

Systemic abuse by the NZ Family Court: a major violation of women and children's human rights

KEY ISSUE

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. 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.¹ Victims, academics and NGO agencies have repeatedly pleaded with those in authority to investigate what is happening in the Family Court and yet no one appears to have seen these multiple and ongoing complaints as signs of systemic abuse or taken action.

NATIONAL FRAMEWORK

The justice system in New Zealand is based on the Westminster System which holds judiciary independent from the Parliament. 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 and ensure that New Zealand's obligations under the various international conventions and laws covering the rights of women and children are met by the Family Court and must provide effective remedies to the victims of domestic violence.

The New Zealand Family Court, established 1980, is a mostly closed court. There have been various reviews of the legislation, but most commentators agree that the problems in the Family Court are related to the culture in the Family Court, the interpretation and implementation of the legislation rather than the legislation itself. There have also been various reviews of the court models used for domestic and sexual violence cases,² including one done by one of the biggest domestic violence agencies and another by the Law Commission, working in collaboration with leading academics.³

CHALLENGES	IMPACT
Victims/survivors rights, particularly that to safety are not being upheld by the Family Court	<p>Women feel, controlled, frightened, terrorised, put down, silenced and punished for speaking out about the abuse 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.</p> <ul style="list-style-type: none"> • 68% of women are subject to decisions, directions or orders that prohibit them from rebuilding their lives after escaping violence and abuse⁴ • 65% say their experience of violence and abuse was not understood by those working in the Family Court⁵ • 47% of women have been verbally abused, put down or traumatised by a lawyer, judge, psychologist or other official person in Court⁶ • 23% had been denied a support person in court or mediation⁷ • 21% of wahine Māori (indigenous women) reported experiencing racism⁸
A child's right to stay in contact with both parents ⁹ is being prioritised over their right to safety ¹⁰	<ul style="list-style-type: none"> • The Family Court has not responded appropriately to child/ren's wishes/views/experiences and safety in 86% of cases¹¹ • 54% of the children are being forced into care and contact arrangements they do not want¹² • 28% of children forced into the abuser's care think or talk about suicide compared to 12% of children who are not forced¹³

¹<https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5a94cc1a9140b78a0a3a5061/1519701025135/Submission+to+Justice+Select+Committee+January+2018.pdf> (pg 9-11)

² [file:///C:/Users/rthh1/Downloads/SDVC+in+Auckland+PVH+Report%20\(2\).pdf](file:///C:/Users/rthh1/Downloads/SDVC+in+Auckland+PVH+Report%20(2).pdf)

³ <https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20IP30.pdf>

⁴<https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5949a425a5790a3989f7e74e/1497998414103/Family+Court+Survey+report+final+080617.pdf> pg 30

⁵ Ibid. pg 19

⁶ Ibid. Figure 10 Pg 21 New analysis of raw data done specifically for this paper to calculate the percentage of women who answered yes to one or more of the four questions regarding being abused or put down or traumatised in cross examination by the abuser's lawyer

⁷ Ibid. pg 22

⁸ Ibid. pg 13

⁹ 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...'

¹⁰ 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).

¹¹<https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5a3171c59140b743f5abbe36/1513189837189/Seen+and+not+Heard+Children+in+the+Family+Court+%281%29.pdf> Pg 53

¹² Ibid. Pg 7

¹³ Ibid. Figure 30 Pg 48

The Family Court is treating abusive men as 'safe'	<ul style="list-style-type: none"> • 87% of mothers said the Family Court views their abuser as being safe for the children to spend time with¹⁴ • Risk assessment only done in 2% to 10% of cases¹⁵ • 83% of mothers said the Family Court had not made their children safer after they left the violence and abuse¹⁶ • Most children are ordered into unsupervised care and contact with the abuser¹⁷
Family Court practice is not evidence-based	<ul style="list-style-type: none"> • 55% of women wrongly accused of parental alienation despite this theory having been debunked internationally¹⁸ • As a result, when the mothers try and protect their children from ongoing harm, trauma and abuse they are accused of trying to alienate their children from their father and deemed to be psychologically abusing the children. The court then overrides their fears and any reports of physical, sexual or psychological abuse by the father and imposes orders which force the child/ren into care and contact with the abuser • If the child tries to resist that contact and the mother refuses to force their children to go the Family Court orders that the Police uplift the child – using force if necessary,¹⁹ or removes the mother as a legal guardian of her child/ren.
The Family Court operates without the usual checks and balances to ensure it acts fairly, safely, and lawfully	<ul style="list-style-type: none"> • 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 abuser²⁰ • There is no independent authority monitoring and overseeing the Family Court and reviewing or regulating its outcomes • The legal appeals process is not available to all women and has significant barriers as it is costly and time dependent • Many women do not complain because all complaints are sent back to the presiding judge to investigate and this results in women being further punished in court • There is no authority responsible for overseeing the safety and rights of children who are subject to Family Court proceedings and no independent and safe mechanism for children to complain

RECOMMENDATIONS

1. Urgently invite the Special Rapporteurs on Violence Against Women and Child Protection to urgently conduct a country visit to New Zealand to investigate the way the New Zealand Family Court is treating victims of violence and abuse.
2. Conduct 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.
3. Develop a new inquisitorial justice response for domestic, sexual violence and child protection civil and criminal cases that treats victim safety as paramount, staffed with specialist and culturally appropriate personnel who understand the immediate and intergenerational impact of violence and abuse and who can ensure women and children's rights are upheld.
4. In order to keep women and children who have disclosed violence and abuse safe in the Family Court until a new system is operational, immediately establish: a national network of independent children's advocates and domestic violence and child abuse expert advisors, comprehensive specialist training for judges, quality assurance processes, formal risk assessment in all cases, trauma counselling for children, legal aid and specialist legal services.
5. Amend legislation, policies and practice standards to ensure non-evidence-based concepts such as parental alienation are not be applied by the Family Court in cases of violence and abuse.
6. Establish an independent quality assurance, monitoring and complaints body be established for violence against women and their children to ensure all parts of the system, including the Family Court are operating to best practice levels.

¹⁴ Ibid. Pg 27

¹⁵ <https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5949a425a5790a3989f7e74e/1497998414103/Family+Court+Survey+report+final+080617.pdf> Pg 18

¹⁶ <https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5a3171c59140b743f5abbe36/1513189837189/Seen+and+not+Heard+Children+in+the+Family+Court+%281%29.pdf> Pg 53

¹⁷ Ibid. Pg 6

¹⁸ <https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5949a425a5790a3989f7e74e/1497998414103/Family+Court+Survey+report+final+080617.pdf> Figure 12 Pg 23

¹⁹ The video at this link shows the manner in which many of these Police uplifts are conducted <https://www.newsroom.co.nz/2017/08/07/41459/taken-by-the-state> and the context is found at <https://www.newsroom.co.nz/2017/08/07/41512/the-legislation-behind-uplifting-children>

²⁰ <https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5a3171c59140b743f5abbe36/1513189837189/Seen+and+not+Heard+Children+in+the+Family+Court+%281%29.pdf> Pg 42

