



# Women's Aid Input to the Special Rapporteur VAWG'S Report on Violence Against Women and Children in Custody Cases

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Women's  Aid

## About Women's Aid

Women's Aid is a national, feminist organisation working to prevent and address the impact of domestic violence and abuse (henceforth DVA) including coercive control, in Ireland since 1974. We do this by advocating, influencing, training, and campaigning for effective responses to reduce the scale and impacts of domestic abuse on women and children in Ireland and providing high quality, specialised, integrated, support services. More information is available on our website [www.womensaid.ie](http://www.womensaid.ie).

## Introduction

Women's Aid has held serious concerns about Family Law outcomes and processes for decades. Women regularly tell us that custody and access arrangements are made which are unsafe for children and their mothers, and which allow the abuse to continue post separation. They report that proceedings are biased against them, that many professionals, including judges and child experts, do not understand the issues faced by women separating from an abuser nor the impact of domestic abuse, including coercive control, on children.

Moreover, while in theory access to their parents should be the right of the child, in practice, it is exercised as the right of the parents, in this context specifically of the abusive father. There is a pro-contact assumption that often trumps considerations regarding the risk to the children and their mothers, as well as sometimes the stated wishes of children not to be forced to go on access. As a result, custody and access orders can be dangerous and/or detrimental to the safety and the well-being of children and their mothers.

Added to this already fraught context, the increasing use and acceptance of Parental Alienation (and similar constructs) is extremely worrying.

## Answers to Special Rapporteur's Questions

1. The different manifestations or specific types of domestic and intimate partner violence experienced by women and children, including the use of “parental alienation” and related concepts in child custody and access cases. Please also include a description of the different forms of violence that may be experienced by the mother and child as well as fundamental human rights violations, where relevant.

In Women's Aid's experience, many mothers support the continuation of the relationship between the child and the father, despite the abuse the mothers have suffered. It is only when the welfare and safety of the children are at risk, or their own safety is severely compromised, that they act to limit contact or ask for supervised access, in order to protect their child(ren). However, women are often not believed in courts or their concerns are dismissed. Parental Alienation is used in this context as a legal strategy by abusive parents to respond and undermine allegations of domestic and child abuse and to continue controlling the mother and children.

Our Direct Services report that:

- Women tell us that their children become extremely distressed- crying, screaming, vomiting, and hiding- when being forced to go on access.
- Women are regularly blamed and threatened with prison by judges and solicitors if the children do not want to attend access.
- Abusers threaten to bring Parental Alienation claims if the children do not want to engage with them in a manner that they expect or demand.
- Abusers make false allegations of Parental Alienation in custody and access proceedings.
- Abusers use Parental Alienation claims as a response to domestic violence orders applications.
- Frequently, as soon as the woman applies to the court for maintenance- the father will apply for access and accuse the woman of Parental Alienation.

Note that the **threat** of Parental Alienation allegations has a chilling effect and it can be enough by itself to prevent women reporting abuse to the criminal justice system, applying for protection orders or insisting on safer access arrangements or fairer maintenance.

2. The factors behind the increased number of allegations of parental alienation cases in custody battles and/or disputes involving allegations of domestic violence and abuse against women, and its differentiated impact on specific groups of women and children.

Due to lack of any relevant data, we do not know the frequency of Parental Alienation allegations in custody disputes. However, anecdotally there is a consensus that such allegations are on the increase<sup>1</sup>. This has been reflected in the government deciding to carry out a consultation on the topic in June 2022<sup>2</sup>. The consultation was itself the result of a recommendation in the Oireachtas Report on Reform of the Family Law system 2019<sup>3</sup>, a report where incredibly there is very little mention of domestic abuse, reflecting the lack of survivors and DA specialist NGOs in the consultation. Recommendation 36 states:

*36. The Committee recommends that consideration be given as to whether laws should be amended to take into account situations where one parent is wrongfully influencing their child or children against the other parent, thereby creating unfair and unwarranted alienation that can be destructive and life lasting.*

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1 <https://www.irishtimes.com/ireland/2022/11/02/concern-over-increasing-use-of-parental-alienation-in-custody-disputes-in-family-courts/>

2 <https://www.gov.ie/en/consultation/c7235-open-consultation-on-parental-alienation/> Report not yet available

3 Joint Committee on Justice and Equality, Report on reform of the Family law system, 2019 Recommendation 36

[https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint\\_committee\\_on\\_justice\\_and\\_equality/reports/2019/2019-10-24\\_report-on-reform-of-the-family-law-system\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-10-24_report-on-reform-of-the-family-law-system_en.pdf)

At around this time, a motion was circulated to local councils in Ireland asking to support the recommendation, which many signed, notwithstanding the lack of any relevant data and the wealth of international research against the recognition of Parental Alienation in Family Law<sup>4</sup>.

Anecdotally it seems that the number of PA allegations in Family Law cases are increasing.

Women's Aid believes this reflects the increasing use of this often successful tactic by abusers and support of the construct by certain fathers' groups, rather than any increase in real estrangement cases.

3. The way in which different groups of women and children experience this phenomenon differently based on any intersecting elements such as age, sex, gender, race, ethnicity, legal residence, religious or political belief or other considerations and the factors that contribute to these situations.

Unfortunately we do not have any disaggregated data in relation to these groups. As in other aspects of domestic abuse, we know that any additional vulnerability or marginalisation would make access to fair court outcomes much more difficult.

4. The role that professionals play, including welfare workers, child protection services, guardian ad-litem, psychologists, psychiatrists, and how they are regulated in any way as expert witnesses.

In Ireland, in contested custody and access cases, the courts can order expert reports on the best interest of the child, under either Section 47 of the Family Law Act 1995, or Section 32 of the Guardianship of Infants Act 1964 as amended. These are conducted by court appointed experts, such as psychologists, social care workers, psychotherapists or family therapists. While these professionals may belong to professionals associations, these professions are currently not regulated by Coru, the Irish Health and Social Care Professionals body, and the titles are

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<sup>4</sup> <https://alienated.ie/council-motions/>

unprotected. There is no panel of S32 and S47 reporters, nor any data on how many such reports are made annually.<sup>5</sup>

The lack of regulation and training for child experts is a huge problem in the Irish Family Law system. We have repeatedly reported that child experts lack training in understanding domestic abuse and coercive control, the effect of abuse in children and the persistence of abuse after separation.

Our Direct Services Team believe that these processes are not fit for purpose and are causing real harm to children and women. Assessors are naming Parental Alienation when there is domestic violence/coercive control that they do not identify, do not appear to have appropriate training or understanding of DVA, and there is no mechanism in place to make a report or complaint around their practice.

5. The consequences of the disregard for the history of domestic violence and abuse and intimate partner violence or the penalising of such allegations in custody cases on the human rights of both the mother and the child, and the interrelationship between these rights.

In our experience, the disregard and minimisation of domestic abuse in custody and access cases result in orders that are **not** in the best interest of the child and that often put the child at risk of continuing abuse, including abuse directed at the child and the emotional abuse of witnessing the abuse of their mother. The safety of the mother is seldom considered and often jeopardised. Parental Alienation allegations make this worse and may result in custody being reversed and contact of the mother with the children limited. As mentioned, the mere threats of PA allegations prevent women from seeking safe access and custody arrangements or fair maintenance.

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5 Kitty Holland, 'Parental Alienation': Child abuse, or a pseudoscientific tool to silence domestic violence victims? Irish Times, 5/11/22 <https://www.irishtimes.com/ireland/social-affairs/2022/11/05/parental-alienation-child-abuse-or-a-pseudoscientific-tool-to-silence-domestic-violence-victims/>

The Irish Times recently followed 6 cases, in all of which women who had a **verified** history of domestic violence with their partner and who were accused of PA lost custody altogether or were forced into shared custody. In some of the reported cases the mother was allowed only extremely limited visits and the children were removed against their will.<sup>6</sup>

The Survivors Informing Services and Institutions (Sisi) group carried out a survey of 54 mothers, all survivors of domestic abuse, going through custody disputes in the Family Courts. More than half said abuse was not believed or disregarded, and 75% had Parental Alienation allegations made against them. Moreover, children have been removed from mothers accused of PA after raising concerns about post separation abuse of children, and placed in the custody of alleged abusers<sup>7</sup>.

The child's voice is often not heard in these proceedings, or heard "selectively", only if they want to have contact, but ignored if they do not<sup>8</sup>, contrary to Article 12 the UN Convention of the Rights of the Child and the 31<sup>st</sup> Amendment of the Irish Constitution.

6. The challenges in collecting disaggregated **data** on courts' practices concerning custody cases, the areas/sectors for which data is particularly lacking and the reasons for such challenges.

Very little statistical data on Family Law cases is collected in Ireland, including number of DV orders applied for and granted by type of order and number of access and custody cases processed by the Courts.

**No data is collected** on how many families separate in the context of domestic violence or child abuse and whether allegations and findings of domestic/child abuse are taken into account in

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6 Kitty Holland, *supra*

7 <https://www.irishtimes.com/ireland/social-affairs/2022/10/31/domestic-abuse-claims-by-women-in-family-courts-often-dismissed-as-irrelevant/>

8 Stephanie Holt (2018) A voice or a choice? Children's views on participating in decisions about post-separation contact with domestically abusive fathers, *Journal of Social Welfare and Family Law*, 40:4, 459-476

determining custody, access and guardianship. Nor is there any data on the use of Parental Alienation allegations in such cases. The cases are heard in camera, which is another barrier to research and data collection.

7. The **good practices**, strategies adopted by different organs of the State or other non-State actors, at local, national, regional, or international level to improve the due consideration of domestic and family violence, including intimate partner violence against women and abuse of children in determining child custody, as well as in providing remedies and redress for victims/survivors.

Family Law legislation and processes need to be founded on the principle that the best interest of the child includes being safe from domestic abuse, including emotional abuse caused by exposure to abuse of a parent. Safety should trump any rights to contact of the abusive party. In this regard, we appreciate Article 31 of the Istanbul Convention and believe it should be reflected in all legislation dealing with custody and access.

8. Recommendations for preventing the inadequate consideration of a history of domestic violence and abuse and gender stereotyping in custody cases to restore the human rights of mothers and their children, as well as ensure that survivors/victims are effectively protected and assisted.

Women's Aid believes that the Family Courts need to improve their understanding of and response to custody and access cases where there is domestic and child abuse. In particular:

- All professionals in the Family Courts, including judges, should be trained on domestic abuse, including coercive control, the impact on children of being directly targeted or exposed to DVA, and its impact on the ability of victims to confidently participate in legal proceedings.
- A scheme of **regulated** and **trained** experts needs to be established to provide assessment on the safety and welfare of the child in cases where there is domestic or



child abuse. The experts should have in-depth training on domestic abuse and its impact on children.

- Listening to children in proceedings about them should be implemented. A range of options to hear the child needs to be offered.
- Custody and access cases should be screened to identify DVA and child abuse as early as possible. Once such cases are identified, there should be a risk assessment and management process, carried out by trained specialists, focusing on the safety of children and the non-abusive parent.
- A domestic violence advocate's scheme should be implemented in the Family Court to provide the above.
- Parental Alienation should not be recognised in any Family Law proceedings.
- Statistical, anonymised data on the prevalence of domestic violence/child abuse in the Family Law Court caseload and on the outcomes of such cases should be collected and published.
- Relevant legislation needs to be amended to ensure that safety from domestic abuse of the child and the non-abusive parent is a paramount principle in determining the best interest of the child in all relevant proceedings.

9. Any other issue of relevance that are vital for consideration but that may not have been mentioned in this call for inputs.

More information, including case studies, can be found in the Women's Aid submissions below

- [Submission on Parental Alienation, 2022](#)
- [Submission to the Family Law Court Bill General Scheme, 2021](#)
- [Submission to the Family Justice Oversight Group, 2021](#)
- [Submission to the Child Maintenance Review Group, 2021](#)

- [The Children and Domestic Violence Group Submission to the Family Justice Oversight Group Consultation, February 2021.](#)