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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Custody, violence against women and violence against children**

### **Report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem**

#### *Summary*

The present report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem, is submitted to the Human Rights Council pursuant to resolution 50/7. The report addresses the link between custody cases, violence against women and violence against children, with a focus on the abuse of the term “parental alienation” and similar pseudo-concepts.



## I. Introduction

1. The present report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem, is submitted pursuant to Human Rights Council resolution 50/7. The Special Rapporteur, along with the other members of the Platform of Independent Expert Mechanisms on the Elimination of Discrimination and Violence against Women, has voiced concern about the pattern of ignoring intimate partner violence against women in determining child custody cases across jurisdictions.<sup>1</sup> Since raising specific concerns to Brazil<sup>2</sup> and Spain,<sup>3</sup> the Special Rapporteur has received reports of cases from countries where such violence has been ignored and where mothers making such allegations have been penalized by law enforcement and/or the judiciary responsible for determining custody cases. The tendency to dismiss the history of domestic violence and abuse in custody cases extends to cases where mothers and/or children themselves have brought forward credible allegations of physical or sexual abuse. In several countries, family courts have tended to judge such allegations as deliberate efforts by mothers to manipulate their children and to separate them from their fathers. This supposed effort by a parent alleging abuse is often termed “parental alienation”.

2. The report examines ways in which family courts in different regions refer to “parental alienation” or similar pseudo-concepts in custody cases, ignoring histories of domestic violence, which may lead to the double victimization of victims of such violence. The report also offers recommendations for States and other stakeholders on how to address the situation.

3. In preparing the report, the Special Rapporteur sought contributions from Member States, international and regional organizations, non-governmental organizations, academia and victims, and held a series of online consultations with stakeholders and experts. The Special Rapporteur has received over a thousand submissions, of which a large number were duplicated individual submissions, particularly from fathers’ organizations. Most submissions were received from the Western European and others group, followed by the Latin America and the Caribbean group, and the majority addressed systemic issues and the impact of parental alienation.

## II. Activities undertaken by the Special Rapporteur

4. The Special Rapporteur continued to collaborate closely with the Platform of Independent Expert Mechanisms on the Elimination of Discrimination and Violence against Women, contributing to its first thematic report on the digital dimension of violence against women.

5. On 4 October 2022, the Special Rapporteur presented the report on the nexus between the climate crisis, environmental degradation and related displacement, and violence against women and girls to the General Assembly.<sup>4</sup>

6. On 22 February 2023, the Special Rapporteur participated in a discussion organized by the Committee on the Elimination of Discrimination against Women at its eighty-fourth session on the equal and inclusive representation of women in decision-making systems.

7. On 6 March 2023, the Special Rapporteur delivered a statement at the opening meeting of the sixty-seventh session of the Commission on the Status of Women in New York and participated in the interactive expert panel on the priority theme of the session.

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<sup>1</sup> AL BRA 10/2022 and AL ESP 3/2020. These and all subsequent communications are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>. See also joint statement by the Platform of Independent Expert Mechanisms on the Elimination of Discrimination and Violence against Women, 31 May 2019, available at <https://rm.coe.int/final-statement-vaw-and-custody/168094d880>.

<sup>2</sup> AL BRA 10/2022.

<sup>3</sup> AL ESP 3/2020 and AL ESP 6/2021.

<sup>4</sup> [A/77/136](https://www.ohchr.org/en/press-releases/2022/10/136).

8. The Special Rapporteur conducted two country visits in 2022, one to Türkiye, from 18 to 27 July<sup>5</sup> and the other to Libya, from 14 to 21 December 2022.<sup>6</sup> In 2023, she visited Poland from 27 February to 9 March.

### III. Definition and use of the pseudo-concept of “parental alienation”

9. There is no commonly accepted clinical or scientific definition of “parental alienation”. Broadly speaking, parental alienation is understood to refer to deliberate or unintentional acts that cause unwarranted rejection by the child towards one of the parents, usually the father.<sup>7</sup>

10. The pseudo-concept of parental alienation was coined by Richard Gardner, a psychologist, who claimed that children alleging sexual abuse during high conflict divorces suffer from “parental alienation syndrome” caused by mothers who have led their children to believe that they have been abused by their fathers and to raise allegations of abuse against them.<sup>8</sup> He recommended draconian remedies to address the syndrome, including a complete cut-off from the mother in order to “deprogramme” the child.<sup>9</sup> It was argued that the more that children rejected the relationship with their fathers, the more evidence of the alienating syndrome was observed.

11. Gardner’s theory has been criticized for its lack of empirical basis, for its problematic assertions about sexual abuse and for recasting abuse claims as false tools for alienation, which, in some cases, have dissuaded evaluators and courts from assessing whether abuse has actually occurred.<sup>10</sup> It has been dismissed by medical, psychiatric and psychological associations, and in 2020 it was removed from the International Classification of Diseases by the World Health Organization. Nevertheless, it has gained considerable traction and has been widely used to negate allegations of domestic and sexual abuse within family court systems on a global scale.<sup>11</sup>

## IV. Parental alienation and its link to domestic violence

### A. Invoking parental alienation as an extension of domestic violence

12. Domestic violence is one of the most serious and pervasive human rights violations, in particular as it affects women and girls. While men can also fall victims to domestic violence, women are at a much higher risk and the dynamics of abuse are different for men.<sup>12</sup>

<sup>5</sup> [A/HRC/53/36/Add.1](#).

<sup>6</sup> [A/HRC/53/36/Add.2](#).

<sup>7</sup> A. Barnett, “A genealogy of hostility: parental alienation in England and Wales”, *Journal of Social Welfare and Family Law*, vol. 42, No. 1 (2020), pp. 18–29.

<sup>8</sup> Richard A. Gardner, *The Parental Alienation Syndrome: A Guide for Mental Health and Legal Professionals* (Creative Therapeutics, Cresskill, New Jersey, 1992) and *True and False Accusations of Child Sex Abuse* (Creative Therapeutics, Cresskill, New Jersey, 1992).

<sup>9</sup> Richard A. Gardner, *The Parental Alienation Syndrome and the Differentiation between Fabricated and Genuine Sexual Abuse* (Creative Therapeutics, Cresskill, New Jersey, 1987), pp. 225–230 and pp. 240–242.

<sup>10</sup> Joan S. Meier, “U.S. child custody outcomes in cases involving parental alienation and abuse allegations: what do the data show?”, *Journal of Social Welfare and Family Law*, vol. 42, No. 1 (2020), pp. 92–105.

<sup>11</sup> *Ibid.*; see also Linda C. Neilson, *Parental Alienation Empirical Analysis: Child Best Interests or Parental Rights?* (FREDA Centre for Research on Violence Against Women and Children, Vancouver, Canada, 2018); Jenny Birchall and Shazia Choudhry, *What About My Right Not to Be Abused: Domestic Abuse Human Rights and the Family Courts* (Women’s Aid Federation of England, Bristol, 2018).

<sup>12</sup> Marianne Hester, “Who does what to whom? gender and domestic violence perpetrators in English police records”, *European Journal of Criminology*, vol. 10, No. 5 (2013), pp. 623–663.

Given the prevalence of domestic violence in intimate relationships,<sup>13</sup> separation from a perpetrator can also be a highly dangerous period for the victim.<sup>14</sup> Allegations of domestic violence tend to receive insufficient scrutiny by courts<sup>15</sup> and to trigger problematic assumptions, for example that it causes little harm to the mother or child and that it ceases with separation.<sup>16</sup> The consequences of domestic violence and its effects on children are also misunderstood and underestimated by judges,<sup>17</sup> who tend to prioritize and grant contact with fathers. In doing so, judges fail in their duty to protect children from harm,<sup>18</sup> giving abusive fathers unsupervised access to their children, including in cases where judges have found that physical and/or sexual violence has occurred.<sup>19</sup>

13. Where judges acknowledge the occurrence of domestic violence, they may regard it as historic, assuming that is in the past.<sup>20</sup> Research<sup>21</sup> and submissions received demonstrate that perpetrators of domestic violence can also misuse family law proceedings to continue to perpetrate violence against their victims,<sup>22</sup> resulting in secondary traumatization. In this context, parental alienation may be employed as a useful tactic. An empirical analysis of parental alienation cases in Canada conducted in 2018 found that of 357 cases, 41.5 per cent involved assertions of domestic or child abuse, of which 76.8 per cent included alienation claims advanced by the alleged perpetrator.<sup>23</sup> In another study, parental alienation was mentioned in all 20 cases studied within the context of coercive control and child sexual abuse, and even when it was not explicitly used, the underlying ideas were still present.<sup>24</sup>

14. The use of parental alienation is highly gendered<sup>25</sup> and frequently used against mothers.<sup>26</sup> A study in Brazil found that women were accused of parental alienation in 66 per cent of cases, as opposed to 17 per cent of cases where a man was accused, and men made more unfounded accusations than women.<sup>27</sup> In Italy, the accusation was also overwhelmingly used against mothers.<sup>28</sup>

<sup>13</sup> According to global estimates by the United Nations Office on Drugs and Crime, more than half of homicides of women and girls in 2021 were committed by intimate partners or family members.

<sup>14</sup> Lynne Harne, *Violent Fathering and the Risks to Children: The Need for Change*, (Bristol University Press, Policy Press, 2011). See also submission by Patricia Fernández.

<sup>15</sup> Linda C. Neilson, *Spousal abuse, children and the legal system*, final report for the Canadian Bar Association (Law for the Futures Fund, University of New Brunswick, 2001).

<sup>16</sup> Susan B. Boyd and Ruben Lindy, “Violence against women and the B.C. Family Law Act: early jurisprudence”, *Canadian Family Law Quarterly*, vol. 35, No. 2 (2016), pp. 136–137. See also submission by NANE Women’s Rights Association.

<sup>17</sup> Donna Martinson and Margaret Jackson, “Family violence and evolving judicial roles: judges as equality guardians in family law cases”, *Canadian Journal of Family Law*, vol. 30, No. 1 (2017), p. 11.

<sup>18</sup> Adrienne Barnett, “Contact at all costs? Domestic violence and children’s welfare”, *Child and Family Law Quarterly*, vol. 26 (2014), pp. 439–462; see also J. Birchall and S. Choudhry, *What About My Right Not to Be Abused*.

<sup>19</sup> Yvonne Woodhead and others, “Family court judges’ decisions regarding post-separation care arrangements for young children”, *Psychiatry, Psychology, and Law*, vol. 22, No. 4 (2015), p. 52.

<sup>20</sup> Susan B. Boyd and Ruben Lindy, “Violence against women and the B.C. Family Law Act”.

<sup>21</sup> Daniel George Saunders and Katherine H. Oglesby, “No way to turn: Traps encountered by many battered women with negative child custody experiences”, *Journal of Child Custody*, vol. 13, No. 2–3 (2016), pp. 154–177; Lynne Harne, *Violent Fathering and the Risks to Children*.

<sup>22</sup> Submission by the Backbone Collective.

<sup>23</sup> L.C. Neilson, *Spousal abuse, children and the legal system*.

<sup>24</sup> Pierre-Guillaume-Prigent and Gwénola Sueur, «À qui profite la pseudo-théorie de l’aliénation parentale?», *Délibérée*, vol. 9 (2020), pp. 57–62.

<sup>25</sup> E. Sheehy and S.B. Boyd, “Penalizing women’s fear: intimate partner violence and parental alienation in Canadian child custody cases”, *Journal of Social Welfare and Family Law*, vol. 42, No.1 (2020), pp. 80–91. See also submissions by Australia’s National Research Organization for Women’s Safety and National Association of Women and the Law.

<sup>26</sup> Submission by Differenza Donna.

<sup>27</sup> Paula Inez Cunha Gomide and others, “Analysis of the psychometric properties of a parental alienation scale”, *Paidéia*, vol. 26, No. 65 (2016), pp. 291–298.

<sup>28</sup> Submission by Differenza Donna.

15. Common to the gendered use of parental alienation is the depiction of mothers as vengeful and delusional by their partners, courts and expert witnesses.<sup>29</sup> Mothers who oppose or seek to restrict contact or raise concerns are widely regarded by evaluators as obstructive or malicious,<sup>30</sup> reflecting the pervasive pattern of blaming the mother.<sup>31</sup>

16. Allegations of the mother alienating the child are often used to demonstrate that awarding custody to the mother is not in the best interest of the child as she will not facilitate contact with the father.<sup>32</sup> As noted in a number of submissions,<sup>33</sup> domestic violence and parental alienation are often blurred in family law systems, to the detriment of the victims of violence. Protective mothers are placed in an invidious position, in which insisting on presenting evidence of domestic violence or child abuse may be seen as attempts to alienate children from the other parent, which could result in the loss of primary care or contact with their children.<sup>34</sup>

17. The use of parental alienation tends to become a self-fulfilling prophecy. As soon as parents are judged as being “alienating,” “implacable” or “failing to listen”, their actions or inaction can be prejudiced.<sup>35</sup> As a result, allegations of domestic violence remain side-lined as a one-off occurrence.<sup>36</sup> This reduces domestic violence to a minor conflict and stigmatizes and pathologizes women and children.<sup>37</sup>

18. The consequences of biased custody decisions can be catastrophic, resulting in specific incidents when contact has been awarded to fathers with a violent history,<sup>38</sup> in the death of children and women and children being placed at gunpoint.<sup>39</sup> In some cases, women have been imprisoned for violating custodial rights and protective restraining orders have been overturned.<sup>40</sup>

19. Parental alienation can have a significant impact on custody outcomes. In the United States of America, data show that rates of custody losses between mothers and fathers differ significantly, depending on which parent alleges alienation. When a father has alleged alienation by the mother, her custody rights have been removed 44 per cent of the time. When the situation was reversed, mothers gained custody from fathers only 28 per cent of the time. Thus, when alienation is accused, mothers were twice as likely to lose custody compared to fathers. This has led to an annual estimate of 58,000 children in the United States being placed in dangerous home environments.<sup>41</sup> In New Zealand, a survey demonstrated that 55 to 62 per cent of mothers reported being accused of parental alienation, often diverting the attention courts from legitimate allegations of abuse.<sup>42</sup>

<sup>29</sup> Adrienne Barnett, “Greater than the mere sum of its parts: Coercive control and the question of proof”, *Child and Family Law Quarterly*, vol. 29, No. 4 (2017), pp. 379–400.

<sup>30</sup> See J. Birchall and S. Choudhry, *What About My Right Not to Be Abused*; see also A. Barnett, “Contact at all costs? (2014) and “Greater than the mere sum of its parts” (2017).

<sup>31</sup> Patrizia Romito, *A Deafening Silence: Hidden Violence against Women and Children* (Bristol, Bristol University Press, 2008).

<sup>32</sup> Joint statement by the Platform of Independent Expert Mechanisms.

<sup>33</sup> Submissions by the Victims’ Commissioner of the Greater London Authority and the SHERA Research Group.

<sup>34</sup> L.C. Neilson, *Parental Alienation Empirical Analysis*.

<sup>35</sup> Briony Palmer, “Have we created a monster? Intractable contact disputes and parental alienation in context”, Family Law Week, Association for Shared Parenting (2017).

<sup>36</sup> Zoe Rathus, “A history of the use of the pseudo-concept of parental alienation in the Australian family law system: contradictions, collisions and their consequences”, *Journal of Social Welfare and Family Law*, vol. 42, No. 1 (2020), pp. 5–17.

<sup>37</sup> P-G. Prigent and G. Sueur «À qui profite la pseudo-théorie de l’aliénation parentale?».

<sup>38</sup> Submissions by Mamy Mówią DOŚĆ and Women’s Aid Federation of England.

<sup>39</sup> Submission by *Mor Çatı Kadın Sığınağı Vakfı*.

<sup>40</sup> Submission by *Lif án ofbeldis*.

<sup>41</sup> Joan S. Meier and Sean Dickson, “Mapping gender: Shedding empirical light on family courts’ treatment of cases involving abuse and alienation”, *Minnesota Journal of Law & Inequality*, vol. 35, No. 2 (2017), pp. 311–334.

<sup>42</sup> Submission by the Backbone Collective.

## B. Tactics to trump allegations of domestic violence

20. There are numerous ways in which allegations of domestic violence are sidelined and delegitimized through invoking parental alienation:

(a) Ignoring the history of domestic violence against mothers and children in decisions of custody and visitation rights, as evidenced in countries such as Denmark,<sup>43</sup> Italy<sup>44</sup> and Ukraine.<sup>45</sup> In Italy, the invisibility of gender-based and domestic violence in civil courts has been identified<sup>46</sup> and a 2022 report found that in 96 per cent of separations involving domestic violence, courts did not consider violence as being relevant to child custody.<sup>47</sup> In some countries, the act of dismissing domestic violence is enabled by the fact that there is no legal requirement for courts to examine the history of violence, as is the case in Hungary;<sup>48</sup>

(b) Efforts to scrutinize domestic violence are not actively pursued. In 2017, a Parliamentary Commission of Inquiry in Brazil found a correlation between parental alienation, domestic violence and sexual abuse. However, lawyers and experts who defend parental alienation lobbied to ensure that no measures were taken to protect victims;

(c) Despite a history of domestic violence, courts have invoked the pseudo-concept of parental alienation or blamed mothers for purposely isolating children from their fathers, even where the safety of the mother or the child was at risk. This has been mentioned in submissions received from entities in Ireland,<sup>49</sup> Israel,<sup>50</sup> Türkiye<sup>51</sup> and Ukraine;<sup>52</sup>

(d) According to a submission received from Japan, even in cases where domestic violence has been acknowledged, mothers have been accused of being selfish for not enduring abuse, sacrificing themselves, for the sake of their children.<sup>53</sup>

21. By ignoring or undermining domestic violence in a family, courts fail to acknowledge the issue in their decisions, thereby presenting domestic violence as an exception rather than the norm in cases of parental alienation.

## V. Impact of parental alienation on the best interest of the child

22. In the context of domestic violence, there is a duty to listen and respond to children's accounts of violence, with a view to validating those experiences, ensuring that decisions are better informed and that the child's safety and welfare are promoted.<sup>54</sup> However, research demonstrates that children's views are selectively integrated, depending on whether they accord with the prevailing trend towards "pro-contact" for both parents,<sup>55</sup> such as in Croatia.<sup>56</sup>

23. When custody decisions are made in favour of the parent who claims to be alienated without sufficiently considering the views of the child, the child's resilience is undermined and the child continues to be exposed to lasting harm. It may also sever the stable and safe

<sup>43</sup> Submission by *Landsorganisation af Kvindekrisecentre*.

<sup>44</sup> Submissions by Donne in Rete contro la violenza and Pangea Foundation Onlus.

<sup>45</sup> Submission by the Centre Women's Perspectives.

<sup>46</sup> Senate of Italy, Parliamentary Commission (Doc. XXII-BIS, n. 4).

<sup>47</sup> Ibid. (Doc. XXII-BIS, n. 10).

<sup>48</sup> Submission by NANE Women's Rights Association.

<sup>49</sup> Submission by Women's Aid Ireland.

<sup>50</sup> Submission by the Rackman Centre for the Advancement of the Status of Women.

<sup>51</sup> Submission by Cemre Topal.

<sup>52</sup> Submission by Centre Women's Perspectives and the Human Rights in Democracy Centre.

<sup>53</sup> Submission by Minato Sogo Law Office, Japan.

<sup>54</sup> Gillian S. MacDonald, "Hearing children's voices? Including children's perspectives on their experiences of domestic violence in welfare reports prepared for the English courts in private family law proceedings", *Child Abuse and Neglect*, vol. 65 (2017), pp. 1–13.

<sup>55</sup> Louise Caffrey, "Hearing the 'voice of the child'? The role of child contact centres in the family justice system", *Child and Family Law Quarterly*, vol. 25, No. 4 (2013), pp. 357–379; G.S.

Macdonald, "Hearing children's voices?".

<sup>56</sup> Submission by Autonomous Women's House Zagreb.

bond with the non-abusive primary caretaker.<sup>57</sup> Submissions from Australia,<sup>58</sup> Austria,<sup>59</sup> Brazil,<sup>60</sup> Colombia,<sup>61</sup> Germany<sup>62</sup> and the United Kingdom of Great Britain and Northern Ireland<sup>63</sup> report cases where children were removed from the primary carer and compelled to reside with the perpetrator parent, whom they resist. In addition, submissions noted how police child protection services have enforced access and custody orders in cases where the child clearly did not wish to comply,<sup>64</sup> traumatizing both the child and the mother.<sup>65</sup>

24. Some countries have established good practices focused on child participation and the best interest of the child. For example, the Domestic Abuse Commissioner for England and Wales has developed a model on how to approach a child who is reluctant or resistant to making contact with the non-resident parent-perpetrator through a trauma-informed lens, recognizing that the strategy of blaming the resident parent for such resistance may be part of a pattern of coercive control.<sup>66</sup> In Scotland, a Domestic Abuse Children's Rights Officer serves children who have experienced domestic violence and feeds their views directly into court cases of contested contact, without an order from a court.<sup>67</sup>

25. In Mexico, the constitutional court intervened to stop two attempts to introduce a specific provision recognizing parental alienation, which would have resulted in the potential loss of parental authority of the alleged alienating parent and a violation of the rights of the child in custody proceedings. The first case, in the State of Oaxaca in 2016, was held to be partially unconstitutional as it violated the principle of progressive autonomy of the child and the right of minors to be heard in judicial procedures.<sup>68</sup> The second, in the State of Baja California in 2017, struck down a similar case as unconstitutional on the basis that the suspension or loss of parental authority as a consequence of parental alienation worked against the best interests of the child. The Supreme Court noted that the loss of parental authority did not translate into an appropriate measure to protect the rights of minors, which would likely generate undue and unjustified effects on their rights to healthy development and to maintain effective relationships with both parents. The court also recognized that it was likely to generate negative experiences as a result of changes in the child's environment, making it feasible that the child might be revictimized by this measure.<sup>69</sup>

## VI. Relevant international and regional standards and practice

### A. Legal standards governing custody issues, including the use of parental alienation

26. The Committee on the Elimination of Discrimination against Women noted that the stereotyped roles of women and men also manifest as gender stereotyping and prejudices in judicial systems, which result in the denial of effective justice to women and other victims of violence.<sup>70</sup> The Committee called on States to ensure that gender stereotyping is addressed and dealt with adequately. In 2014, in its decision on the case of *Gonzales Carreno v. Spain*,

<sup>57</sup> Sandra A. Graham-Bermann and others, "Factors discriminating among profiles of resilience and psychopathology in children exposed to intimate partner violence", *Child Abuse and Neglect*, vol. 33, No. 9 (2009), pp. 648–660.

<sup>58</sup> Submission by Women in Hiding.

<sup>59</sup> Submission by Suzanne Wunderer.

<sup>60</sup> Submissions by SHERA Research Group and Paola Matosi.

<sup>61</sup> Submissions by Diana Rodríguez and the Ministry of Justice.

<sup>62</sup> Submission by Association of Single Mothers and Fathers.

<sup>63</sup> Submission by Domestic Abuse Commissioner for England and Wales.

<sup>64</sup> Submissions by Diana Rodríguez, the Ministry of Justice; Now and others; Federation of Mother and Child Homes and Shelters; and Association to Assist Women and Mothers; Diotima Centre.

<sup>65</sup> Submission by Domestic Abuse Commissioner for England and Wales.

<sup>66</sup> *Ibid.*

<sup>67</sup> Submission by Martha Scott.

<sup>68</sup> Government of the State of Oaxaca, Mexico ([Official Journal of the Federation](#)).

<sup>69</sup> *Ibid.*

<sup>70</sup> See [CEDAW/C/GC/33](#).

the Committee recommended that the history of domestic violence be considered when determining visitation schedules to ensure that women or children are not endangered.<sup>71</sup>

27. The failure to address intimate partner violence and violence against children in custody rights and visitation decisions is a violation of the rights of the child and the principle of the best interest of the child. Article 12 of the Convention on the Rights of the Child provides that States parties shall ensure to children who are capable of forming their own views the rights to express those views freely in all matters affecting them and for their views to be given due weight in accordance with their age and maturity. It also states that children shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting them, either directly, or through a representative or an appropriate body. Article 19 provides the right to be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment, or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has care of the child.

28. Regional human treaties have also addressed issues of parental custody and its relationship to violence against women and children. Articles 31 and 45 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence require judicial authorities not to issue contact orders without considering incidents of violence against the non-abusive carer and the child and to impose “effective, proportionate and dissuasive” sanctions. In its monitoring activity to date, the Group of Experts on Action against Violence against Women and Domestic Violence has highlighted the strengths and weaknesses of States parties in the implementation of the two articles with regard to victims of domestic violence, including the widespread use of parental alienation as a means of minimizing evidence of domestic violence.<sup>72</sup> In its third general report,<sup>73</sup> the Group of Experts identified 12 cross-cutting actions, including the need to “ensure that relevant professionals are informed of the absence of scientific grounds for ‘parental alienation syndrome’ and the use of the notion of ‘parental alienation’ in the context of domestic violence against women”. The Group also submitted written observations to the European Court of Human Rights in connection with the case of *Kurt v. Austria*,<sup>74</sup> which concerned the murder of an 8-year-old boy by his father after previous allegations by the mother of domestic violence.

29. The European Convention on Human Rights recognizes that domestic violence falls within the scope of its articles 2, 3, 8 and 14<sup>75</sup> and that labelling mothers as “uncooperative parents” or threatening them with liability for child abduction for refusing to allow contact between their children and a father in cases where the father is a perpetrator of violence is a breach of the rights to family life under article 8.<sup>76</sup>

30. Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women obliges States parties to “condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence”, as well as to act “with due diligence to prevent, investigate and impose penalties for violence against women”.

31. Finally, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the Maputo Protocol), in article 7, explicitly affirms that “in case of separation, divorce or annulment of marriage, women and men shall have reciprocal rights and responsibilities towards their children. In any case, the interests of the children shall be given paramount importance”.

<sup>71</sup> See CEDAW/C/58/D/47/2012.

<sup>72</sup> Council of Europe, third general report on the activities of the Group of Experts on Action against Violence against Women and Domestic Violence (2022), available at <https://www.coe.int/en/web/istanbul-convention/-/3rd-general-report-on-greivio-s-activities#>.

<sup>73</sup> *Ibid.*

<sup>74</sup> Application No. 62903/15.

<sup>75</sup> See *Opuz v. Turkey*, Application No. 33401/02, 9 June 2009; *Talpis v. Italy*, Application No. 41237/14, 2 March 2017; *Kurt v Austria*, Application No. 62903/15, 15 June 2021; and *Landi v. Italy*, Application No. 10929/19, 7 April 2022.

<sup>76</sup> See *I.M. and Others v. Italy*, Application No. 25426/20, 10 November 2022; and *Bevaquca v. Bulgaria*, Application No. 71127/01, 12 June 2008.



## B. Engagement of human rights mechanisms on preventing violence against women and children within the context of custody

32. Several international and regional mechanisms recognize the importance of considering the history and prevalence of domestic violence when deciding on custody cases, as well as recognizing the use of parental alienation as an extension of domestic violence. The Committee on the Elimination of Discrimination against Women recalled the State's responsibility to consider "the specific needs of women and children in determining child custody in cases involving gender-based violence in the domestic sphere,"<sup>77</sup> by adopting measures to systematically consider domestic violence in child custody decisions".<sup>78</sup> Moreover, the Committee stated that "the rights or claims of perpetrators or alleged perpetrators during and after judicial proceedings ... should be determined in the light of women's and children's human rights to life and physical, sexual and psychological integrity, and guided by the principle of the best interest of the child".<sup>79</sup>

33. With regard to the pseudo-concept of parental alienation, the Committee issued a number of concluding observations in which it directed States parties to abolish the use of parental alienation in court cases and to conduct compulsory judicial training on domestic violence, including its impact on children.<sup>80</sup> The Committee expressed concern about the negative effect of the advocacy of fathers' rights groups and public discourse about parental alienation syndrome in Costa Rica and recommended that the State party "take all measures necessary to discourage the use of 'parental alienation syndrome' by experts and by courts in custody cases".<sup>81</sup> It adopted similar positions New Zealand<sup>82</sup> and Italy.<sup>83</sup>

34. The Committee on the Rights of the Child has developed several general comments<sup>84</sup> relevant to family law cases, particularly on the right of the child to be heard, to be free from violence and to have his or her best interests taken as a primary consideration. Among the Committee's decisions, one case concerns a father who alleged that Paraguay had failed to enforce a contact and visitation regime between himself and his daughter.<sup>85</sup> In a mixed decision, the Committee asserted the importance of avoiding the negative consequences of a non-compliant parent not allowing contact between the non-resident parent and his or her child, while also referring to the situation as one of "gradual alienation".<sup>86</sup> Some experts have commented that the use of such diagnostic labels is regrettable, pointing out that the Committee should have avoided setting precedence that lays the ground for further abuse and misrepresentations of the attitudes of parents in highly complex family law disputes.<sup>87</sup>

35. Likewise, the Committee of Experts of the Follow-up Mechanism of the Belém do Pará Convention has underscored the obligation of the States parties to "take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations, or to modify legal or customary practices which sustain the persistence and tolerance of violence against women", particularly within the context of the use of the controversial pseudo-concept of parental alienation against women.<sup>88</sup> In 2022, the Committee and the Special Rapporteur urged States parties to explicitly prohibit the use of parental alienation

<sup>77</sup> CEDAW/C/CRI/CO/7, para. 43 (a).

<sup>78</sup> CEDAW/C/FIN/CO/7, para. 39 (c).

<sup>79</sup> CEDAW/C/GC/35, para. 31(ii).

<sup>80</sup> CEDAW/C/ESP/CO/7-8, paras. 38–39, CEDAW/C/RUS/CO/8, para. 46 (c), CEDAW/C/CAN/CO/8-9, para. 57, and CEDAW/C/SWE/10, para. 46 (a).

<sup>81</sup> CEDAW/C/CRI/CO/7, para. 43 (b).

<sup>82</sup> CEDAW/C/NZL/CO/8, para. 48 (d).

<sup>83</sup> CEDAW/C/ITA/CO/7, paras. 51–51 (a).

<sup>84</sup> CRC/C/GC/12, CRC/C/GC/13 and CRC/C/GC/14.

<sup>85</sup> CRC/C/83/D/30/2017.

<sup>86</sup> *Ibid.*, para. 8.7.

<sup>87</sup> See, for example, opinion by N.E. Yaksic, Communication No. 30/2017 *N.R. v. Paraguay*, Leiden Children's Rights Observatory, University of Leiden.

<sup>88</sup> Joint statement of the Committee of Experts of the Follow-up Mechanism of the Belém do Pará Convention and the Special Rapporteur published on 12 August 2022, available at <https://www.ohchr.org/sites/default/files/documents/issues/women/sr/2022-08-15/Communique-Parental-Alienation-EN.pdf>.

syndrome in judicial proceedings, so that children and mothers are not placed in a situation of vulnerability,<sup>89</sup> adding that it could be used as a continuum of gender-based violence and could invoke the responsibility of States for institutional violence.<sup>90</sup>

### C. Gendered application of the Convention on the Civil Aspects of International Child Abduction

36. The Hague Convention on the Civil Aspects of Child Abduction (1980) covers international parental child abduction and provides an expeditious process for the return of a child internationally abducted from his/her habitual residence in the territory of one State party to the Hague Convention by a parent to the territory of another State party to the Convention so that the courts in that jurisdiction can settle a custody dispute. However, the Convention does not mention domestic violence, neither does it include protections for abused mothers.<sup>91</sup> As a result, when mothers flee with their children across international borders, they become vulnerable to being treated as an “abducting” parent by the courts under the Convention.

37. Around three-quarters of all cases filed under the Hague Convention are against mothers, most of whom are fleeing domestic violence or seeking to protect their children from abuse.<sup>92</sup> Article 13 of the Convention states that an order for the return of a child can be rejected if there is a “grave risk” of harm. However, courts have been reluctant to accept exposure to domestic violence as a reason not to return children to another State party. In some cases, courts have returned children to their country of habitual residence even where they have found that violence has occurred against the children,<sup>93</sup> frequently compelling women and children to return to abusive and life-threatening situations.<sup>94</sup> Migrant women who seek to return to their home countries for familial support face additional barriers if they are forced back owing to accusations of child abduction.<sup>95</sup>

38. Some courts do however consider family and domestic violence when interpreting and applying the Hague Convention. The New Zealand Court of Appeal held that both the mother’s history as a survivor of family and domestic violence and her potential future in Australia were pertinent to the interpretation of the grave risk exception and subsequently declined to order the child’s return.<sup>96</sup>

39. In an attempt to address shortcomings of the Hague Convention, the Government of Australia implemented legislation that requires Australian courts to consider allegations of family and domestic violence before any return orders are made for children under the Convention.<sup>97</sup>

## VII. Link between parental alienation and child sexual abuse

40. The link between parental alienation and child sexual abuse is apparent from its origins as a pseudo-concept and from the high incidence of child sexual abuse in the context of domestic violence. While Gardner acknowledged the prevalence of child sexual abuse allegations in custody litigation, he dismissed many of these claims as false, advanced by the

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Adriana De Ruiter, “40 years of the Hague Convention on child abduction: legal and societal changes in the rights of a child”, European Parliament, November 2020.

<sup>92</sup> Hague Conference on Private International Law, seventh meeting of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention (October 2017).

<sup>93</sup> Confidential submission from France.

<sup>94</sup> Submission from University College London.

<sup>95</sup> Confidential submission from France.

<sup>96</sup> Court of Appeal of New Zealand, *Lrr v. Col*, CA743/2018, [2020] NZCA 209.

<sup>97</sup> Government of Australia, “Ensuring family safety in Australian Hague Convention cases” (12 December 2022).

mother to alienate the child from the father.<sup>98</sup> By reframing a mother as a liar who “emotionally abuses” her children, the parental alienation label diverts the attention of courts away from the question as to whether a father is abusive and replaces it with a focus on a supposedly lying or deluded mother or child.<sup>99</sup>

41. How parental alienation syndrome is used by men to dismantle allegations of physical, sexual or emotional abuse through legal means is discussed in the submissions of Argentina, Bolivia (Plurinational State of), Brazil,<sup>100</sup> Colombia,<sup>101</sup> Iceland,<sup>102</sup> Mexico, Puerto Rico and Uruguay.<sup>103</sup> A submission from France<sup>104</sup> describes how mothers who report disclosures of sexual abuse corroborated by psychological examinations are still removed and placed in the custody of the father (the perpetrator) after he invoked parental alienation.

42. Child sexual offenders have invoked parental alienation to limit, obstruct or delegitimize the progress in protecting the rights of child victims.<sup>105</sup> In Brazil,<sup>106</sup> the recognition of parental alienation in legislation<sup>107</sup> and the imposition of sanctions for acts of parental alienation has also facilitated its use as a defence for sexual abuse.

## VIII. Disproportionate impact on women from minority groups

43. Minority women face additional barriers with regard to parental alienation, including access to justice and negative stereotypes.<sup>108</sup> In one study in the United Kingdom of Great Britain and Northern Ireland, African-Caribbean women viewed judges as being disconnected and judgmental, while South Asian and African-Caribbean women were pressured by court-appointed welfare officers to give men a chance even when they had been repeatedly unreliable and had been given prison sentences.<sup>109</sup> Most of the women reported feeling revictimized and “very belittled, very diminished, not really listened to” by professionals.<sup>110</sup>

44. According to submissions received, in Italy secondary victimization is more evident among victims of trafficking and migrant women.<sup>111</sup> Migrant women are “often judged as inadequate mothers, unable to protect and take care of their children” who are often placed in group homes.<sup>112</sup> In Ireland, migrant women whose partner is of Irish origin also face challenges.<sup>113</sup> In Portugal, while migrant women are labelled as parent alienators, educated women are seen as not fitting into the mainstream image of victims of domestic violence.<sup>114</sup> In Austria<sup>115</sup> and Japan,<sup>116</sup> migrant mothers are at a particular disadvantage owing to language barriers and vulnerable immigration status. In the United Kingdom, intersecting vulnerabilities along lines of race, disability, immigration status and sexuality compound the

<sup>98</sup> R.A. Gardner, *The Parental Alienation Syndrome*.

<sup>99</sup> Joan S. Meier, “Getting real about abuse and alienation: A critique of Drozd and Olesen’s decision tree”, *Journal of Child Custody*, vol. 7, No. 4 (2010), pp. 228–229.

<sup>100</sup> Submission by Cláudia Galiberne Ferreira.

<sup>101</sup> Submissions by Diana Rodríguez and Alexandra Correa.

<sup>102</sup> Submission by Líf án ofbeldis.

<sup>103</sup> Submission by Equality Now and others.

<sup>104</sup> Confidential submission from France.

<sup>105</sup> Submission by Carlos Rozanski.

<sup>106</sup> Submission by Cláudia Galiberne Ferreira.

<sup>107</sup> Law No.12.318 of 26 August 2010.

<sup>108</sup> Submission by Women against Violence Europe.

<sup>109</sup> Ravi K. Thiara and Aisha K. Gill, *Domestic Violence, Child Contact and Post-Separation Violence: Issues for South Asian and African-Caribbean Women and Children* (London, National Society for the Prevention of Cruelty to Children, 2012).

<sup>110</sup> Ibid.

<sup>111</sup> Submission by Donne in Rete contro la violenza.

<sup>112</sup> Submission by Pangea Foundation Onlus.

<sup>113</sup> Submission by SiSi.

<sup>114</sup> Submission by Dignidade and others.

<sup>115</sup> Submission by Suzanne Wunderer.

<sup>116</sup> Submission by Minato Sogo Law Office.

difficulties women face when experiencing domestic violence in child custody cases.<sup>117</sup> Mothers in structurally disadvantaged positions are more likely to have their children removed or their parenting capacities judged harshly.<sup>118</sup> In New Zealand, Maori women are more likely to report the involvement of the child protection agency in family court proceedings than non-Maori women.<sup>119</sup> In addition, survey data found that minority women experienced discrimination and a combination of sexism, racism and ableism.<sup>120</sup>

## IX. Widespread adoption of parental alienation in justice systems

45. The pseudo-concept of parental alienation or similar iterations are widely used in different jurisdictions. In 2010, Brazil passed Law No.12.318, which specifically defined parental alienation (article 2) and foresaw sanctions for acts deemed to be parental alienation (article 6), which build up from warning the alienator, to extending the amount of contact of alienated parents with the child, to fining the alienator parent, swapping custody arrangements and suspending the authority of the alienating parent.

46. Other jurisdictions use iterations of parental alienation, such as “high conflict disputes”,<sup>121</sup> “parental manipulation”<sup>122</sup> “attachment intolerance”<sup>123</sup> or “parent-child relational problem”.<sup>124</sup> In the United States, the use of the parental alienation in family courts was given further support when the *Diagnostic and Statistical Manual of Mental Disorders* introduced two new diagnoses: “child affected by parental relationship distress” and “child psychological abuse”, which pro-parental alienation syndrome professionals use for identifying alienation.<sup>125</sup> Although the terms parental alienation or parental alienation syndrome are no longer included in the *Diagnostic and Statistical Manual*, several authors of the manual clarified that a parental relationship distress diagnosis encompasses a range of parental alienation behaviours and outcomes.<sup>126</sup>

47. In Portugal,<sup>127</sup> high conflict divorces are reportedly treated as a euphemism for parental alienation and in Iceland parental alienation is now legally defined as “withholding contact”.<sup>128</sup> In New Zealand, different terms are used as “a strategy of plausible deniability” to effectively introduce the pseudo-concept of parental alienation, such as “resist-refuse”, “enmeshment”, coaching or poisoning a child, gatekeeping or over-anxious mothering.<sup>129</sup> In Italy, parental alienation has been “replaced with new expressions that reiterate the same pseudo-concept”,<sup>130</sup> despite the fact that the Supreme Court has called the validity of the so-called parental alienation concept into question and it has been repudiated by the Italian Psychology Society and the Ministry of Health.<sup>131</sup>

48. To date, there is only one example where the use of parental alienation is explicitly prohibited by legislation, namely in Spain, where the use of these theoretical pseudo-concepts

<sup>117</sup> Submission by Women’s Aid Federation of England.

<sup>118</sup> Submissions by AVA (Against Violence and Abuse) and Women’s Resource Centre.

<sup>119</sup> Submission by Auckland Coalition for the Safe of Women and Children.

<sup>120</sup> Submission from the Backbone Collective.

<sup>121</sup> Submissions by Dignidade and others and SiSi.

<sup>122</sup> Submission by the Government of Portugal.

<sup>123</sup> Submission by the German Institute for Human Rights

<sup>124</sup> As outlined in American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (4th ed.); see also Morgan Shaw and Robert Geffner, “Alienation and reunification issues in family courts: Theory, research, and programs in child custody cases”, *Journal of Family Trauma, Child Custody and Child Development*, vol. 19, No. 3-4 (2012), pp. 203–213.

<sup>125</sup> William Bernet and others, “Parental alienation, DSM-5, and ICD-11”, *American Journal of Family Therapy*, vol. 38, No. 2 (2010), pp. 76–187.

<sup>126</sup> Ibid.

<sup>127</sup> Submission by Dignidade and others.

<sup>128</sup> Submission by Líf án ofbeldis.

<sup>129</sup> Submission by the Backbone Collective.

<sup>130</sup> Submission by Fondazione Pangea Onlus.

<sup>131</sup> CEDAW/C/ITA/7, paras. 51 and 52.

is prohibited as being without a scientific basis<sup>132</sup> and explicitly called out as “pseudoscience”.<sup>133</sup> Despite this prohibition, and contrary to the advice provided in legislation and by the General Council of the Judiciary in Spain,<sup>134</sup> parental alienation has been used to justify decisions in custody cases.<sup>135</sup>

49. A similar situation exists in Colombia, where, despite advice provided by the General Council of the Judiciary against using parental alienation in cases involving gender-based violence,<sup>136</sup> the Supreme Court of Justice has generated a jurisprudential line in support of this theory, particularly in cases where mothers have filed complaints concerning the sexual abuse of children, in order to label them as suffering from mental problems and/or submitting false accusations. Parental alienation has also been used to establish that one parent, usually the mother, is violating the right of the other parent to communicate with the child, as witnessed in cases in Greece,<sup>137</sup> Italy<sup>138</sup> and Spain.<sup>139</sup>

50. Some systems impose an additional obligation on primary caregivers to facilitate contact. Germany has incorporated a legal presumption that contact between both parents is generally in the best interest of the child, but has added a good conduct clause, by which each parent must refrain from any act that impairs the child’s relationship with the other parent and must also promote a positive attitude towards contact.<sup>140</sup> However, this presumption works against victims of domestic violence in that any lack of perceived attachment tolerance arising from violence may impact custody allocation. In Greece, one parent is obligated to facilitate and support the child’s regular communication with the other parent, which prioritizes communication over safety, with mothers facing heavy fines and imprisonment for failing to do so.<sup>141</sup> Similar sentencing has been reportedly imposed in Croatia,<sup>142</sup> Iceland,<sup>143</sup> Ireland,<sup>144</sup> and Spain.<sup>145</sup> In England and Wales, a statutory presumption was introduced that requires courts to consider the involvement of both parents post-separation as being in the children’s best interests.<sup>146</sup> There is evidence that lower courts are applying the approach in cases of domestic violence, which pressures mothers to agree to contact.<sup>147</sup>

51. Some legal systems have incorporated parental alienation into State-funded evaluator practices. For example, in England and Wales, the Children and Court Family Advisory Service, which provides independent reports regarding the best interest of the child to the family court, uses the term “alienating behaviours”<sup>148</sup> to describe “circumstances where there is an ongoing pattern of negative attitudes, beliefs and behaviours of one parent (or carer) that have the potential or expressed intent to undermine or obstruct the child’s relationship

<sup>132</sup> Draft organic law for the protection of children and adolescents against violence (proyecto de ley orgánica de protección integral a la infancia y la adolescencia frente a la violencia).

<sup>133</sup> Submission by Equality Now and others. The majority of the submissions for the report agreed with this assessment, however, a small minority did not, see submissions by: the Parental Alienation Study Group, the Global Action for Research Integrity in Parental Alienation, Stan Korosi (Dialogue-in-Growth), the International Council on Shared Parenting, We are Fathers, We are Parents Forum and Recover our Kids.

<sup>134</sup> Submissions by Cristina Fernández, Patricia Fernández and Bárbara San Pedro.

<sup>135</sup> AL ESP 3/2020.

<sup>136</sup> Submissions by Diana Rodríguez and the Minister of Justice of Colombia.

<sup>137</sup> Submission by Diotima Centre.

<sup>138</sup> Ann Lubrano Lavadera and others, “Parental alienation syndrome in Italian legal judgments: An exploratory study”, *International Journal of Law and Psychiatry*, vol. 35, No. 4 (2012), pp. 334–342.

<sup>139</sup> Glòria C. Vila, “Parental alienation syndrome in Spain: opposed by the Government but accepted in the Courts”, *Journal of Social Welfare and Family Law*, vol. 42, No. 1 (2019), pp. 45–55.

<sup>140</sup> Submission by the German Institute of Human Rights.

<sup>141</sup> Submission by Diotima Centre.

<sup>142</sup> Submission by Autonomous Women’s House Zagreb.

<sup>143</sup> Submission by Líf án ofbeldis.

<sup>144</sup> Submission by SiSi.

<sup>145</sup> Confidential submission from Spain.

<sup>146</sup> See Children Act 1989, sect. 1 (2A).

<sup>147</sup> Felicity Kaganas, “Parental involvement: a discretionary presumption”, *Legal Studies*, vol. 38, No. 4 (2018), pp. 549–570.

<sup>148</sup> The first step in assessing the child’s resistance or rejection of a parent is to consider whether domestic abuse or other forms of harmful parenting are factors.

with the other parent. It is one of a number of reasons why a child may reject or resist spending time with one parent post-separation.”<sup>149</sup>

52. Other jurisdictions have reacted more cautiously to attempts to formally incorporate the pseudo-concept of parental alienation into legal systems by either undertaking additional research on the issue or by applying human rights law to its adoption. After intensive investigation, the Canadian Department of Justice concluded that the use of labels and terminology such as parental alienation syndrome raises the stakes in the confrontation between parents and usually fails to take account of the child’s needs and wishes. The Department also noted that all those involved in such cases tended to explain anything that transpires in high-conflict separations by using these labels.<sup>150</sup> The Government of Ireland commissioned research on how other jurisdictions approach parental alienation in 2021 and announced an open consultation on whether any legislative and/or policy changes were required.<sup>151</sup>

53. In terms of good practices in tackling the negative consequences of such approaches, Australia has announced that it will remove the presumption of equal shared parental responsibility as it may lead to unjust outcomes and compromise the safety of children. The proposed bill replaces previous tests with a test consisting of six factors to determine the best interest of the child: promoting the safety of the child and the carer; the views of the child; the needs of the child; the benefit of maintaining relationships with each parent and other significant people, where it is safe to do so; the capacity of each proposed carer to provide for the child’s needs; and any other relevant factors.<sup>152</sup>

54. Furthermore, the Supreme Court of Italy stated that the exclusive custody of a minor cannot be based only on the diagnosis of a parental alienation syndrome or a “malicious mother” syndrome, and that judges must verify the foundation, at the scientific level, of any advice that deviates from official medical science.<sup>153</sup>

## X. Systemic issues

### A. Gender inequality in laws and legal systems

55. Some legal systems have not yet eradicated gender inequality and discrimination in legislation and policy. In Iraq, for example, there is no legal protection for persons subjected to domestic violence, despite the discussion of an Anti-Domestic Violence Bill since 2020. In custody cases, if a mother prevents her child from seeing his/her father, the father can file a complaint against the mother and a warrant may be issued against her, which does not apply to the father’s non-compliance.

56. A lack of clear legal definition of domestic violence in some jurisdictions, such as in the Russian Federation, poses a challenge.<sup>154</sup> The Government has stopped addressing the lack of clarity in family law by citing concerns such as parental privacy and the freedom to raise children in accordance with parental beliefs, a concern supported by the Russian Orthodox Church. In 2017, domestic violence was partially decriminalized and is only considered a criminal offence if the victim is hospitalized.

57. States that incorporate a pluralistic family law system can systemically disadvantage women. Under religious laws in some countries, the father is automatically given custody of

<sup>149</sup> Children and Family Court Advisory and Support Service, “Alienating behaviours: What are alienating behaviours?”, available at <https://www.cafcass.gov.uk/grown-ups/parents-and-carers/divorce-and-separation/what-to-expect-from-cafcass/alienating-behaviours/>.

<sup>150</sup> Government of Canada, “Managing Contact Difficulties: A Child-Centred Approach”, modified on 22 December 2022, available at: [https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/2003\\_5/p2.html](https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/2003_5/p2.html).

<sup>151</sup> Government of Ireland, “Open consultation on parental alienation”, published on 27 May 2022, available at [https://www.gov.ie/en/consultation/c7235-open-consultation-on-parental-alienation/?referrer=http://www.justice.ie/en/JELR/Pages/Parental\\_Alienation\\_Consultation](https://www.gov.ie/en/consultation/c7235-open-consultation-on-parental-alienation/?referrer=http://www.justice.ie/en/JELR/Pages/Parental_Alienation_Consultation).

<sup>152</sup> Australian Government, “Consultation on Exposure Draft – Family Law Amendment Bill 2023”.

<sup>153</sup> Supreme Court of Italy, 24 March 2022, Case No. 9691.

<sup>154</sup> Submission by Stichting Justice Initiative.

the children, no matter the circumstances.<sup>155</sup> Where women have custody of their children, they may lose it by simply remarrying, behaving against social norms or initiating separation. In such cases, religious courts and leaders have the ultimate decision-making power over custody. While they may listen to the child's statement, they do not necessarily consider the child's views and can sometimes even contradict them. Despite the challenges in reforming family law based, at least in part, on religious dogma, important steps have been taken in some countries, such as Egypt, Jordan and the State of Palestine, where the minimum age of marriage has been raised to age 18 and both parents have equal rights to custody.

## B. Role of the evaluator in family courts

58. Parental alienation and related pseudo-concepts are embedded in the legal system, including amongst evaluators tasked with reporting to the family courts on the best interest of the child (psychiatrists, psychoanalysts, psychologists and social workers). Parental alienation has been endorsed through formal training and promulgated by professional networks and, more recently, academic journals. The application of parental alienation has also been exacerbated by the lack of formal training for justice system professionals and the relationship between allegations of parental alienation and the dynamics of domestic violence.

59. When faced with a dispute between parents, family courts often look to independent advice from child experts to decide on an appropriate outcome. While the ultimate decision is made by the presiding judge, the recommendation of the evaluator is powerful and one that, in practice, most judges follow. According to submissions received, in Finland, most allegations of parental alienation arise from reports of social workers,<sup>156</sup> while, in Italy, the court generally adopts the suggestions of the court-appointed technical expert or psychologists in its rulings without a critical evaluation of their reports, which often results in shared parenting, regardless of the existence of abuse.<sup>157</sup>

60. Public officials and institutions involved in the evaluation of children's best interests may be trained or lobbied by promoters of parental alienation.<sup>158</sup> For example, the Committee for the Protection of Children's Rights in Poland organized a two-day practitioner training, entitled "Recognizing and responding to alienated children and their families".<sup>159</sup> In Ireland, psychologists and psychotherapists have been trained in how to interact with alienated children and their families. In Brazil, the National Council of Justice offers courses on the use of parental alienation for members of the judiciary and others, which women and mothers are sometimes forced to attend following court orders.<sup>160</sup>

61. Some evaluators openly advertise themselves as experts in parental alienation and are appointed to assess relevant cases, despite the lack of formal recognition of the pseudo-concept in many jurisdictions.<sup>161</sup> Concerns have also been raised about evidence provided by unqualified and unregulated experts, some of whom appear to "abuse their position for profits or political agenda".<sup>162</sup> For example, Israel's civil and Rabbinical courts reportedly tend to appoint the same experts to fulfil both diagnostic and therapeutic roles, despite the conflict of interest, in which experts may be financially motivated to acknowledge parental alienation to recommend continued therapy.<sup>163</sup> Such experts subject both adults and children to intrusive, inappropriate and retraumatizing psychological assessments and employ judgmental and dismissive attitudes towards victims of domestic violence.<sup>164</sup> Experts also

<sup>155</sup> Submission by Action by Churches Together (ACT Alliance).

<sup>156</sup> Submission by Federation of Mother and Child Homes and Shelters.

<sup>157</sup> Submission by Donna in Rete Contra La Violenza.

<sup>158</sup> Submissions by Association PEND Slovenia and Mamy Mówią DOŚĆ.

<sup>159</sup> See: <https://www.familyseparationclinic.com/about-1/news-and-media/>.

<sup>160</sup> AL BRA 10/2022.

<sup>161</sup> Submissions by Monash Gender and Family Violence Prevention Centre and Differenza Donna.

<sup>162</sup> Submissions by the Victims' Commissioner of the Greater London Authority, the SHERA Research Group, Protect Children Now and Women's Aid, Ireland.

<sup>163</sup> Submission by Rackman Centre for the Advancement of the Status of Women.

<sup>164</sup> Submissions by Women's Aid Federation England; Differenza Donna; NRPF Network; Líf án ofbeldis; Women's Resource Centre; Protect Children Now and Minato Sogo Law Office.



recommended solutions to alienation, which may not be compatible with the welfare and rights of the child, including the transfer of custody,<sup>165</sup> and the use of “reunification camps and therapies”,<sup>166</sup> where children are held against their will and pressured to reject the influence of the parent with whom they are most bonded.<sup>167</sup>

62. Parental alienation is undoubtedly a lucrative endeavour that allow experts to provide their services in family proceedings for a fee. Training programmes and conferences, which have proliferated on a global scale over the last two decades, provide yet another stream of income.<sup>168</sup> This may partially explain the pushback in academic literature against criticizing parental alienation by undermining the credibility of research that evidences the links between parental alienation and domestic violence,<sup>169</sup> including how a context of domestic violence increases the risk of invoking parental alienation.<sup>170</sup> Academic experts have noted the concerning development whereby reputable academic journals in the field of psychology are publishing articles that promote the notion of “alienating behaviours” without applying the usual standards of scientific rigour in peer review or not allowing a right of response to authors whose studies are the subject of such criticism.<sup>171</sup>

63. In response to such issues, the Family Justice Council of England and Wales issued joint guidance with the British Psychological Society on providing expert reports in family courts, which set out that all such experts should be regulated by two specified professional bodies.<sup>172</sup> Further, the President of the Family Division issued a memorandum,<sup>173</sup> reminding judges that experts should only be instructed to assist the court in resolving issues when necessary. The Council also established the working group on responding to allegations of alienating behaviours, which issued interim guidance on expert witnesses where there are allegations of alienating behaviours and conflicts of interest in 2022. It cautions the courts to be prudent in considering the assessment and treatment packages offered by the same or linked providers. However, the President of the Family Court fell short of prohibiting the use of experts that are not regulated by specified professional bodies, stating that there should be a timely judgment instead justifying the instruction of an unregulated psychologist.<sup>174</sup>

<sup>165</sup> Stephanie Dallam and Joyanna Silberg, “Recommended treatments for ‘parental alienation syndrome’ may cause children foreseeable and lasting psychological harm”, *Journal of Child Custody*, vol. 13, No. 2-3 (2016), pp. 134–143.

<sup>166</sup> Suzanne Chester, “Reunification, alienation, or re-traumatization? Let’s start listening to the child”, *Journal of Family Trauma, Child Custody & Child Development*, vol. 19, No. 3-4 (2022), pp. 359–382.

<sup>167</sup> Jean Mercer, “Are intensive parental alienation treatments effective and safe for children and adolescents?”, *Journal of Child Custody: Research, Issues and Practices*, vol. 16, No. 1 (2019), pp. 67–113; S. Dallam and J.L. Silberg, “Recommended treatments for ‘parental alienation syndrome’”.

<sup>168</sup> As examples of paid online training, see, inter alia: <https://parentalalienation.eu/training-for-professionals/>; <https://paawareness.co.uk/parental-alienation-online-training-courses/>; and <https://datalawonline.co.uk/cpd-courses/children-law-courses/parental-alienation-and-hostility-case>.

<sup>169</sup> See Jennifer Harman and Demosthenes Lorandos, “Allegations of family violence in court: How parental alienation affects judicial outcomes”, *Psychology, Public Policy and Law*, vol. 27, No. 2 (2021), pp. 187–208, and the response: Joan S. Meier and others, “The trouble with Harman and Lorandos’ parental alienation allegations in family court study”, *Journal of Family Trauma, Child Custody & Child Development*, vol. 19, No. 3-4 (2022), pp. 295–317.

<sup>170</sup> Simon Lapierre and others, “The legitimization and institutionalization of ‘parental alienation’ in the Province of Quebec”, *Journal of Social Welfare and Family law*, vol. 42, No. 1 (2020), pp. 30–44.

<sup>171</sup> Expert consultations conducted by the Special Rapporteur.

<sup>172</sup> Family Justice Council and the British Psychological Society, “Psychologists as expert witnesses in the family courts in England and Wales: Standards, competencies and expectations”, reissued in May 2022.

<sup>173</sup> United Kingdom, Courts and Tribunals Judiciary, “President of the Family Division’s memorandum: Experts in the Family Court”, published on 11 October 2021.

<sup>174</sup> England and Wales High Court, Re C (“Parental Alienation”; Instruction of Expert) [2023] EWHC 345 (Fam).



### C. Conduct of the judiciary and legal professionals

64. Victims of violence have reported feeling belittled by judges and legal professionals and of being revictimized by professionals who lack an understanding of the impact and dynamics of domestic violence.<sup>175</sup> Research reveals women's frustration with the sympathy expressed by judges towards violent fathers and at witnessing professionals being manipulated by perpetrators of abuse, who behave in a charming manner and are on their best behaviour.<sup>176</sup> Victims of domestic violence have also perceived differential treatment of parents by courts and professionals, with mothers expected to be calm and accommodating while aggressive behaviour by fathers was tolerated in court.<sup>177</sup>

65. Women have reported being advised by their legal representatives not to raise allegations of domestic violence, as it would work against them.<sup>178</sup> Research and submissions, including from Germany and the United Kingdom,<sup>179</sup> demonstrate that women experience considerable pressure from courts and their lawyers to agree to contact arrangements or to attend mediation, in some cases without any assessment of child welfare concerns or obtaining the views of the children.<sup>180</sup> In Hungary, women who are judged as being uncooperative in mediation sessions are required to pay fees.<sup>181</sup>

66. In 2020, the Supreme Court of Israel issued a temporary protocol expediting working procedures for the courts to handle proceedings to ensure a relationship between a parent and the child, including those where a child's safety may be at risk. In practice, however, the protocol is almost always used in cases where allegations of parental alienation are raised.<sup>182</sup>

67. There is clearly a need for specialist training and expertise for members of the judiciary and legal professionals<sup>183</sup> as evidenced by submissions from Germany,<sup>184</sup> Ireland<sup>185</sup> and Italy.<sup>186</sup> In Australia, after the family court was merged with a generalist federal court into the Federal Circuit Court in 2021, there is no longer a specialist family law court, and family law matters are heard by judges who may not have specialist knowledge on family violence.<sup>187</sup>

68. In terms of good practice, the Council of Europe has developed several free courses, provided in a variety of languages, to aid legal professionals involved in family law and cases of domestic violence, including on child-friendly justice, human rights and family law.<sup>188</sup>

69. The Government of Germany requires family court judges and guardians ad litem of minors to have expert knowledge of the effects of violence on children and the pseudo-concept of parental alienation.<sup>189</sup> In England and Wales, the Domestic Abuse Commissioner

<sup>175</sup> See J. Birchall and S. Choudhry, *What About My Right Not to Be Abused*; see also submissions by Rackman Centre for the Advancement of the Status of Women and Australia's National Research Organization for Women's Safety.

<sup>176</sup> M. Coy et al. (2015), "It's like going through the abuse again?: domestic violence and women and children's (un)safety in private law contact proceedings", *Journal of Social Welfare and Family Law*, vol. 37, No. 1, pp. 53–69.

<sup>177</sup> See J. Birchall and S. Choudhry, *What About My Right Not to Be Abused*.

<sup>178</sup> *Ibid.*, p. 24. See also submission by the Monash Gender and Family Violence Centre.

<sup>179</sup> Submissions by University College London Institute for Risk and Disaster Reduction Policy Brief Group 1; Dignidade and others; Women at the Centre; and the German Institute of Human Rights.

<sup>180</sup> L. Harme, *Violent Fathering and the Risks to Children*.

<sup>181</sup> Submission by NANE Women's Rights Association.

<sup>182</sup> Submission by Rackman Centre for the Advancement of the Status of Women the Faculty of Law, Bar Ilan University.

<sup>183</sup> Submission by National Collective of Independent Women's Refuges.

<sup>184</sup> Submission by the German Institute of Human Rights.

<sup>185</sup> Submission by Protect Children Now.

<sup>186</sup> Submissions by Donne in Rete contro la violenza and Pangea Foundation Onlus.

<sup>187</sup> Submission by Monash Gender and Family Violence Centre.

<sup>188</sup> Council of Europe HELP Course, available at <https://help.elearning.ext.coe.int/>.

<sup>189</sup> Submission by the Government of Germany.

is starting a monitoring pilot for the family courts to provide oversight and regularly report on the performance of family courts in private law proceedings on child custody.<sup>190</sup>

#### **D. Lack of legal aid and the costs of family law proceedings**

70. Participating in custody and access proceedings is costly and a lack of legal representation is a structural disadvantage, particularly for victims of domestic violence. Women who are socioeconomically disadvantaged have limited or no guaranteed access to justice and legal support.<sup>191</sup> Navigating the family law system can be particularly challenging, especially when parts of the system are not harmonized or work in contradictory ways.<sup>192</sup> In several countries, departments within the same system have adopted different approaches and do not always share information, which has led to conflicting and contradictory decisions.<sup>193</sup>

71. Limited access to legal aid can lead to the secondary traumatization of victims. In England and Wales, legislation has removed legal aid for the majority of private family law matters.<sup>194</sup> Accompanying regulations have set out criteria whereby assistance is available for survivors of domestic violence if they can provide prescribed evidence.<sup>195</sup> However, research has found that about 40 per cent of women have been denied access to legal advice and representation in family law proceedings.<sup>196</sup>

72. The inability to afford legal representation also leads victims to settle or mediate their cases. In New Zealand, women are at a disadvantage in family court proceedings.<sup>197</sup> There are, however, documented efforts to address these shortcomings. In Scotland, the Edinburgh Women's Aid has undertaken a one-year pilot project to provide free legal advice and support in civil matters to survivors of domestic violence.

### **XI. Conclusion and recommendations**

**73. The report demonstrates how the discredited and unscientific pseudo-concept of parental alienation is used in family law proceedings by abusers as a tool to continue their abuse and coercion and to undermine and discredit allegations of domestic violence made by mothers who are trying to keep their children safe. It also shows how the standard of the best interest of the child is violated by imposing contact between a child and one or both parents and by prioritizing it, even where there is evidence of domestic violence. Predominantly as a result of the lack of training and gender bias and of access to legal support, the custody of children may be awarded to perpetrators of violence, despite evidence of a history of domestic and/or sexual abuse. The risks of such consequences are compounded for women from marginalized groups in society. The report elaborates on systemic issues that lead to additional barriers to justice. Judges and evaluators need to move away from focusing on the identification of behaviours that are contested within the discipline of psychology and towards a focus on the specific facts and contexts of each case.**

<sup>190</sup> Submission by the Domestic Abuse Commissioner for England and Wales.

<sup>191</sup> Submission by Women against Violence Europe.

<sup>192</sup> Marianne Hester, "The three planet model: Towards an understanding of contradictions in approaches to women and children's safety in contexts of domestic violence", *British Journal of Social Work*, vol. 41, No. 5 (2011), pp. 837–853. See also submission by the Monash Gender and Family Violence Centre.

<sup>193</sup> Submission by Women against Violence Europe.

<sup>194</sup> Legal Aid Sentencing and Punishment of Offenders Act, 2012.

<sup>195</sup> Civil Legal Aid (Procedure) Regulations, 2014.

<sup>196</sup> Rights of Women, "Evidencing domestic violence: nearly 3 years on", Working Paper (2014), available at <https://rightsofwomen.org.uk/wp-content/uploads/2014/09/Evidencing-domestic-violence-V.pdf>.

<sup>197</sup> Submissions by the National Collective of Independent Women's Refuges and SiSi.

74. **Building on these findings, the Special Rapporteur recommends that:**

(a) **States legislate to prohibit the use of parental alienation or related pseudo-concepts in family law cases and the use of so-called experts in parental alienation and related pseudo-concepts;**

(b) **States comply with their responsibilities and positive obligations under international human rights law by establishing regular monitoring mechanisms to oversee the effectiveness of family justice systems for victims of domestic abuse;**

(c) **States ensure mandatory training of the judiciary and other justice system professionals on gender bias, the dynamics of domestic violence and the relationship between allegations of domestic abuse and of parental alienation and related pseudo-concepts;**

(d) **States issue and implement specific guidance to the judiciary on the need to examine each case on the basis of facts and to judge fairly, according to the range of evidence before them, what outcome best supports the welfare of the child;**

(e) **States institute publicly funded systems of experts to provide information to courts on the best interest of the child and such experts be regularly trained on the dynamics of domestic violence and its effect on victims, including children;**

(f) **States ensure and maintain a list of approved experts for the family law system and introduce a formal complaint mechanism and an enforceable code of practice that addresses conflicts of interest and the recognition of expertise to practise in this area;**

(g) **No evaluations be made in family law proceedings without consideration of relevant criminal law and/or child protection proceedings;**

(h) **Any allegations or evidence of domestic and sexual abuse by both adult and child victims be clearly referred to in evaluations and, if access or custody is recommended, a full explanation be provided as to why such allegations or evidence be included;**

(i) **States issue guidance to the judiciary on when experts should be used outside of publicly funded systems in family law cases and ensure that experts employed are qualified and professionally regulated;**

(j) **Training be provided on a mandatory basis for all family justice professionals on the relationship between allegations of parental alienation and domestic violence and sexual abuse; such training should also be provided to combat gender stereotyping and ensure understanding of the legal standards on violence against women and children in this regard;**

(k) **The Hague Convention on the Civil Aspects of Child Abduction be revised to better protect abused women and their children by allowing a stronger defence against return if there is family and domestic violence, incorporating an understanding that a child's return order may compel an abuse survivor to return to violence and harm, and that courts with jurisdiction under the Convention be required to consider family and domestic violence when interpreting and applying its provisions;**

(l) **The use of "reunification camps" for children as part of any outcome in legal proceedings be prohibited;**

(m) **States ensure that children are legally represented separately in all contested family law proceedings;**

(n) **States ensure that independent inquiries are established on the use of the pseudo-concept of parental alienation and its iterations, where appropriate;**

(o) **States ensure that that the views of the child are sufficiently and independently represented in family law procedures and, where possible, children be able to participate in such proceedings, according to their age, maturity and**

**understanding and all safeguards and obligations contained in the Convention on the Rights of the Child should be used;<sup>198</sup>**

**(p) All agencies and elements of the justice system, statutory services and the domestic abuse sector work together rather than in silos and adequate coordination between the criminal, child protection and family law systems be ensured either by mandatory institutional cooperation mechanisms or the use of integrated court structures;**

**(q) Wider availability of legal aid in family law proceedings for all parties be made available to ensure equality of arms;**

**(r) Disaggregated data be collected, including on the prevalence of domestic abuse in family law cases and characteristics of applicants and respondents in such cases, including gender, race, sex, religion, disability and sexual orientation;**

**(s) States introduce monitoring mechanisms to assess the specific impact of policies and procedures relating to family justice on marginalized groups of women.**

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<sup>198</sup> See D. Martinson and R. Raven (2021), “Implementing Children’s Participation Rights in All Family Court Proceedings”, *Family Violence and Family Law Brief*, No. 9, Vancouver, Canada, FREDA Centre for Research on Violence against Women and Children.