

Universal Periodic Review of New Zealand

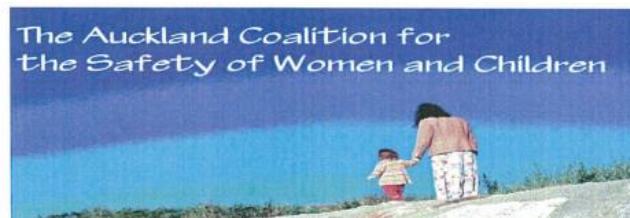
32nd session of the Working Group on the UPR, January/February 2019

Joint Stakeholders Report from The Backbone Collective and The Auckland Coalition for the Safety of Women and Children.



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The Backbone Collective (Backbone) was established in 2017 to enable women to safely and anonymously tell the Government, others in authority, and the public about how the 'system' responded to them when they experienced violence and abuse, and how they need it to respond for them to be safe and rebuild their lives. Backbone has 1300 women members who are all victims/survivors of violence and abuse.



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The Auckland Coalition for the Safety of Women and Children (the Coalition) was developed in 2006 to strategise and work toward achieving the ultimate goal of safety for women and children in Auckland. The Coalition has thirteen member agencies and has a special interest in the prevention of violence against women and children.

See Appendix one, p.15 for more details on those organisations.

Words count: 5550

Introduction

1. This submission is focused solely on violence against women and children issues, and on what we believe is the single greatest failure of the state funded system response to violence against women and children in New Zealand – the Family Court.

2. New Zealand women and children who have been victims of violence and abuse are suffering extraordinary levels of discrimination and abuse via the Family Court process.

3. New Zealand's commitments under international law obligates our government and judiciary to protect and promote the human rights of citizens who are subject to New Zealand's family law and party to proceedings in the New Zealand Family Court – whether as applicants or respondents.
4. We believe that the issues we outline in this report constitute state sanctioned abuse by the New Zealand Family Court resulting in serious violations of the civil, political economic, social and cultural rights of women and children who have experienced violence and abuse.
5. There is urgency in our submission as the likelihood of punishment for speaking out about the Family Court is becoming more formalised. Recently the NZ Law Society investigated an Auckland lawyer and researcher for speaking out in the media about an inappropriate sentencing for a domestic violence assault. She faced the possibility of losing her practising certificate and being fined.¹ While the case was not upheld it acted as a warning (a very public one) to others about the dangers of speaking out.
6. Further, there is a Reform Bill currently before parliament seeking to strengthen contempt of court legislation which will make it easier to punish those who speak out in critique of the court or the judiciary with the possibility of a jail sentence.²
7. We are seriously concerned that this may be our last safe opportunity to let the United Nations know about failings in the closed and 'secret' Family Court.

The 2014 UPR report

8. One of conclusions and recommendations from New Zealand's 2014 Human Rights Council UPR was: *'Ensure full and consistent implementation of the Family Court Proceedings Reform Bill, in particular with regard to issuing immediate protection for victims of domestic abuse'*.
9. None of the actions identified as part of New Zealand's Plan of Action under UPR appear to have reduced the discrimination and abuse of women in the Family Court, nor do we think they can.
10. The Minister of Justice has recently announced a review of the Family Court. However, as will be discussed later in this report, Backbone is clear that under New Zealand's Westminster system a

¹ <https://www.newsroom.co.nz/2018/05/15/109446/law-society-ends-inquiry-over-judge-criticism>

² <http://www.legislation.govt.nz/bill/member/2018/0039/latest/whole.html#LMS24753>

Ministerial Review will be constitutionally unable to fully investigate the extent to which women and children are being harmed and discriminated against in the Family Court.

Recommendations

11. We recommend:

- a) The New Zealand Government be held accountable for the failings of the Family Court.
- b) The New Zealand Government asks the Governor General to urgently establish a Royal Commission of Inquiry into the Family Court to investigate the serious and widespread systemic abuse that hundreds of women and children have been reporting.
- c) The Special Rapporteurs on Violence Against Women and Child Protection urgently conduct a country visit to New Zealand to investigate the way the New Zealand Family Court is treating victims of violence and abuse.
- d) Planning commences immediately to establish a new justice response for domestic and sexual violence cases that is less adversarial and more inquisitorial, staffed by specialist domestic and sexual violence personnel who understand the immediate and intergenerational impact on children and whanau.
- e) Immediate legislation changes to address some of the problems identified by Backbone.³
- f) Interim measures be established to keep women and children safe in the Family Court until a new system is established. This would include independent domestic violence and child abuse expert advisors, training for judges, quality assurance processes, formal risk assessment in all cases, trauma counselling for children and a national network of independent children's advocates.
- g) The thresholds to access legal aid be lowered and the restrictions on obtaining legal aid to appeal a Family Court judgement be reviewed.⁴

The New Zealand Family Court

12. The justice system in New Zealand is based on the Westminster System which holds judiciary independent from the Parliament. Judges are not accountable to the government or its agencies. Legislation decided by Parliament determines the basis for activity in the Family Court. The judiciary must implement or apply the law in a way that upholds the parties' rights to natural justice. The judiciary must also ensure that New Zealand's obligations under the various international conventions and laws covering the rights of women and children are by the Family Court and must provide effective remedies to the victims of domestic violence.

³ Refer pages 18-19 at

<https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5a3c08eae2c483c2490cbfca/1513883894520/Briefing+to+incoming+government+2017.pdf>

⁴ Currently being able to appeal to the High Court is biased towards those who have independent means because legal aid refuses to fund many Family Court appeals.

13. The Westminster system is supposed to have built-in checks and balances to protect the judicial system from bias, corruption, and inefficiency and to ensure court users' domestic and international rights are being upheld.
14. However, the New Zealand Family Court, which came into effect in 1980, is a mostly closed court. The media attended only 14 Family Court hearings in 2016 - a miniscule percentage (.002%) of all the Family Court hearings in 2016.⁵ A similarly small percentage of Family Court decisions are published online by the Ministry of Justice and these are handpicked by a judicial panel.
15. It is impossible for members of the public to scrutinise the courts, unsafe for court users to speak out about it and difficult for media to report on cases, thereby enabling the Family Court to operate without the usual (and legislated) checks and balances to ensure it acts fairly, safely, and lawfully.
16. There is no independent authority tasked with monitoring and overseeing the Family Court and reviewing or regulating its outcomes. There is no authority responsible for overseeing the safety and rights of children who are subject to Family Court proceedings.
17. There are a range of entities that should and could collectively be undertaking aspects of quality management of practice within the Family Court, particularly in cases where there has been violence and abuse, but Backbone has shown that these are not working.⁶

Failures in the Family Court have been flagged for many years

18. For years there has been criticism via reports and reviews of the way the Family Court responds to cases where there is violence and abuse.⁷ There have been various reviews of the legislation, but most agree that the problems in the Family Court are related to the implementation of the legislation rather than the legislation itself.
19. Women who have experienced violence and abuse and NGO agencies have repeatedly pleaded with those in authority to investigate what is happening in the Family Court and yet the people appealed to have not intervened or elevated their concerns to a higher or more appropriate authority when they have been unable to get involved themselves. We believe that someone should have seen these multiple and ongoing complaints as signs of a systemic failure and investigated long ago – they have been told and done nothing. It seems that no one has been ultimately accountable or wanted to be.
20. Despite the ongoing local criticism, it appears that the identified failures in the New Zealand Family Court have not until now come to the attention of any of the UN review committees.

⁵ Information gained via an Official Information Act request to Government made by Backbone in 2017.

⁶Refer section below and full report available at:

<https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/59b71d81197aea15ae01133b/1505172890050/Complaints+and+appeals+watchdog+report+12+Sept+2017+FINAL.pdf>

⁷<https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5a94cc1a9140b78a0a3a5061/1519701025135/Submission+to+Justice+Select+Committee+January+2018.pdf> (pg 9-11)

Backbone's investigations into the Family Court system

21. Prior to launching the Backbone Collective, women who had experienced violence and abuse had started telling their stories about how the current system does not keep them safe and that the part of the system that needed to be looked at first was the Family Court.
22. In the 15 months Backbone has been in operation they have surveyed hundreds of women,⁸ and received in depth case stories from hundreds more via email and Facebook. All the women who took part in Backbone surveys (first survey 612, second survey 291 mothers of 591 children) had experienced violence and abuse and most women reported serious negative outcomes from being involved with the New Zealand Family Court. Backbone has produced five comprehensive reports based on what women and told them is happening in the Family Court - all of which have provided extensive evidence of system failures in the Family Court:
 - a) All Eyes on the Family Court: A watchdog report from the Backbone Collective⁹
 - b) Out of the Frying Pan and into the Fire: Women's experiences of the New Zealand Family Court¹⁰
 - c) Don't Tell Me Your Problems: The Family Court complaints and appeals landscape¹¹
 - d) Seen and Not Heard: Children in the Family Court. Part One. Force¹²
 - e) Seen and Not Heard: Children in the Family Court. Part Two. Lawyer for Child?¹³
23. These five reports individually and collectively confirm and expand on what earlier studies have found. Restrictions on the length of this report, prevent us from reporting in detail on our findings so we urge committee members to refer to these reports in full to understand more completely the shocking extent of the widespread and systemic failures and breaches of women and children's human rights in the New Zealand Family Court. The findings summarised in the following sections have been extracted from these five publicly released reports.

Breaches of women's rights in the Family Court

24. The rights of victims/survivors of violence and abuse are not being upheld by the Family Court - they are experiencing bias, are not getting access to a fair hearing and are being made less safe because of their interactions with the Family Court.
25. Many women first approached the Family Court after separating from an abuser, seeking protection and safety, but most said they subsequently wished they had never done so. Women told Backbone the Family Court put them and their children in more danger after leaving an

⁸ <https://www.backbone.org.nz/surveys/>

⁹ <https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/58e696a21e5b6c7877e891d2/1491506855944/Backbone+Watchdog+Report+-+Family+Court.pdf>

¹⁰ <https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5949a425a5790a3989f7e74e/1497998414103/Family+Court+Survey+report+final+080617.pdf>

¹¹ <https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/59b71d81197aea15ae01133b/1505172890050/Complaints+and+appeals+watchdog+report+12+Sept+2017+FINAL.pdf>

¹² <https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5a3171c59140b743f5abbe36/1513189837189/Seen+and+not+Heard+Children+in+the+Family+Court+%281%29.pdf>

¹³ <https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5ae99c5588251bf787133d44/1525259361189/Seen+and+not+Heard+-+Lawyer+for+Child+3+May+2018.pdf>

abusive and violent partner. The Family Court has in effect become their new abuser - many women said the Family Court's abuse was worse than the abuser's.

26. Women feel, controlled, frightened, terrorised, put down, silenced and punished for speaking out about the abuse. They have reported verbal abuse, bullying, intimidation, fear, stand over tactics and power, control, and coercion being used by individuals working within the Family Court system (including judges and lawyers). Women described the Family Court as somewhere where their experiences of violence and abuse were not believed, were minimised, and not responded to.
27. Women report suffering negative and serious health issues from Family Court proceedings - from physical illness through to mental disorders. Many women experienced multiple different impacts. This has impacted on their ability to earn an income, mix with others, participate in daily activities, and have hope for the future.
28. Sixty-eight percent of women had applications, decisions, orders and directions placed upon them prohibiting them from rebuilding their lives and thereby impacting on their civil, social and economic rights. Orders made by the Family Court have prevented women from moving somewhere safe and affordable, taking up jobs and furthering their education. Court orders have specifically barred them from talking about their abuse, getting support to deal with the trauma, getting therapeutic help for their children, being involved in their children's daily lives (school, sporting activities, social engagements, seeing friends and family), and making medical decisions for their child.
29. The Family Court is making orders in violence and abuse cases that do not align with international best practice. For example, a risk assessment to determine the risk of dangerousness and lethality of the abuser had been undertaken in only 10% of all cases and in only 2.2% of cases where there were children involved.
30. Women said that Protection Orders are not keeping them or their children safe. Protection Orders are not being granted at all or are being put on notice (the abuser gets served with her application and affidavit before a hearing is scheduled to determine the application). In addition, many women have told Backbone that when a Protection Order is granted, the children are not protected under it as the parenting orders supersede the Protection Order.
31. In the majority of cases, the Family Court treated the abuser as 'safe', even when the woman's experience of his treatment to her or the children showed that he was not safe. Women feel re-victimised because they are forced to have ongoing contact with the person that abused them and are directly abused by the court as well. Many women reported being forced/coerced by the Family Court into participating in joint activities with the abuser without any regard to their safety or support needs - 58% of women told Backbone that when attending Family Court-related appointments, fixtures, or hearings they have been threatened, intimidated, or physically assaulted by their abuser. This happened even if they had a Protection Order in place which prohibits the abusive person from having contact with them for safety reasons.
32. Many mothers say that those working in the Family Court accused them of being responsible for their child/ren not wanting to have contact with the abuser rather than seeing that the violence

and abuse the children have been exposed to is the cause. When the mothers try and protect their children from ongoing harm, trauma and abuse they are punished, denigrated (put down) and accused of being 'parental alienators' - trying to alienate their children from their father. Parental alienation as a theory has been debunked internationally¹⁴ however, Backbone found it is routinely applied (used in nearly half of all cases) by psychologists, Lawyer for Child, social workers and judges in the Family Court.

33. Many women report that their ex-partner (particularly if he is wealthy with unlimited financial resources, or connections) uses the Family Court as a new tool of abuse to file relentless applications relating to Care of Children to punish her and the children and keep them under his control. Unfortunately, this strategy is not seen as vexatious litigation and the Family Court allows this behaviour to continue. Women told Backbone they are trapped in a cycle of numerous Family Court cases spanning many years – 19% of women said they had been involved in the Family Court for over 7 years – some for as long as 22 years.
34. Women are financially ruined through the cost of legal representation. Indications are that many of those working in the Family Court actively create further conflict or 'feed' existing conflict with their actions and judgements. Many women are unable to get legal aid. Women have sold property or belongings, have borrowed from new partners or extended family and many have to pay off legal fees in instalments. Some women are forced to attend court hearings unrepresented as they can't borrow any more money to pay for a lawyer and, yet they are forced to defend applications made by their abuser. This is having serious impact on their and their children's livelihood and health.

Breaches of children's rights in the Family Court

35. Children who have experienced violence and abuse need safe and competent representation in the Family Court. New Zealand's domestic legislation and the international conventions which we are signatory to, insist that the views of children must be both heard and taken into account when decisions are being made about them.
36. Both UNCROC and the New Zealand legislation clearly require that all children who are party to Family Court proceedings have a right to be heard – to express their views, and they **must** be given reasonable opportunities to do this on any matters that affect them. The New Zealand legislation¹⁵ and UNCROC are also both clear that merely gathering children's views is not sufficient – their views must be presented to the court and must be taken into account by the court.
37. UNCROC and the New Zealand legislation also both obligate the Family Court and Lawyer for Child to protect children from all forms of violence. This is particularly critical for those children who have already suffered considerable trauma as a consequence of the violence and abuse they have experienced.

¹⁴ <https://www.newsroom.co.nz/2017/08/13/42453/family-court-using-discredited-us-theory>

¹⁵ The Care of Children Act 2004 and the Family Court Act 1980

38. We believe that in cases where there has been violence and abuse the Family Court is unduly prioritising a child's right to stay in contact with both parents¹⁶ over their right to be protected from being hurt and physical, sexual or mental mistreatment or violence.¹⁷ The result is hundreds of children being forced against their wishes into unsafe care and contact with the abusive parent.

39. In a 2017 submission to New Zealand Parliament, the Coalition noted:

There is a belief in the Family Court (during parenting proceedings) that the child's welfare and best interests is best served by significant contact with each parent (perpetrators of violence included). The literature on the effects of violence on children exposed to violence (no less those who are both the targets of such violence and also exposed to violence against their mothers) belies these assumptions.¹⁸

40. All the children of the women who participated in Backbone's surveys have experienced violence and abuse - by seeing, hearing or knowing about the abuse of their mothers and/or by also being directly physically, sexually and/or psychologically abused,¹⁹ and they had suffered a complex array of trauma as a result of the violence and abuse prior to separation. Despite this, children's experiences of violence and abuse are not being believed, evidence of violence occurring is being disregarded in the court and mothers are being blamed for their children's fears for their safety.

41. The evidence Backbone has collected shows that the Family Court is acting contrary to the legislation which should guide the way the Court responds to children;

- 83% of mothers said the Family Court had not made their children safer after they left the violence and abuse.
- Most children are ordered into unsupervised care and contact with the abuser.
- 87% of mothers said the Family Court views their abuser as being safe for the children to spend time with.
- 54% of the children are being forced into care and contact arrangements that they do not want. These 'forced' children are significantly more worried about what happens at the abuser's house (sexual, physical, and psychological safety issues) than children who were not forced.

¹⁶ Article 9 of UNCROC which states 'Children have the right to live with their parent(s), unless it is bad for them. Children whose parents do not live together have the right to stay in contact with both parents, unless this might hurt the child' and s5(e) of the Care of Children Act 2004 which says 'a child should continue to have a relationship with both of his or her parents...'

¹⁷ Articles 19.1 and 19.2 of UNCROC which state 'children have the right to be protected from being hurt and physical, sexual or mental mistreatment or violence' and s5(a) of the Care of Children Act 2004 which states a child's safety must be protected and, in particular, a child must be protected from all forms of violence (as defined in section 3(2) to (5) of the Domestic Violence Act 1995.

¹⁸ Graham-Bermann, S. A., & Edleson, J. L. (2001). Domestic Violence in the Lives of Children: The future of research, intervention and social policy. Washington D.C.: American Psychological Association.

¹⁹ Both of which are defined as forms of domestic violence against children in the Domestic Violence Act 1995

- Backbone have been told about 57 children where a forced uplift has occurred i.e. the Family Court has ordered Police to uplift the child from the protective parent and place them with the abusive parent to enforce the parenting order.²⁰
42. Despite the many fears the children had about having contact with their abusive father post separation, children were not listened to and were subsequently placed in unsafe situations:
- For most children their experience of violence and abuse was not believed, was minimised, was excused or told it happened too long ago to mention.
 - 86% of mothers say the Family Court has not responded appropriately to their child/ren's wishes/views/experiences and safety.
 - 89% of children received no follow up interviews or reviews from anyone working in the Family Court after orders were made placing them into care and contact with the abuser.
43. Many children are exposed to harmful behaviours, substances and further violence and abuse when in the care of the abuser. While in the abusive parent's care:²¹
- 58% of children are worried about their physical safety
 - 14% are worried about their sexual safety
 - 81% are worried about their psychological safety
 - 15% are exposed to pornography
 - 18% are exposed to drug use and paraphernalia
 - 24% are exposed to him abusing the new partner and children
 - 23% are exposed to illegal behaviour.
44. In more than half the cases either the children or their mother told professionals working in the Family Court about the worries they had at the abuser's house but in the majority of cases those worries were not reported accurately to the Court (by lawyers or the psychologist assigned to the case) or taken into consideration when care and contact orders were made.
45. Children's health had suffered as a result of Family Court proceedings and the subsequent care and contact orders made:
- 119 children have suffered physical injuries while in the care of the abuser
 - 111 children have eating disorders
 - 189 children have nightmares
 - 209 children suffer anxiety and panic attacks
 - 80 children have been talking or thinking about suicide
46. The damage done to children's health is markedly worse in cases where the Family Court has forced children into care and contact and where the children have refused to attend care and contact.

²⁰ <https://www.newsroom.co.nz/2017/08/07/41459/taken-by-the-state>

²¹ N= 408 children

Breaches of Tangata whenua rights

47. A further document which guides the rights of women and children who have experienced violence and abuse in New Zealand is Te Tiriti O Waitangi which is the founding document that guides relationships between tangata whenua and tauwiwi. The Treaty sets out principles of protection, partnership and participation to which New Zealand is bound. Through the colonisation of Aotearoa, the loss of Māori land, language and culture, great harm has been done to Māori. The justice sector is one critical area where racism towards Māori is experienced pervasively.²² While the Human Rights Act prohibits racism in New Zealand, Te Tiriti O Waitangi upholds tangata whenua's right to experience the same privileges as tauwiwi and have inequalities reduced. Therefore, racism experienced in the Family Court by women and children transgresses the principles of Te Tiriti O Waitangi and the Human Rights Act and we therefore understand Te Tiriti O Waitangi is a critical document in the Family Court landscape.
48. Backbone has consistently found that Māori women (wahine Māori) and children (tamariki) are experiencing even greater human rights abuses in the Family Court.
- 21% of wahine Māori reported experiencing racism compared to 8% of all non-Māori (tauwiwi) women.
 - 24% of wahine Māori felt the Family Court had failed to comprehend the importance of cultural beliefs and practices, compared to only 5% of Tau Iwi women.
 - 22% of children of Maori mothers compared to 11% of children of non-Maori mothers were ordered into the abuser's day to day care by the Family Court.
 - Professionals accurately reported children's concerns to the Family Court in only 8% of Maori cases compared to 34% of non-Maori cases.
 - 67% of children of Maori mothers and 54% of children of non-Maori mothers are forced into contact arrangements with the abuser against their wishes.
 - 52% of Māori mothers reported Oranga Tamariki (New Zealand's child protection agency) involvement in their Family Court case compared to 39% of non-Māori mothers.
 - A higher percentage of children of Māori mothers were physically injured while in the abuser's care and did not have their medical needs met.
 - As a result of their Family Court proceedings, children of Māori mothers were more likely to experience an inability to concentrate, experience weight loss or gain, have bowel problems to abuse alcohol and drugs and sadly more likely to use self-harming behaviour and make suicide attempts.
49. Backbone is very concerned that Māori women and children experience a double whammy in the Family Court and believes that the health impacts on Māori children because of Family Court proceedings is an urgent area of further investigation.

²² <http://www.stuff.co.nz/national/crime/84346494/new-zealands-racist-justice-system--our-law-is-not-colourblind>

Appeals and complaints

50. The traditional avenue for citizens to have a voice if they are not happy with the outcome of a court case, is to complain or appeal. Backbone's September 2017 report on the appeals and complaints processes available for women and children who have experienced violence and abuse,²³ showed that these processes do not provide adequate independent quality management of the Family Court. Women and children face insurmountable barriers to appealing including cost, timeframes, status of orders, and legislation requirements. Complaints bodies overall will not get involved in cases before the Family Court including the Human Right's Commission and the Children's Commissioner.
51. Women have told Backbone that even if they received a favourable outcome from an appeal in the High Court they experienced discrimination at their next appearance in the Family Court for being viewed as vexatious because they had appealed to the High Court.
52. Many women do not complain as they don't understand their rights to complain, the complaints bodies and processes available to them, or because they fear repercussions from both the abuser and the Family Court. In most cases women's complaints are sent to the presiding Judge to consider and women have told Backbone they were punished for complaining even if their complaints have been upheld and described serious repercussions that have resulted in biased and unsafe decisions being made in the court.

Conclusions reached based on evidence from women

53. Backbone's reports detail the experiences of hundreds of women and children in the Family Court. Given their overwhelmingly negative feedback and the consistency in their experiences in the Family Court, we believe there is sufficient evidence to indicate there is serious systemic abuse occurring in the New Zealand Family Court.
54. The evidence provided by Backbone over the past year, is not new. As noted earlier in this report, there has been criticism in numerous reports and reviews over many years of the way the Family Court responds to cases where there is violence and abuse.²⁴
55. We believe that the New Zealand Government is in effect funding state sanctioned abuse of women and children via the Family Court and that the state party – New Zealand government and judiciary – are failing in their obligations to identify, prevent, mitigate and account for the human rights impact of the New Zealand Family Court.
56. The Government has a duty of care to women and children who have experienced violence and abuse, and to the New Zealand public. The only way to determine conclusively whether the failures in the Family Court are accurate and systemic is to conduct an in-depth formal inquiry into the way the New Zealand Family Court responds to cases of violence and abuse.
57. A comprehensive inquiry into the Family Court must have powers to subpoena witnesses, interview judges and other court officials, and review case files. It must also provide the required

²³<https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/59b71d81197aea15ae01133b/1505172890050/Complaints+and+appeals+watchdog+report+12+Sept+2017+FINAL.pdf>

²⁴<https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5a94cc1a9140b78a0a3a5061/1519701025135/Submission+to+Justice+Select+Committee+January+2018.pdf> (pg 9-11)

protection for the victims of domestic violence (primarily women and children) to give evidence of their experiences in the Family Court without fear of negative repercussions.²⁵

58. New Zealand's Westminster system of government demands complete separation of powers between parliament and the judiciary. For this reason, the only way a thorough and complete investigation into the Family Court can happen in New Zealand is as a Public Inquiry or a Royal Commission.²⁶

Attempts to get those in authority to take urgent action

59. Over the past three years the Coalition and Backbone have been formally advising those in authority about serious and systemic failures in the Family Court (see Appendix two). These communications have provided the judiciary and government with ample evidence that there is a serious problem with the New Zealand Family Court.
60. In each communication Backbone has made it clear that according to the information they have the Family Court is acting contrary to New Zealand's obligations under national and international conventions and laws.
61. Backbone has repeatedly strongly requested that government considers establishing a Royal Commission of Inquiry to conduct an in-depth investigation into the New Zealand Family Court and offered to meet with them to talk in person about the issues that women have told them about.
62. All of Backbone's reports have been publicly released and sent directly to the Principal Family Court Judge, the New Zealand Law Society, the Prime Minister, the Minister of Justice and Courts and many others in positions of authority.

The state's response

63. As can be seen in the schedule of communications (Appendix two) there have been no formal written responses received regarding the specific issues Backbone has been articulating in their reports and in their communications to those in authority.
64. In April 2018, the New Zealand Government announced a review of the 2014 Family Court reforms. One media article²⁷ had this to say:

The Government has ordered the third review into the Family Court in under a decade, as it aims to fix a system "in crisis".

²⁵ Backbone reports that most of the women they have collected information from have been threatened by the Family Court that if they talk about their case they will lose their children, many are still involved in Family Court proceedings; some have gagging orders on them preventing them from talking to anyone about their case

²⁶ A paper prepared by Backbone (and submitted to Parliament's Justice select committee by Ms Poto Williams MP) detailed the reasons for this. See <https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5a94cc1a9140b78a0a3a5061/1519701025135/Submission+to+Justice+Select+Committee+January+2018.pdf>

²⁷ <https://i.stuff.co.nz/national/politics/102936799/justice-minister-andrew-little-concerned-about-access-to-justice-in-family-court>

Family Court reforms were brought in under the former National government in 2014, but Little said he was concerned about what he was hearing about how the courts were running, and the impact that was having on families and children.

65. However, in a letter to Backbone dated 17 April 2018, Minister Andrew Little said, ‘As the review will be focussed on the operation of the 2014 reforms, it is not intended to include consideration of criticisms of the Family Court more generally’.
66. At the time of preparing this shadow report, no further detail had been announced about this planned review and no one in authority has responded to Backbone about the system failures in the Family Court detailed in their five reports and clearly articulated in their formal letters.²⁸

Closing comments

67. We are astonished that despite the overwhelming evidence Backbone has provided, Government has not taken the one means at its disposal to investigate – a Royal Commission of Inquiry – instead opting for a Ministerial level inquiry into the 2014 reforms of the Family Court.
68. We are strongly of the view that the systemic failures identified and reported by Backbone are not related to the 2014 reforms and hence a ‘review’ would have neither the scope nor the mandate to go nearly deep enough into the issues we are hearing about in the Family Court– the reforms aren’t the problem – the problems women are telling Backbone about have been occurring for many years before the reforms.
69. New Zealand’s system of government demands that any inquiry into the court system be completely independent. Constitutionally, an inquiry into the operation and culture of the Family Court’s treatment of cases where there has been violence and abuse could not be done as a Ministerial inquiry.
70. It appears that New Zealand is destined to make the same mistake that Australia has. In August 2017, the Australian Parliament’s inquiry into the family law system came under fire after announcing it was severely restricted due to these Westminster conventions. Community groups and service users publicly called the inquiry a waste of time and have now started a concerted campaign to get a Royal Commission established in its place.²⁹
71. It is abhorrent that with each day that passes while we wait for our government to take action, more women and children in New Zealand are abused through the system that is supposed to make them safer.
72. The only other domestic avenue open to us is to take the Government to court for failing to act. However, such action would be cost prohibitive and we believe it would be inappropriate to ask one arm of the New Zealand judiciary to rule on the failure of another arm of the same judicial system.

²⁸ Refer Appendix two

²⁹ <https://www.smh.com.au/politics/federal/family-violence-inquiry-written-off-as-a-waste-of-time-after-judges-excused-from-appearing-20170822-gy1d6m.html>

73. We urge The Human Rights Council to urgently consider this most serious transgression of the rights of women and children and do everything possible to ensure our Government comprehensively and urgently intervenes.
74. Thank you for your consideration. We are happy to respond to any further questions the committee may have.

Appendix one – About the submitters of this shadow report

The Backbone Collective

The co-founders of the Backbone Collective (Backbone), Deborah Mackenzie and Ruth Herbert have extensive histories working in the violence against women sector – in policy, frontline services, research and project management work. In 2014 they jointly published an independent report ‘The Way Forward’, documenting a long history of failure by successive New Zealand governments to address the epidemic of violence against women and children. Mackenzie and Herbert proposed a new integrated system model. Central to this model was a comprehensive range of quality management activities to:

- ensure all parts of the Integrated System were operating to best practice levels and achieving optimal immediate and, intermediate outcomes
- feed information into the continuous improvement process so learning can occur and ongoing improvements made over time.

In early 2017, frustrated at the government’s inaction, Mackenzie and Herbert established the Backbone Collective³⁰ to enable women to safely and anonymously tell the Government, others in authority, and the public about how the ‘system’ responded to them when they experienced violence and abuse, and how they need it to respond for them to be safe and rebuild their lives.

Backbone believes the system needs to be accountable for how it responds to its users and that the voices of service users must be seen as one of the critical components of quality management and continuous improvement of the system. To encourage accountability, Backbone:

- Conducts secure, online surveys to collect anonymous feedback from women who have experienced violence and abuse and presents their collective voices.
- Acts as a community watchdog of the Government, the legal system and all agencies working within the response system by shining a light on specific issues.
- Tracks and reports on whether any action has been taken to address the problems we have identified.

The Auckland Coalition for the Safety of Women and Children

The Auckland Coalition for the Safety of Women and Children (the Coalition) was developed in 2006 to strategise and work toward achieving the ultimate goal of safety for women and children in Auckland. The Coalition has a special interest in the prevention of violence against women and children. Its mission is to progress a gender and intersectional analysis of the underlying determinants of violence against women and children and the policy and practice responses to the issue.

The Coalition has undertaken a number of innovative activities including a competition for young people to make a video for you-tube on violence against young women and a community development programme involving small businesses making a commitment to speaking out against violence. It makes frequent representations to Government on matters concerning preventing and responding to sexual and domestic violence.

³⁰ www.backbone.org.nz A registered not-for profit trust

Members:

- Auckland Women's Centre
- Auckland Sexual Abuse HELP
- Eastern Women's Refuge
- Homeworks Trust
- Inner City Women's Group
- Mental Health Foundation
- Mt Albert Psychological Services Ltd
- North Shore Women's Centre
- Rape Prevention Education – Whakatu Mauri
- Rodney Women's Centre
- SHINE Safer Homes in NZ Everyday
- Supportline Women's Refuge
- Women's Health Action Trust

Appendix two: Communications with Government³¹

23 March 2015	The Coalition wrote to Hon Anne Tolley (Minister of Social Development) and Hon Amy Adams (Minister of Justice), in their capacity as co-chairs of the Government’s Ministerial Group for Family Violence and Sexual Violence and again to Hon Amy Adams on. They clearly signalled evidence of failure by the Family Court to keep children safe: <i>‘We are witnessing judges using their discretion to put very young children in the care of violence abusers. These children cannot speak up on their own behalf because they are not considered to be credible witnesses by the Family Court. When such a decision is made, Courts cannot keep these children safe. Decisions such as these have resulted in a complete lack of confidence of victims in the family court system.’</i>
19 October 2015	The Coalition wrote to Hon Amy Adams in which they advised the Minister, <i>‘Many mothers and their children are placed at risk in the Family Court due to Judges believing that contact between the father and the children is more important than the safety of the children.’</i>
11 April 2017	Backbone sent Minister of Justice and Courts, Hon Amy Adams and the Principal Family Court Judge copies of our first report
19 April 2017	The Principal Family Court Judge, Laurence Ryan issued a public statement in response. ³² One media story referred to Judge Ryan’s statement as ‘lambasting a report by the Backbone Collective’. ³³
12 May 2017	Ms Adams replies in effect dismissing Backbone’s findings. For example, she said, <i>‘I am not satisfied that allegations of bias on the basis of anecdotal evidence prove systemic bias in the Family Court.’</i>
12 June 2017	Backbone wrote to the Prime Minister, Rt Hon Bill English, formally advising him that based on the information Backbone has we believe there may be a systemic problem in the New Zealand Family Court.
16 June 2017	Prime Minister replies saying Hon Amy Adams, Minister for Courts, is the appropriate person to reply to our letter.
21 July 2017	When nothing was received from the Minister for Justice and Courts, Backbone wrote direct to Hon Amy Adams urging her to consider the matters raised in this and previous communications and in our two reports we had sent her at that point about the Family Court.
21 August 2017	Hon Amy Adams replied, saying <i>‘As Minister of Justice, I am unable to comment on judicial decision making. It is a fundamental principle of our constitutional system that the judiciary operates as an independent branch of government.’</i>

³¹ Copies of any of these communications can be provided upon request

³² <http://www.districtcourts.govt.nz/assets/Uploads/Statement-from-Principal-Family-Court-Judge-re-Family-Court-debate.pdf>

³³ https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11841267

15 September 2017	The Coalition wrote to the Chief District Court Judge and the Principal Family Court Judge saying, <i>'Anecdotal reports we are hearing are of a lack of confidence in the enactment of the law in the Family Court and gender prejudice, particularly against educated or apparently strong women (who do not meet the stereotypical appearance of victims) but also against Māori, and immigrant women, who may have English as a second language. These matters need to be addressed urgently.'</i>
25 October 2017	The Chief District Court Judge and the Principal Family Court Judge replied to the Coalition saying, <i>'those expressing dissatisfaction with the Family Court are best to direct their called for fundamental change or review to lawmakers.'</i>
13 November 2017	Backbone wrote to the incoming Prime Minister Rt Hon Jacinda Ardern, saying <i>'Based on the information we have gathered from New Zealand women over the last eight months we wish to formally advise you that Backbone believes it has sufficient evidence to indicate there is a major systemic problem in the New Zealand Family Court'</i> and <i>'We see that a Royal Commission of Inquiry is needed not only to address the harm currently being done to women and children but also to ensure that future victims have appropriate access to justice and safety to mitigate the scourge of violence against women and children in New Zealand.'</i>
20 November 2017	The Prime Minister replied saying our letter had been forwarded to the office of Minister for Courts, Hon Andrew Little, for further consideration.
20 November 2017	Backbone sent a Briefing to the Incoming Government ³⁴ to the Prime Minister and 14 Government Ministers. Priority 1 in that briefing was 'set up a Royal Commission of Inquiry into the Family Court.
20 November 2017	Backbone wrote to the members of Parliament's Justice Select Committee, urging them to hold a comprehensive hearing to consider the evidence whether a Royal Commission of Inquiry is needed to investigate the Family Court's practices, culture, interpretation of the law and orders/decisions/directions in all cases where violence and abuse has been alleged.
21 December 2017	As nothing had been received from the Minister for Justice and Courts Backbone wrote to Hon Andrew Little, saying: <i>'We would like to meet with you as soon as possible in the New Year to explain in person what we have learned from the hundreds of phone conversations, email and Facebook communications with women and from the two large surveys we have conducted in recent months, why we see a Royal Commission of Inquiry is urgently needed and why we believe it is the only way an inquiry could happen in the circumstances.'</i>
15 February 2018	Backbone wrote again to the Prime Minister noting that we had not received a reply from her or any of her Ministers to the communications sent in the previous three months.

³⁴<https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5a3c08eae2c483c2490cbfca/1513883894520/Briefing+to+incoming+government+2017.pdf>

5 March 2018	Minister of Justice and Courts, Hon Andrew Little wrote thanking us for our work and saying he would reply to our communications about problems in the Family Court separately.
5 March 2018	Backbone met with Under-Secretary to the Minister of Justice (Domestic Violence and Sexual Violence), Ms Jan Logie and as part of that meeting asked Ms Logie whether the Government would consider asking the United Nations Special Rapporteur on Violence Against Women to visit New Zealand to investigate the matters that Backbone is raising. She said she was open to that idea and would look into whether that could be arranged.
8 March 2018	Ms Logie sent a follow up letter saying, amongst other things; <i>'I can assure you that in this role I will work to ensure processes are put in place so the voices of victims are heard'</i> .
3 April 2018	As we had heard nothing further from Under-Secretary Logie regarding our request regarding the Special Rapporteur, we wrote to her again.
17 April 2018	Minister Andrew Little wrote to Backbone advising that he intends to establish an independent review of the 2014 family justice system reforms, but that it is not intended that review would consider criticisms of the Family Court more generally.
26 April 2018	Backbone had a meeting with Minister Andrew Little in which we briefed him about the serious failures we believe are happening in the Family Court. He confirmed that at this stage Government would not be establishing a Royal Commission of Inquiry into the Family Court, but instead be conducting a review of the 2014 reforms as per his letter (above).
30 April 2018	Backbone wrote to Minister Andrew Little, formally advising him that, <i>'Based on the alarming information we have gathered we know that systemic failures are not related to the 2014 reforms and hence a 'review' would have neither the scope or the mandate to go nearly deep enough into the issues we are hearing about in the Family Court'</i> .
8 May 2018	Letter received from Chief District Court Judge and Acting Principal Family Court Judge, Jan-Marie Doogue in response to Backbone's 'Seen and Not Heard' report. This is the first, and only, direct communication Backbone has received from the judiciary. Judge Doogue says, among other things <i>'In my role, I am charged with ensuring the orderly administration of justice. Striving for improvements over and above this is difficult in times of resource constraint and burgeoning demand, but I will continue to encourage all District Court judges to set their sights high as they endeavour to serve New Zealand families, especially our children.'</i>
23 May 2018	Deputy Secretary Policy Group wrote on behalf of the Secretary and Chief Executive of Justice saying it would be inappropriate for the Ministry to comment because the Minister has asked for the work on his planned review of the 2014 reforms of the Family Court to be done separately from the Ministry and encouraging Backbone to engage with the review panel at the appropriate time.

8 June 2018	In a phone call to Under-secretary Logie's office, her Private Secretary advised that Ms Logie was meeting Minister Andrew Little and the possibility of the Government asking the United Nations Special Rapporteur on Violence Against Women to visit New Zealand to investigate the matters that Backbone is raising is on the agenda for discussion.
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