachelor's qualification or above, was around 6% and after five years, this increased to 17%, both in favour of males.[565] This shows a significant discrimination against women on every level rather than just on boards and in managerial positions. On boards of the top 100 companies on the New Zealand Stock Market, women compromised only 14.8% in 2008. However, although the figure is disappointingly low, it is almost triple the percentage since 2003 which does show some fairly rapid improvement.[566]

Without regard to Governmental encouragement, the stock exchange in New Zealand, NZX, has agreed to a "diversity listing rule," which is a

[562] New Zealand Human Rights Commission, above n 546, at 27; Human Rights Commission, above n 498, at 2.
[563] Ministry of Women's Affairs *Trading Choices*: *Young People's career decisions and gender segregation in the trades* (2008) www.mwa.govt.nz/new-and-pubs/publications/trading-choices.
[564] NZ CEDAW Report 7, at iii.
[565] NZ CEDAW Report 7, at iii; Ministry of Women's Affairs *Analysis of Graduate Income Data 2002-2007 Broad Field of Study* (2009) www.mwa.govt.nz/news-and-pubs/publications/graduate-income-data.
[566] Human Rights Commission, above n 498.

voluntary code for gender disclosure by companies of the composition of women who are Directors or Officers. The companies state whether they have a formal diversity policy and give an evaluation of their performance with regard to that policy.[567] It mirrors other policies internationally, such as in Australia and Scandinavia,[568] yet it is effectively an information gathering activity that is voluntary. In other words, those companies most in need of gender diversity need not participate if they so choose, which defeats the object of increasing the number of women on boards. However, this private initiative has provided more positive action and investigation into the private sector than the Government, whose primary focus for women is to increase their numbers on boards.

Other organizations, such as the "25% Group," led by Goldman Sachs' chief executive, have set goals for equality of women and men in balanced distribution among senior positions as research has shown this enhances companies' performance.[569] Their main aim is to attain an average of 25% of women on private sector New Zealand Boards by 2015.[570] Efforts made by the government in an attempt to improve the numbers on private boards include promotion and identification of women ready to be stepped up to such positions, as well as increasing the Ministry of Women's Affairs budget by 12% to continue to do more in depth investigations on the gender pay gap.[571] This budget was strongly objected to by the CTU on the basis that research into the pay gap had already been done under the Department of Labour's Pay and Employment Equity Unit in 2009 ("EEU"). The CTU also believed that any further research would be unlikely to actually lessen the gap.[572]

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[567] NZX Ltd. "Diversity information part of investment decisions" (Updated: July 2012) <https://www.nzx.com/companies/NZX/announcements/224643>.
[568] Georgina Bond "NZX adopts gender diversity" The National Business Review updated July 05, 2012, accessed 13/01/13 < http://www.nbr.co.nz/article/nzx-adopts-gender-diversity-gb-122829>.
[569] Eversheds "The Board Report; Measuring the Impact of Board Composition on Company Performance" (Eversheds, 2009) http://www.dubchamber.ie/docs/research-by-members/eversheds-board-report.pdf.
[570] 25% Group "Why Start With Women?" (25% Group) <http://www.25percentgroup.co.nz/why-start-women#.UPyU9OSA-O4>.
[571] NZ CEDAW Report 7, at 21.
[572] New Zealand Council of Trade Unions , above n 514, at 5.

Issues that have been taken with the government include the CTU having made a submission to CEDAW, stating that by closing the EEU, the Government has effectively discontinued the organised programme to gain gender equality through the public sector.[573] Since then, workplace programmes to reduce the gender pay gap in the public sector have stalled. [574] The lack of an overarching framework and support system has impacted the continued implementation in public sector workplaces of these programmes and no further policy development has taken place to lessen the gap.[575]

Although the privately organised anti-discrimination measures appear to be infinitely more substantial in effectiveness and influence, comment has been made that *all* projective targets and aims are too low for equality in this sphere to be achieved within a reasonable period of time, for example – with the unchanging aim to have one in four on privatised boards being female and through the further neglect to follow through with the workplace pay-equity programmes.[576] There is suggestion that not only will some of these targets require no effort (as they have already been met), but that women's progress has been devalued through the weak benchmark.[577] The Committee has indicated that these goals may even be a symptom of regression rather than progress in women's representation.[578]

As the Government does not believe any further legislative changes will further close this gap, but rather that the education of the community will provide the necessary change,[579] it could be assumed that the establishment of policy initiatives would be substituted. However, the lack of these, the low projective targets, and little other action taken imply that the National Party goal to increase the number of women on boards is merely a front, and that there is little real intention of the Government to

[573] At 4.
[574] At 4.
[575] At 4.
[576] Human Rights Commission, above n 498, at 5.
[577] At 5.
[578] Committee on the Elimination of Discrimination Against Women *Concluding Observations of the Committee on the Elimination of Discrimination Against Women* (27 July 2012) CEDAW/C/ NZL/CO/7, at [43].
[579] NZ CEDAW Report 7.

improve the statistics. The goal, therefore is a gross misrepresentation to the public and to CEDAW, a formal acknowledgement that change is necessary, but no fulfilment of obligations or promises leads to the conclusion that the Government only wishes to passively accommodate women and CEDAW without any intent to take substantive action.

(iv) Unemployment

In comparison to the unemployment average of 7.9% of across the entire Organisation for Economic Cooperation and Development ("OECD") (an organization for developed countries that accept the principles of representative democracy and a free market economy)[580], New Zealand currently rates 14th, with a 6.8% unemployment rate.[581] Since the beginning of the recession in 2007, the female unemployment rate has risen from 4% to around 6%. Maori and Pacific Island women are double this at around 13%. It is thought that this considerable gap is a result of the limited higher education of these women in comparison with Pakeha women.[582]

Of those New Zealanders on the Domestic Purposes Benefit (sole parent) (the State welfare support system for individuals and families without employment) 89% are women, and nearly 42% of all recipients were Maori (including women and men).[583] This can be put into perspective by noting that only 15% of the population in New Zealand is Maori.[584] Over 95% of sole parent teenagers receiving either the Benefit mentioned above or the Emergency Maintenance Allowance are young women.[585] Women with infants and children under three years of age are the fastest growing

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[580] OECD "About the OECD" http://www.oecd.org/about/.
[581] Statistics New Zealand *Household Labour Force Survey- tables: June 2012 quarter* (Wellington, 2012).
[582] Statistics New Zealand *Household Labour Force Survey: December 2009 quarter* (Wellington, 2010); Statistics New Zealand, above n 578.
[583] Welfare Working Group April *Overview of Domestic Purposes Benefit, Invalid's Benefit and Sickness Benefit'* (2010) www.ips.ac.nz/welfareworkinggroup/downloads/working%20papers/msd-overviews-of-dpb-sb-ib.pdf.
[584] Ministry of Social Development *Ethnic Composition of the Population* The Social Report 2010 (2010) <http://www.socialreport.msd.govt.nz/people/ethnic-composition-population.html>.
[585] Welfare Working Group April, above n 580.

population group within the labour force,[586] indicating a need for the government to quickly adapt the labour forces to meet the needs of these women. If these women are not encouraged and fostered back into paid work, there will be additional strain on the welfare system.

The Welfare Working Group has recommended a 'family cap' policy as proposed welfare reform, whereby further financial assistance is limited for additional children in a family.[587] The theory behind this policy is that parents will either be less motivated to have children or will struggle financially if they do – both of which arguably result in women being more active in the workforce. In the United States, this policy has been shown to force solo parents deeper into poverty and have a significant negative impact on the health and wellbeing of the family in question.[588] According to CEDAW, a pivotal right women have is to choose how many children they wish to have[589] and in almost all cases, the rights of children are paramount. This indicates that (to comply with CEDAW), a 'family cap' policy should not be instated.

In employment, the situation for women is not nearly as positive as in the educational sphere. Despite more women qualifying than men, there is still a pay gap in practically every sector (including, alarmingly, the regulated public sector) of the workforce. The Government shows little, if any, inclination to take any real action to reduce this gap, and as a result, equality improvements rely on the beneficence of (male dominated) private organizations to attempt the change, without significant political backing. The economic recession further compounds this situation, with employers unlikely to close the gap without appropriate short-term compensation or rewards – which can realistically only come from Government. Unless this cycle sees urgent intervention, the continued effects can only become increasingly detrimental on women in employment, and also has potential for the hard-fought gains made by women to slip backwards.

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[586] Christy Parker (prepared by)"CEDAW NGO Perspectives; Revised Briefing Paper" (Women's Health Action, September 2011) www.womens-health.org.nz, at 3.
[587] At 6.
[588] D Romero and M Agenor "US Fertility Prevention as Poverty Prevention: an empirical question and social justice issue" (2009) 19 Women's Health Issues 355.
[589] CEDAW, Art 16.

Part III: Private Equality

This part discusses the status of women in health and family violence. It investigates women's overall health aspects in the first section. The second section discusses one of the biggest issues women continue to have in New Zealand today; domestic violence specifically with women as its victims. Although the sensitivity of the topic often prevents full and totally accurate reports, this section reviews the effects of domestic and sexual violence towards women in New Zealand as is currently recorded.

(A) Women's Health

In general, women in New Zealand have better health outcomes than men.[590] However, this is an area that has particular discrepancy between different races – for example, Pakeha women have better health outcomes than their Maori or Pacific counterparts.[591]

All public hospital services are free as well as all pre- and post-maternity services.[592] Women suffer little, if any, discrimination when accessing health care. However, there are particular areas of health that are only (or mostly) female related and setbacks with regard to rights, health and opportunity for services in them. They are shown below.

(i) Female Related Health Issues and Programmes

Campaigns have been targeted at those groups (such as Maori and Pacific women) that have a low awareness of regular breast screening to make them more aware that the service is free and how often they should make use of it.[593] Since the National Cervical Screening Programme was introduced in 1990, there has been a 60% reduction in mortality from

[590] NZ CEDAW Report 7, at 14.
[591] At 14.
[592] At 23.
[593] At 24.

cervical cancer. The Programme shows a 75% reduction rate of these cancers due to early detection and intervention.[594]

On average, in part because of maternity and screening services, women use more health related services than men. Maternal mortality rates are very low, with less than 12 women dying from every 100,000 births.[595] A human immunodeficiency virus ("HIV") screening program was started in 2006, in which pregnant women with HIV can be treated to reduce the risk (previously from about 32% to less than 1% currently) of transmitting the virus to the baby.[596]

New Zealand also has a high proportion of obese and overweight people. Discrimination against women in this category is disproportionate to that of men. [597] Research in this area determined that that there was particular discrimination against overweight female job applicants, despite experience and suitability for the job.[598] Recommendations were made to amend the Human Rights Act 1993 to prohibit discrimination on the basis of size but no changes have been made to date. [599]

This type of discrimination is an important aspect of women's rights, as one in three adults in New Zealand are overweight, and one in four obese.[600] Women (especially young women) are much more likely to be teased about their weight (one third as opposed to one tenth of young men), more likely to want to lose weight (two thirds) and more likely to be afraid of gaining weight (70%).[601] It has also been shown that discrimination on the basis of weight does not support weight reduction or promotion of health but rather has the opposite effect.[602] The Women's Health Action group provided recommendations to CEDAW that the government should initiate further research on the incidence of weight and

[594] National Screening Unit *Strategic Plan 2010-2015*, (Ministry of Health, Auckland, June 2010) http://www.nsu.govt.nz/files/NSU/NSU_Strategic_Plan_2010-2015.pdf.
[595] NZ CEDAW Report 7, at 24.
[596] At 24.
[597] V Ding and J Stillman "An empirical investigation of discrimination against overweight female job applicants in New Zealand" (2005) 34(3) New Zealand Journal of Psychology 139.
[598] Ding, above n 594.
[599] Ding, above n 594.
[600] Parker, above n 583, at 8.
[601] At 8.
[602] At 8.

size-based discrimination of women.[603] Despite this study being made in 2005, however there has been little comment or action on the results and recommendations by governmental sectors.

(ii) Reproductive Health and Rights

One area in which New Zealand is particularly far behind the OECD median (currently having the second highest statistics), is in regard to the statistics reflecting teen pregnancy rates. Although declining, New Zealand rates are still far above the norm. Maori have higher rates of teen pregnancy than Pakeha.[604]

Abortion rates are also relatively high in New Zealand, but have been decreasing since 2008. In 2010, over 20% of recorded pregnancies were terminated. One in four women will terminate a pregnancy at some point during their reproductive lives.[605]

One suggestion as to how to lessen this statistic and reduce the risk to women's health through such a medical procedure has been made by the Abortion Supervisory Committee. It recommends that reducing financial barriers to long-acting contraceptives may reduce these issues which will increase the ease with which women obtain contraceptives, and as a result less unplanned pregnancies will occur.[606]

Another suggestion has been to make abortion available without any conditions that need to be fulfilled. Interestingly, the right to terminate a pregnancy remains under the jurisdiction of the Crimes Act 1961 which means abortion is a crime unless a woman meets those specific criteria under the Act.[607] As New Zealand agrees that women should be able to choose freely on the number and spacing of their children, there is an

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[603] At 9.
[604] NZ CEDAW Report 7, at 14.
[605] Statistics New Zealand *Abortion statistics: year ended December 2009* (Wellington, 2010).
[606] Abortion Law Reform Association New Zealand Inc "Report of the Abortion Supervisory Commission 2009*"* (2009) www.alranz.org/documents/ASC2009.pdf.
[607] Parker, above n 583, at 4.

implication that abortion is a fundamental human right.[608] Based on the current interpretation of when life begins, abortion at the legal age could therefore be decriminalised and thus give women more of a chance to enact their human rights. This suggestion is a reasonable one, but legalising abortion absolutely can also be seen as an 'ambulance at the bottom of the cliff' strategy. Women, especially young women, need to be more effectively made aware of the ramifications of unprotected sex – not just the risks of catching sexually transmitted infections, but also the other risk of an unwanted pregnancy.

While this issue remains a woman's consequence in the most part, there is a lack of acknowledgement that a man plays half the role in the creation of unwanted pregnancies. New policies that provide free, easier or cheaper contraceptives for women are an effective idea. However, other options, such as men's oral contraceptives (soon to be a viable option),[609] need to be more fully explored so that it is not only the female partner who must deal with the issue alone.

(iii) Sexual Health

New Zealanders also have poor sexual health in comparison with other OECD countries.[610] For example, 2008 data indicated a 43% increase in a Chlamydia diagnosis, 70% of which occurred in the 15-19 year old age group.[611] An NGO, Women's Health Action believes that New Zealand lacks a sexual health strategy to coordinate efforts to improve young people's sexual health (both men and women), especially in relation to recent funding cuts towards health sectors.[612] This would improve sexual

[608] Hessini A Kumar and E Mitchell 2009 "Conceptualising abortion stigma" (2009) Culture, Health & Sexuality 1.
[609] TVNZ One News "Male birth control pill a step closer to reality" (Article, 5 October 2012) <http://tvnz.co.nz/national-news/male-birth-control-pill-step-closer-reality-5118064>.
[610] Parker, above n 583, at 5.
[611] Ministry of Health *Chlamydia Management Guidelines* (Ministry of Health, July 2008) http://www.health.govt.nz/publication/chlamydia-management-guidelines.
[612] Parker, above n 583, at 6.

awareness in both genders (either of which may be carriers without physical symptoms)[613] and reduce the spread of this virus and others.

(B) Domestic Violence and Sexual Violence

Domestic violence, physical, sexual or emotional is a significant issue within New Zealand.[614] It is a problem that can be vastly improved with the support of the Government. It goes without saying that emotional violence is usually a considerable part of both of these acts, but with such significant figures on the two visible types of violence, there is little provision for initiatives that aim at rectifying only emotional damage of victims.

Women who have had any sort of violence perpetrated against them are more likely to experience health issues than those who have not, including self-perceived poor health, physical poor health and mental health problems.[615] Recommendations have been made to develop violence intervention programmes in health services on the basis that such programs would at worst increase awareness of the issue, and at best reduce the number of violent incidences[616] although no Governmental change towards this end has been made yet.

Violence against women in New Zealand remains one of the biggest setbacks to gender equality. A survey estimated that 28% of all New Zealand households experienced victimisation of one form or another and victims had indicated that they had only reported one third of all crime they experienced to the police.[617] Violence against women in particular is difficult to quantify, since little is reported and most is of a sensitive nature. The New Zealand Crime and Safety Survey showed that the lifetime

[613] Auckland Sexual Health Service "Chlamydia" (2007) Reviewed by *everybody*, May 2008 <http://www.everybody.co.nz/page-a645187a-4686-42e9-a23b-8511cec66235.aspx>.
[614] NZ CEDAW Report 7.
[615] Parker, above n 583, at 9.
[616] At 9.
[617] New Zealand Parliament *New Zealand Crime and Safety Survey: 2009 Main Findings Report* (December 2010) www.parliament.nz/mi-NZ/ParlSupport/ResearchPapers/f/a/c/00PlibCIP101-Victims-rights.htm.

prevalence of partner violence was at 30% for women (and 21% for men), but was much higher for Maori women, at 46%.[618]

The government, however, is "committed to reducing its incidence and prevalence and its damaging impact on women"[619] through some initiatives; to better access justice, the Legal Services Amendment Act 2007 widened the criteria needed for people to gain legal aid. This helped women with regard to accessing family law without unattainable personal cost, in that victims are somewhat better taken care of. There is additional support from the Sentencing (Offender Levy) Amendment Act 2009 which requires all convicted offenders to pay a levy. The levy goes to fund support and services for victims of serious crime.

There also was a submission in 2009 for a public consultation document" *A Focus on Victims of Crime – A Review of Victims' Rights"*.[620] Since this consultation, the following conclusions and actions have been made: the introduction of the Victims Crime Reform Bill 2011 (which essentially acts to extend the scope of victims understanding of their rights and the available agencies to help them) and a Victim's Service Centre was launched for 18 months to provide the preliminary help to victims and to write a Victim's Code of Rights.[621]

Family violence rates have continued to increase dramatically, but it is still not known whether this reflects an increase in violence or an increase in reporting.[622] What is known is that around 88% of the perpetrators in couple related homicides were men, with 78% of the victims being the perpetrator's female partners or ex-partners.[623]

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[618] New Zealand Parliament, above n 614.
[619] NZ CEDAW Report 7, at 32.
[620] Ministry of Justice *A focus on Victims of Crimes – a Review of Victims' Rights* (Ministry of Justice, 2009) www.justice.govt.nz/publications/global-publications/a/a-focus-on-victims-of-crime-a-review-of-victims-rights.
[621] New Zealand Parliament *Enhancing Victims' Rights Review* (December 2011) www.parliament.nz/mi-NZ/ParlSupport/ResearchPapers/f/a/c/00PlibCIP101-Victims-rights.htm.
[622] NZ CEDAW Report 7, at 34.
[623] Jennifer Martin and Rhonda Pritchard "Learning from Tragedy: Homicide within families in New Zealand 2002-2006" (Ministry of Social Development, Wellington, 2010).

Research taken out by the Ministry of Women's Affairs looked at interventions for survivors of sexual violence.[624] This research showed that only 9% of women that had been victims of sexual violence reported it to the police, and only 13% of those cases resulted in a conviction.[625] This means that in every 1,000 cases of sexual violence, less than 12 will result in convictions. Half of the victims who reported sexual violence had also reported other violence to the police previously. Cases involving victims who were young, had a disability or knew the perpetrator were least likely to proceed through the criminal justice system.[626]

Life prevalence of sexual violence is much higher for women than men, at 30% and 9% respectively. Maori women have a higher rating once again, at 37%. [627] The *Taskforce for Action on Sexual Violence* was established in 2007 to make a report and recommend changes that can be made to reduce sexual violence within New Zealand. The report made 71 recommendations, focussing on four main areas: prevention – improving attitudes and behaviours within New Zealand (13 recommendations); front-line services – improving crisis and long-term recovery services, and services for perpetrators (34 recommendations); reforming criminal justice – improving the current system and considering alternative models (10 recommendations); and future directions and approaches – focusing on future actions to end sexual violence (14 recommendations).[628]

The Government responded that it was not going to attempt to directly address all the recommendations but would only focus on areas where it believed progress could be made.[629] For the most part, this included some minor funding (based on the enormity of the problem) for services and

[624] NZ CEDAW Report 7, at 37.
[625] Ministry of Women's Affairs *Restoring Soul: Effective interventions for adult victim/survivors of sexual violence* (2009) www.mwa.govt.nz/news-and-pubs/publications/restoring-soul-pdf.
[626] NZ CEDAW Report 7, at 37.
[627] At 36.
[628] Ministry of Justice *Government Response to the Report of the Taskforce for Action on Sexual Violence* Taskforce for Action on Sexual Violence (Ministry of Justice, 2009) www.justice.govt.nz/policy/supporting-victims/taskforce-for-action-on-sexual-violence/government-response-to-the-report-of-the-taskforce-for-action-on-sexual-violence.
[629] Ministry of Justice, above n 625.

further research into sexual violence. [630] The report found that additional investment was necessary to meet the current and emerging community needs, to which the Government responded it 'agreed' that "effective investment is necessary to meet community needs, encourage better value for money and flexibility and to prevent duplication and waste,"[631] which sidelined the main object and reduced any responsibility on its part.

The prevalence of violence towards women in New Zealand is difficult to remedy. However, other than in the statistics, there is little formal recognition that almost all violence (sexual or otherwise) is committed by a man against a woman. The consistent use of gender-neutrality is therefore one of the most significant problems in this area. By minimising the fact that in almost all cases women are victims, the focus becomes too broad and the recommendations watered-down. The Committee has recommended changes to both legislation and policy to ensure the focus remains on protection and reduction of violence against women[632] – but no action has been taken based on this advice. The Government has failed to recognise that CEDAW no longer only demands equal rights, but rather expects equal outcomes – and these are not necessarily formed in gender-neutral language.

If women are acknowledged as a separate and distinct group that are specifically targeted in most acts of violence, attempt to eliminate negative cultural traditions against women can then be initiated and hopefully more effective. While Maori and Pacific Island women face considerably higher incidents of violence, the main focus of prevention should remain with an approach to improve the status of women as a whole, with a side goal of particularly improving the gap between the cultures. This overarching aim would improve the lives of the majority of women on a wider scale, and once the general social acceptance of violence towards women is eradicated, there will be more effective help available to improve specific factions.

[630] Ministry of Justice, above n 625.
[631] Ministry of Justice, above n 625.
[632] UN Committee on the Elimination of Discrimination Against Women , above n 575.

Changes need to be made in practically every area, but an extensive budget (which is against the current government's policies) is necessary for any improvement. While the efforts of the government in this area are well known in the "it's not ok" campaigns,[633] recorded violence statistics are rising, and the government's continuous budget cutting in all 'non-economically beneficial' areas, indicates that little improvement will be made to the status of women in this area, even though it has one of the most discriminatory and harming effects on women.

Conclusion

During the last reporting period New Zealand has not made many significant changes to particularly improve the lives of women. In some ways, it is understandable that little funding has been available for this cause as a result of the recession and efforts to recover from it. In other ways it is incomprehensible, as the Government's actions imply that it is satisfied with not using half the population in an economically efficient way and that human rights are less of a priority than government debt.

The number of women in decision making positions has not improved to any great degree in the last decade, the pay gap statistics have behaved in a similar fashion. It remains to be seen how many of these issues relate to the fact that it is only in the last few decades that women have been able to actively enter into educational systems in a similar way to men. As a result of greater numbers of women graduating, there may be a more positive impact on the number of female decision makers; however these figures will likely remain offset by the continuing responsibility for child rearing in the absence of better subsidised ECE and extended paid maternity leave. More women in these top positions will raise the average wage for women and this may close some of the pay gap.

There are, however, still 'unexplained' areas in which women are discriminated against, by both men and other women – as a result of

[633] Areyouok "The Campaign for Action on Family Violence" (NZ Government Accessed) http://www.areyouok.org.nz/home.php>.

overarching social norm and cultural expectation. Discrimination within culture can be subliminal and without direct action taken against it, cannot be combated.

CEDAW has been a useful tool requiring New Zealand to collate sufficient data on women to summarise their status in the 'big picture'. That picture may be skewed by the fact that the New Zealand Government often represents only the positive aspects of the status of women to the Committee, however this bias is mitigated by allowing other bodies, such as NGOs to make their own submissions, as well as sector specific submissions.

It has been repeatedly demonstrated that the Committee lacks influence in its ability to require New Zealand to make changes. But CEDAW remains useful in highlighting discrimination issues for New Zealand citizens to act on. Continued pressure by the Committee to make changes may have an eventual effect on raising the status of women.

In conclusion, although the picture painted in this chapter is largely negative, it is acknowledged that New Zealand ranks high in the world for its lack of discrimination against women. New Zealand led the world in giving women rights that formally equated with those of men and current legislation does prohibit discrimination and adheres to New Zealand's obligations under CEDAW. In practical terms however, substantive equality has been a more difficult battle and for the most part, has also required legislation or policy changes.

Unfortunately, since the introduction of the fifth National Government, almost no changes to the status of women have been made. Changes to legislation have been regarded as unnecessary or too costly and policy has largely ignored the subject. Where gendered goals have been mentioned, they have often been vague or requiring more research. New Zealand has become a nation that follows other countries rather than leading them and as a result, the status of women is no longer topical.

Chapter 6

Conclusions and Recommendations

A historical analysis of the status of women in New Zealand has shown why women still struggle to gain equality. Cultural stereotyping and governmental indifference with subsequent lack of action, have led to a country that takes pride in its notion of perfect 'equality' regardless of the ongoing unequal outcomes that remain prevalent since formal equality was achieved.

CEDAW has collated a full set of requirements that need to be in place in order for women to achieve equality. However, as an instrument with little direct power and influence over New Zealand, it has not induced any major improvements to women's status. Nevertheless, the instrument is helpful to compare and categorically understand what issues remain, as well as providing logical and useful recommendations that will likely achieve equality.

Part one of this chapter gives brief conclusions on chapters one through four. The second and final part concludes the contemporary discussion from chapter five as well as recommending changes to improve the status of women in New Zealand to that of substantial equality based on the current situation.

Part I: Conclusion of Chapters One through Four

(A) Chapter One: Historical Overview of the Original Development of the Status of Women

The first chapter of this thesis provided foundational links to the current status of women in Westernised countries. Without being aware of how women's status became secondary to that of men through cultural

prerogative, it would be difficult to comprehend how the various movements to improve the status came about. The focus on Great Britain and the introduction to the Industrial Revolution makes it clear that women's dissatisfaction with their position originated not by design, but by evolution in slow and logical steps. This began through overcrowding and family poverty as major cities expanded and women were required to seek paid employment, an action that gained momentum as the World Wars forced women out of their traditional roles in society.

The status of women in New Zealand, as a colony of the British Empire, was consistent to that of England. The demand for suffrage and better treatment of women in employment led to the concept of equal rights and the concomitant determination to attain them. However, the complications surrounding how to bring about equality were soon apparent; while women succeeded in achieving some equal political and legal rights, these proved to be only a small step towards the ultimate goal. In some ways it even detracted from the campaigns. Women's groups had great difficulty in obtaining further rights that would have put them on an equal status with men as they were believed by many to have already succeeded through the formality of the gender-neutral legislation in relation to politics. Although legislation had changed, culture had not and through this, the barriers to women's equality remained.

(B) Chapter Two – The Evolution of Modern Legislative Equality in New Zealand During the Mid-Twentieth Century; National and International Influences

By the end of the twentieth century the United Nations was well established, and internationally recognised women's rights had progressed in leaps and bounds, culminating in the embodiment of the International Women's Conferences. Through these Conferences, the UN officially recognised that society and culture within almost all countries was discriminatory against women, forcing them into the same mould of 'second-class citizen' status that had been perpetuated for countless

centuries. It came to be realised that substantial equality would not simply eventuate after a country only formally acknowledged equality in its legislation and policies; women's lesser status was culturally and socially entrenched and equal opportunities did not create equal outcomes. CEDAW was created and adopted as a universal instrument that effectively encompassed and protected the right of women to have the same political, economic, social and cultural status as men.

In New Zealand, women's groups came to similar conclusions – equality had not been reached on attainment of equal political rights. The movement that had fought for suffrage split into factions of which there were activists for equal employment opportunities, sexual freedom and choice, changes to stereotypical domestic roles and protection of women in domestic violence situations. Although successful on some points, such as the ratification of CEDAW and legislation providing for some gender-neutral treatment in state sectors and in marriage, substantive equality was not achieved. While formally equal and somewhat politically persuasive as a group, individual women held little practical influence as they were rarely found in pivotal positions. Despite the campaigns of various women's groups, and regardless of the fact that cultural norms dictated equal outcomes for women to be virtually impossible, New Zealand Governments continued to act on the belief that formal equality was all that CEDAW required.

Domestic comparisons aiming to raise the status of women mainly focussed on attaining "men's rights" with the result that formal (gender-neutral) equality was targeted without gaining substantial (real) equality concurrently. The gap between CEDAW's and the New Zealand Government's concepts of equality had widened, but CEDAW provided the only unbiased authority on which a fair comparison of the status of women could be made.

(C) Chapter Three – The International Model: CEDAW and the Optional Protocol

In chapter three, an analysis of the scope of CEDAW revealed both benefits and flaws in the instrument. The benefits of CEDAW predominantly lie with the wide definition, dissemination, and categorical layout of women's rights in the earlier articles, giving Member States an international model on which to compare their domestic implementations. While the categorical layout briefly includes political rights, CEDAW's main focus is on boosting the status of women by giving Member States obligations to implement both positive and negative anti-discrimination measures in the public (educational and economic) and private (health, relationships and culture) sectors. These provisions are internationally recognised as being necessary for the equal status of women and men.

The Optional Protocol negated the flaws of CEDAW to some degree by establishing the right of individuals and NGOs to apply to the CEDAW Committee for discrimination within a Member State and by giving the Committee autonomy to investigate a potentially discriminatory practice within a State. Unfortunately however, CEDAW and the Committee have little direct impact and authority in Member States such as New Zealand. Aside from its lack of power to force a State to take action, CEDAW's primary failing is its acceptance of reservations that negate the purpose of the instrument; to stop discrimination. New Zealand's first mandatory report to CEDAW emphasises these flaws when it states that ratification only took place after legislation was effectively discrimination-free (which was substantively untrue), other than the reservations it placed in sectors in which the Government intended to continue discriminating against women.

(D) Chapter Four – The Transition; Recent Historical Changes to the Status of Women and the Impact of CEDAW in New Zealand since Ratification

The historical status of women in New Zealand had, by the late twentieth century, been fully entrenched. The major women's groups had lost momentum and no longer held much political sway. In the second report to

CEDAW made in 1993 and the third and fourth (combined) report in 1998, women's status went relatively unimproved. During this time the deregulated market and MMP had been established. Although NZBORA and the Human Rights Act 1993 had been introduced and had entrenched the right to not be discriminated against, it was only a negative right and did not affect the general status of women. The National Government also passed the Employment Contracts Act in 1991, which gave disproportionate rights to employers and negatively affected women (as they were predominantly employees). The Committee's stance against this Act and advice to New Zealand to withdraw its reservations went unheeded.

During the fifth and sixth reports (in 1998 and 2006 respectively), the Labour Party effectively led the New Zealand Government. As Labour is generally a more rights-based party, it is not surprising that measures were taken to improve the status of women. Effective measures included; the Employment Relations Act 2000, which rectified the imbalance between employer and employee, various Action Plans for women and for New Zealand as a whole, and the implementation of a paid parental leave scheme.

Although the improved status of women was a positive step, it was unfortunate that CEDAW and the Committee maintained little, if any, influence on the changes. However, insofar as CEDAW provided a template by which New Zealand could collate and categorically understand what was necessary for substantive equality, it was a positive influence.

Part II: Conclusion of Chapter Five and New Zealand's International Ranking

(A) Chapter Five – New Zealand Women Today; How Close is New Zealand to Conforming to CEDAW and Achieving Substantive Equality?

The historically established secondary status of women in New Zealand continues to be perpetuated. While it can be easily and obviously acknowledged that drastic improvements have been made since the early twentieth century, it is equally acknowledged that current improvements are slow and often ineffective.

This thesis has put forward two particular reasons for the lack of recent change: the first is, briefly, that the Government has no real interest in raising the status of women to equality. While economic benefit and debt minimisation continues to be the major objective of the National Party, the protection of all human rights suffers. The Government's sole aim with regard to this issue has been directed at placing more women in leadership positions, yet has provided few initiatives to produce this outcome and as a result the statistics of women in such positions in both public and private spheres have shown almost no improvement. Economically beneficial remedies are therefore necessary to provide the Government incentive to take action – these are provided in the recommendations section below.

The second ground for the lack of change in women's status is based on the incorrect premise that formal or legislative rights translate into practical equality. As the current comparison stands, gaining "men's rights" (or formal equality) have not led to equality for women – yet no alternative comparison has been suggested and therefore many methods of attainment of equality remain couched in gender-neutral language. CEDAW provides the proper comparison, but in New Zealand, it and the Committee have little influence. New Zealand has accepted and ratified obligations to give women equality. However, Governments have chosen not to use CEDAW as an ideal comparison despite the Committee's insistence that merely passing neutral law and policy will not necessarily result in equality, and can in some cases detract from it. If equality is to be attained, CEDAW should be applied to a greater extent, so that equality is no longer dependent on the transition from formal to substantive equality.

(B) New Zealand – How does it Compare?

The status of women in New Zealand is clear; formal equality exists in the form of legal equal opportunities, but substantial equality (equal outcomes) remains to be attained after over a century of campaigning. However, in comparison to much of the rest of the world, New Zealand is achieving highly. This section briefly examines New Zealand's ranking with regard to women's status and rights: first, to give an indication of where the country is positioned in this regard on a global scale and to demonstrate its relative success; and secondly, to highlight specific countries that rank higher than New Zealand so as to give recommendations based on actions that have proven effective.

According to the Global Gender Gap report 2011, New Zealand ranks sixth overall of 135 countries for its gap between equality of men and women. [634] However, using the same report, for the past four years it has ranked fifth, showing a drop in improvement.[635] This aligns with the Gender-Related Development Index which measures achievement in the Human Development Index ("HDI") basic capabilities as well as noting inequality of achievement between women and men.[636] In the HDI study, New Zealand ranks fifth.[637] Slight discrepancies within the studies specific results can be explained by the difference in collected data, although both of these investigations use categories such as political representation/empowerment, health/survival, educational attainment and economic participation.[638] Compared to other countries, New Zealand has higher than average equality in all spheres, which includes one of the best comparative equalities in the health and education sectors, but has some

[634] Ricardo Hausmann, Laura D Tyson and Saadia Zahidi "The Global Gender Gap Report 2011" World Economic Forum (Geneva, Switzerland, 2011) http://www.ncwnz.org.nz/assets/Uploads/WEF-GENDER-GAP.PDF, at 271.
[635] At 271.
[636] United Nations Development Program "Measuring inequality: Gender-related Development Index (GDI) and Gender Empowerment Measure (GEM)" Human Development Reports (2010) <http://hdr.undp.org/en/statistics/indices/gdi_gem/>.
[637] United Nations Development Program, above n 663.
[638] Hausmann, above n 661; United Nations Development Program , above n 663.

inequality in its economy and is severely lacking in terms of political equality.[639]

One survey compared 165 countries (over 80% of the total countries in the world) on women's place in justice, health, education, economics and politics. It found that Iceland had the best women's rights in the world.[640] The Prime Minister of Iceland, going one step further than the International Women's Conferences, declared that not only are women's issues related to all human rights issues, gender equality is one of the best indicators for the overall equality of societies.[641]

Iceland has consistently received top rankings in relation to women's rights, although it still does not have perfect equality. It is logical, therefore, to discuss some of the policies Iceland has in comparison with New Zealand and whether they are able to be transferred to the New Zealand system successfully. This is addressed below.

Part III: Recommendations – Where to From Here?

New Zealand has acknowledged that it does not practice substantive gender equality.[642] It has been demonstrated that CEDAW only has, at the most, minimal impact on improving equality within New Zealand. So what can be done that will alter these facts? Are there any viable improvements available that will enhance the status of women in New Zealand? If CEDAW is given greater status and power within the country, will it have a positive impact? The answer to all of these questions is a resounding 'yes.' By examining and expanding on successful action taken by other countries and suggestions already pending within New Zealand, the following sections give options for real improvement in the public and private sectors. All recommendations are initiatives for the Government to

[639] Hausmann, above n 661, at 270 - 271.
[640] The Daily Beast "Women in the World; the Best and the Worst Places for Women" *The Daily Beast* (online ed., September 2011) www.thedailybeast.com.
[641] Kira Chochrane "Is Iceland the Best Country for Women?" *The Guardian* (online ed., Oct 2011) <http://www.guardian.co.uk/world/2011/oct/03/iceland-best-country-women-feminist>.
[642] NZ CEDAW Report 7.

take, rather than suggestions for action for the public based on the premise that Governmental action impacts the widest sector of society.

(A) Public Sector

It is said that to succeed in today's society, it is fundamental that the full potential of women is utilised.[643] While it is important that the private sector provide systems for this, the pivotal role remains with governments and their policy framework for improving women's education and economic participation.[644] Improvements to the public sector has always been the first point of call for establishing equality in New Zealand, as it provides the most regulated system without interference in the private market.

(i) Recommendations on CEDAW's Status and Impact

CEDAW had and continues to have little direct impact in New Zealand. Although it has been ratified into domestic law, it has little sway with regard to trumping other domestic law that contradicts it. To give CEDAW more strength in this area would imply that New Zealand must cede some of its autonomy and sovereignty to the Committee (which opens the floodgates to its obligations under other international treaty bodies). This would obviously be an unacceptable and complicated situation.

However, there is another option that would give CEDAW and the Committee more influence within New Zealand, without giving them actual authority to take action. It is suggested that the scope of the Ministry of Women's Affairs ("Ministry") be extended to grant binding powers of recommendation. Some of the Ministry's main responsibilities are currently:[645]

[643] Hausmann, above n 661.
[644] Hausmann , above n 661.
[645] Ministry of Women's Affairs "About" (2012) http://mwa.govt.nz/about.

(a) to give Policy advice on improving outcomes for women in New Zealand;
(b) to manage New Zealand's international obligations in relation to the status of women; and
(c) to provide suitable women nominees for appointment to state sector boards and committees.

These objects are perfectly in line with CEDAW and regular communication already takes place between the Ministry and the Committee through the submission of reports and other associated documents.

Under the recommended additional powers granted to the Ministry, the Committee could provide suggestions and the Ministry would be able to take action such as: instigating legislative change, creating *Action Plans* that other Ministries are obliged to be a part of, and disseminating the recommendations of the Committee through wider forums than the state sector. The Ministry could have the ability to investigate whether an action, program or scheme in either public or private sectors is likely to have a discriminatory effect (similar to the watchdog role of the New Zealand Commerce Commission).

Although this extension of authority might be objected to by those in the private sector on the basis that it would partially regulate their autonomy, this objection can be countered by the fact that the Ministry would only be more effectively enforcing previously established anti-discrimination legislation. The private sector would not lose any authority as, under the current law, they are already obligated to have non-discriminatory practices. Widening the scope of the Ministry would merely police that such measures are taken.

If the Ministry were given greater power beyond non-binding advice, management and nominations, the status of women in New Zealand could be vastly improved and the impact of CEDAW would be significantly more influential without affecting New Zealand's autonomy. However, given the current budget-cutting policy, it is unlikely that the Government will

introduce this authoritative scope to the Ministry. For the most part, this initiative will involve high costs (the Ministry's budget would need to be expanded), significant complaint from the private sector and little direct monetary return, as its aim is solely to stop discrimination against women and any other results would be by-products.

(ii) Legislative Change

The second suggestion for improvement to the status of women is one of legislative change. Although the current government believes that further legislative change will not have an impact,[646] CEDAW continues to suggest that it can.[647] It is argued here that certain legislative measures will bring about some change provided such legislation is written in a gender-specific, rather than gender-neutral form.

The statute should be constitutional and specifically protect women's right to equality in all spheres of life. It should be in the form of a positive (as well as the usual negative) right; a starting point would be to force action that rectifies the imbalance culture has given women. The legislation should be similar in form to that of NZBORA with some amendments – specifically, that women have a right not to be discriminated against on the basis of their sex, and that those in authority (such as employers) have a duty to ensure equality is being practiced within the scope of their domain.

Although this would boost the status of women in the private and public sectors (but perhaps not in the domestic scene), it is highly unlikely that such a statute will be enacted for two main reasons: first, because New Zealand has continuously enacted formally gender-neutral legislation that provides equal opportunities for decades and to reverse this tradition would be considered 'sexist' regardless of outcomes; secondly, it has not

[646] NZ CEDAW Report 7; United Nations Committee on the Elimination of Discrimination Against Women *Responses to the list of issues and questions with regard to the consideration of the seventh periodic report* (8 February 2012) CEDAW/C/NZL/Q/7/Add.1.
[647] UN 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 LVII.

been habitual to provide for positive rights in any human rights legislation, and any such new legal deviation would put a heavy burden on both the public and private sector's purses – causing both financial struggle and outcry. Editing the document to provide only a negative right not to be discriminated against would not provide any additional improvements to NZBORA and the Human Rights Act 1993. For these reasons, this idea, suggested because of its potential to make a significant change, is not given in any detail.

(iii) Additional Policy Improvements: Action Plans

One consistent international finding is that public policies have a significant impact on gender equality.[648] If the New Zealand government is opposed to making long-term decisions such as enacting legislation, policy changes should be drafted as special temporary measures that act in a similar way as the suggested legislation, but for a finite period of time.

In Iceland, past *Action Plans on Gender Equality* were based on special projects for each ministry within the government that focussed on specific action that could be taken to improve women's status within the confines of each ministry. The *Action Plan* for 2011-2015 has changed this to thematic issues to be implemented by all ministries, such as within the Government and the labour market, improving the gender pay gap, political representation, gender-based violence and education, and also engaging men in the demand for gender equality.[649] Gender mainstreaming is required in all government policies and in decision making.[650] The *Action Plan* will look into education and vocational choices, gender stereotypes and participation in care work.[651]

[648] The Social Report 2010 "New Zealand compared to Australia" (2010) <http://www.socialreport.msd.govt.nz/comparisons/australia.html>.
[649] Jafnrettisstofa "Gender Equality in Iceland" Centre for Gender Equality Iceland (February 2012) <http://www.jafnretti.is/D10/_Files/Gender_Equality_in_Iceland_2012.pdf>, at 18.
[650] At 18.
[651] At 20.

New Zealand's previous *Action Plan for Women* was successful in focusing governmental agencies on topics that would improve the status of women. It did not particularly raise the status, but formed an important link by broadening the scope of understanding on women's issues. An additional *Action Plan* was suggested by the Committee and it is suggested here that one is instigated so as to mainstream gender issues in government policies. It should be based on the Icelandic model that uses thematic issues over a broad spectrum of state sectors such as aiming to close the pay gap in all areas of employment by all Ministries that have an input into employers and employees lives. This would provide the most cohesive action as all Governmental spheres would be acting separate parts towards one main goal of equality. Although this policy is not likely to be implemented based on its initial costs, it is probable that in the long term this would improve the economic performance of New Zealand based on the premise that increased equality leads to a higher Gross Domestic Product ("GDP") as discussed in the following section.[652]

Other suggestions on legislative change and policy improvement are discussed within their specific sectors below.

(B) Private – Employment and the Pay Gap

The fight for equality originated in the demand by women for equal (or at minimum, better) treatment in the workforce. It was the main topic of contention before, during and after the vote for women was gained in most Western nations, as well as during the period in which formal and substantive equality were realised to be separate aims and achievements. Despite all activism and action taken in this area by women's groups, individuals and governments, the current workforce remains discriminatory towards women in the most part because of the bias of old-fashioned culture.

[652] Goldman Sachs "Closing the Gender Gap: Plenty of Economic Upside" National Council of Women of New Zealand (9 August 2011) www.ncwnz.org.nz, at 1.

The International Labour Organisation has stated that women continue to earn, on average, less than men in *all* countries.[653] New Zealand has a slightly smaller pay gap than Australia and has a similar gap to the United Kingdom, but is significantly behind the Scandinavian countries.[654] It is estimated that closing the gender gap (by women attaining economic equality rather than a decrease in payment of men) in New Zealand will result in a 10% increase in the GDP.[655]

This section provides recommendations that, if applied, should provide women with drastic improvement in equality in the employment sector and thus finally achieve a goal that has been set for centuries.

Rather than questioning why the gap remains relatively static, some research has examined the factors that positively encourage female participation in the workforce. These factors include; high childcare subsidies and favourable tax treatment (or no unfavourable tax treatment) of second income earners.[656] Other suggestions incorporate ways to encourage women into sectors outside traditional areas; minimising issues such as childcare costs and availability; and ensuring women are attaining leadership roles.[657]

The Corporate Women's Directors International Group has recorded two effective diversity initiatives internationally which are: government mandated quotas, and board diversity in corporate governance codes.[658] Some of these suggestions are explored in depth below.

(i) Equality Legislation

[653] Report of the Director-General, International Labour Organisation "Equality at Work: Tackling the Challenges: Global Report under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work" (Geneva, 2007), at 73.
[654] Goldman Sachs, above n 649, at 9.
[655] At 1.
[656] OECD Economics Department "Female Labour Force Participation: Past Trends and Main Determinants in OECD Countries" (May 2004). http://www.oecd.org/eco/labourmarketshumancapitalandinequality/31743836.pdf.
[657] Goldman Sachs, above n 649, at 1.
[658] New Zealand Human Rights Commission "New Zealand's Census of Women's Participation" (2012) < http://live.isitesoftware.co.nz/neon2012/documents/hrc_womens_census2012.pdf>.

The first recommendation to reduce the pay gap is for the enactment of new equal rights legislation. The previous Government Service Equal Pay Act (1960) and Equity Pay Act (1972) have both been shown to be unsuccessful in reducing the wage gap – even within the public sector. Suggestion has been made by the Human Rights Commission that New Zealand should imitate other commonwealth countries in investing in an "Equality" Act that ensures equality between men and women within all sectors of employment, and provides for transparency and accountability of companies to guarantee the law is followed.[659]

Canada has adopted this concept, on the advice and efforts of the Canadian Human Rights Commission, by developing a "Framework for Documenting Equality Rights."[660] The cornerstone for this Framework is found in the anti-discrimination clause of the Canadian Charter of Rights and Freedoms.[661] The main objective of the Framework is to provide reliable and policy-relevant data on equality rights by examining the social and economic well-being of groups protected under the Canadian Human Rights Act 1977.[662]While the Framework is only an information gathering initiative and does not provide rights, it categorically documents each sector of society and its relative standard of equality. It provides transparency within different employment spheres which is a pivotal part of improving equality, or at least, discovering and halting discrimination. The suggested Equality Bill supplies an information gathering procedure as discussed below.

In Australia, a different approach was followed to take action against the practice of discrimination in the workplace. The Fair Work Act 2009[663] provides anti-discrimination of gender measures, as an additional development, the Act contains a 'Modern Award Objective', that requires the employment authority, when making an award, to take into account the

[659] New Zealand Human Rights Commission "Tracking Equality at Work" (2011) www.ncwnz.org.nz/assets/Uploads/Tracking-Equality-at-Work-Summary-Report2.PDF.
[660] Canadian Human Rights Commission *Framework for Documenting Equality Rights* (2010) http://www.chrc-ccdp.ca/pdf/framework_equality.pdf; New Zealand Human Rights Commission, above n 656, at 28.
[661] Constitution Act 1982; Canadian Charter of Rights and Freedoms (CAN), s 15.
[662] New Zealand Human Rights Commission, above n 656, at 28; Canadian Human Rights Act 1977 (CAN).
[663] Fair Work Act 2009 (AUS).

principle of equal work for equal remuneration.[664] The employment authority, 'Equal Work Australia' also has the power to initiate equal remuneration orders onto a place of employment.[665]

There has also been a submission to review the Equal Opportunity for Women in the Workplace Act 1999[666] so that interaction between this Act and the Fair Work Act will provide a framework that ensures equal work for equal remuneration. Reforms to the Equal Opportunity for Women in the Workplace Agency are also taking place, which will include a new Workplace Gender Equality Act and Workplace Gender Equality Agency with the objects of the Act including pay equity.[667] However, since the introduction of the Employment Contracts Act 1991, and even after the Employment Relations Act 2001, New Zealand no longer has an industrial relations infrastructure to support this sort of reform.[668] Therefore, an awards system model would be inappropriate and a different approach is necessary.

The United Kingdom has also made a move towards updating its human rights framework. It has introduced a new Equality Act 2010.[669] This Act has a shift in focus from a negative right to a positive duty (expanded on below) – similar to what is suggested for the potential Equality Bill in New Zealand.[670] As it has already been acknowledged that women have a right to have equal pay as men, it is logical that this should be enforceable.

Rather than having to identify discrimination, the proposed Bill gives equality as a positive right. This means that an employee would not have to prove discrimination, but instead, the employer would have to prove that equality is practiced. "Equal work" is determined as work like, equivalent, of equal value, the same or broadly similar, or has equal value in terms of job demands which can be calculated through the already established Gender-Inclusive Job Evaluation Standard (P8007/2006) developed under

[664] New Zealand Human Rights Commission , above n 656.
[665] At 28.
[666] Equal Opportunity for Women in the Workplace Act 1999 (AUS).
[667] Equality Act 2010 (UK).
[668] New Zealand Human Rights Commission, above n 656, at 31.
[669] Equality Act 2010 (UK).
[670] New Zealand Human Rights Commission, above n 656, at 29.

the auspices of the former Pay and Employment Equity Unit of the Department of Labour and approved by the Standards Council.[671]

In the past, collective bargaining schemes contributed to pay equity, however, more recently collective bargaining has not been used to as great a degree for this aim. The proposed Bill states that every collective bargain will be deemed to contain a pay equality clause which has the following effect:[672]

> (a) If a term of A's agreement is less favourable to A than a corresponding term of B's agreement, A's term is modified so as to have the same effect as the term in B's agreement;
> (b) If A does not have a term which corresponds to a term of B's that benefits B, A's terms are modified so as to include such a term.

The inclusion of this automatic provision in collective bargaining agreements will ensure that equality is not optional. This indicates no time or negotiation during discussion is necessary on this point, and therefore equality will be instated; neither employer nor union needs to cede other 'more important' obligations or benefits to the detriment of a specific gender.

The Bill gives provision for both the HRC and the Employment Relations Authority ("ERA") to issues "codes of practice" to ensure that the Act itself is not too complicated and that the processes are translatable to each employment sector. This is a similar provision to the Canadian and United Kingdom initiatives.[673]

One of the ways to enact this positive right is to ensure that information about rates of pay (including situations in which rates of pay are different for a specific gender) are required to be recorded by all employers.[674] This information will be available through a Department of Labour Inspectorate and made available to the ERA if a complaint is filed.[675] There is no need to fear that employees gain access to any confidential pay records,

[671] New Zealand Human Rights Commission, above n 656, at 26; Equality Bill, s 5.
[672] Equality Bill, s 6(a) and (b).
[673] New Zealand Human Rights Commission, above n 656, at 31.
[674] Equality Act, s 8.
[675] New Zealand Human Rights Commission, above n 656, at 30.

because any sensitive information would only go to the Government Department.

The HRC has offered a suggestion which would not require an extensive overhaul of the current legislation or bodies that administer it and still provide it in gender-neutral language. It has provided a drafted Equality Bill that places reasonable obligations on employers, gives an existing established state body the duty of administering it, protects confidential information about companies and provides remedial action should it be ignored.

Unlike the above recommendation for legislative change, this would make a direct impact on the majority of women in the workforce and therefore within New Zealand. It is more suitable to New Zealand's statutory framework in that it uses gender-neutral language. However, given the current Government goal of economic improvement, it is unlikely the Bill will be enacted as it would create immediate and significant cost and reshuffling to employers and state departments. The current Prime Minister, John Key, has openly acknowledged that it is unlikely that the National Party will support the Bill.[676]

(ii) Representational Positions and Compulsory Quotas on Boards

Currently, New Zealand falls significantly behind Australia, the UK, the US and many European countries in terms of women in representational positions, especially in the private sector.[677]

The motivation behind introducing government mandated quotas is for two central reasons; the first is to provide more balanced board numbers, in the hope that this will encourage greater participation lower in employment hierarchies and create a more equal society; the second is to close the

[676] Derek Cheng "Key Shies from Wage Equality Bill" *The New Zealand Herald* (online ed., July 2011) http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10736372.
[677] Goldman Sachs, above n 649, at 14.

pay gap. If more women made up employment numbers on boards and in other top positions, then this would lessen the pay gap.

In Iceland, a law will come into force in 20 13 that obliges every company with more than three directors to have at least 40% of each gender on its board.[678] In 2010, the same country passed legislation requiring boards of public and private companies with 50 or more employees to contain both men and women.[679] At minimum, these laws will make an improvement to the current lack of numbers as women in management positions in Iceland currently only make up 13%-19% and this is limited to only 9% in companies with more than 250 employees.[680] Norway passed a similar law in 2003, which resulted in listed companies having (currently) an average of 40% female representation on their boards.[681]

One of the most significant issues that have caused reluctance by countries to adopt mandatory quotas is the possibility of companies losing value based solely on having "token" women on boards who do not contribute to the benefit of the company.[682] However, at worst, quotas neither affect the quality of women appointed, nor affect the longer term performance of companies.[683] At best, improving the number of women on boards dramatically improves growth, provides better investment and better return on equity, increases sales and expands markets.[684] Further, high numbers of women on boards has been linked to contribute to the

[678] Chochrane, above n 638; Equal Status and Equal Rights of Women and Men Act; Law (no.10/2008) (ICELAND), at no. 15.
[679] Company Law Act; Law (No. 2/1995) (ICELAND); Private Limited Companies Act; Law (No. 138/1994) (ICELAND).
[680] Jafnrettisstofa, above n 646, at 22.
[681] Human Rights Commission, above n 655, at 9.
[682] Fenja Villeumier "Mind the Gap" *M2Woman* (New Zealand, October 2012) 50, at 52; Human Rights Commission, above n 655, at 9.
[683] Human Rights Commission, above n 655, at 9; see J Whelan and R Wood "Gender equality project; Centre for Ethical Leadership" (2012) The University of Melbourne.
[684] Nancy M Carter, Lios Joy, Harvey M Wagner and Sriram Narayanan "The Bottom Line, Corporate Performance and Women's Representation on Boards" (15 October 2007) Catalyst http://www.catalyst.org/knowledge/bottom-line-corporate-performance-and-womens-representation-boards; Human Rights Commission, above n 655, at 8; Greg Pellegrino, Sally D'Amato, and Anne Weisberg "The Gender Dividend; Making the Business Case for Investing in Women" Deloitte (2011) http://www.deloitte.com/assets/Dcom-Greece/dttl_ps_genderdividend_130111.pdf.

success of companies during low economic growth (such as the recent recession).[685]

This is a viable system for New Zealand. Based on research (such as that referred to in this thesis), the introduction of reasonable government mandated quotas (with a phase-in period) in both the public and private spheres is likely to increase New Zealand's output and efficiency. The quotas should be similar to that of Iceland, at 40% for companies of over 50 employees, as this number indicates that an effort must be made to introduce women into higher positions, but the target is not set so high that "token" or majority positions are forced. Given New Zealand women's high educational levels and experience, there should be a sufficient number of suitably qualified women for these positions without causing companies to lose value.

CEDAW's suggestion has been continually rejected by the government on the basis that equality is supposedly provided for in the Human Rights Act 1993.[686] However, this thesis recommends that this quota system be implemented in New Zealand as a special temporary measure – which, once achieved and running smoothly for a generation (so as to create a cultural expectation of equality in all positions), could then be repealed. Once the culture has been altered so that the default point is not discriminatory against women, the deregulated market should be reverted to, as equal opportunities should subsequently indicate equal outcomes.

(iii) Paid Maternity Leave and Subsidised Early Childhood Education

Part of the reason for the gender pay gap in New Zealand has been attributed to childbearing and childrearing. As both of these demand time taken from employment and cultural norm makes it almost exclusively a woman's role, having children reduces the amount of time for women with

[685] Nancy M Carter, above n 681; Greg Pellegrino, above n 681.
[686] NZ CEDAW Report 3-4, at "Temporary Measures"; United Nations Committee on the Elimination of Discrimination Against, above n 644, at 4-5.

the necessary skill and experience to gain higher level positions in the workforce. By increasing state funded maternity leave (for men in particular) and subsidised ECE, women will have more equal opportunity as men to compete for promotion and positions as they will be taking a similar amount of leave that men are, and will not necessarily have 'main' care of a child any longer.

The childcare benefits in Iceland provide some of the most positive impacts on women in gaining equality. Iceland has progressive rights of parental leave for before and after a child is born. Both parents each have three months paid leave which is non-transferable (i.e., the father cannot 'gift' his three months to the mother), and a further three months that the parents are able to share as they wish.[687] This law has been in place since 2003.[688] The outcome of this practice ensures employers are unable to discriminate against women of childbearing age, as regardless of gender, they will have to pay parental leave or keep a position open for either parent. Close to 90% of fathers use their three months paid leave.[689] It has shown an increase in father-children relationships and made men and women have more equal footing in the workplace.[690]

Part of the reason state funded paid parental leave has not been increased in New Zealand is because it may put an unfair burden on employers as the woman's position must be held open for her return and she often does not return on a permanent basis after leave has been fully paid out. However, Google – the information technology giant – studied this premise as it wanted to find a way to avoid its issues of high numbers of women leaving the company to give birth and not returning.[691] The company had discovered a loss on recruitment and training costs to fill the positions the women had left, so the research was done for the benefit of

[687] Chochrane, above n 675.
[688] Jafnrettisstofa, above n 646, at 10.
[689] At 23.
[690] At 23.
[691] Farhad Manjoo "How Google Became a Great Place to Work" *Stuff.co.nz* (online ed., 24 January 2013) http://www.stuff.co.nz/technology/digital-living/8214359/How-Google-became-a-great-place-to-work; Claire C Miller "In Google's Inner Circle, a Falling Number of Women" *The New York Times* (online ed., 22 August 2012) http://www.nytimes.com/2012/08/23/technology/in-googles-inner-circle-a-falling-number-of-women.html?pagewanted=all&_r=1&.

the company. As a result, after finding their paid and unpaid maternity leave policy (similar to New Zealand's current policy) was not effective, they raised their leave allowance to give mothers five months of fully paid leave with full benefits and the option to use this time as they choose (such as coming back part time after the birth rather than using it all at once).[692] Attrition reduced by 50%, recorded happiness within the firm rose and the policy was cost-effective.[693]

By increasing the length and amount of paid maternity leave in New Zealand, women will find it easier to return to work after childbirth, employers will not have too heavy a burden placed on them, and (again) women will be able to aim for promotions which will increase the number of women in higher positions and thus potentially improve New Zealand's GDP. If paid (and non-transferrable) parental leave is extended to men, discrimination against women of childbearing age will reduce and traditional culture may potentially change to include men as caregivers.

In terms of ECE in Iceland, most municipalities pay around 85% of childcare.[694] It costs around $100 NZD per month to put a child in care for eight hours a day. [695] This figure changes depending on the situation of the parent, for example, a single parent may have to pay the above figure, whereas a couple raising a child will have to pay a bit more. These fees include breakfast and lunch for the child.[696]

Child benefits, paid to both parents (provided they are living together), are granted for each child until that child is 18 years old. This is not taxable income.[697] Individuals are allowed to take unpaid "family weeks" for thirteen weeks each year until the child is 8 years old. However, in 2010, of the 1,200 people taking all or part of this leave, all were women.[698] Because the obstacles to gaining education and employment with children are thus reduced, it also means that having a child is a benefit rather than

[692] Manjoo, above n 689; Miller , above n 689.
[693] Manjoo, above n 689.
[694] Jafnrettisstofa, above n 646, at 9.
[695] Chochrane, above n 675.
[696] Chochrane, above n 675.
[697] Jafnrettisstofa, above n 646, at 24.
[698] At 22.

only a cost. Iceland has one of the highest fertility rates in Europe at 2.1%.[699]

Providing higher subsidies for ECE will improve the rate of women (mothers) in employment. It will not provide a significant burden on the public, as those mothers who can obtain the subsidy will be in employment and the economy will thus benefit as shown above. However, although enacting similar provisions as Iceland will be beneficial to equality, it may not be transferrable to a New Zealand system based on available state funding. While the New Zealand personal income tax rate ranges from 10%-33%,[700] the Icelandic equivalent ranges from 37%- 46%[701] - a significantly higher budget, with a greater focus on state subsidies. An increase to this level will not be well received by the New Zealand public and regardless of long term benefits to the economy, will not likely be given greater budget allocation in the near future.

(C) Private Sector

A final improvement which would have significant and lasting effect on many women is a change in the domestic violence law. Ideally, the law would seek a change that would evolve culture to the point that any violence (especially against women and children) is socially unacceptable. Unfortunately however, deliberate culture change through legislation is almost a practical impossibility.

Instead, legislative change is suggested here as a viable option that would likely improve the lives of thousands of women as well as indicating to the public that violence against women specifically is prohibited in law. The Domestic Violence Act 1995 is written in gender-neutral language, but is anchored in a sector of society that is not gender-neutral. The majority of

[699] At 9.
[700] Deloitte "Tax Rates for the 2012 Income Year Tax Calendar" (2012) http://www.deloitte.com/assets/Dcom-NewZealand/Local%20Assets/Documents/Services/Tax%20Services/nz_en_Tax_calendar_2011_12.pdf.
[701] Nordisk eTax "Tax Rates" (2012) https://www.nordisketax.net/main.asp?url=files/isl/eng/i07.asp&c=isl&l=eng&m=02.

'domestic violence' is in fact, male violence against women.[702] Despite the fact that one-in-three women (who have had a partner) have experienced at least one act of physical or sexual violence by an intimate male partner,[703] while only 9% of men experience "unwanted and distressing sexual contact over their lifetime,[704] the language is couched in terms of assumed equality. There is no suggestion that female violence against males does not occur, merely that there is a radical difference in the statistics and therefore should be a difference in the wording of the legislation.

The Committee has suggested legislative change to specifically protect women in domestic violence situations.[705] To change the legislation (or to create new legislation) to ban male violence against females would not only show an acceptance by the government that this area is accepted as being unequal, but will combat the obvious problem that thousands of women are facing. While the current situation that protects men who are abused as well as women should not be withdrawn, an additional clause or statute should be enacted to specifically protect women. A suggested amendment to the current Domestic Violence Act 1995 would be in the purposes section of the statute. As well giving protection for domestic violence's "victims",[706] the object should include an aim to "specifically protect women, as a recognition that most victims are women, who therefore need particular protection from the state to combat its discriminatory continuance."

Protecting these women will give them a substantively equal chance to participate as an equal part of society. Other than initial costs, this will eventually provide the Government with a lot of cost savings in terms of

[702] Nicola Gavey "Violence Against Women: Beyond Gender Neutrality" (Contribution to Special Topic Session, co-presented with Alison Towns at The Women's Convention, Wellington, 3-6 June 2005).
[703] Janet Fanslow, Elizabeth Robinson "Violence against women in New Zealand: prevalence and health consequences" (2004) The New Zealand Medical Journal 117.
[704] Areyouok? "Recent Family Violence Statistics" New Zealand Government http://www.areyouok.org.nz/files/statistics/ItsnotOK_recent_family_violence_stats.pdf.
[705] United Nations Committee on the Elimination of Discrimination Against Women *General Recommendation 19* (1992) XI http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm.
[706] See Domestic Violence Act 1995, s 5.

police, legal aid, shelters and other services that will not be required in as great numbers as currently exists.

Conclusion

The aim of this thesis has been to demonstrate how the status of women in New Zealand has evolved, and by doing so, comprehend why equality has not yet been reached. The thesis has provided analysis on the incorrect assumption that formal equality directly equates to and results in substantial equality. It has also discussed the ineffectiveness of the continued attempts to convert women's status into "men's rights."

CEDAW has been confirmed as a relatively flawless and unbiased instrument on which comparisons to full equality can be made. As New Zealand is a ratified Member State of CEDAW, both its obligations to provide equality for women, and CEDAW's suitability as an ideal goal makes a comparison between CEDAW and the status of New Zealand women an optimal one. The contrast between the two effectively shows that the status of women in New Zealand has need of significant improvement before equality can be reached.

The viable recommendations for these improvements are given almost consistently in the form of gender-specific language. As New Zealand women have formal equality and it has not provided them with full equality, the option CEDAW and others have suggested is to integrate gender-specific legislation and policy in the long and short term. These recommendations are suggestions for legislation, in the form of prohibiting discrimination against women specifically and providing protection for women in domestic violence cases. Secondly, suggestions have been given for policy, to introduce new and effective *Action Plans for Women*, to have compulsory quotas for women on boards and to provide women with better maternity leave benefits and subsidised ECE. All of these female-specific potential initiatives will likely boost women's status by giving protection against discrimination of women. The suggestions, if

implemented, will also instigate positive action that will forcibly create equality in certain sectors (that have an undefined bias against women), will provide economic benefits in the short term, and in the long term, will develop permanent and positive cultural change.

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