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Open Letter to Prime Minister, Rt Hon Jacinda Ardern

Re: Urgent need for a Royal Commission of Inquiry into New Zealand Family Court and Oranga Tamariki

We are writing on behalf of the women and children of New Zealand and in particular the 1600 current members of The Backbone Collective (Backbone).¹ Despite your admirable intentions to make New Zealand the best place in the world to be a child and your determination to break the cycle of family and sexual violence, New Zealand continues to show it is falling well short on both these fronts.

For over two years Backbone has been reporting details about the systemic failure in the operation and culture of the NZ Family Court and making repeated calls for a Royal Commission of Inquiry into the New Zealand Family Court.

Backbone fully supports and endorses the open letter sent to you today by Te Ao Pepi,² calling for an inquiry into the Ministry for Children. As we will explain in this letter we see merit in establishing a Royal Commission of Inquiry into Family Court and Oranga Tamariki because the two institutions are inextricably linked and the issues each institution is called to address are inextricably linked – the problems of one cannot be solved without also investigating the other.

Current situation

Backbone is outraged and distressed, but not surprised, at recent coverage by Newsroom and other media about the processes, policies and conduct of Oranga Tamariki, in particular the forced uplift of newborn babies and children being taken into state care (particularly Maori tamariki). For almost as long as Backbone has been reporting about systemic failures in the Family Court, Newsroom has been releasing one horrifying story after another in their series 'Taken by the State'. Many other media outlets have also run similarly concerning stories about Family and Sexual Violence, the Family Court, and Oranga Tamariki.

It is important to recognise that Oranga Tamariki is only able to uplift and forcibly remove babies and children with the approval of the Family Court. The Family Court is supposed to be the legal authority providing the checks and balances of Oranga Tamariki, but these recent stories provide more deeply distressing evidence of how the Family Court is failing.

¹ <https://www.backbone.org.nz/>

² Available [at this link](#)

This should be no surprise

There appears to be widespread agreement that the rates of Family Violence in New Zealand are the worst in the world and that the Justice system is broken.³ The latest Newsroom stories provide compelling evidence that Oranga Tamariki, the previous Government's answer to addressing widely accepted systemic failures in our child protection system, is also broken.

Many people in authority have known about the failings in the Family Court for a long time and have received many complaints from desperate individuals. Yet these same people in authority have not intervened or taken any action. It seems that no one has been ultimately accountable.

Soon after you became Prime Minister (13 November 2017) Backbone wrote formally advising you that based on the information Backbone had gathered from NZ women we believe we have sufficient evidence to indicate there is a major systemic problem in the New Zealand Family Court.

A week later (20 November 2017), Backbone sent you and all members of your Cabinet a briefing⁴ reiterating and expanding on our concerns and suggesting the Government has a duty of care to these women and children and to the New Zealand public to urgently and comprehensively investigate the harm being done.

Seven months later (June 2018) and with considerably more evidence to hand, Backbone made a submission to the United Nations Committee on Elimination of Discrimination Against Women (CEDAW)⁵ explaining how we have systematically provided this Government and the previous one with ample evidence that there is a serious problem with the New Zealand Family Court. We told CEDAW, *'We are astonished that despite the overwhelming evidence we have provided, Government has not taken the one means at its disposal to investigate – a Royal Commission of Inquiry.'*

On 12 July 2018 CEDAW heard from the New Zealand delegation led by Under-Secretary Jan Logie⁶. In response to concerns raised by the Deputy Chair of CEDAW Ms Logie said,⁷ *'We recognise the seriousness of this, that when our legal systems and mechanisms are supposed to protect - and they are the mechanism for protection - when we are hearing that they are causing more harm – we take that seriously.'*⁸

CEDAW findings and recommendations

A week after this hearing CEDAW released its concluding observations about New Zealand.⁹ In para 47 they had this to say about the Government's planned Ministerial Review of the 2014 family justice system reforms (whose report was released today). *'While welcoming the upcoming review of the Family Court announced by the Minister of Justice and Courts, the Committee is concerned that this review will be focused on the 2014 Family Court reforms alone, and will not examine the root causes of the systemic lack of trust and insensitivity to women victims of domestic violence apparently entrenched in the Family Court.'*

³ For example the Minister of Justice at the UN Universal Periodic Review hearing [listen here](#)

⁴ Briefing to the Incoming Government available [at this link](#)

⁵ Submission available [at this link](#)

⁶ The audiovisual recording of the hearing can be found [at this link](#)

⁷ 1min46sec into the above recording

⁸ 1min55sec into the above recording

⁹ Available [at this link](#)

CEDAW recommended that the NZ Government:

‘Establish a Royal Commission of Inquiry with independent mandate to engage in wide-ranging evaluation of the drawbacks and obstruction of justice and safety for women inherent in the Family Court system, and to recommend necessary legislative and structural changes necessary for making the Family Court safe and just for women and children, particularly in situations of domestic violence.’

NZ Government rejects United Nations recommendation

Less than 48 hours after the CEDAW report was released Minister Andrew Little said¹⁰ that he didn’t think the Government needed to consider upgrading the Ministerial Review to a Royal Commission, as he already had a fair idea what the problem points are and inferred that he was confident that the Ministerial Review would address the CEDAW recommendations.

Report released today

From the outset Backbone has said that the Ministerial Review did not have the power to investigate the issues Backbone has been reporting. The 2014 reforms aren’t the problem – the problems women are telling Backbone about have been occurring for many years before the reforms.

Having now read *Te Korowai Ture ā-Whānau: The final report of the Independent Panel examining the 2014 family justice reforms* (the Report), released by Minister Andrew Little today we are deeply disturbed at the extent to which this review has failed to face the elephant in the room – the culture and operation of the Family Court - head on.

In reviewing the Report, we have asked ourselves, ‘If fully implemented, will the recommendations of Review Panel:

- Address the wide-ranging failures in the Family Court that Backbone has reported in the past two years and re-iterated in numerous media stories.
- Improve the Family Court’s role in sanctioning and authorising the the overall processes, policies and conduct of the Ministry for Children as reported by Newsroom and other media in recent days.
- Keep family violence victims safe when involved in the Family Court.
- Break the cycle of family and gender-based violence in NZ and prevent victims from becoming perpetrators across generations.¹¹
- Address the matters raised by CEDAW and the undertakings made by the NZ delegation to CEDAW.
- Has the Report negated the need for a Royal Commission of Inquiry as recommended by CEDAW?’

Backbone’s response

The Report is comprehensive with a wide range of recommendations. We accept that if implemented, the Court will be more efficient and effective for the straightforward cases. However, we believe recommendations 17-24 dealing specifically with ‘Family Violence and children’s safety’ fall well short in adequately addressing the complex and specialist cases involving family violence or

¹⁰ Available [at this link](#)

¹¹ When referring to NZ’s ‘broken justice system’, Minister Little told the UN Universal Periodic Review in Geneva in January this year that this Government is determined to break the cycle of family and gender-based violence in NZ and prevent victims from becoming perpetrators across generations [listen here](#)

child protection or the specific problems Backbone and many individual women raised with the Review Panel. Maybe the Review Panel is acknowledging this themselves in para 102, *'This report cannot deal comprehensively with all of the issues raised'*?

There has been criticism via numerous reports and reviews of the way the Family Court responds to cases where there is violence and abuse and most agree that the problems in the Family Court are related to the operation and culture of the Family Court's practice and its implementation and interpretation of the legislation rather than the legislation itself.¹² The Report is completely silent on this, opting instead to rely almost exclusively on recommending more tweaks to the legislation, rules and regulations.

The Report falls well short in identifying and addressing the detailed issues that led to CEDAW recommending a Royal Commission of Inquiry into the Family Court. We believe Andrew Little's unilateral dismissal of the CEDAW recommendation has been shown to be premature.

The need for a Royal Commission of Inquiry is even more urgent now that we understand there are also systemic failures in how the Family Court responds to child protection cases.

In summary

We are aware that New Zealand's Westminster system of government demands complete separation of powers between parliament and the judiciary. This Government, like its predecessors, has repeatedly hidden behind this separation of powers in responding to individual communications and in national and international forum,¹³ saying they are powerless to do anything about matters before the Family Court.

However, New Zealand's commitments under international law obligates our government and judiciary to provide effective remedies to the victims of domestic violence. We understand the standard of due diligence is one of reasonableness, it 'requires a state to act with the existing means at its disposal to address both individual acts of violence against women and the structural causes so as to prevent future violence.'¹⁴ If the Government fails to take action it is, by default, sending a message to the New Zealand public and the international community that it is not concerned about the matters that women, children, families, whanau and professionals are raising.

New Zealand has an opportunity to transition from being the worst in the world in responding to domestic and sexual violence and child protection, to be a world leader in these areas. In 2015, as a Labour Party spokeswoman, you outlined in an interview for *Faces of Innocents* how a focus on poverty, domestic violence and inequality was needed to address the country's appalling child abuse record, saying, *"I absolutely believe we have it within our power to turn that around and become world leaders. We can be that place ... we are of the size that can make that dramatic change."*¹⁵

But this can only happen if those in authority stop continually denying the reality – cease using rhetoric of false equivalence – cast aside their reliance on patriarchal and colonial, command and control models, and start really listening to those who are most in need of being heard.

¹² [See here](#)

¹³ For example the New Zealand delegation to CEDAW 2018

¹⁴ In-depth study on all forms of violence against women, Report of the Secretary General, U.N. Doc. A/61/122/Add.1 (2006), at para. 257 cited by, Fenrich, J., Contesse, J. 2009. 'It's not OK': New Zealand's efforts to eliminate violence against women. Leitner Center for International Law and Justice. Available at <http://www.leitnercenter.org/files/doc-17866.pdf>

¹⁵ Reported [here](#)

Backbone's recommendations

Backbone believes there is a climate of willingness – to move beyond strategies and action plans – rather to step up and take action – immediate interim actions (as suggested by Backbone¹⁶) and by Te Ao Pepi in their open letter to you. Te Ao Pepi, like Backbone are now being flooded with dozens of calls and emails from desperate women wanting help with their situations. We urge you not to silence these calls, rather to be open to hearing their calls and to taking action.

We recommend:

1. The urgent establishment of interim measures to keep women and children safe in Family Violence and Child Protection cases being brought before the Family Court.
2. The urgent establishment of a Royal Commission of Inquiry into the processes, procedures, conduct and culture of the NZ Family Court and Oranga Tamariki in relation to cases of family violence and child protection - with powers to subpoena witnesses, interview judges and officials and review case files.

Yours sincerely

Ruth Herbert and Deborah Mackenzie

Co-founders

The Backbone Collective

CC:

Hon Andrew Little, Minister for Justice
Ms Jan Logie, Parliamentary Under-secretary for Justice
Hon Tracey Martin, Minister for Children
Ms Janet Mason, Senior Legal Counsel, Te Ao Pepi
Judge Andrew Becroft Children's Commissioner

¹⁶ For example, in our Briefing to the Incoming Government. Available [at this link](#)