



Towards gender-sensitive and child-centered judicial proceedings in custody cases: The use of the pseudo and regressive theory of “parental alienation”

Panel convened by the Special Rapporteur on violence against women on the occasion of the 66th session of the Commission on the Status of Women

17 March 2022

10:00 – 11:30 (EST)

Online event – register to participate: <https://tinyurl.com/56a7rs8t>

Concept Note

In recent decades, the concept of “parental alienation” or “parental alienation syndrome” has been widely used by courts when assessing child custody cases, particularly when a child expresses fear or avoidance of a parent. Despite lacking credible scientific support, and the fact that the World Health Organization excluded it from its classification index, it continues to be an explicit or implicit reference in justice systems worldwide, with serious implications for the human rights of women and their children.

According to this theory, an alienated child has been manipulated by one parent to turn against the other and resist contact with him or her, usually during child custody disputes in connection to separation or divorce proceedings. Supposed indications of alienation include the child’s resistance to contact with one parent, strong preference for the other parent, avoidance of the extended family of the resisted parent, and seemingly “frivolous” reasons (in the eye of an evaluator) for their avoidance.

While the alienation concept is theoretically gender-neutral, it is more frequently applied against women, especially when they present allegations of violence abuse against themselves or their children. Due to discriminatory biases against women, justice systems will often perceive women alleging abuse as less credible than men denying such allegations, and re-frame abuse allegations as attempts to hinder or block contact between the accused father and the child. Courts will tend to elevate the father’s right to contact with the child as the highest good, and sometimes punish the mother (with loss of custody or even imprisonment) for the supposed interference. Even in countries where legislation has banned the use of this concept, rulings in specific cases often resort to its reasoning and logic, albeit implicitly.

It is of particular concern that, in the name of protecting children, these judicial decisions often end up exposing them to even greater risk by placing them under the care of an abusive parent. In many cases, children reporting abuse by a father are not listened to and their feelings and statements are treated as distorted or coached during court proceedings; even a child’s denying being manipulated is treated as evidence of alienation.

As a result, the child’s best interest to be free from violence, in the terms of the Convention on the Rights of the Child, is violated, and serious allegations of physical and sexual abuse are not sufficiently assessed and investigated. In fact, research shows that women are more likely to lose custody of their children if they claim the father was abusive towards their children, than if they assert the violence was committed only against themselves.

In 2019, after a meeting of the Platform of Independent Expert Mechanisms on the Elimination of Discrimination and Violence against Women, chaired by the Special Rapporteur on violence against women, the experts issued a joint statement on the relationship between violence against women and child custody. The experts argued that intimate partner violence against women is an essential factor in the determination of child custody, and discouraged the abuse of “parental alienation” and similar concepts invoked to deny child custody to the mother and grant it to a father accused of domestic violence. This reiterates previous jurisprudence and standards developed by the mechanisms on the issue of domestic violence.

On 9 December 2021, the Special Rapporteur on violence against women issued a press release in which she expressed her concern about the ongoing cases of women who lost custody of their children to abusive fathers in Spain and other parts of the world, based explicitly or implicitly on parental alienation theory. She called on Governments to do more to improve its judicial systems and ensure children’s right to be free from violence and women’s right to non-discrimination.

In this panel, experts will discuss the need for further guidance on the applicable human rights standards to judicial proceedings, so that they are gender-sensitive and child-centered, and serve to protect the human rights of women and their children. They will bring an assessment of major trends and challenges, and provide recommendations for Governments on the way forward, including legislation, capacity building and other policy measures. They will also provide recommendations to UN entities, National Human Rights Institutions and other stakeholders on the ways they can support the improvement of justice systems.

Objectives

- Present an overview of the main human rights violations affecting women and children in child custody cases, particularly when there are allegations of violence against the women and/or the children, in connection with the application of the “parental alienation” concepts;
- Provide global and regional perspectives on challenges and good practices in relation to violence against women and child custody cases;
- Identify key measures to overcome gaps and challenges in justice systems and make them gender-sensitive and child-centered;
- Provide recommendations to Governments, UN entities, National Human Rights Institutions and other stakeholders.

Agenda

Moderator: *Reem Alsalem, UN Special Rapporteur on violence against women, its causes and consequences*

10:00 – 11:00

Panel Discussion

- *Joan Meier, Professor of Clinical Law and Director, National Family Violence Law Center at George Washington University*
- *Ruth Halperin-Kaddari, former Vice-President of the CEDAW Committee, Professor of Law at Bar-Ilan University*
- *Nicolas Espejo-Yaksic, Researcher, Centre for Constitutional Studies (Supreme Court of Mexico); Guest Lecturer in Law, Leiden University*
- *Iris Luarasi, President of the Group of Experts on Action Against Violence Against Women and Domestic Violence (GREVIO)*
- *Genoveva Tisheva, Member of the CEDAW Committee and Chair of the Working Group on GBV against women, Bulgaria*

11:15 – 11:25

Open floor for questions

11:25 – 11:30

Concluding remarks