

United Nations Convention on the Rights of the Child

A Thematic Paper from The Backbone Collective

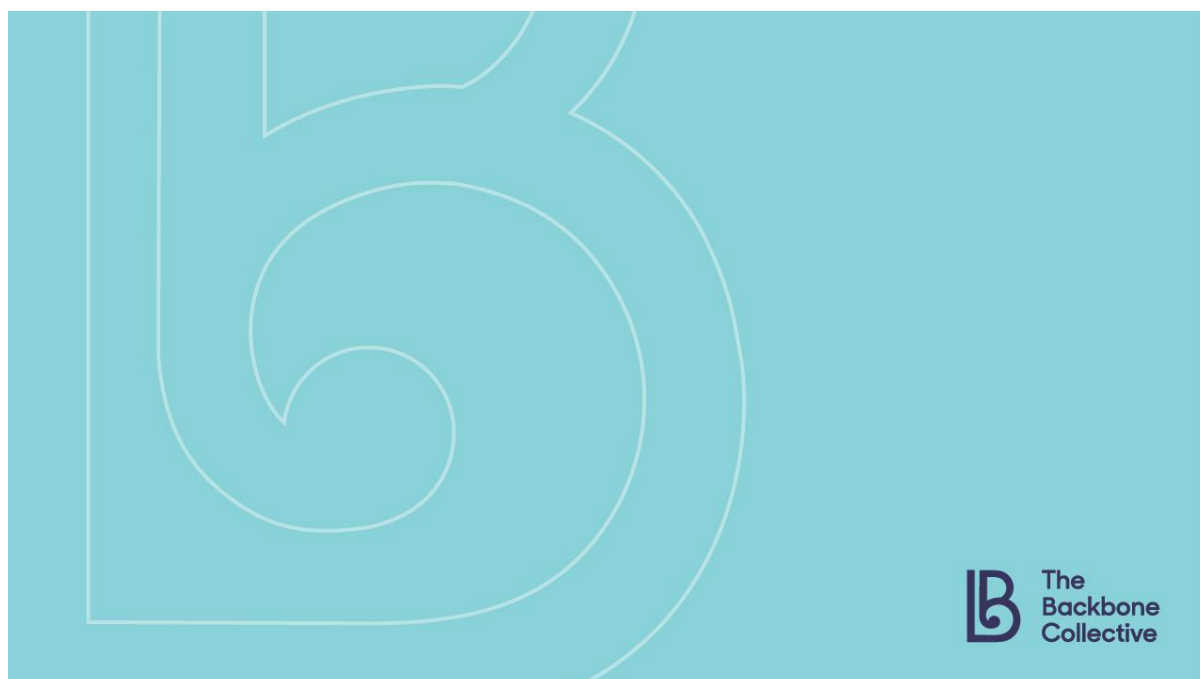
On New Zealand's Sixth Periodic report

to

United Nations Committee on the Rights of the Child

93rd Session: Simplified Reporting Procedure

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Introduction

Thank you for the opportunity to provide input into New Zealand's sixth periodic UNCROC review.

The paper is informed by the experiences of women victim-survivors of family and sexual violence(FV/SV) and their children, gathered by Backbone via online surveys and one on one communications. We also draw on our interactions with government agencies, Official Information Act requests and relevant media articles.

This paper is supported by The Auckland Coalition for the Safety of Women and Children (see Appendix for details of the 17-member agencies).

Summary

This report aims to provide the UN CRC with an understanding of the situation for children affected by FV/SV in Aotearoa. We discuss a range of issues identified by CRC and how practices and decisions of the NZ Family Court (NZFC) result in breaches of these children's rights. Women and children have reported to Backbone that when they seek the NZFC's protection, the interventions and decisions place them and their children in more, rather than less, danger. Recommendations are included to effectively uphold children's right to be free of violence, to have their views respected and their best interests, health and welfare prioritised.

The experience of FV/SV in NZ is influenced by gender and culture. Therefore, the impact of NZFC dysfunction and bias is felt heavily and disproportionately by women and in particular wāhine Māori and other women at increased risk of violence such as disabled women.¹

The Backbone Collective

The Backbone Collective launched in 2017 as an independent registered NZ charity, focussed on improving the system's response to violence against women and their children. We run online surveys to collect anonymous feedback from women and children victim-survivors about various parts of the system (Court, Police, supports and services) and to help them have their say on policy developments, intended legislation, media debate etc. We then write reports, submissions and media articles to identify needed improvements. We currently have 2115 women members.

FV and SV rates

NZ has high rates of intimate partner violence/family violence (FV) and sexual violence (SV).² Children are commonly present when these take place and are harmed directly and/or indirectly.³ FV/SV have been discussed at a state level for many years. However, responses remain poor due to legislation failing to protect women from discrimination and abuse, negative attitudes toward women among judges and law enforcement, and failure to create a response system that is

¹ Fanslow, J. (2004) Violence against women in New Zealand: prevalence and health consequences. *New Zealand Medical Journal* 117(1206).

² See latest NZ Crime and Victims Survey <https://www.justice.govt.nz/justice-sector-policy/research-data/nzcvs/resources-and-results/>

³ According to the NZ Police, children are present at two thirds of family violence incidents they attend. <https://www.police.govt.nz/sites/default/files/publications/annual-report-2020-2021.pdf>

accountable to victims, linked up, evidence-based and independently monitored.⁴ Nowhere is this more evident than in the NZFC's response to FV/SV.

The New Zealand Family Court (NZFC)

NZ has a Westminster System in which the judiciary is independent from Parliament. Judges are not accountable to government or its agencies. It is extremely difficult and risky for the public to scrutinise the courts, unsafe and/or unlawful for court users to speak out and difficult for the media to report on cases.⁵ There is no independent authority tasked with monitoring and overseeing the NZFC or reviewing/regulating its outcomes.⁶ System failures have been flagged for many years.⁷ In 2019 the government undertook an Independent Panel Inquiry into the 2004 Care of Children Act (COCA) and the NZFC response. The final report stated that the family justice system does not fully understand or respond well to family violence and its impact on children.⁸ It also found that children are afforded limited participation in issues that affect them, and raised concerns about whether their views are taken into account.

List of Issues

The following list is set out numerically to match the LOI and does not denote any prioritisation by us.

1. New developments

a) COVID 19

Early in the COVID19 pandemic in NZ, women victim-survivors reported to Backbone that abusive ex partners were using the pandemic and related lockdowns as a tool with which to abuse them and their children. Backbone alerted the government and NZFC. However, The Minister of Health and the Principal Family Court Judge stated that shared care parenting orders should continue and expressed their wish for parents to 'rise above their personal conflicts at this extraordinary time'.⁹ This approach put children who were subject to parenting orders at greater risk of violence and abuse and contracting the virus.

⁴ See <https://digitallibrary.un.org/record/1642449?ln=en>.

⁵ 2019 legislation makes it punishable, by fine or imprisonment, to make a false statement that may 'undermine public confidence in the independence, integrity, impartiality, or authority of the judiciary or a court.' It is unclear how the courts would assess a statement's veracity. Victim-survivors have told Backbone they are punished in proceedings for making complaints about court professionals or speaking out in the media. <https://www.legislation.govt.nz/act/public/2019/0044/latest/LMS238628.html>

⁶ The NZFC, incepted in 1980, is predominantly closed. Media attended 14 NZFC hearings in 2016 - .002% of all cases. A similarly small percentage of NZFC decisions (handpicked by a judicial panel) are published online by the Ministry of Justice.

⁷ Please see pg. 9 - 11 for a sample of reports etc <https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5a94cc1a9140b78a0a3a5061/1519701025135/Submission+to+Justice+Select+Committee+January+2018.pdf>

⁸ <https://www.justice.govt.nz/assets/Documents/Publications/family-justice-reforms-final-report-independent-panel.pdf>

⁹ <https://www.backbone.org.nz/s/200326-LITTLE-Hon-A-Backbone-re-Covid-19-wtgw.pdf>

A March 2022 Backbone survey¹⁰ found that abusers forced contact with children, even when those children were unwell. Children were required to continue unsupervised care with an abusive parent in lockdown conditions, making them especially isolated as they did not have access to their usual protective people e.g. friends, family, school staff or recreational activity leaders. Further, children were deprived of contact with their protective mother for weeks if not months in some cases.

Abusers flouted public health regulations and exposed children to others, refused to share information with victim-survivors regarding virus exposure and in some cases refused to vaccinate the child/ren or vaccinated the child/ren without their mother's consent.

Children who spent time in lockdown with the abuser, two thirds of whom were under 14, experienced abuse. Most were prevented from contacting their mothers, over half were verbally abused and a quarter were physically abused. Some were neglected and denied food, attention, medical help and/or were kept from doing online learning. Nearly half of participants said the abuser psychologically abused the children e.g. saying their mother was going to die of COVID-19. In some cases, the abuser regulated, monitored and recorded the children's communications online with others (including their mother).

Victim-survivors explained that information regarding shared care during lockdowns was limited and ambiguous, giving abusers scope to define the rules themselves. The NZFC's response was also described as slow, impairing some participants' ability to have their children returned to them after being held by the abuser.

Victim-survivors also reported that police refused to do welfare checks, did not take seriously their experiences of violence and abuse, colluded with the abuser, lost paperwork, breached their privacy and/or failed to take action when parenting orders were in place. This put victim-survivors and their children in more danger. Support agencies were overwhelmed and unsure how to help.

Victim-survivors explained that being separated from their children, knowing they were in lockdown with an abusive parent and not being able to talk with or see them for significant periods, was traumatic for them and their children. The experience will have lasting impacts.

Recommendations

- **Apply a FV/SV lens to all policy development.**
- **When lockdowns occur place the child/ren in the care of the protective parent.**
- **Provide specialist urgent intervention for victim-survivors and their children when required.**
- **Make specialist support for children easily accessible.**

b) Child Young Person Wellbeing strategy (CYWS) and Te Aorerekura National Strategy

The Government's recent CRC report lists the Joint Venture for Family Violence and Sexual Violence in 2018 and the CYWS as new developments that provide a framework to align policy, efforts and

¹⁰ <https://www.backbone.org.nz/s/Shining-Light-on-the-Shadow-FINAL-Backbone-Collective.pdf>

investments in and outside government. However, neither strategy includes adequate discussion of, or action towards, addressing the unsafe way the NZFC currently responds to children victim-survivors involved in Family Violence Act 2018 or COCA proceedings. The **CYWS** makes no mention of the Family Court in its Action Plan and refers to Te Aorerekura's development as an action. **Te Aorerekura** provides inadequate actions to address the failure of the NZFC to respond safely and appropriately to violence and abuse of children and women.

Backbone collected feedback from 264 adult victim-survivors to inform the development of Te Aorerekura. One of the strongest themes was the need for urgent reform of the NZFC to better protect children. Yet, only two of the strategy's 49 actions relate to the NZFC and neither will address the core issues that put children in danger (see below). One relates to training Family Court staff but is unlikely to improve outcomes for children impacted by FV/SV if existing processes, attitudes, power imbalances and lack of independent monitoring and regulation continue. Another aims to build specialist workforces for children but is led by Oranga Tamariki – an agency strongly criticised for racially profiling and targetting tāngata whenua (NZ's indigenous people) and failing to understand and safely respond to challenges adult victim-survivors encounter when trying to protect their children.

Backbone maintains that responses to child abuse cannot be improved without addressing how the NZFC responds to cases involving FV/SV.

Recommendation

- **Te Aorerekura must be updated at its annual review in December 2022 to include actions that specifically address the harm done to children involved in NZFC proceedings when FV/SV are present. All other recommendations in this paper should form part of those actions.**

6. Data collection

The NZFC receives around 60,000 applications each year, half of which involve children.¹¹ The government does not collect data on how many children are involved in NZFC COCA proceedings involving FV/SV. Nor does it report on outcomes for these children. Local and Australian research suggest that the majority of COCA proceedings before the NZFC involve allegations or confirmed accounts of FV/SV.¹²

The Independent Panel's report directed the Ministry of Justice (MoJ) to develop a monitoring strategy but this does not include children who have experienced FV/SV as a target group. It is unknown if a monitoring strategy has been developed. Te Aorerekura includes a monitoring and

¹¹ <https://www.districtcourts.govt.nz/reports-publications-and-statistics/annual-reports/page-2342/family-court/>

¹² Kaspiew, R., Carson R., et al. (2015) Experiences of separated parents study. *Melbourne: Australian Institute of Family Studies*. See also Kaspiew, R., Carson, R., et al. (2015) Evaluation of the 2012 family violence amendments: Synthesis report. Melbourne: *Australian Institute of Family Studies*. See also Gollop, M., Taylor, N., et al. (2019) Parenting Arrangements after Separation Study: Evaluating the 2014 Family Law Reforms – Parents' and caregivers' perspectives. Dunedin: *Children's Issues Centre, University of Otago*.

learning outcome but there is no action relating to information collection about children in the NZFC.

Recommendation

- **The NZ Government should immediately adopt a process to identify and track outcomes for children involved in the NZFC who have experienced violence and/or abuse across all legislative Acts and not only FV Act proceedings.**

8. Identity and family relations

Several women have reported to Backbone that they and their children have been prohibited from returning home (overseas), having been denied relocation. The principles for determining the best interests of a child in COCA are not weighted except 5(a) that a child's safety **must** be protected. However, the NZFC wrongly upholds abuser's contact with the child and continuity of care (COCA s5(b)(d)) over the rights of children from international backgrounds, to preserve their identity and family relations as set out in COCA s5(e) and (f). The NZFC fails to recognise that continued abuse and control, including via the children, forces these mothers into residing in NZ, even when support, safety and recovery would be better available for them and their children if they could return to their home country.

Recommendation

- **Ensure applications for relocation are weighted to uphold children's rights to be protected from FV/SV and equally meet the other COCA principles including to preserve their identity and family relations outside NZ.**

10. Best interests of the child

The best interests of the child are consistently undermined in NZFC proceedings where FV/SV are present, despite these being the 'first and paramount consideration' in COCA. The government states in its report to CRC that numerous recent legislative changes (in the 2021 Supporting Children in Court Act) will uphold the best interests of children. However, the Act fails to address key failings in the NZFC that undermine the best interests of children.

Children's participation – The Supporting Children in Court Act is on hold and not in force as it awaits a report (which was due in March 2022) commissioned by the MoJ on best practice for children's participation in NZFC processes. No information on findings has been publicly released and no interviews have been conducted with FV/SV specialists as far as Backbone is aware. We detail recommendations below to improve children's participation in NZFC.

Lawyer for child (L4C) – The government refers in its periodic report to section 9B of the Family Court Act 1980 requiring an L4C to act for a child/young person in proceedings to promote their welfare and best interests.

In 2018, Backbone released a report – based on the experiences of 291 mothers of 591 children involved in Family Court proceedings – on the L4C role and its appropriateness for FV/SV cases.¹³

¹³ <https://www.backbone.org.nz/reports/report-four-seen-and-not-heard-force20171214>

Most of the children were appointed a L4C and the majority of mothers explained that L4C made their children less safe. The most commonly cited reasons were:

- not responding to safety concerns
- minimising experiences of violence and abuse
- not understanding that psychological abuse *is* abuse
- blaming mothers for the abuser's behaviour
- accusing mothers of parental alienation
- recommending unsafe care for children with abusive fathers
- refusing to let children have support people present in interviews
- interviewing children in their offices or at the abuser's house where children do not feel or are not safe
- lacking in training, regulation, monitoring and accountability
- failing to meet the legislation or Best Practice Guidelines.

Backbone's findings are not unique; the role of L4C has been criticised for the last 35 years.¹⁴

12(a) Respect for the views of the child

The Government has submitted to CRC in response to LOI 12(a) that the 2019 COCA amendments will ensure children's right to be heard in cases affecting them. However, unless children are given safe opportunities to share their views with specialist advocates and they, and their mothers, are believed; and unless significant reform and cultural shifts in how individuals in the Court respond to FV/SV, legislative amendments will have no impact whatsoever on children's safety in COCA proceedings.

Backbone surveys found that 54% of children were forced against their wishes to spend time with an abusive parent, family or whānau (wider family) member. They were significantly more worried about safety at the abuser's house than children who were not forced.¹⁵ We discussed such situations during pandemic lockdowns earlier (pp. 4-5).

Children's worries about their physical, sexual and psychological safety are not being appropriately responded to by NZFC professionals including L4C, section 133 specialist report writers (psychologists), social workers and Judges. Backbone has reported that when children or mothers told NZFC professionals about concerns for the child while at the abuser's house, in the majority of cases (65%), these were not reported accurately to the Court or taken into consideration when care and contact orders were made.¹⁶

A lack of quality training about FV/SV dynamics (including psychological abuse and coercive control) and their direct and indirect impacts on children, and a dearth of knowledge of best practice regarding recovery, are compromising NZFC professionals' ability to accurately respond to the needs of child-victims.¹⁷ Furthermore, these professionals do not work with all other FV/SV specialists

¹⁴ For example, in a 2003 Law Commission report to the Government, they referenced criticism of Lawyer For Child practice dating back to 1997.

¹⁵ <https://www.backbone.org.nz/reports/report-four-seen-and-not-heard-force20171214>

¹⁶ See pp. 25-27 of <https://www.backbone.org.nz/reports/report-four-seen-and-not-heard-force20171214>

¹⁷ A three-day workshop for L4Cs was held in June 2022. Course material did not include FV/SV dynamics, risk assessment, or reference to Te Aorerekura. However, presenters focussed on parental alienation-based theories and court ordered 'treatment programmes' for children who resist contact with a parent even when

(including risk and safety planning) at a community level (see Appendix). Consequently, NZFC professionals prepare reports that fail to identify risk to children, overestimate the parenting abilities of an abuser and/or show bias against the protective parent. Backbone recommends that all children be supported to safely provide their views to the court on any decisions being made about them via:

- **Independent child advocates who must be specialists in FV/SV, child development, trauma and tikanga Māori (replacing the L4C and court appointed psychologists).**
- **Children must have access to a range of options for sharing their views, to ensure that children of all ages, abilities, ethnicities and genders are positively and safely supported to participate – through a range of modalities and with a trusted support person if they so desire.**
- **Independent child advocates must undertake follow up interviews with children at regular intervals (at 3, 6 and 12 months) to assess the impact of the care and contact arrangements and assess children’s safety.**
- **Establish an independent complaints system where children and parents can go if they are not being heard or feel unsafe in the NZFC.**

16. Child’s freedom from all forms of violence

Professionals in the NZFC are responding to FV/SV unsafely. This is resulting in decisions/orders that place children at risk of harm. Advocates, academics and victim-survivors have continued to raise these concerns with the government with little effect. Moreover, CEDAW in its 2018 periodic report on NZ and again in 2020 in its mid-term report¹⁸, required the government to provide information on what it had done to,

*Address the root causes of the drawbacks for women, the obstruction of justice for women and the hindrances to their safety inherent in the family court system.
Operate the legislative and structural changes necessary to make the family courts safe and just for women and children, in particular in situations of domestic violence.*

Key findings from Backbone's 2017 survey of children’s experiences in the NZFC¹⁹ highlight serious breaches of children’s right to be protected from all forms of violence:

- 83% said NZFC had not made their children safer after they left the perpetrator.²⁰
- 98% said a risk assessment of dangerousness and lethality had **not** been undertaken.
- 91% of children are ordered into unsupervised care/contact with the abuser.
- 87% said NZFC views the abuser as being safe for the children to spend time with.²¹

FV/SV has been disclosed.

<https://www.lawyerseducation.co.nz/shop/Books/Family/Advanced+Lawyer+for+Child.html>

¹⁸ <https://women.govt.nz/about/international/cedaw-reports>

¹⁹ <https://www.backbone.org.nz/reports/report-four-seen-and-not-heard-force20171214>

²⁰ This number increased to 91% in our 2020 update survey (but note significantly smaller sample size vs. 2017).

²¹ 63% reported the Court saw time with the abuser as safe for the children in the updated 2020 survey (with smaller sample size) and an additional 30% said the Court saw the abuser as unsafe but perceived contact time as important regardless. Only 2% said the Court saw contact time with the abuser as unsafe for the children.

- 67% of children of wahine Māori and 54% of children of wahine tauīwi are forced into care/contact they do not want.
- 86% say NZFC had not responded appropriately to their child/ren's wishes, views, experiences and safety concerns.
- 89% of children received **no** follow up interviews or reviews from the NZFC after orders were made placing them into care and/or contact with the abuser.
- Many children are exposed to harmful behaviours (pornography, illegal activities, substance abuse) and further violence and abuse when in the abuser's care.
- **37% of children suffered physical injuries while in the abuser's care.**

NZFC processes and decisions are frequently contrary to what the evidence tells us helps children recover from abuse: being believed, protected by a trusted parent or caregiver, and shielded from further abuse.²² Tragically, in many cases, NZFC care and contact orders result in the opposite, with very negative mental and physical health impacts for these children. Children often remain embroiled in NZFC proceedings for 5 - 10 years²³ with the cumulative harm on their education, social and cognitive development.²⁴

We discuss four critical issues below that continue to act as barriers to children's safety in the NZFC.

Dangerous use of parental alienation allegations

Parental Alienation (PA) theory posits that if a parent/child makes allegations of abuse or if a child rejects contact with a parent, it is because the other parent has 'invented' these claims and manipulated the child into believing them. PA 'theories' have been widely scientifically discredited and many academics argue they are not applicable where there has been violence/abuse.

Nonetheless, the NZFC frequently subscribes to PA theory.²⁵ In Backbone surveys, 55% to 62% of mothers said the Court accused them of PA. Rather than believing these victim-survivors, NZFC professionals deny that abuse occurred, or reframe it as minor, historical, irrelevant, situational or their fault.²⁶ Once PA becomes part of a case's accepted narrative, all evidence of abuse becomes perversely reframed as evidence of alienation. The more children disclose abuse or demonstrate fear of the abuser, the more the mother may be vilified and seen as the abuser. Subsequent judgments reflect the poor understanding of FV/SV dynamic and result in further harm to children.²⁷ As a result of the court diverting from legitimate abuse allegations to claims that the mother is vengeful or over anxious and influencing the child, mothers sometimes lose day to day care of the children (including very young children) on the grounds that their "unreasonable" anxiety over the children's safety with the father is psychologically abusive and that only removal from their care will render the child willing to have a relationship with the father.²⁸

²² <https://www.cdc.gov/violenceprevention/childabuseandneglect/aces/fastfact.html>

²³ See pp. 14-16 of <https://www.backbone.org.nz/reports/report-four-seen-and-not-heard-force20171214>

²⁴ 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

²⁵ Also referred to in NZFC as Resist-Refuse, Enmeshment, coaching a child.

²⁶ Mackenzie, D., et al. (2020) 'It's Not OK', but 'It' never happened: parental alienation accusations undermine children's safety in the New Zealand Family Court. *Journal of Social Welfare and Family Law* 41(1).

²⁷ Some children are ordered into unsupervised contact or increased care with the abuser or have no contact at all with their protective parent. In some cases, court-ordered conditions on mothers' contact include denying contact at the children's school and/or prohibiting discussion of the abuse or trauma treatment. See <https://www.backbone.org.nz/reports/report-two-family-court-survey-report201768> particularly pp. 30-32 on prohibitive orders.

²⁸ See *Mazar v Holloway* [2019] NZFC 9520, available at <https://www.districtcourts.govt.nz/>

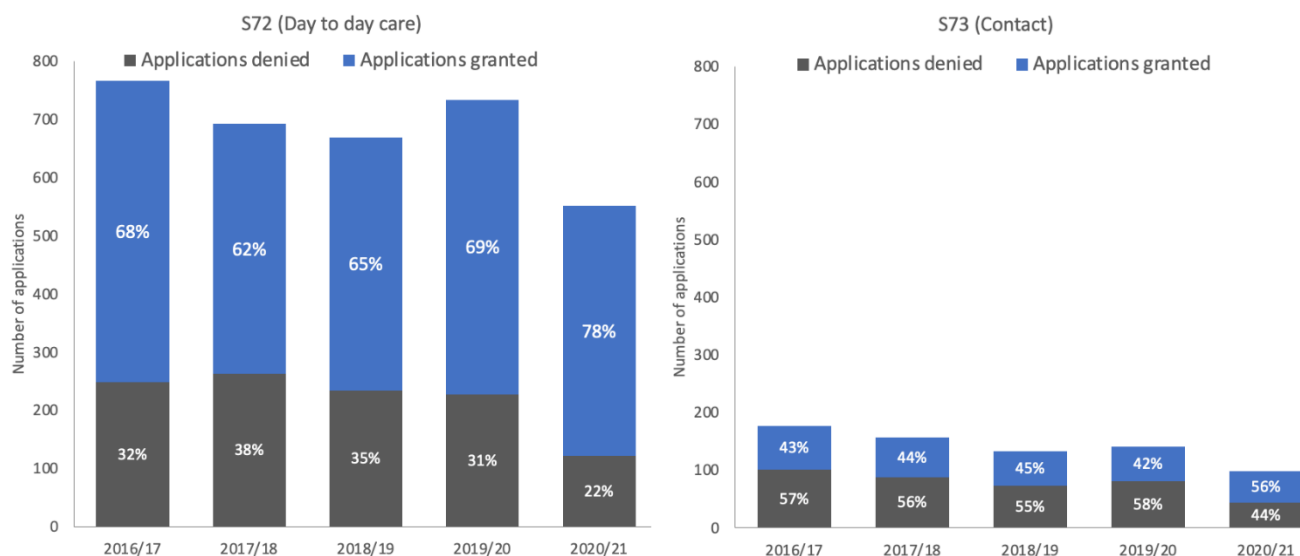
CEDAW’s 2018 periodic review recommended that NZ ‘Review the reliance on the Parental Alienation theory, with a view to limit its usage in child custody disputes’ (48,d). In July 2019, 339 experts (including 19 from NZ) and organisations from 35 countries endorsed a collective memorandum to the World Health Organisation successfully seeking removal of references to ‘parental alienation’ and related concepts from the ICD-11, International Classification of Diseases.²⁹

Forced uplifts to enforce parenting orders

Some children are physically forced by Police into the care of the abuser.³⁰ In Backbone’s 2017 survey of victim-survivors, 57 women informed us that NZFC ordered Police to forcibly uplift children from them to enforce parenting orders.³¹ The NZ media investigated this practice in 2017.³² There was public outcry at the time yet the NZFC continues to order these traumatic uplifts. In most cases they are made without notice – the parent they are made against has no prior knowledge of it; Police arrive to execute the uplift warrant without warning. This is a traumatic experience for women victim-survivors and their children.

An Official Information Act request to the MoJ made by Backbone in 2021, found that applications granted for these uplifts have remained steady throughout 2016 – 2021 with numbers ranging from **485 to 594** warrants granted per year. Each warrant applies to one *or more* children. Further, the percentage of total applications that were granted for both s72 and s73 applications rose in 2020/21, as shown below.³³ The continued use of Police uplifts is causing harm and trauma to children who need protection from the state, not more violence and abuse.

Figure 1: Granted warrants to uplift children in Aotearoa NZ



²⁹ <https://www.learningtoendabuse.ca/docs/WHO-September-24-2019.pdf>

³⁰ Under sections 72 and 73 of the COCA the Court can impose a warrant to uplift the child/ren and place them in the care of the parent who under current orders would ordinarily have them in their care or whom the court now orders should have day to day care. These are separate from uplifts ordered under s39 of the Oranga Tamariki Act 1989.

³¹ Force them into the unsupervised care of the abuser.

³² A short video by NZ media about S72, S3 police uplifts is available at <https://www.newsroom.co.nz/2017/08/07/41459/taken-by-the-state>

³³ We cannot ascertain from the OIA report which parent filed the application. In some cases, a protective parent will make an application to enforce a parenting order if an abuser refuses to return the child/ren to their care, e.g. as happened during the COVID 19 lockdowns.

**percentage granted based on total number of determined applications - excludes those that are still active/undecided or have been lapsed, withdrawn or discontinued.*

Guardianship rights are not impacted by a parent's use of violence

COCA S17³⁴ makes both parents joint guardians under most circumstances. Although violence should be a reason to limit or remove guardianship, this removal rarely occurs.³⁵ The abusive guardian's continued ability to make major decisions about the child negatively affects children's safety and recovery from abuse. In 2017 we reported that abusers use guardianship rights to prevent:

- the protective parent and children relocating to somewhere safe (40%)
- children attending a different school (29%)
- children attending therapeutic intervention or treatment to cope with their experience of violence and abuse (28%),
- protective parents from talking about the violence and abuse with their children (32%)
- protective parents/children departing NZ (29%).³⁶

A 2019 Backbone survey of 528 victim-survivors about the barriers to getting safe and recovering from violence and abuse showed 47% of participants said the violence and abuse continued even though many of them had separated long ago. Most of the other 53% said that having no contact with the abuser, where possible, is what enabled the violence and abuse to stop. However, for many, the NZFC prevented no contact (and thereby legitimised stalking) by prohibiting women and children from relocating elsewhere (where they had support networks and/or access to better, more affordable housing or work) or forcing ongoing contact with the child/ren.³⁷

Hague Convention

Backbone is regularly contacted by women involved in Hague Convention proceedings. Frequently they have fled abuse and violence in another country, returning home where they have support networks. In the vast majority of cases, children are ordered back to their 'habitual residence' – even if that involves an unsafe/unsupportive environment. The bar for not returning children is exceptionally high³⁸ and the NZFC almost always presumes that legal systems in the other country are adequate to protect the child. This compromises the safety of women and children as they are returned to situations of violence/abuse in which they have no support and inadequate protection.

³⁴ <http://www.legislation.govt.nz/act/public/2004/0090/latest/DLM317418.html>

³⁵ See section 16 of COCA for detail. Under s29 an application can be made to remove the abuser as a guardian. However, an order of this kind would only be made if the parent for 'some grave reason was unfit to be a guardian of the child.' <http://www.legislation.govt.nz/act/public/2004/0090/latest/DLM317414.html>

³⁶ See pp. 30 - 34 of

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

³⁷ <https://www.backbone.org.nz/s/Victim-Survivor-Perspectives-on-Longer-Term-Support-Backbone-report-for-MSD-2020-FINAL.pdf>

³⁸ Specifically, Article 13(b): There is grave risk of physical or psychological harm to the child if he or she is returned or the return will place the child in an intolerable situation.

Recommendations

- Undertake extensive screening of all matters coming before the court for FV/SV.
- Provide a specialist and separate response in FV/SV cases such as an inquisitorial system where a judge is assisted by specialists who gather the appropriate evidence and information to support safe and reviewable decision making.
- Provide a specialist kaupapa Māori FC response as suggested in Te Taniwha report.³⁹
- Require all COCA proceedings involving FV/SV allegations to undergo risk assessments by trained specialists (independent child advocates), not lawyers or psychologists.
- Believe women and children about their experiences of violence and abuse and do not minimise or blame them.
- Prioritise section 5A over section 5e and all other subsections in section 5 of COCA.
- Protect children and adult victim-survivors from ongoing contact with abusers by limiting contact to what the child wants and ensuring any contact that happens is supervised.
- Assess applications under COCA to monitor if they are being used as a tool of post separation abuse. Use section 163 of the Family Court Act 1980 for this purpose.
- Mandate and monitor regular training of all professionals working in the NZFC - include dynamics of FV/SV, child development, the impact of trauma and kaupapa Māori responses. Ensure that practice is evidence based.
- Legislate against the use of PA/S for abuse/violence cases including other terms PA/S is known by, as recommended by CEDAW in 2018.
- Prohibit Police uplifts to enforce court orders unless the child's safety is at immediate risk.
- Update interpretations of Hague Convention to better reflect safety for women and children escaping FV/SV.
- Establish, as a matter of urgency, a completely independent body (including from the judiciary and the Law Society), responsible for appointing/engaging, briefing, monitoring, quality managing, reviewing decisions and considering complaints regarding professionals working in the NZFC. This body would also provide regular training on conscious and unconscious bias, victim blaming, violence and trauma, NZ's CRC obligations, etc.
- Special Rapporteurs on Violence Against Women and Child Protection urgently conduct a country visit to New Zealand to investigate the way the NZFC is treating victims of violence and abuse and their children.

³⁹ <https://www.whakauae.co.nz/publications/technical-reports/5/>

16 (b, c) Abuse outside the care system

The government reports to CRC that Oranga Tamariki and Police work collaboratively to respond to alleged or actual incidents of serious child abuse or neglect and claims that these two statutory bodies act immediately to protect children, investigate all reports of serious child abuse and take effective action against offenders. However, Backbone has observed that this approach is not taken when children are subject to NZFC orders or proceedings.

Police have a statutory obligation to intervene if a child is at risk. However, victim-survivors have reported to Backbone that Police (and Oranga Tamariki) have refused to investigate child protection notifications as the family are involved in NZFC proceedings, or a parenting order is in place. We hear from mothers whose child/ren have disclosed that the other parent has sexually or physically abused them or left them home alone for periods of time. The mothers in turn seek Police intervention to protect the child/ren. However, Police advise they can do nothing if a judge has ordered contact – even when the children are in immediate danger. Police officers have refused to do welfare checks, been unwilling to investigate once a disclosure has been made, and/or dismissed or minimised the mother's concerns by telling her she needs to support the abusive father in the child/ren's care.

We have raised the statutory obligation/boundary issues on a number of occasions with police officers, the Police Commissioner and, in February 2021, the Minister of Family and Sexual Violence. The Police responded that it is unlawful for them to attempt to override parenting orders. They will not apply for a Protection order on behalf of a child, or independently file risk or safety information regarding care or contact orders if a child is at risk. Police do have emergency powers and may remove a child from a situation where it is critically necessary to protect the child or young person from injury or death. However, the threshold for these powers is extremely high and reserved for exceptional situations.

Recommendations

- **Require Police to issue a Police Safety Order (PSO) in favour of the child/ren if a protective parent raises concerns about the child/ren's safety and welfare while in the other parent's care.⁴⁰**
- **Urge Police to act as representatives to apply for a Protection Order on behalf of a child as set out in s62 of the Care of Children Act.**
- **Improve training of Police staff regarding FV/SV (the impacts and risks to children, post separation abuse and available Police responses).**

22. Basic health and welfare

Backbone hears regularly from women victim-survivors that their abusive ex partners withhold consent and actively stop children participating in counselling and therapy. We are deeply concerned that the Guardianship Act's requirement of dual parental consent to child/ren's participation in

⁴⁰ Family Violence Act, s 28(1). A PSO can be issued by Police for a child if the officer believes it is necessary to help make [the child] safe from FV. Once issued, a PSO can remain in effect for up to 10 days. It can be useful to get the child/ren safe immediately whilst the protective parent seeks a protection order for the child or a variation to existing parenting orders.

counselling is harming child/ren and preventing them from accessing these services, which will help them recover from violence and abuse.

Recommendations

- **Remove the decision-making ability of a parent if they are abusive from the Guardianship Act.**
- **Give children access to free trauma counselling if they have experienced violence/abuse.**

24. Standard of living

Women victim-survivors and their children are forced into poverty as a result of FV/SV and their involvement in NZFC proceedings. They generally leave the relationship with very little, and are traumatised and consequently often unable to sustain full time work.⁴¹ Many are forced into ongoing NZFC proceedings (as a result of legal abuse) lasting many years (usually until the child is 16) which come at an enormous financial cost.⁴² Victim-survivors advised in our 2017 survey that they had spent up to \$500,000 on NZFC proceedings. Many were in debt due to the proceedings and 70% reported feeling 'very worried' about that debt. They said the financial burden they suffered as a result impacted on their decisions as to whether or not to continue to try and pursue protection for their children via the court.

Recommendation

Make COCA/FV Act NZFC proceedings free for victim-survivors to limit the ongoing harm and poverty that comes from their experience of abuse.

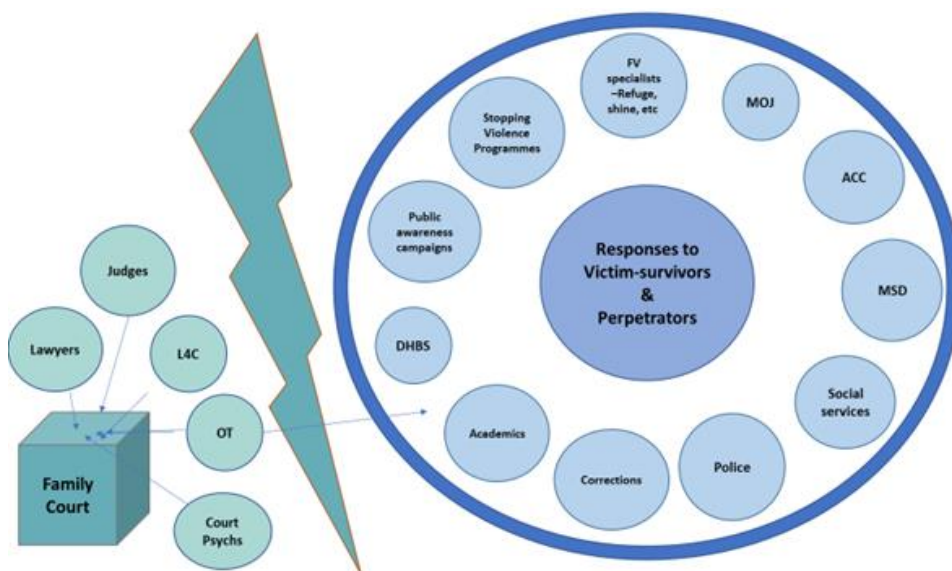
⁴¹ See Backbone's report <https://www.backbone.org.nz/s/Victim-Survivor-Perspectives-on-Longer-Term-Support-Backbone-report-for-MSD-2020-FINAL.pdf>

⁴² Scott, A. (2020) Surviving post-separation financial violence despite the Family Court: complex money matters as entrapment. *Australian Journal of Family Law*. 10. 27 – 35 (b).

Appendix

At local levels in communities throughout New Zealand, and outside the NZFC’s jurisdiction, there is a vast amount of activity that aims to put supports and services in place to protect victim-survivors of FV/SV and their children. Sometimes victim-survivors come through this pathway because of Police call outs for FV. Sometimes victim-survivors approach services themselves and sometimes notifications come through Oranga Tamariki by people concerned about the safety of children. As part of these interventions and investigations, evidence is gathered relating to victim-survivors and their children's experiences of violence and their own perceptions of ongoing risk of harm. The evidence is used to make safety plans, connect victim-survivors with support services and prevent further abuse by the perpetrator. Currently very little of this ‘evidence’ is used in NZFC decision making; but it should be. The expertise and analysis of FV/SV specialists working from an evidence based, best practice approach is not used to help inform NZFC decision making. Conversely, professionals who currently work in the NZFC do not hold expertise in FV/SV and are not linked in with the FV/SV sector. The diagram below depicts this.

Professional segregation from the family and sexual violence sector.



Abbreviations

<p>L4C - Lawyer for Child</p> <p>OT - Oranga Tamariki - NZ’s Care and Protection statutory agency -currently social workers from OT are the only professionals who work in the Family Court and in the community in response to family and sexual violence.</p>	<p>DHBs - District Health Boards</p> <p>MoJ - Ministry of Justice</p> <p>MSD - Ministry of Social Development</p>	<p>Court psychs - Court appointed psychologists</p> <p>ACC - Accident Compensation Corporation</p>
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Members of the Auckland Coalition for the Safety of Women and Children

1. Auckland Women's Centre - Te Wāhi Wāhine o Tāmaki Makaurau
2. Eastern Women's Refuge
3. HELP Support for Sexual Abuse Survivors
4. Inner City Women's Group
5. Mental Health Foundation
6. Mt Albert Psychological Services Ltd
7. National Council of Women, Auckland
8. North Shore Women's Centre
9. Pacific Women's Watch, New Zealand
10. Rape Prevention Education – Whakatu Mauri
11. Respect
12. Rodney Women's Centre
13. Shakti Community Council NZ
14. SHINE Safer Homes in NZ Everyday
15. The Backbone Collective
16. Women's Health Action Trust
17. YWCA, Auckland