PARENTAL ALIENATION

A new form of gender-based violence against women and children in Latin America and the Caribbean

Editor: Tamara Amoroso Gonsalves

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AUTHORIAL RESPONSIBILITY

The opinions expressed in this publication are solely those of the authors and do not necessarily reflect the views of the editors. This book includes sensitive personal accounts and reflections on legal matters that are complex and ongoing. We acknowledge that the experiences shared in this book may evolve as the cases go through the due process and the legal system. However, any development in individual cases does not undermine the lived realities of women who are disproportionately affected by accusations of parental alienation, often with long-lasting consequences for themselves and their children. Systemic inequality in the criminal justice system frequently denies women access to justice, and their experiences are often dismissed or disbelieved.

REGIONAL COORDINATION - CLADEM

Milena Páramo Bernal

PROJECT COORDINATION

Tamara Amoroso Gonsalves

TRANSLATION FROM SPANISH AND PORTUGUESE

Paola Motosi

ENGLISH PROOFREADING

Tamara Amoroso Gonsalves

GRAPHIC DESIGN AND LAYOUT

André Lacasi
Zabelê Comunicação

address: Jirón Caracas Nº 2624, Jesús María, Lima, Perú
phone number:+51 961 234 063
email: infocom@cladem.org
www.cladem.org

Global Campaign for Equality in Family Law
equalfamilylaws.org

OFFICE OF THE AMERICAS NEW YORK | USA
PO Box 7160
New York, 10008-7160 USA
Phone number: +1-212-586-0906
info@equalitynow.org
equalitynow.org

PARENTAL ALIENATION: A NEW FORM OF GENDER-BASED VIOLENCE AGAINST WOMEN AND CHILDREN IN LATIN AMERICA AND THE CARIBBEAN

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SUMMARY

Parental alienation and related concepts: institutional gender violence against women and children

Tamara Amoroso Gonsalves[1]

In December 2016, I represented CLADEM at a meeting in Bangkok to discuss the possibility of advocating within the international human rights protection system (the United Nations system) for a specific convention on gender-based violence against girls and women. As in other transnational feminist meetings, I learned a lot and came across issues I was not familiar with so far. I've heard frightening reports on the use of the concept of parental alienation in child custody cases in Italy. At the time, I didn't understand properly (or perhaps it was my disbelief at such horror) and I wondered: Were Italian courts granting child custody to parents accused of domestic violence, including sexual violence against their children, during divorce proceedings? It was unbelievable! Feminists of today and the ones that came before us have tirelessly fought for domestic violence to be recognized as a human rights matter, as well as for the enacting of domestic laws that prevent such behavior. And now, when they were finally able to report domestic violence based on these frameworks, women have been finding, in the judicial system, an almost insurmountable barrier preventing the guarantee of their most fundamental rights. How to explain these court behaviours? Could this phenomenon be happening in other parts of the world?

In 2021, representing the Southern Cone countries at CLADEM's Regional Board 14 (an advisory body that supports the regional coordination),

1 Tamara Amoroso Gonsalves is a guest researcher at the Centre d'études et de recherches Internationales, Law Faculty, University of Montreal. She holds a PhD in Law and Society from the University of Victoria (Canada), a Master's Degree in Human Rights from the University of São Paulo, and a Bachelor of Laws from the Pontifical Catholic University of São Paulo. Mrs. Gonsalves is a member of CLADEM/Brazil and served at the 14th and 15th Regional CLADEM Board of Directors. She is also an associate researcher at the Simone de Beauvoir Institute, Concordia University, Montreal, Canada.

in consultation with the national coordinators, I once again came across the parental alienation issue, which was emerging strongly, especially in Brazil, Argentina and Uruguay. Apart from these accounts, I did not know much about the subject. With the full support of our regional coordinator, Milena Páramo Bernal, we decided to explore this topic further and study it in depth before taking a regional position. We then organized an initial *online* internal meeting, inviting the countries in the region that had expressed interest in debating the issue. Given the seriousness of the allegations and still in the context of the pandemic, we held two online meetings open to the public, with the support of the University of São Paulo Law School in Ribeirão Preto (USP). November 29 and 30, 2021[2] were days of intense learning and meaningful engagement[3]. From then on, we had no doubt: We needed to take action and position ourselves regionally regarding the way the parental alienation syndrome was being invoked in the defense of fathers accused of domestic violence and/or sexual abuse, and also used as a tool for perpetrating post-separation coercive control against women-mothers.

The concept of Parental Alienation Syndrome (PAS), coined by Richard Gardner[4], is highly contested and widely rejected[5] by health professionals and authorities worldwide[6] due to its inherent gender bias and sexism[7]. For this reason, PAS has been classified as a false, pseudoscientific, or nonexistent concept, a topic that will be further examined and detailed in the articles in this book. According to Gardner, 90% of sexual abuse allegations raised by mothers during child custody proceedings are false[8]. Since the 1980s, the false PAS has emerged as a prominent issue in child custody disputes in several countries, becoming a strategy to refute the claims of mothers who have experienced intimate partner violence prior to divorce; or even when their

2 Complete information about the program is available at: https://www.direitorp.usp.br/eventos/webinario-internacional-alienacao-parental-uma-nova-forma-de-violencia-de-genero-contra-as-mulheres/.

3 The recording of both days of debates can be accessed at: https://www.youtube.com/watch?v=YVh0jiG1iyQ https://www.youtube.com/watch?v=ZpZDGe6ESHg&list=PLGA5ByQlQm0D8LCvh8Q9xb05rF6ASbHfE&index=2&t=7s.

4 Gardner, R. A. (1989). My involvement in child custody litigation: past, present and future. Family and Conciliation Courts Review, 27(1), 1-12; Gardner, R. A. (Summer 1985). Recent Trends in Divorce and Custody Litigation. *Academy Forum, 29*(2), pp. 3-7.

5 Rebecca M. Thomas & James T. Richardson (2015). Parental Alienation Syndrome: 30 Years on and Still Junk Science, 54 Judges J. 22. https://www.researchgate.net/publication/303445208_Parental_Alienation_Thirty_years_on_and_still_junk_science

6 https://www.who.int/standards/classifications/frequently-asked-questions/parental-alienation.

7 Meier, Joan S. (2009). *A Historical Perspective on Parental Alienation Syndrome and Parental Alienation.* 6 J. Child Custody 232.

8 *Ibid.*

children have been subjected to paternal violence[9]. Feminist litigation in Latin America and the Caribbean (LAC) has evidenced the use of the false PAS and related concepts as a tool to prevent mothers from accessing their custody rights, especially in cases where the mother accuses the father of violence (physical, emotional, psychological, sexual) against herself and her children. Data from Canada shows similar results[10]. In LAC, Brazil was the first country to adopt a law on the subject in 2010, the Parental Alienation Law (Law No. 12.318/2010), which has been used as an example in legislative debates in other countries in the region and in Portugal. Mexico, Puerto Rico, and Costa Rica have also enacted laws that include concepts related to the parental alienation belief system, while Argentina and Uruguay, despite not having a law that explicitly addresses the term, have been using arguments related to parental alienation in custody proceedings. In other words, although the concept of parental alienation has been around since at least the 1980s (with modifications and differences according to national contexts), only recent research has shown that it constitutes a new form of gender-based violence against women, children, and adolescents. This conceptualization of the false parental alienation and the use of related concepts as forms of institutional violence have gained traction in academia. Driven by transnational feminist activism, this discussion has been brought to multiple national, regional, and global forums; a movement also explored in this publication.

Most LAC countries reformed their civil legislation during or shortly after the military dictatorships that dominated the region between the 1960s and 1980s. Therefore, at least formally, there are no explicitly discriminatory family law regulations in these jurisdictions. Most civil codes have been updated and, in some way, reflect principles of formal equality in family relations. This is what happened in Brazil, where the constitutionalization of family law occurred with the approval of the 1988 Constitution (an advocacy work pushed by feminists and known as the Lipstick *Lobby*)[11]. What the Parental Alienation

9 Meier, Joan S. (2009). *A Historical Perspective on Parental Alienation Syndrome and Parental Alienation.* 6 J. Child Custody 232.

10 (F(JA) v F(JJ), 2016 BCSC 300) + Family Violence Family Law. (January 11, 2024). Western University: https://fvfl-vfdf.ca/webinar-recordings/Webinar_special-report.html; Family Violence Family Law. (January 11, 2024). Western University: https://fvfl-vfdf.ca/webinar-recordings/Webinar_special-report.html; Zaccour, Suzanne. (2018). *Parental alienation in Quebec custody litigation. Cahiers de Droit.* 59(4), 1073-1112.

11 Alves, Branca Moreira & Pitanguy, Jacqueline. Feminismo no Brasil: memórias de quem fez acontecer. Rio de Janeiro: Bazar do Tempo, 2022, pp. 99-135; Blay, Eva. Como as mulheres se construíram como agentes políticas e democráticas: o caso brasileiro. In Eva Alterman Blay, Lúcia Avelar. Organizadoras. (2017). 50 Anos de Feminismo: Argentina, Brasil e Chile: A Construção das Mulheres como Atores Políticos e Democráticos. São Paulo: Editora da Universidade de São Paulo, Fapesp, pp.65-97; Htun, Mala. (2003). *Sex and State: abortion, divorce, and the family under Latin American dictatorships and democracies.* Cambridge: Cambridge University Press.

Law in Brazil and the use of related concepts in the LAC region have demonstrated is that legislative reform alone (formal equality) is not sufficient to ensure equality in the face of the entrenched gender stereotypes prevalent in our countries. These sociocultural perceptions have been responsible for the "blindness"[12] of the Judicial Power to the demands of mothers and their children, causing unimaginable emotional, psychological and financial damage to these women, children and adolescents.

Having this scenario in mind, in September 2023, in collaboration with CLADEM/Regional, CLADEM/Brasil, Equality Now and the Global Campaign for Equality in Family Law, we held an in-person seminar in Rio de Janeiro, to which we invited a wide range of social actors engaged with the parental alienation issue and related concepts: mothers accused of parental alienation, lawyers, judges and forensic experts (social workers, psychologists). Representatives from these sectors in Mexico, Puerto Rico, Argentina, Uruguay, Canada, and, of course, Brazil were present during those two days of fruitful discussions. In addition to building a network of actors capable of confronting the advance of the false PAS in our region, we also decided to publish our discussions and reflections, now consolidated in this book which is the outcome of this coalition between local and regional actors and the Ribeirão Preto Law School of the University of São Paulo (FDRP-USP).

This is not a book solely about legal issues or focused exclusively on denouncing human rights violations. It's not even a psychology or social work book, nor is it a collection of cases. This publication has a structurally interdisciplinary layout that aims to connect different perspectives and national contexts while demonstrating how patriarchy has been articulating itself in the LAC region to confront the undeniable advances in the rights of women, children and adolescents.

Warren (2000) teaches us that theory can be understood as a process[13], which makes it possible to accommodate different perspectives in constant interaction. Thus, sociocultural, geographical, linguistic, racial, gender, sexual orientation, disability, religious and social class factors influence the production of knowledge in structural and particular ways. The author compares the production of knowledge to the making and sewing of a patchwork quilt. The choice of patches and their arrangement depend on the available pieces of cloth, as well as on what we envision and plan for its manufacturing and use. The final result of the patchwork, however, can change depending on

12 Laura Nader (1999). Num espelho de mulher: cegueira normativa e questões de direitos humanos não resolvidas. *Horizontes antropológicos*, Porto Alegre, ano 5, n. 10.

13 Warren, K. J. (2000). *Ecofeminist Philosophy: a Western Perspective on What it is and Why it Matters.* USA: Rowman and Littlefield Publishers Inc.

the availability of materials and the work of the person making it; just as its use proves to be versatile and variable depending on who uses it. By drawing a parallel between this concept and the production of academic knowledge, we observe that this flexible intellectual process encourages the incorporation of knowledges not always accepted in academia, despite being essential for understanding the world around us and the social challenges we face. The patchwork methodology and the notion of "in-process" theory allow us to develop concepts that emerge from the needs of communities[14] in agreement with feminist practices that respect the communities we belong to as we honor these community ties and strengthen them by bringing visibility and meeting their needs. Following this thread, this book is not a traditional academic work, as it incorporates non-academic discourses and personal accounts as equally valuable forms of knowledge that must be taken into consideration and guide our academic research. This work, therefore, is organized like a patchwork quilt that I had the pleasure of sewing together. I would like to thank everyone involved for their trust and partnership in sharing their knowledges and experiences.

The opportunity and responsibility I have been given in organizing this book has also allowed me to see a number of similarities in terms of the strategies and articulations of anti-rights groups in a coordinated way throughout the region. For example, the approval of the laws concerning shared custody and parental alienation in Puerto Rico mirrors the process of approving the Parental Alienation Law in Brazil with little or no public debate, extremely fast and driven by father's rights groups. In Puerto Rico, the Legislative Power took advantage of the context of the pandemic to speed up the publication of laws. In a similar way, Uruguay passed its shared custody law which, although it does not ostensibly deal with parental alienation, incorporates key concepts that allow it to be used in cases of child custody disputes. Similarly, in Brazil, the Civil Code was first amended with the inclusion of shared custody, followed by the approval of specific legislation addressing parental alienation. From the experiences here reported, we can see how compulsory shared custody was a first step towards establishing fertile ground for concepts such as parental alienation to take root. This is what happened in Brazil and Puerto Rico and it is the path that is also being followed in Argentina and Uruguay. Similarly, the incorporation of these new family law legislations is organized around a discursive strategy of making women's rights and their achievements invisible, such as the recognition of domestic violence as a human rights issue, which is once again reduced to "family conflicts". This discursive strategy adopts "familist" concepts, that

14 Shiva, V., & Mies, M. (2014). *Ecofeminism.* Zed Books Ltd.

turn a blind eye to the violence occurring in private spaces, in the name of protecting the family unit. In this movement, anti-rights groups also appropriate the language of human rights using intimidating responses against those who dare to report abuses, especially sexual abuse[15].

At first glance, shared custody could be seen as a feminist achievement, since it proposes an equitable division of the unpaid and often invisible childcare work. However, in practice, its implementation alongside the concept of parental alienation has become a tool to perpetuate the coercive power of abusive (ex-)partners. By acknowledging the unique legislative and sociocultural contexts of each nation (no two patchwork quilts are identical!), this book allows us to observe how the use of parental alienation and related concepts represents a coordinated effort in the region to hinder the advances of feminists and women's movements concerning the protection against domestic and family violence. This is the patriarchy's response to feminist advances concerning legislative and social changes, particularly regarding the enactment of laws that seek the protection of women from domestic violence in the LAC region. This phenomenon highlights two things: i) we are causing discomfort; ii) we are truly making progress. If we weren't making deep changes to patriarchal structures, the reaction wouldn't be so intense.

It should also be noted that the topics of the false PAS and shared child custody create significant political tension within feminist fields, as well as mothers' and women's groups. Under the banner of fighting pedophilia, discussions concerning the concept of parental alienation are often led by conservative and anti-rights groups. This creates a complex context for social movements, as this agenda is shared by groups defending diametrically opposed interests in the broader political spectrum. In Brazil, for example, while part of the feminist movement defends the repeal of laws that in some way incorporate and allow the use of concepts related to parental alienation within a broader discussion of the right to motherhood and life without violence, the same demand is driven by ultra-religious groups that seek to regulate motherhood according to narrow gender stereotypes that confine women to motherhood and domestic work, in many cases subjected to domestic violence. In other words, the repeal of the Parental Alienation Law in Brazil is being sought simultaneously by ministers from neo-charismatic pentecostal movements and by feminists, despite their contradictory purposes regarding broader political agendas. This poses a complex political dilemma commonly seen in contexts involving threats to democracy, present in several jurisdictions across the region. In the midst of this turbulent environ-

15 Mandi Gray (2014). *Suing for Silence: sexual violence and defamation law*. Vancouver, UBC Press.

ment, women and children are violated and re-victimized multiple times. In an especially perverse way, their reports of violence are disregarded by the courts (institutional violence), which seek to silence them by threatening to remove custody of their children and grant it to abusive fathers. As I have heard from a mother accused of parental alienation: "I'd rather die than go to court again." The dramatic nature of this and other stories call us to think of alternatives and solutions - legal and social - to protect women and children and ensure their human rights to a life free from violence.

It is in this context that we have organized this book, through a great collective effort, with the hope that it will provide support for the protection of the fundamental rights of girls and women in the region. We begin with texts by Milena Páramo Bernal, on CLADEM's engagement with the parental alienation issue; by Bárbara Jiménez-Santiago and Sofia Quiroga, members of Equality Now, on the fight for access to justice in cases of sexual violence, including the elimination of the use of the false PAS and related concepts; and by Hyshyama Hamin, explaining the need for a Global Campaign for Equality in Family Law, and the ways the discussions concerning the PAS are related to this global action. Also in this introductory section, MESECVI *expert* Susana Chiarotti takes us through decades of discrediting women's words, especially in judicial contexts. In the second part of the book, we continue with interdisciplinary reflections on the connections between domestic and family violence and the false PAS, with texts by Diana Ferrer, María Milagros Argañaraz, Ana Maria Iencarelli and Andrea Tuana.

In the third part, we seek to portray the legal contexts regarding the use of the false PAS and related concepts in Brazil, Argentina, Uruguay, Puerto Rico and Mexico. When we look at the legal contexts of these countries, we can see the similarities between the processes of legislative change in the region and the strategies of silencing and threatening women who raise their voices to protect themselves and/or their children, as shown in the texts by Fabiana Severi *et al,* Leila Barsted, Nathálya Ananias, Rubia da Cruz, in Brazil, María Piermarini and Dania Villanueva, in Argentina, Ana Lima, in Uruguay, María Guadalupe Ramos Ponce and María del Pilar Delgado Ortiz, in Mexico, and Maricarmen Carrillo Justiniano, in Puerto Rico. In the case of Brazil, where the law has been in force for 14 years, we have seen serious scenarios of institutional violence within the judiciary, marked by the perpetuation of gender stereotypes that permeate court decisions related to child custody disputes, as shown by Romano Enzweiler. The political battles withing the Legislative Power to change or maintain the law are also present, as shown in Roberta Viegas' text, as well as the reflections being consolidated in the academic environment, revealing the mechanisms through which the legislation

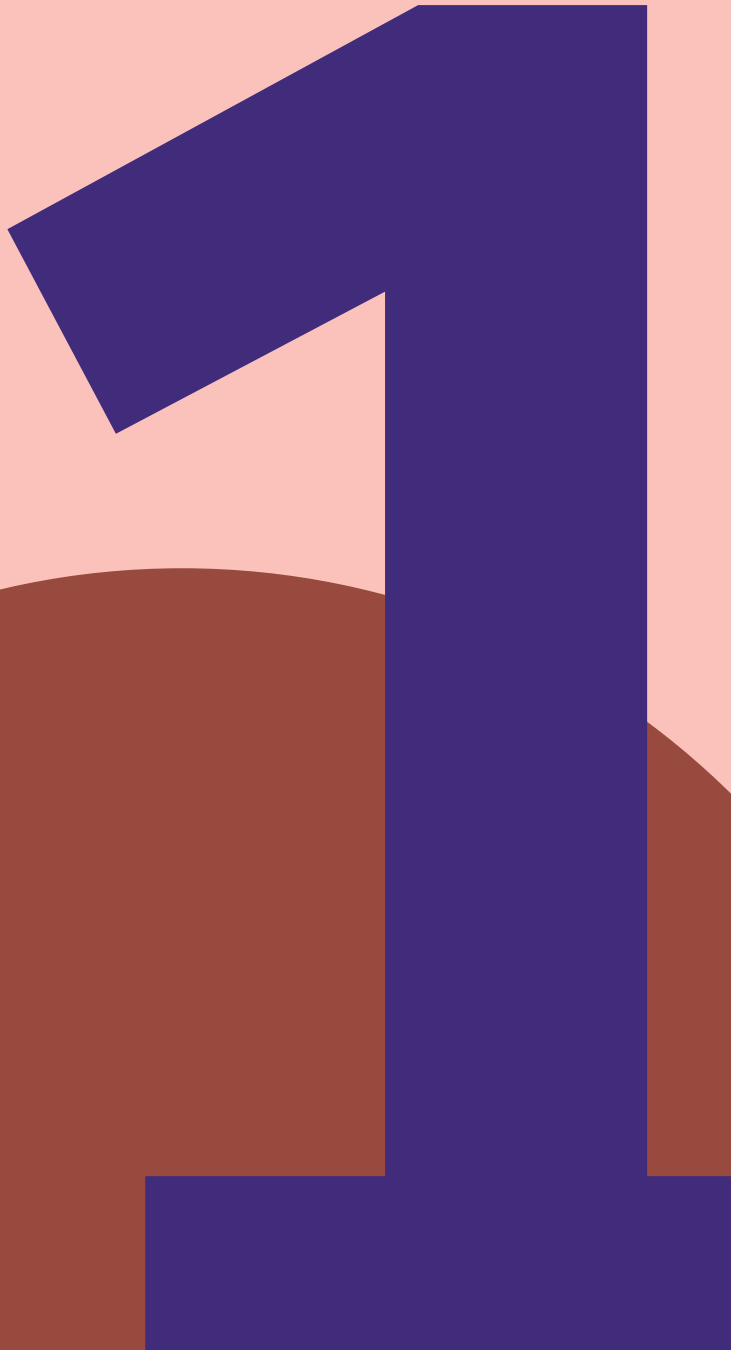
on parental alienation operates to restrict the rights of women and children, as we will see in Ela Wiecko de Castilho's text. This regional focus allows us to visualize the similarity of strategies for implementing parental alienation and related concepts in family law in LAC. At the end of this section, Reinaldo Andrade introduces us to the subject of parental alienation and its relation to international law, more specifically the application of the Hague Convention in cases of international child custody disputes.

The fourth part of the book is dedicated to a reflection on the ways the infiltration of the false concept of parental alienation and related concepts in our democracies work to discipline and silence women, children and adolescents, in a clear move to restore patriarchal power. The book concludes with reports and analyses by Gabriela Smith, Daniela Dosso, Andrea Vásquez, Stella Furquim and the GAMBE team, Carla Junqueira, Déborah de Oliveira and Andrea Tuana, who highlight cases of mothers who have stood up against the label of alienators in order to protect themselves and their children from this misogynistic and violent weapon designed to silence them.

I would like to thank all the authors, as well as the institutional partners, Equality Now, the Global Campaign for Equality in Family Law and the Ribeirão Preto Law School (FDRP-USP), who believed in this project and made this publication possible. My sincere thanks go to: Valéria Pandjiarjian and Sumaia Galli Sampaio, for their tireless proofreading; Ingrid Leão and Roberta Viegas, for their careful reading; the Zabelê Comunicação team for the beautiful graphic design; as well as to the CLADEM/Regional and CLADEM/Brasil teams. Finally, I am grateful for the immense patience and love of Laura, Elis and Marcelo, who supported me during the production of this book. I hope that this book will strengthen the struggle of protective mothers not only in Latin America and the Caribbean, but also in other countries around the world. Enjoy your reading!

Institutional Archives CLADEM and Equality Now

WHY DO WE NEED TO DISCUSS PARENTAL ALIENATION AS A NEW FORM OF GENDER-BASED VIOLENCE?



Parental alienation as a form of violence against women: CLADEM's perspective

Milena Páramo Bernal[1]

The Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM) is a regional feminist network founded in 1987, that brings together women and feminist organizations in fifteen Latin American and Caribbean (LAC) countries: Argentina, Bolivia, Brazil, Colombia, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Puerto Rico, the Dominican Republic and Uruguay.

Since its set up, the committee has worked from a feminist socio-legal perspective with a view to contributing to the elimination of multiple forms of discrimination and violence against women and gender inequalities in the region. Being present in the three Americas—South America, the Caribbean, and Central America—has allowed us to sharpen our regional perspective: from problems in various areas of social life, including the social and political actors involved, to the challenges faced by women and feminists in their pursuit of economic, physical, and decision-making autonomy. It also facilitated research into the national and regional contexts affecting women's lives, aiming to identify and promote meaningful courses aligned with local demands and thereby generate a positive impact on public debate, as well as on socio-political, legal, and legislative discussions.

CLADEM is a pioneering organization in the development of alternative reports to demand compliance and give substance to the women's rights agenda. At a global level, it establishes strategic alliances with relevant actors, such as Equality Now, with which it addresses the alarming reality of sexual violence against girls and women in the region, and Equal Measures

1 Milena Páramo Bernal is a feministand activist in defense of the rights of girls and women. She has been a member of CLADEM for over 20 years. She was the national coordinator of CLADEM/Argentina between 2014 and 2018, and is currently CLADEM's regional coordinator.

2030, with which it monitors the 2030 Agenda through global and regional *advocacy* work grounded in data. The CLADEM network also constantly monitors the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and other treaties. At the regional level, it consistently monitors the Belém do Pará Convention, as well as it is part of the CLACAI network and the regional group monitoring the Montevideo Consensus. Within ECLAC, it participates in the technical groups on education, women and migration. It also works within the framework of the United Nations (UN) and the Organization of American States (OAS). At the national level, CLADEM has been involved in the pursuit of greater democracy and justice for women, working both to establish legal frameworks for the recognition of women's rights and to expand existing legal norms while building jurisprudence in favor of women.

In order to fulfill this fundamental commitment to improving the lives of all women in the region and eradicating all forms of discrimination, CLADEM works along four main lines:

1. The follow up of international human rights treaties from a gender perspective in order to ensure that States fulfill their international commitments on women's rights;
2. Strategic litigation to promote changes in laws and public policies in the region, as well as to ensure fair remedies for the violation of women's rights;
3. Internal and external training on socio-legal content from a feminist perspective, ensuring that its members possess the skills and abilities to promote change regarding gender equality;
4. Campaigns, which are planned and coordinated regional strategies of actions with potential national impacts, addressing fundamental issues related to the empowerment, affirmation, and respect for women's fundamental rights.

In 2022, CLADEM joined the steering committee of the Global Campaign for Equality in Family Law,[2] a global initiative aimed at promoting needed changes to eliminate discrimination and gender stereotypes in family law. As part of its work within this campaign, CLADEM became aware of the problems arising from the increasingly widespread use of legal arguments that incorporate the false Parental Alienation Syndrome (PAS)—or its core ideas under different concepts—in child custody disputes, particularly when child sexual abuse is reported in family courts. It is concerning

2 https://equalfamilylaws.org/

how readily judicial systems in the LAC region accept spurious pseudo-scientific arguments based on stereotypes against women, as well as the harmful effects they have both on women and their children, and on the overall functioning of the judicial system.

Why does the use and acceptance of the false PAS and other associated concepts in family courts result in violence against women?

Firstly, the validation of a supposed theory focused on claiming maternal manipulation in reports of sexual violence against children in child custody disputes categorically invalidates the testimonies of women and children. This, in turn, ignores the serious levels of violence and abuse that women and their children continue to face within their families. In this way, parental alienation (and associated concepts) has become a powerful legal weapon that not only minimizes or outright dismisses reports of violence and child sexual abuse; but also perpetuates the patriarchal system, prioritizing father-family rights over the safety of mothers and their children.

Furthermore, the use of parental alienation and associated concepts in child custody disputes where there are allegations of violence and child sexual abuse implies forcing these children to live with or maintain a bond with abusive fathers. In other words, they are not being protected by the judicial system. The strength of the narrative that women lie and force their children who report abuse to lie is fed by the strength of the narrative of the family as a basic and harmonious nucleus - immune to the dynamics of power, control and violence - which must be preserved at all times and in all contexts.

By immersing itself in the implications of the false PAS and associated concepts, CLADEM corroborates the idea that the incorporation and legitimization of this legal argument is exposing women and their children to greater levels of violence and greater risks. This legal strategy works to favor the maintenance of men's coercive power over women as a way of controlling them even after divorce. In addition, the CLADEM network warns of the progressive consolidation of a legal structure that enables the judicial system to be used against women, both to deny their complaints and to hinder their right to defend their own lives and well-being, as well as that of their children. It also warns us about the institutional violence involved in the use of parental alienation laws, which subject women to re-victimization.

Despite the aforementioned problems, the false parental alienation syndrome has become a prominent issue in child custody proceedings and allegations of child sexual abuse in the region. It has divided the opinions of legal and health professionals, leading women and their legal representa-

tives to highlight the perniciousness of this new legal weapon that blames women and discredits any report of violence and abuse perpetrated against them and their children. This is no coincidence, since the definition of parental alienation given by its creator, psychiatrist Richard Gardner, is steeped in gender bias and sexism since it is considered to be a syndrome in which vengeful mothers use accusations of child abuse as a powerful weapon to punish their ex-partner and secure custody of their children for themselves. In short, Gardner stated (based solely on his own clinical observation) that the allegations of sexual abuse raised by mothers in custody cases would be false in 90% of cases.[3]

In the few years since CLADEM began working on this issue, regional training and discussion sessions have been organized based on the challenges faced by each country in this field.[4] Subsequently, CLADEM, in partnership with Equality Now and within the framework of the Global Campaign for Equality in Family Law, held a meeting in Rio de Janeiro, Brazil, in September 2023, to better discuss the impacts of the use of the false parental alienation syndrome on the rights of women and children in the LAC region. The book, now published, compiles the contributions of experts in law, psychology and social work, as well as the experiences of mothers accused of parental alienation, as a warning of a new form of gender violence against women and children.

Given CLADEM's experience with women's human rights and its regional actions, this book intends to bring the issue of false PAS to the forefront of the regional agenda, as it demands attention from feminist movements in the region. It is also intended to contribute to the global debate on the subject, since the use of false PAS and related concepts is verified in many other regions, including North America and Europe. Ultimately, our aim is to contribute in ensuring women's and children's rights to a life free from violence!

3 Joan S. Meier (2009). *A Historical Perspective on Parental Alienation Syndrome and Parental Alienation.* 6 J. Child Custody 232.

4 Regional meetings to discuss false parental alienation syndrome, held on November 29 and 30, 2021. https://www.youtube.com/watch?v=YVh0jiG1iyQ&t=2486s; https://www.youtube.com/watch?v=ZpZDGe6ESHg&t=5s

Patriarchal gender stereotypes as barriers to women's and children's access to justice

Bárbara Jiménez-Santiago[1]
Sofia Quiroga[2]

Equality Now[3] is a global organization dedicated to promoting a fairer and more equal world for women and girls. Through coalitions based on alliances with local and regional organizations, the organization pursues structural changes that addresses the root causes of oppression. At Equality Now, we understand that the law plays a central role in guaranteeing rights or perpetuating discrimination, which is why we use it to:

Achieve legal equality[4] - Although the lack of legal equality promotes violence and discrimination, in most countries around the world there are still laws that treat people differently according to their sex and/or gender.

End sexual violence[5] - Sexual violence is a human rights violation that predominantly affects women and girls as a result of systemic and structural inequality.

1 Bárbara Jiménez-Santiago is a feminist and human rights lawyer from Puerto Rico, she is the Regional Representative for Latin America and the Caribbean at Equality Now. She promotes access to justice, gender equality, and the elimination of discrimination and violence against girls and women in the Latin America and Caribbean, working with allied organizations to transform laws on sexual violence and ensure their effective implementation.

2 *Sofía Quiroga* has a degree in social work, she is specialist in sexual diversity and human rights from the Latin American Council of Social Sciences, in gender violence from the National University of Córdoba and in higher education from the University of Buenos Aires and the Latin American Council of Social Sciences. She is a professor at the National University of Tucumán and a member of the regional network of "Jóvenas Latidas", a network of young feminists in Latin America fighting against child marriage. She is responsible for strategic alliances and *advocacy* for Equality Now in Latin America and the Caribbean, and Program Officer for Argentina for Equality Now.

3 https://equalitynow.org/

4 https://equalitynow.org/achieve_legal_equality/

5 https://equalitynow.org/end_sexual_violence/

End sexual exploitation[6] - Sexual exploitation, a form of sexual abuse, occurs when someone abuses or attempts to abuse another person's vulnerability or their position of power or trust for sexual purposes.

End harmful practices[7] - The term "harmful practices" comprehends forms of ritual violence or discrimination, perpetrated mainly against girls and women, which have become culturally normalized.

Specifically within the scope of Equality Now's strategy to eliminate sexual violence, we intend to:

- Improve legal protection: Modify the definition of rape to base it on lack of consent rather than the use of force, and repeal statutory rape and similar laws.
- Improve access to justice under the law: Allow adolescent girls to file reports of sexual violence on their own; classify all sexual crimes as a public offense; and promote a holistic review of laws impacting women and girls.
- Improve implementation, practice and accountability: Train legal agents to deal with cases of sexual violence in a victim-centered and trauma-informed manner, obtaining statistics and allocating resources for prevention and care programs.
- Fight negative stereotypes and improve public understanding of sexual violence: Implement comprehensive sex education programs in schools; and public information campaigns to prevent and eliminate the culture of silence and victim-blaming.

Our report, *Failure to Protect: How Discriminatory Sexual Violence Laws and Practices are Hurting Women, Girls, and Adolescents in the Americas*[8] demonstrates how discrimination and violence against women in all their diversity are maintained and reinforced by discriminatory laws and practices implemented by different justice systems. It also addresses the obstacles women and girls face to access justice in cases of sexual violence due to patriarchal norms and harmful gender stereotypes that normalize and tolerate gender-based violence.

6 https://equalitynow.org/ending-sexual-exploitation/

7 https://equalitynow.org/end_harmful_practices/

8 Equality Now (2021). Failure to Protect: How Discriminatory Sexual Violence Laws and Practices are Hurting Women, Girls, and Adolescents in the Americas . https://equalitynow.storage.googleapis.com/wp-content/uploads/2021/09/20064320/Failure_to_Protect_-_Equality_Now_2021_-_ENG-min-1.pdf https://equalitynow.storage.googleapis.com/wp-content/uploads/2021/09/20064348/Failure_to_Protect_-_Equality_Now_2021_-_ESP-min.pdf

It is important to emphasize that judicial ineffectiveness and inefficiency in cases of violence against women is in itself a form of discrimination against women in terms of access to justice; and fosters an environment of impunity, which facilitates and promotes the repetition of events.[9]

For this reason, as part of its efforts to promote the principles of equality and non-discrimination in society, Equality Now has taken on the role of executive secretary of the Global Campaign for Equality in Family Law, which has been advocating for legal reform of family law to be a global priority by 2030. Thus, an alliance was formed with CLADEM to understand the challenges and improvements regarding the issue in Latin America and the Caribbean. In this context, and based on the meeting held in Rio de Janeiro in September 2023, we are working to better understand and fight the use of the false parental alienation syndrome (PAS) as violence against children and adolescents and a new form of gender-based violence.

The implementation of the false PAS and related concepts shows a mechanism for the maximum expression of cruelty, which seeks not only to silence the child who has been sexually abused, but also their mothers. It is a tool that allows the perpetration of institutional violence by judges, prosecutors and academics in order to deprive victims of their voice and criminalize their main defenders.

For us, as an international organization, working with protective mothers has been fundamental to understanding the complexity of this problem based on the voices of the protagonists; learning not just what to do, but how to do it. By building this path to access justice, we encounter a central obstacle to the protection of women and children and to the proper reparation for the multiple forms of violence they have suffered: a justice system that reinforces gender stereotypes.

These women, many of whom are organized in collectives and associations, face not only the pain of sexual violence suffered by their children, but also stigmatization and re-victimization by the justice systems, both in relation to them and their children. By using the false PAS, the reports of sexual violence against boys and girls are discredited, the mothers' mental health is questioned and the dynamics of violence that affect the mothers and their children is perpetuated, legitimizing the impunity of the abusers.

The Inter-American Court of Human Rights (I/A Court H.R.) has stated that:

9 Inter-American Court of Human Rights. *Case of Ángulo Losada vs. Bolivia*. Judgment of 18 November 2022. Preliminary Objections, Merits and Reparations, paragraph 161. https://www.corteidh.or.cr/docs/casos/articulos/seriec_475_ing.pdf

> women who are victims of sexual crimes, and girls or adolescents who are victims of sexual crimes, are very strongly disadvantaged in the criminal process, as a result of the trauma they have suffered", so it is necessary that there be an "empathic neutrality" towards the victims of sexual violence by the officers of the justice system.[10]

It is essential to recognize that access to justice cannot be approached independently. All sectors must be involved: from the administration of justice systems to civil society, which includes feminist organizations and mothers fighting for their rights and their children's rights. The segregation of civil and criminal jurisdictions further complicates the situation, often leading to the reconnection of victims with their abusers and depriving them of the essential support their mothers provide. Forced reunification that violate the dignity, well-being and psychophysical health of children and adolescents serve as a strategy to prevent criminal charges against sex offenders. In other words, when mothers report child sexual abuse to criminal courts, perpetrators turn to family courts to request reunification with their children, using this as a strategy to undermine the criminal complaint and evade accountability.

Let us recall that the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the Convention of Belém do Pará, in its Article 7(b), obliges States Parties to apply due diligence to prevent, punish and eradicate violence against women. In addition, Article 7(f) states that States Parties must "establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures". This means that

> in the event of an act of violence against a woman, it is particularly important that the authorities in charge of the investigation carry it out with determination and effectiveness, taking into account the duty of society to reject violence against women and the obligations of the State to eradicate it and to give victims confidence in state institutions for their protection.[11]

10 Inter-American Court of Human Rights. *Case of Ángulo Losada vs. Bolivia*. Judgment of 18 November 2022. Preliminary Objections, Merits and Reparations, paragraph 104. https://www.corteidh.or.cr/docs/casos/articulos/seriec_475_ing.pdf

11 Inter-American Court of Human Rights. *Case of Ángulo Losada vs. Bolivia*, judgment of November 18, 2022. Preliminary objections, Merits and Reparations, paragraph 94, available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_475_ing.pdf

In this sense, Equality Now is committed, within its campaign, to promoting access to justice for children and adolescents who are victims of sexual abuse, defending the elimination of the use of the false PAS and related concepts.

The Inter-American Court of Human Rights (IACHR), in the case Brisa de Angulo Losada v. Bolivia, whose litigation was supported by Equality Now, has warned

> that children and adolescents who are victims of crimes, particularly sexual violence, may experience serious physical, psychological and emotional consequences caused by the violation of their rights, as well as new victimization at the hands of state bodies through their participation in a criminal process, whose function is precisely the protection of their rights. If it is considered that the participation of the child or adolescent is necessary and can contribute to the collection of evidentiary material, re-victimization must be avoided at all times and participation will be limited to the procedures and actions where their participation is deemed strictly necessary. Their interaction and contact with their aggressor during the proceedings ordered will be avoided.[12]

We believe that these multiple forms of oppression cannot be combated individually but must be addressed collectively, seeking solutions that align with our commitment to a swift and comprehensive justice system, free from discriminatory gender stereotypes. This is why we are committed to fostering opportunities for dialogue and collaboration between protective mothers, lawyers, and feminist organizations, while promoting academic research that underpins our approach. In this regard, we believe it is essential to cultivate a scientific discourse that challenges the validity of this so-called syndrome while simultaneously educating future legal and psychology professionals on the significance of victim-centered justice. This begins with prioritizing the voices of victims, rather than perpetuating harmful stigmas that deny them their rightful access to justice.

At Equality Now, we are committed to the mobilization established in Brazil in 2023 regarding the meeting led by CLADEM, Equality Now, and the Global Campaign for Equality in Family Law. We firmly believe in the importance of supporting the work of civil society organizations, which are crucial for raising awareness of these issues and building a united front in the fight

12 *Idem*, paragraph 104.

against sexual violence. Our commitment is clear and profound: **to fight for access to justice in cases of sexual violence, including the elimination of the false PAS and related concepts used as tools to discredit children's experiences of sexual abuse. We are also committed to fighting the control of bodies and the ongoing gender-based violence that stems from abusive relationships during and after divorce**. We hope that this book will play its part in disseminating the experience of these mothers, their lawyers and other experts in Latin America and the Caribbean, and that it will inspire women in other countries to fight for the prohibition of legislations based on a concept that lacks legal validity and legitimacy, or for the repeal of any policy related to the false PAS.

Equality in society begins with equality in the family

Hyshyama Hamin[1]

According to the Women Business and the Law report of 2024, issued by the World Bank Group, no country worldwide has achieved full legal equality between women and men.[2] In addition, we know that inequality often starts in the family. In this regard, women and girls globally are affected by discriminatory family laws[3] and practices, which consequently have multiple intersecting impacts on all other areas of their lives. Inequality in family law limits women and girls' right to education, employment, economic independence, and full participation in society. It also further increases their risk of facing gender-based violence and harmful traditional practices such as child and forced marriage.

According to a recent report[4] on the progress towards the Sustainable Development Goals (SDGs), one in ten women globally lives in extreme poverty. Addressing discrimination in family laws offers one way to contribute to

1 Hyshyama Hamin is the Campaign Manager of the Global Campaign for Equality in Family Law (GCEFL). Born in Sri Lanka, Hyshyama grew up in Nepal and is now based in Colombo, Sri Lanka. She is a researcher and activist with over 15 years of experience working on women's rights, primarily in the Global South. With a passion for advocacy campaigns and movement-building focusing on family law reform, she previously led Musawah's global Campaign for Justice and international advocacy work.

2 Women, Business and the Law (2024). *World Bank Group report.* https://wbl.worldbank.org/en/reports

3 Family law encompasses a body of statutes, rules, regulations, court proceedings, and customary and uncodified laws and practices that govern relationships within family units. It includes but is not limited to, areas of marriage, unions and family relations that fall under Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), including the rights of women and men entering into marriage, rights within marriage and unions (for example in choosing a profession/occupation or to access education), right to divorce, custody and guardianship of children, property rights and inheritance.

4 UN Women, UN DESA. (2023). *Progress on the Sustainable Development Goals: The gender snapshot 2023*. https://www.unwomen.org/en/digital-library/publications/2023/09/progress-on-the-sustainable-development-goals-the-gender-snapshot-2023

poverty elimination in many countries where the lack of economic rights and security of women is intrinsically linked to unequal family laws and practices.

The Global Campaign for Equality in Family Law (GCEFL)[5] is a joint campaign launched in March of 2020 by Equality Now, Act Church of Sweden, CLADEM (Latin American and Caribbean Committee for the Defense of Women's Rights), Musawah, Muslims of Progressive Values, SOAWR (Solidarity for African Women's Rights) - network represented by FEMNET - Women's Learning Partnership and UN Women. The current members of GCEFL include ACT Alliance, Girls Not Brides and GAMBE, Canada. At the Global Campaign for Equality in Family Law, we have noted from multiple contexts, especially in the Middle East, Africa, South and Southeast Asia and Latin America and the Caribbean, that unequal family laws and practices impact the financial rights of women. These family laws can affect most of a country's population or specific minority communities based on customs, traditions, ethnicity, or religion.

At the household level, these practices can result in women being denied the agency to consent to marriage or unions. After a woman or girl has entered into a marriage or union, patriarchal family laws can allow a husband to limit her rights and even when women do work, they may have limited control over their earnings. For example, in Chile, husbands can retain exclusive ownership of the marital earnings and assets, even in cases where the domestic work by the wife has enabled the husband to earn an income outside the home.

The aforementioned Women, Business and the Law report by the World Bank Group,[6] shows that, out of 190 economies, 76 countries restrict women's property rights; 19 countries have laws that allow husbands to legally prevent their wives from working; 43 countries do not grant widows the same inheritance rights as widowers; and 41 countries prevent daughters from inheriting the same proportion of assets as sons.

In countries such as Pakistan, Tunisia, Egypt, and Saudi Arabia, among others, there are no provisions for maintenance or alimony. In the majority of Global South countries,[7] the division of marital property is neither calculated equitably nor does it recognize women's unpaid care work and non-monetary contributions.

5 Global Campaign for Equality in Family Law (GCEFL). www.equalfamilylaws.org.

6 Women, Business and the Law (2024). *World Bank Group report.* https://wbl.worldbank.org/en/reports

7 Women perform 2.8 times more unpaid care work than men, which is largely invisible and unaccounted for in national economies. Hanna. T, Meisel. C. et.al. (2023). *Forecasting time spent in unpaid care and domestic work - UN Women Technical Brief.* https://www.unwomen.org/sites/default/files/2023-10/technical-brief-forecasting-time-spent-in-unpaid-care-and-domestic-work-en.pdf

In addition, during critical emergencies, like pandemics, economic and climate crises, and conflicts, women experience a sharp increase in informal care work in their families and communities, including child and elderly care and household and communal work. As a result, women and girls are especially vulnerable to multiple layers of discrimination because, at the very root of the matter, their rights, including economic rights, are hindered in the basic unit of society, the family.

Challenges with reforming unequal family laws and practices

Family law reform remains one of the most intractable areas of legal change, primarily because most family laws are based on religion, culture, and tradition. Over 60%[8] of the 440 reservations entered against the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) are based on religion, and the most reserved article of all UN human rights treaties is Article 16 of CEDAW. States often misuse religion and culture to justify such reservations and other violations of international and constitutional rights to equality and non-discrimination and to resist civil society's demands for reform.

Women's rights groups, progressive religious leaders, and academics are working together to advocate for the possibility of reform toward equality and justice in family law. New voices have emerged at national, regional and global levels to challenge the ways governments and leaders use religion, culture and tradition to justify discrimination against women and resist demands for legislative reform. Hence, the GCEFL is a concerted and strategic global effort to draw attention to discriminatory family laws and advocate for their reform as a fundamental women's rights and human rights issue, aiming to promote and accelerate national-level reform campaigns and processes.

The need for a concerted global effort

Coupled with the fact that the majority of discriminatory family laws, particularly in the Global South, have roots in religion, culture, and tradition, these laws and practices are further entangled in misinterpretations of religion, identity politics, as well as myths and community conceptions that fuel reluctance and opposition to reform. As a result, family law reform often ranks low on the list of priority issues for broader feminist movements and the human rights system.

8 Cas. B, Montoya. M. (2017). *Policy Report: The march of universality? Religion-based reservations to the core UN human rights treaties.* Universal Rights Group (URG). https://www.academia.edu/33274401/The_march_of_universality_Religion-based_reservations_to_the_core_UN_human_rights_treaties?auto=download

Hence, there is a need for these national movements to organize regionally and globally, and that is precisely what is happening. There are now regional networks on family law reform in Asia, MENA and Africa led by key members of the GCEFL.

It should be noted that the GCEFL was launched in March 2020 by eight women's rights, human rights and faith-based organizations, with the goal to make family law and its reform a priority issue for governments, women's rights groups and movements, the human rights system and religious institutions. The GCEFL will work hand-in-hand with regional and national groups pushing to create the political will for governments to reform discriminatory family laws, through evidence, advocacy, solidarity and movement-building.

The overarching goal of the GCEFL is equality for women and girls and other marginalized groups under law, policy, and practice on issues related to families in all their diverse forms, regardless of religion and culture. The objectives of the GCEFL are also to:

1. Make equality in family law, policy, and practice a global priority.
2. Strengthen solidarity and collaborative action within and across regional networks and campaigns to prioritize equality in family law, policy, and practice.
3. Create an enabling environment to amplify globally the national-level efforts to reform family law, policy, and practice.

The GCEFL addresses family law as a body of statutes, rules, regulations, court procedures, and customary and uncodified laws and practices that govern relationships within family units. This includes — but is not limited to — matters relating to marriage and family relations that fall under Article 16 of CEDAW, including the rights of women and men to enter into marriage and divorce, custody and guardianship of children, property rights, and equal rights to inheritance.

Thus, the GCEFL acknowledges that different regions face different family law-related issues and priorities that are pre-existing and (or) emerging, which regional networks, civil society groups and activists will want to focus on. For example, regional networks like CLADEM have identified the issue of parental alienation and child custody as a priority issue in Latin America and the Caribbean.

In this regard, while the concept of parental alienation is not new in child custody cases around the world, the pseudo-scientific concept of Parental Alienation Syndrome (PAS) and related concepts are particularly problem-

atic in cases where there is greater risk to the security and well-being of women and children. This is especially true when judges and courts fail to consider the best interests of children and mothers, instead granting custody to fathers who accuse mothers of parental alienation to undermine their right to child custody.

Organizations like CLADEM have gathered research and evidence indicating a high likelihood that courts in Latin America and the Caribbean, including Brazil, Mexico, Uruguay, Costa Rica, Argentina, Bolivia, Colombia, and Puerto Rico, will recognize the false concept of PAS as legitimate in cases where mothers report fathers for sexual abuse and domestic violence.

By operationalizing its goals at the regional level, the GCEFL will amplify and advocate for regional family law issues, such as PAS, and support efforts to reframe family law as a feminist issue. The campaign will also facilitate regional and inter-regional learning, research and resource building on family law, and movement building. This includes the regular sharing of emerging resources with regional networks by organizing and co-organizing meetings or attending meetings organized by other regional and national networks.

The human rights of women and girls: international human rights law and discriminatory practices in family law, including the false concept of Parental Alienation Syndrome

Susana Chiarotti[1]

Introduction

The proliferation of the false Parental Alienation Syndrome (PAS) - explicitly or implicitly - in family litigation almost all over the world is the result of several intertwined phenomena, two of which are particularly noteworthy: first, the patriarchal backlash against the advancement of women's rights, especially regarding the reporting of violence; and second, the discrediting of women's voices, carefully constructed by patriarchal culture and disseminated through religion, the arts and sciences over the past five millennia.

Regarding the patriarchal backlash, great progress has been made in recent decades in recognizing violence against women and girls as a violation of their human rights. Violence has left the private sphere to enter the public sphere.

Thus, the prevention, investigation, punishment, and eradication of violence against women became the responsibility of the state. As a result of feminist activism, laws on violence have been passed all over the world, as

1 Susana Chiarotti is an Argentine lawyer with a postgraduate degree in Family Law. She is a member of the Advisory Board of CLADEM (Latin American and Caribbean Committee for the Defense of Women's Rights) and a professor at the Universidade Nacional de Rosário and FLASCO's *Gender and Justice* Postgraduate Program. She is part of the OAS Committee of Experts on Violence against Women (CEVI-MESECVI) and was part of the UN Secretary-General's Advisory Group for the World Study on Violence against Women and the Advisory Group on National Gender-Based Violence Plans. She has published on women's human rights and has led international litigation cases on violence against women and girls.

well as two regional international treaties: in the Americas, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, also known as Belém do Pará Convention (1994); and, in Europe, the Council of Europe Convention on preventing and combating violence against women and domestic violence, known as the Istanbul Convention (2011).

At the same time, specialized institutions and an important body of case law on the subject were built up. In a period of around 40 years, violence has been delegitimized. Women not only began to personally report the abuses they endured to national and international courts, but they were also empowered to report the abuses perpetrated against their sons and daughters. Thus, the structures forged over millennia to sustain the subordination of women and children began to be dismantled.

Concerning the discrediting of women's voices, we must examine history to uncover the countless tools used by patriarchy to reshape the relationship between men and women. Firstly, to ensure that half of humanity - women - served the other half, the female image had to be devalued. It was then that women came to be seen as fragile, fickle, governed by the cycles of nature, and dependent on an authority to protect them while also controlling them. Monotheistic religions, art and law were fundamental to justifying this domination. Thus, the female goddesses and Mother Earth, whether called Pachamama or Gaia, who had been venerated alongside other nature deities for millennia, were replaced by the Sun god. Other goddesses were dismantled and relegated to a secondary role. In theater and literature, myths emerged about vengeful women capable of killing their children, like Medea, liars and traitors, or women subjected to brutal punishments for daring to modify the law, like Antigone.

In law, women were no longer considered reliable witnesses and became suspects of confabulation. An example of this shift can be found in the Code of Hammurabi, which, in its Law 131, stated: "If a wife was accused by her husband and evicted from her house, but she has not been caught in lying with another male, she shall swear by God and shall return to her house." This credibility in a woman's word has changed over the centuries, as recorded in the Hammurabi Code itself. The unreliability of the women's word is gradually inserted in the Code and, by the time collection is finished, the testimony of women is already seriously questioned. In this same region, where 4,500 years ago a woman's oath was sacred and trusted, nowadays women are disqualified as court witnesses.

Along the same lines, the book Malleus Maleficarum (Hammer of the Witches) is a manual in which religion and law work together. First published

in 1486 by Heinrich Kramer and Jacob Sprenger, two Dominican inquisitors, it was an overwhelming success, exerting great influence during the colonial period in America. It was the inquisitors' manual. For the first time in history, criminology (the origin of evil), criminal law (the manifestations of evil) and criminalistics appear integrated in the same document, forming the necessary data to discover evil in practice (Zaffaroni, 2011).

Beyond discussing witches' issues, this book focused on women in general: all women were suspects and potential witches, as evidenced in the following excerpt.

> there was a defect in the formation of the first woman, since she was formed from a bent rib, that is, a rib of the breast, which is bent as it were in a contrary direction to a man. And since through this defect she is an imperfect animal, she always deceives and lies. (Kramer, Sprenger. 2009, p. 18).

According to the text, women are more credulous, more prone to evil and liars by nature, and there are three general vices that exert particular power over them: "infidelity, ambition and lust". They are described as beings with deceitful and "slippery" tongues who cannot be left alone, as "when a woman thinks alone, she thinks evil." Furthermore, according to the book, it would be a natural weakness of women not to want to be governed.

This manual was used in the American colonies until the early decades of the 19th century, deeply influencing their culture as a whole, particularly the legal sciences. In Lima, Peru, for example, it was only repealed in 1820. However, it was reproduced in the policies and laws of the 20th century, where women remained subordinated to their husbands, were not allowed to own property, and could not vote. Additionally, sexual violence and incest continued to be silenced.

This brief mention of background aims to highlight that the false parental alienation syndrome - the subject of analysis in this book - is, on one hand, a new tool for reinstating, recycling, or perpetuating old myths, prejudices, and stereotypes about women. In fact, the legal defenses of some incestuous abusers look like updated reissues of the Witch's Hammer. The fast spread of a theory that is not scientifically validated is explained by the fact that this theory is connected to the deep roots of the patriarchal oppression that pervades our culture.

On the other hand, the false PAS is also a backlash to the growing mobilization of women against violence and their achievements concerning labor, social, political and cultural participation.

The false Parental Alienation Syndrome

In 1987, U.S. physician Richard A. Gardner developed the concept of PAS based on the central argument that reports of violence and abuse are likely unfounded. Instead, he claimed that one parent (typically or invariably the mother) employs various strategies to brainwash their children, altering their perception in order to prevent, undermine, or destroy their bond with the other parent (invariably the father).

Gardner never provided verifiable data or clarified the methods he used in his research, he relied solely on anecdotal cases and his personal experiences. He published a scale that he claimed could distinguish true cases of Child Sexual Abuse (CSA) from false ones, a claim that has also not been scientifically corroborated. With his proposals, he contradicted established theories of child development, scientific advancements regarding the testimony of girls and boys, and the common understanding derived from everyday interactions with children. The invocation of the false PAS leads to the premature closure of cases, offering a convenient and simplistic resolution to complex legal matters and proceedings.

Richard Gardner neither assisted patients nor conducted research in health establishments or universities; therefore, he lacked a substantial number of cases to support his diagnoses. He never conducted any research with real people that would allow him to reach his claimed findings. His main occupation was testifying as an expert witness for the defense of fathers in hundreds of child custody cases in contentious divorce proceedings in the United States. Eventually, his claims were discredited by health, psychiatric and psychological associations and, in 2020, they were removed from the World Health Organization's International Classification of Diseases.[2]

In this context, it is worth raising the following questions: How is it possible for this theory—neither validated nor certified, and even criticized by professional mental health associations—to be used in courts that demand all evidence to be thoroughly verified? Why is it accepted and spread so rapidly around the world?

Possible answers are:

- → Due to the fact that this theory aligns with the prejudices and discriminatory stereotypes that portray women as deceitful, manipulative, and vindictive, allowing for the expression, with an apparently theoretical nuance, of the misogyny inherent in patriarchal law.

2 The World Health Organization (WHO) has removed the term of this syndrome from its ICD-11 and from its implementation guide. https://www.who.int/standards/classifications/frequently-asked-questions/parental-alienation.

→ Because this theory is based on fallacies about children's behavior, suggesting that children lie, fabricate stories, and manipulate adults, and therefore their testimony should not be taken seriously. Although it has already been proven that boys and girls cannot fantasize about sexual abuse — since no one can fantasize about something unknown, and that children cannot make up stories or draw pictures of adult sexual events if they have not experienced them — their testimonies are still doubted.

The international legal framework for human rights

From the last decades of the past century to the present, it has been possible to build a solid legal *corpus* that enables the pursuit of justice in cases of sexual violence.

The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women—Convention of Belém do Pará, in its Article 7, establishes that State Parties "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", and that they must "apply due diligence to prevent, investigate and impose penalties for violence against women".

The Committee of Experts (CEVI) of the Follow-up Mechanism for the Implementation of the Belém do Pará Convention (MESECVI), which monitors the Convention's implementation, issued the following recommendation in a resolution on sexual violence against women and girls in September 2014:

> Conducting prompt and exhaustive investigations, bearing in mind the context of coercion as a fundamental element for determining the existence of violence, by using technical evidence and explicitly prohibiting evidence based on the victim's behavior to infer consent, such as lack of resistance, sexual history, retraction during the trial; or discrediting testimony on the basis of alleged Parental Alienation Syndrome (PAS), such that the results of investigations combat the impunity of offenders (MESECVI, 2014).

MESECVI, GREVIO[3], the Special Rapporteur on the Rights of Women in Africa, the UN Special Rapporteur on Violence against Women and Girls, the CEDAW Committee[4], the UN Working Group on Discrimination against

3 Group of experts that monitors the application of the Istanbul Convention.

4 Committee that monitors the implementation of the Convention on the Elimination of All Forms of Discrimination against Women(CEDAW).

Women and Girls, and the IACHR/OAS Rapporteur on the Rights of Women collectively form the Platform of Independent Expert Mechanisms on Discrimination and Violence against Women (EDVAW Platform). On May 31, 2019, the EDVAW Platform issued a declaration warning against the use of the parental alienation mechanism to influence judicial decisions in child custody cases. The declaration expressed: "Accusations of parental alienation by abusive fathers against mothers must be considered as a continuation of power and control by state agencies and actors, including those deciding on child custody" (EDVAW Platform, 2019).

In 2022, CEVI-MESECVI and the UN Special Rapporteur on Violence against Women and Girls urged States Parties to explicitly prohibit the use of the PAS during judicial proceedings in order to prevent placing both children and mothers in a situation of high vulnerability, and added that this concept could be used as a *continuum* of gender-based violence and could invoke the responsibility of States for institutional violence (MESECVI, 2022a).

But PAS doesn't settle in a vacuum, it thrives on discriminatory laws and courts trained to enforce those laws. Discriminatory civil and family laws still prevail in many States. To provide an analysis of the legal framework in the Latin American region, MESECVI has published, in 2022, its report on "Discriminatory Civil and Family Law in Latin America. Analysis of civil and family legislation in relation to the obligation to prevent, attend to, punish and repair gender-based violence against women."[5] (MESECVI, 2022b)

This mapping is important since, despite numerous legislative reforms in civil and family matters across the region, civil laws and other policies that perpetuate gender discrimination and violence remain in force. "The purpose of the analysis is, first, to draw attention to the need for States Parties to thoroughly review the civil legislation currently in force and, second, to identify problems arising from the enforcement of such laws", as the adoption of the measures set out in the Belém do Pará Convention must be complemented by "the dismantling of patriarchal ideologies, structures, systems, and practices".

This study analyzed the civil and family codes and civil procedure codes of 17 countries in the region in order to identify not only discriminatory laws, but also good practices that would eliminate legal gaps and contribute to achieving substantive equality between women and men in this field. Specific recommendations were also issued in order to promote legislative changes that guarantee due diligence of the State and the prevention of gender-based discrimination and violence.

5 https://belemdopara.org/

In the United Nations system, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) contains a specific article on the State's obligation to eradicate the stereotyped social roles of women and men. Article 5 states that:

> States Parties shall take all appropriate measures to: *Modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.*

In 2014, in its decision regarding the case González Carreño v. Spain, the CEDAW Committee recommended that prior acts of domestic violence should be taken into consideration when determining child custody and visitation, so that mothers or their children are not put at risk (CEDAW, 2014).

The CEDAW Committee, in its General Recommendation No. 33 (2015) on access to justice, observes that noncompliance with CEDAW's Article 5 enables the judiciary to rely on gender stereotypes and prejudices that lead to the denial of effective justice to women and other victims of violence. It also urges States Parties to ensure that gender stereotypes are effectively addressed and eliminated.

In its General Recommendation No. 35 (2017) on gender-based violence against women, the CEDAW Committee stated that: "The rights or claims of perpetrators or alleged perpetrators during and after judicial proceedings, including with respect to property, privacy, child custody, access, contact and visitation, should be determined in the light of women's and children's human rights to life and physical, sexual and psychological well-being and guided by the principle of the best interests of the child".

The Convention on the Rights of the Child, of 1989, radically transformed the paradigm for considering the rights of girls and boys, recognizing them as subjects of law rather than merely beings in need of protection. Its article 12, it establishes that "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. For this purpose, the child shall in particular be provided with the **opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body**" (CRC, 1989). Article 19 establishes the right of children 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 the care of the child" (CRC, 1989).

In April 2023, the UN Special Rapporteur on Violence against Women and Girls, its causes and consequences, Reem Alsalem, published the report "Custody, Violence Against Women, and Violence Against Children", in which she expressed concern over complaints received from various countries regarding cases where domestic violence was ignored, and legal or judicial authorities issued decisions on child custody that penalized mothers who had reported abuse by their ex-partners.

This 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" (UN, Alsalem, 2023).

For the rapporteur, the authorization by the judiciary of the use of false PAS in court constitutes institutional violence, for which the State must be held responsible. This is a fundamental concept. It also presents the PAS as a continued manifestation of the domestic violence experienced in the home, which is then transferred to the courts, holding the State accountable for allowing the use of such arguments.

The report also warns about the application of the Hague Convention on the Civil Aspects of International Child Abduction (1980), which deals with the international removal of children by their parents. This Convention does not address gender-based violence in its articles, nor do the courts include it in its enforcement. The result is that around three quarters of the cases brought under this Convention are decisions against the mother, who in most cases is either fleeing domestic violence or trying to protect her children from abuse. In many cases, women and their children are forced to return, even after it has been proven that they have been victims of violence and that their lives are in danger (UN, Alsalem, 2023).

After an extensive review of policies and case law from around the world, the Rapporteur recommends that:

- States legislate to prohibit the use of parental alienation or related pseudoconcepts in family law cases and the use of so-called experts in parental alienation and related pseudoconcepts;
- 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 pseudoconcepts;

→ The Hague Convention on the Civil Aspects of Child Abduction be revised to better protect abused women and their children by allowing a stronger defense against return if there is family and domestic violence (UN, Alsalem, 2023).

In conclusion:

A very important task lies ahead, as part of the efforts that thousands of women have been undertaking for many years to give visibility to prevent, report, and eradicate gender-based violence.

Spreading awareness about these tools and denouncing the PAS in academia, the justice system, and the media will be essential for debunking these false theories. It is essential for law students to be aware of this situation before graduating and for it to be incorporated into the curriculum of family law and criminal law courses. They should not have to wait until they become judges, prosecutors, or public defenders to receive proper training.

Similarly, we must not forget that legal agents are trained in an androcentric culture. In order to guarantee equality, it is necessary not only to transform legal norms and judicial practices, but also to contribute to cultural transformation using all available tools, including communication and the arts. Literature, music, theater, and cinema are privileged tools in contributing to cultural transformation.

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INTERDISCIPLINARY PERSPECTIVES: RELATIONS BETWEEN DOMESTIC AND FAMILY VIOLENCE AND THE FALSE PARENTAL ALIENATION SYNDROME

Shared custody and domestic violence

Diana Valle Ferrer[1]

Introduction

Violence against women, or gender-based violence, is a global issue that has been part of the history of family life for centuries. Gender-based violence is a widespread and often deadly reality for millions of women, boys, and girls. One of the most common forms of violence against women is the one inflicted by their male partner in the context of intimate or family relationships. Violence in heterosexual intimate relationships is mainly perpetrated by men against women, although women can sometimes violently resist the abuse. Besides, domestic violence also occurs in same-sex/gender intimate relationships. Therefore, it is crucial to assess domestic violence when determining whether to recommend shared custody or sole custody with supervised visitation in court proceedings.

In Puerto Rico, as in other countries, research and statistics show that the majority of victims of domestic violence are women. In the last 10 years, more than 200 women have been murdered by their intimate partners or ex-partners. In 2022, there were 79 femicides, 15 of them were perpetrated by the victim's intimate partner. Statistics from the Puerto Rico Police show that between 13,000 and 23,000 incidents of domestic violence are reported each year, with 89% of the victims being women. The Pan Ameri-

1 Diana Valle Ferrer holds a Ph.D. in Social Work and Gender Studies from Rutgers University, New Jersey, USA and a Master's degree in Clinical Social Work from the University of Illinois, USA. She served as Director, Coordinator of the Family Area, and Coordinator of the Doctoral Program at the Beatriz Lassalle Graduate School of Social Work at the University of Puerto Rico in Río Piedras. In her academic work, she coordinated accreditation self-studies and developed courses in Family and Group Intervention, Clinical Supervision, Gender, and Gender-Based Violence. In addition, Dr. Valle served as Assistant Secretary for Families and Children at the Department of Family Affairs of the Government of Puerto Rico and as President of the Board of Directors of Casa Protegida Julia de Burgos, (the first shelter for women survivors of violence in Puerto Rico). She has taught, trained, and conducted extensive research in the field of gender-based violence. She has also worked as an advisor, project developer, and program evaluator for the Department of Family Affairs and the Senate of Puerto Rico.

can Health Organization (2013) indicates that physical violence perpetrated by intimate partners is often accompanied by psychological abuse, and in over 15% of these cases, sexual violence is also present.

In this reflection, I argue that violence against women in intimate relationships is a phenomenon rooted in social structures that uphold the established hierarchy based on gender, class, ethnicity, race, sexual orientation, and other inequalities. On one hand, domestic violence can be understood as a universal phenomenon present in every country around the world. On the other hand, its particularities and characteristics may vary according to the socio-historical and cultural context in which it occurs, as well as according to each woman's personal history, her experiences with violence, and the resources and options available to her at a given time. Domestic violence against women within families is part of a structural social framework of oppressive systems that seek to keep many women "in their place" of subordination or subjection to an established order. I also argue that awarding shared custody in cases of domestic violence is another way of keeping women in a position of subordination and under control through the perpetrator's continuous access to his former partner and their children. Likewise, I assert that courts may put the safety and well-being of children and their mothers, victims/survivors of violence, at risk by granting shared custody or sole custody with unrestricted visitation rights to an abusive father. That is why the assessment of women-mothers victims of intimate partner violence in child custody proceedings is of vital importance.

Domestic violence in intimate partner relationships

Violence against women in intimate relationships is part of the *continuum of* violence (Valle Ferrer, 2011) against women within family and society. Theoretically, violence against women in intimate relationships refers to the use of coercive behavior (through action or omission) by a man against his intimate partner, inflicting physical, sexual, or psychological harm to compel her to comply with his will, regardless of her needs, desires, rights, or best interests. Domestic violence in intimate relationships takes multiple forms, including physical violence, sexual violence, emotional or psychological abuse and economic violence. These forms of violence share common characteristics, such as the power imbalance between the perpetrator and the victim, which is predominantly from men toward women. Moreover, these behaviors perpetuate and sustain the unequal balance of power and the subordination of women in their intimate relationships. Women and girls clearly receive the message from those in power, along

with the consequences they may face, often more violence, if they dare to challenge that power. The culmination of many of these forms of gender-based violence is the death of the woman, or femicide.

Separation and divorce are likely the most dangerous moments for a woman in a violent intimate relationship (Hayes, B.E., 2013). The mere mentioning of separation or divorce can trigger a man's anger and violence toward his partner, sometimes threatening her life and that of their children. In this way, child custody and visitation arrangements with the non-custodial father can become particularly dangerous for both children and women, a situation sadly often seen in Puerto Rico. A particularly emblematic case is that of Yarelis Pimentel, a young girl who was murdered by her father during a weekend overnight visitation (Bauzá, 2013). In cases of shared custody, the risk that the abuser may perpetuate the violence through a pattern of coercive control toward his partner is even greater.

Shared custody

In Puerto Rico, Law No. 223 of November 21, 2011, the Law on the Protection of Children's Rights in Custody Proceedings, as amended in 2020, defines shared custody as "the obligation of both parents, father and mother, to directly and fully exercise all the duties and functions involved in raising their children, establishing relationships with them as much as possible, and providing them with the company and attention expected from a responsible parent". Although Law No. 223 states that courts are not required to establish shared custody, it stipulates that in all cases of divorce, separation, or dissolution of a consensual relationship involving minors, shared custody will be considered if it serves the best interests of the children, unless proven otherwise, and subject to the exclusion criteria outlined in the Law. Some of the exclusion criteria that the Family Relations Social Work Unit of the Court must take into consideration are: history of domestic violence, the parents' ability to meet the emotional, economic, and moral needs of the child; relationship with the children before the divorce, separation, or dissolution of the consensual relationship; ensuring the decision is not made impulsively or under coercion; whether there is the capacity, availability, and firm intention to assume joint responsibility for raising the children; the reasons for requesting parental authority and shared custody; and the communication between the parents. For example, research in the field of child custody proceedings demonstrates that many abusive fathers have concealed motives for pursuing custody, such as revenge and the perpetuation of control over their victims (Katz, E., 2016; Formica, M., 2023; Neilson, L.C., 2017).

Generally speaking, we could say that all the previously mentioned factors are interconnected and could compose a pattern of violence and coercive control perpetrated by man against their female intimate partners. For example, coercion, which is inherently present in domestic violence dynamics, negatively impacts the possibility of communication between partners, the ability and purpose of co-parenting, and the fulfillment of the child's emotional needs, as well as the reasons for future shared custody requests. Article 9 of Law No. 223 stipulates that shared custody will not be considered "beneficial and favorable to the best interest of the minor(s)" if one of the parents has been convicted of offenses involving domestic violence or child abuse.

But, as is widely known, and according to the literature and statistics on domestic violence and custody proceedings, most cases of domestic violence in intimate partner relationships never make it to court. Among those cases that do reach the courts, only a small percentage end in convictions (Colegio de Abogados y Abogadas de Puerto Rico, 2022). In other words, in most cases of domestic violence there are no convictions, as provided for in Law No. 54 of August 15, 1989, as amended (the Domestic Violence Prevention and Intervention Law). Therefore, assessing the history of domestic violence is crucial when deciding whether to recommend the court to order shared custody or sole custody with supervised visitation.

The relevance of domestic violence against intimate partners to child custody and visitation proceedings

Domestic violence in intimate partner relationships is relevant to legal decisions regarding child custody and visitation arrangements since it directly impacts the safety and well-being of both the children and the female partner who is the victim/survivor. Despite domestic violence being a crime, some courts still consider that a violent partner (mainly abusive fathers) can be a good parent. However, legislative reforms in Puerto Rico and other countries (Goodmark, 2018) recognize violence as a critical or unfavorable factor when determining the best interests of the child(ren). In the United States, for example, the "Safe Havens Supervised Visitation and Exchange Program" of the U.S. Department of Justice, provides funding and technical assistance in domestic violence cases to ensure the well-being of children and custodial parents. According to Jaffe et al. (2005), the reasons for these changes in policies are the following:

a. Abuse does not stop with separation or divorce. As previously stated, research and literature confirm that abuse, harassment, and

stalking persist and sometimes escalate during separation, divorce, and post-divorce proceedings.

b. There is a connection between child abuse and domestic violence. The presence of domestic violence raises concerns about the potential existence of child abuse. Various researchers (Edelson, 1999; Bancroft & Silverman, 2002; Stark & Hester, 2019) have found that children of mothers who are victims/survivors of abuse have either been directly abused by their fathers or exposed to their abuse.

c. Violent fathers serve as negative role models for their children. The socialization of children is negatively impacted when they witness abuse against their mother, influencing their approach to conflict resolution and their perception of mistreatment toward others. When children observe their father threatening, intimidating, stalking, and abusing their mother in order to control the relationship, they receive the input that such behavior is acceptable or "normal" in intimate relationships. Johnson (2008) explains that the chances of a man becoming an intimate terrorist or coercive controller are much higher if he has observed his father abusing his mother.

d. Victims/survivors of abuse are undermined and stigmatized in their role as mothers. Many abusive fathers, particularly intimate terrorists, criticize, humiliate, and mock their partners regarding their role as mothers. They often tell them they are too passive or "soft" with their children and, in some cases, instruct the children not to obey or "pay attention" to their mothers. These behaviors must be acknowledged by the perpetrators in order to be eradicated.

e. Perpetrators may use court litigation as part of a continuum of control and harassment against their intimate partners. Courts and the legal system can become powerful weapons in the hands of a violent man to perpetuate his abuse. As previously discussed, women are particularly vulnerable and overwhelmed when making the difficult decision to leave an abusive partner, often facing significant emotional and financial costs to keep litigating in court. Many studies (Bancroft & Silverman, 2002; Zorza, 2013; Valle Ferrer, 1998) have found that abusive men can present themselves in an extremely positive manner and sometimes persuade social workers and judges to grant them custody of their children.

f. In critical cases, domestic violence can be fatal during and after separation. Domestic violence and femicides are closely connected. As previously noted, statistics from the United States and Puerto Rico suggest that women who are survivors of domestic

violence are at a significantly higher risk of being murdered than other women. This urges us to be more cautious and diligent while anticipating and assessing the risks of femicide during separation and divorce proceedings.

g. Another issue that demands our attention is the claim of parental alienation, in which abusive parents accuse mothers of "coaching their children" with the purpose of destroying their bonds with their fathers. In many of these cases, sole custody is granted to the abusive father. Such accusations serve as another mechanism for perpetuating the abuse against both the mother and the children.

Relevant dimensions regarding forensic assessment and intervention in cases involving domestic violence

The appropriate conduct of forensic assessments in child custody proceedings involving domestic violence against women requires the acknowledgment and consideration of the following dimensions:

a. domestic violence theories
b. forms and types of intimate partner violence
c. dynamics of violence in heterosexual intimate relationships
d. women's resistance to intimate partner violence
e. women's experiences with intimate partner violence
f. internal and external resources and strengths of the victim/survivor
g. cultural beliefs and values about women, gender and violence in our society

As I have extensively written about these issues in other papers (Valle Ferrer, 2011, 2012; Silva, Valle & Álvarez, 2023), I will only highlight the types of violence that I find most relevant for understanding and intervening with women/mothers going through divorce and separation proceedings.

Types of domestic violence

Johnson (1995, 2000, 2008) distinguishes four types of intimate partner violence: 1) situational couple violence or common violence, 2) intimate terrorism or coercive control, 3) violent resistance and 4) mutual violent control. In 2008, Johnson added a fifth type of violence: separation-instigated violence. The differences are based on patterns of control manifested throughout the relationship, not in the behavior observed during a single incident. These behavioral patterns are rooted in the underlying drivers and dynamics of both the perpetrator and their partner.

Situational violence, according to Johnson, is not related to an overall pattern of control. It arises in the context of a specific argument during which one or both partners assault the other. Johnson states that, compared to intimate terrorism, this type of intimate partner violence is less frequent and less likely to escalate in severity over time. It is also more likely to be mutual. Johnson argues that most of the violence identified in a general sample of the population is precisely this first type of violence, situational or common violence.

What distinguishes intimate terrorism from other types of violence is the desire to control the partner. In the basic pattern of intimate terrorism, violence is only one strategy in an overall control pattern. This violence, Johnson says, is motivated by a general desire to exert control over his partner, is likely to escalate over time, result in serious harm, and is less likely to be mutual. The controlling behaviors of intimate terrorism typically include psychological and emotional abuse, which can gradually alter a woman's view of herself, her relationships, and her place in the world. This type of violence is predominantly perpetrated by men and is the one most likely to be identified in women seeking services at organizations or shelters for domestic violence victims/survivors, and women who request protective orders. In a 2014 study, Johnson et al., while proposing a Coercive Control Scale, explained that intimate terrorism (high control) would be the equivalent to violent coercive control (Stark & Hester, 2019), and situational couple violence or common violence corresponded to mild coercive control.

Violent resistance is equivalent to self-defense, but Johnson (2000, 2008) prefers the term violent resistance to avoid restricting it to legal definitions, which may change over time. The author explains that violent resistance most often occurs as an immediate response to an attack, with a woman's primary goal being to protect herself from her partner's violence. This form of self-defense is an automatic reaction to the violence of intimate terrorism. Additionally, Johnson, citing Miller (2008), states that a smaller percentage of violent resistance occurs when a woman responds to her partner's psychological and verbal abuse. In these cases, violence expresses the frustration generated by prolonged abuse and humiliation. Research on this type of violent resistance has found that women report not often resorting to it since it is highly dangerous and can result in serious harm (Walker, 1984; Valle Ferrer, 1998, 2011). At the same time, it may indicate that a woman is about to leave her abusive partner (Jacobson & Gottman, 1998). Johnson states that this type of violence is primarily used by women against intimate terrorism. He also notes that one might assume that women who kill their husbands are the

only ones engaging in violent resistance, as the limited research available on the topic tends to focus on these cases.

Mutual Violent Control is identified as a pattern in which both partners are violent and controlling, a situation that could be seen as two intimate terrorists battling for control. Johnson states that this pattern occurs rarely and remains largely unexplored.

In 1993, Johnston and Campbell wrote about violence triggered or instigated by the trauma of separation or divorce. What distinguishes this type of violence is that there was apparently no prior violence in the relationship before the separation or divorce. However, Johnson (2008) explains that, although one might assume this type of violence falls under the category of situational violence, other explanations are possible. For example, it could fall into the category Johnson calls "incipient intimate terrorism", in which the perpetrator employs other coercive control tactics (such as threats, intimidation, and surveillance) but has not yet resorted to physical violence. The threat to their power and control due to the process of separation may lead them to escalate their coercive tactics to the point of using violence.

The second possibility, according to Johnson, is that intimate terrorism or coercive violence is instigated by separation or divorce. In this case, the perpetrator, in fear of losing the partner, begins to use control tactics, including violence. Johnson explains that post-separation or divorce violence can be categorized into any of the categories he has outlined; what is important is recognizing the context in which the violence occurs.

In general terms, it is understood that the apparent symmetry of violence between genders found in some studies results from a decontextualization of violence, as the analysis fails to include the perpetrators' motivations, the type and frequency of violence, and the harm caused by the violence. Both international and the U.S. literature, demonstrate that the violence used by men and women is quantitatively and qualitatively different. While women's violence often occurs in the context of self-defense or violent resistance, men's violence is more related to the intent to control the partner and is more likely to cause physical and emotional harm (Elsberg & Heise, 2005; Stark & Hester, 2019).

In Puerto Rico, the judicial and social work systems focus on the victim/survivor woman by categorizing her either as a victim or as a vengeful woman. If they believe your allegations of abuse are true, the first questions they ask are: How could you endure so much? Why didn't you leave earlier? Are you a masochist who enjoys being hit? Or how could you expose your children to such violence? On other occasions, they question the victim/survivor's ability to be a mother, attributing her behavior to the

battered woman syndrome, disregarding the literature that shows that most of the symptoms associated with this syndrome are a consequence of the abuse and that once the violence ceases, they begin to disappear (Valle Ferrer, 2011; Dutton, D.G., 2005).

The literature and experience (Valle Ferrer, 2011) tell us that many women hide their experiences of violence from the courts due to fear of further violence from the perpetrator, fear of being discredited, and fear of exposing themselves to the risk of losing custody of their children. Additionally, it is important to emphasize that women who survive violence are experiencing a situation of unequal power relations, but this situation of violence does not necessarily define every aspect of their lives. Women who are survivors of violence lead very complex lives, in which they can simultaneously be mothers, wives, partners, employers, employees, wealthy, poor, executives, housewives, and professionals.

In this regard, it is of vital importance that officials working in government institutions and organizations, such as the Courts Administration, the Department of Justice, the Department of Family Affairs, and the Puerto Rico Police, understand the complex dynamics of getting into and leaving an abusive relationship.

Intervention goals

More precisely, once the dimensions previously mentioned have been taken into consideration, it is crucial to establish goals for the intervention and decision-making process in order to substantiate the recommendations to be addressed to the court. First, it is essential to identify whether domestic violence is present in the case we are assessing, and if so, what type of violence is involved. Is it a case of situational couple violence (common violence), or is it intimate terrorism (also known as violent coercive control)? Was violence instigated by separation or divorce? Has the victim/survivor resisted or defended themselves in a violent manner? The answers to these and other questions rely on our thorough understanding of the roots, dynamics, forms, and types of violence in intimate partner relationships, as well as the role of gender and culture in the perpetration of violence. At this stage we can resort to assessment tools, such as domestic violence screening tools; however, the most important aspect is to conduct a thorough assessment in which the woman is supported, believed, and not judged, in order to convey the message that the court takes domestic violence seriously and that it is both acceptable and safe to speak about it. Normalizing and universalizing the questions during the assessment, such as starting by explaining that domestic violence is very com-

mon in our society while also asking specific questions about abusive and coercive behaviors, can ensure that the woman being examined does not feel stigmatized (Valle Ferrer, 2011).

Secondly, a personalized forensic assessment followed by a safety plan (for mothers and children) is of vital importance for the court to effectively address the needs and rights of mothers and their children.

The risk and safety assessment of all examined situations is essential to prevent future violence and save lives. The risk assessment in cases of domestic violence and child abuse must follow agency and inter-agency protocols for these cases.

Safety plans, and in some cases, escape plans (depending on the level of risk), must be developed in collaboration with the victim/survivor. These plans should include, among other things, protective orders, notifications to the Department of Family Affairs, counseling, and emergency shelters when needed. For the abusive partner, intervention and treatment programs for perpetrators should be recommended. Moreover, it is crucial that the perpetrator acknowledges and takes responsibility for his actions while committing to eliminate all forms of violence, including physical, emotional, and coercive abuse.

The main goal of this intervention is to end the violence and ensure the safety and well-being of the children and their mothers. It is important to support positive relationships between the fathers and their children but always prioritizing the safety and well-being of the children and their mothers. If this is not a feasible goal, then supervised visitation or the removal of visitation rights must be considered.

Final remarks

Historically, feminist movements and, particularly, the movement against domestic violence in Puerto Rico have demanded and achieved changes in legislation and in how executive and judicial institutions address the needs and rights of women and children survivors of violence.

The passage of Law No. 54 of 1989 in Puerto Rico (the Domestic Violence Prevention and Intervention Law) marked a significant step forward in the struggles and demands of women survivors of domestic violence. Although in recent years, we have seen how the Supreme Court and the Court of Appeals have eroded, restricted, and limited the scope of Law No. 54 through rulings in the cases of Pueblo vs. Flores and Pueblo vs. Pérez Feliciano (Valle Ferrer, 2012; Vicente, 2012), it is evident that the various branches of the Puerto Rican government have, to varying extents, made efforts to ensure the enforcement of this law. However, we are concerned

with the enactment of Law No. 223 of 2011, the Law on the Protection of Children's Rights in Custody Proceedings, as amended in 2020, which introduces changes to public policy regarding child custody arrangements by prioritizing shared custody in divorce proceedings. Under such a policy, not only the well-being and safety of children but also that of their mothers, who are victims/survivors of violence, could be jeopardized.

If we are unaware of the dynamics, complexity, and context in which domestic violence is perpetrated, we may make mistakes that could cost the lives of women and children. On the other hand, if we understand that violence against women in intimate partner relationships is endemic in our society, that femicide is a grave social issue, and that discrimination and prejudice against women survivors of violence persist in Puerto Rican courts (Stack, 2006; OPM, 2004), it is imperative that we thoroughly review our decisions and recommendations in child custody proceedings.

While a better judicial approach towards domestic violence is essential, this alone is not enough. We must conduct specialized assessments in child custody proceedings, identifying the various forms and types of violence, in order to ensure that shared custody is granted without compromising the emotional and physical well-being of women and children. For example, in cases of intimate terrorism or coercive control, the safety and protection of the children and their mother must be the court's priority; mediation would not be appropriate in these cases, and either shared or sole custody with unsupervised visitation would be detrimental and dangerous for women and children. Regarding violent resistance or self-defense against the abuser, it is essential to distinguish between the perpetrator's violence toward their partner, intended to exert coercive control over the woman, and the woman's violent resistance, which seeks to protect herself and her children.

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Contributions about intrafamilial violence against women and child sexual abuse from a feminist perspective

María Milagros Argañaraz[1]

In this piece, we offer insights into intrafamilial violence against women and the sexual abuse of children and adolescents from a feminist perspective and a human rights approach.[2]

In recent decades, violence against women has gained broad social recognition and has come to be considered "a global health problem of epidemic proportions," according to the Latin American Association of Social Medicine (Fernández Moreno, 2015, p. 349). Since 1993, the Pan American Health Organization (PAHO) has recognized violence as a public health issue on a global scale. Additionally, it has been identified as a severe violation of human rights (Zaldúa et al., 2018). In other words, this is not an individual or intimate relationship issue but a social and collective problem that requires state intervention through specific public policies for the prevention and response to violence (Argañaraz, 2023).

1 María Milagros Argañaraz is a psychologist and a member of CLADEM Argentina. She is a specialist in *Clinical Psychology with Children and Adolescents* (UNT, 2016) and in *Gender-Based Violence against Women Studies* (CLACSO, 2021). She is certified in *Femicide and Sexual Violence against Girls and Adolescents* (CLADEM, 2022). She is a lecturer in the History of Psychology course at the Psychology School of the National University of Tucumán (UNT). She is also a PhD candidate in Psychology and a doctoral researcher at the National Scientific and Technical Research Council (CONICET).

2 In this article, we understand that a child who systematically experiences violence against his mother by his father, or her intimate partner, is not just a "witness", but is also a victim and recipient of this violence. Children who have witnessed the murder of their mother require comprehensive support and reparations. In this regard, it is worth mentioning Argentina's Law No. 27.452, known as the "Brisa Law," which provides for financial reparations for children and adolescents who are victims of violence, as a significant advancement in human rights.

Violence against women, boys, and girls within the family is one of the most severe and widespread forms of human rights violations worldwide. For this reason, international agreements such as the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Belém do Pará Convention, 1994) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979) have been established to protect the rights of women, girls, and adolescents. Following these international treaties, some countries in Latin America and the Caribbean (LAC) have enacted comprehensive laws aimed at protecting, preventing, and eradicating gender-based violence[3]. These legal frameworks recognize that, although violence manifests within the family, it is an expression of structural violence rooted in the patriarchal system, which prioritizes male dominance over women and feminized bodies, as well as over children and adolescents. In other words, it is a symbolic-cultural system that establishes hierarchical and, therefore, unequal distributions of power.

We take as a reference Argentina's Law No. 26.485, enacted in 2009, to prevent and eradicate all forms of violence against women. This legislation shifts the social paradigm that previously regarded violence against women as a private matter of intimate life, making visible the different types of violence women experience in all spaces where they engage interpersonally (Barrancos, 2011). Its Article 4 defines violence against women as follows:

> any conduct, action, or omission that, whether directly or indirectly, in both public and private spheres, based on unequal power relations, affects a woman's life, freedom, dignity, and physical, psychological, sexual, or economic well-being, as well as her personal safety.

Additionally, the law establishes six types of violence—physical, sexual, psychological, economic/patrimonial, symbolic, and political—and eight modalities of violence, that is, eight ways in which these types of violence are manifested: domestic, workplace, obstetric, against reproductive freedom, media, institutional, political, and in public spaces.

In this regard, Canevari (2018) explains that women's bodies are territories of patriarchal domination and spaces where significant symbolic (and real) pressure is exerted by masculine control. This results in male-centered societies, where femininity is placed in a position of both real and symbolic

3 In 2009, Argentina enacted Law No. 26.485 on Comprehensive Protection to Prevent, Punish, and Eradicate Violence Against Women in the contexts in which they engage in interpersonal relationships. https://www.argentina.gob.ar/sites/default/files/ley_26485_violencia_familiar.pdf

subordination. Within this framework, women, feminized bodies, and children are considered naturally inferior to men, who, as a result, feel entitled to take possession of them (Canevari, 2018). The author further explains that patriarchy is embodied beneath the skin, internalized, and therefore requires effort to be made visible. We have all been educated under its influence and reproduce it daily—it is present in every institution we navigate, including family, healthcare, education, and the justice system (Canevari, 2018). For this reason, there is also the challenge of developing new family structures (beyond the patriarchal model), as well as reimagining child-rearing practices. These alternative approaches create space for diverse forms of emotional and relational bonds. At the same time, we assert, alongside other authors (Segato, 2018; Lagarde, 2007), that patriarchy, as a structural system, is closely linked to the capitalist, adult-centric, and colonialist system. We also believe that the feminist perspective must be enriched by the perspective of intersectionality. The analytical category of intersectionality provides us with a theoretical and methodological framework to analyze the different systems of oppression—such as gender, social class, ethnic background, age, disability, and sexual orientation, among others—that shape subjective-social structures and have consequences for access to human rights (Viveros Vigoya, 2016).

The adult-centric model, in turn, assumes that adults are the ones who know and are capable of doing things. They are seen as the holders of "truth," and this belief interferes in practical situations, including reports of intrafamilial violence and sexual abuse against children, where children's testimonies and accounts are rarely considered sufficient. Moreover, this adult-centric and patriarchal system upholds and promotes practices that violate the rights of women and children, such as the false Parental Alienation Syndrome (PAS). Within this framework, children are regarded as the private property of adults.

In this piece, we adopt the definition of child sexual abuse proposed by María Beatriz Müller (2015) in her book *Abuso sexual en la infancia. Mitos, construcciones e injusticias: el éxito judicial del falso síndrome de alienación parental* (Child sexual abuse. Myths, construction, and injustices: the judicial success of the false parental alienation syndrome), *as follows:*

> Subjecting a child or adolescent to behaviors related to adult sexuality, since they are incompatible with their psychosexual development. Such sexual abuses fall within the realm of torture and represent violations that undermine and distort the child's or adolescent's natural development (Müller, 2015, p. 22, my translation).

Regarding the false Parental Alienation Syndrome (PAS), María Beatriz Müller (2015) explains how the promotion of this alleged syndrome in the medical, psychological, and judicial fields, along with other proposals also lacking scientific support, has created a distinctly adverse environment for the prevention and treatment of child sexual abuse. In her own words:

> Everything is turned upside down: children's words and symptoms are not believed, protective mothers are seen as the ones who fabricate and spread lies, sexual abuse is made invisible, the victims become the perpetrators, and the predator is portrayed as the "poor father who cannot see his children" (Müller, 2015, p. 10, translated).

Thus, despite the fact that PAS has been debunked for lacking scientific foundation, court actors, doctors, and psychologists support it either implicitly or explicitly by disbelieving and underestimating the testimonies of children, as well as those of their mothers (Fernandez Boccardo, 2023). In a similar vein, Bettina Calvi (2020) argues that PAS is based on prejudices shaped by patriarchal and adult-centric narratives, such as the belief that mothers are bad people who "hate" the father, or that children are blank slates susceptible to the implantation of false memories (Calvi, 2020).

The feminists of the 1970s coined the slogan "the personal is political," questioning aspects related to the intimate and the private, such as intimate relationships, sexuality, and affections, politicizing everyday life. In other words, they began to address the violence women suffered in a silenced, invisibilized manner, hidden within their homes (Argañaraz, 2021). The conceptual shift was that those so-called "private domestic issues" became public issues (Barrancos, 2011). Therefore, it is important to understand that the intrafamilial violence and sexual abuse suffered by a woman and/or a child inside their homes is a social matter, not merely an individual one. Therefore, it is essential to build cooperative networks supported by those public policies aimed at the guarantee of access to health, education, and justice.

A recent report developed by UNICEF (Argentina) and the "Victims Against Violences" Program of the Ministry of Human Rights of Argentina[4] states the following:

4 https://www.unicef.org/argentina/media/12506/file/Factsheet%20Nro.9%20-%20Serie%20Violencia%20contra%20ni%C3%B1os,%20ni%C3%B1as%20y%20adolescentes.pdf

> Family violence refers to harmful actions committed by a member of the family, regardless of where they take place. This type of violence can negatively impact a person's well-being and affect their physical, psychological, sexual, economic, or material security. It can also restrict personal freedoms, including reproductive rights, and hinder the full development of women, girls, boys, and adolescents. The family group in here refers to those groups of individuals connected by blood or affective ties, marriage, common-law marriage and intimate partnership. It includes ongoing or ended relationships, and cohabitation is not a requirement. The use of the term "family" aims to highlight that the family is also a nucleus where violence can occur, far from its idealization as the paradigm of an institution meant to form and sustain its members, equivalent to a peaceful space (p.3).

At this point, it's worth pointing out that intrafamilial violence is the violence against women, children and adolescents that takes place inside or outside their home, is mostly perpetrated by men (fathers), partners or ex-partners. This type of violence is rooted in unequal sex-affective relationships, often based on myths about "romantic love". Regarding this, Marta Fernández Boccardo (2023) argues that, despite the advances in women's rights and social roles they have taken on in the public sphere, the narrative of romantic love, combined with the cultural construction of their identity as mothers/caregivers, continues to operate in female subjectivities, maintaining power asymmetries within the couple and the patriarchal family (Fernández Boccardo, 2023).

Intrafamilial violence takes different forms, such as physical, sexual, economic, and psychological violence; and also the more extreme and cruel cases that lead to the death of women, called femicides. Some forms of violence are more visible (such as physical violence), while others are less apparent (such as psychological violence in the form of humiliating jokes or demeaning comments). Some are deeply normalized (such as the disproportionate burden placed on women and girls for domestic work, caregiving, and reproductive responsibilities), while others remain largely silenced (such as child sexual abuse). Often, two or all of these types of violence occur together (CLADEM, 2021); in other cases, one form of violence leads to another, especially when the victim begins to report the violence and avoid contact with the abuser, and it is at this point that the violence often becomes more brutal.

It is important to recognize that the intrafamilial violence experienced by women, boys, and girls is part of the *continuum of femicidal violence*. A recent study conducted by CLADEM in 2021 on the interrelation and links between sexual violence and the deaths of girls and adolescents in Latin America and the Caribbean (2010–2019) highlights how different types and forms of intrafamilial violence are interconnected with unequal and patriarchal power structures. Traditional gender roles serve as a cultural foundation for the perpetration of violence by men. In this regard, the patriarchal violence endured by women, girls, and adolescents is "persistent and happens on a daily basis" (CLADEM, 2021, p. 21). Sexual violence constitutes a form of intrafamilial violence, operating as part of the *continuum* and the accumulation of other dimensions of violence.

Intrafamilial violence against women, boys, and girls, in its multiple previously mentioned forms, is systematic and sustained over time, having a devastating effect on the subjectivity of its victims. In other words, it deeply erodes human well-being and social justice, affecting various aspects of daily life, such as work, education, leisure, personal aspirations, autonomy, physical and mental health, among others. It also generates profound feelings of fear, isolation, hopelessness, anguish, and a self-perception of complete powerlessness, sometimes even leading to suicide. This suicide can also be understood within the framework of a *continuum* of violence as a *femicidal suicide* (CLADEM, 2021), closely linked to the persistent and inescapable condition of patriarchal intrafamilial violence.

Feminist movements such as "Nenhuma a Menos" (Not One Less), #yositecreo (#Idobelieveyou), "Maré Verde pelo aborto legal" (the Green Wave for legal abortion), protective mothers organizations, and MeToo, among others, have amplified awareness of these patriarchal forms of violence, bringing them into public discourse and making it clear that what happens to one woman is a collective issue that affects all women. This highlights the importance of feminist movements in pushing States towards the enforcement of comprehensive, systematic, and structural public policies aimed at fighting violence against women and protecting children. The primary goal of public policies is, or at least it should be, to drive deep cultural transformations that challenge and dismantle the prejudices and stereotypes sustaining the sexist, classist, racist, adult-centric, and patriarchal social structure (Barrancos, 2011). To achieve this, public policies and their corresponding protocols must be designed, implemented, and evaluated through a gender perspective, feminist lens, and an intersectional approach. This requires recognizing the complexity and diversity of women's experiences by considering factors such as ethnicity, age, socioeconom-

ic status, geographic location (urban or rural), sexual orientation, gender identity, and disability.

Gradually, the symbolic barriers surrounding sexual violence—particularly child sexual abuse within the family—have begun to fall apart. As a result, while these issues are now more visible and less silenced than they were for the women and children who came before us, this does not mean that intrafamilial violence or the systemic failure to protect children has been resolved or eradicated. The labyrinth of patriarchal violence (Canevari, 2018) becomes even more complex when legal and healthcare systems, along with public agents, revictimize women and children by dismissing their testimonies, and supporting the abuser through statements such as: "*she's exaggerating, she's crazy, she puts ideas into the child's head, why didn't she speak up earlier?*". These, among other harmful responses, are commonly heard when women break the silence about the abuse they have suffered or that their children continue to endure. What is most alarming is that these reactions come from the very institutions meant to provide them with some kind of assistance regarding protection, and/or remedy. It is no coincidence that, in follow-up sessions, the experience of survivors is often reported as "*daily torture*".

The false concept of PAS, the argument of false memory implantation, legal dilatory and bureaucratic tactics, and the requirement for multiple assessments that force the victim to repeatedly recount the violent incident in detail are some of the judicial practices that lead to revictimization and act as barriers to access to justice. The impacts of these practices on the subjectivities of individuals are devastating, as they represent the return of the danger, but this time manifesting as institutional violence. Furthermore, this has social consequences, as it unfortunately sends a message to other women (and also to men) about a judicial system that covers up for abusers and perpetrators of violence.

When a woman or a child speaks out about experiencing violence within their home, in any of its many forms, it is our responsibility (as professionals and legal agents) to listen to their account. Hearing and validating their voices empowers the person, who has been reduced to an object through the exertion of pressure, coercion, manipulation, control, and power, to reclaim their place as a subject and reassert their *subjectivity* in front of others. Through sharing their story and the suffering they have endured, the individual reclaims their position as the subject of a right. This could be the first step towards a path of reparation, restitution, and the reconstruction of a new life project, one that is no longer defined by a history of violence or sexual abuse, challenging the patriarchy's intention, which, in addition to

perpetrating violence and subjugation, seeks to keep us paralyzed as "*good victims*", burdened with the stigma of abuse and violence on our bodies. Protecting children also means offering them the opportunity to rewrite their story. However, this requires cutting ties with the abuser and restoring the rights that were taken from them.

The patriarchal and adult-centric ideological framework perpetuated by institutions, which seeks to "preserve" the family, only serves to violate women and children's rights to a life free from violence. In this context, in addition to intrafamilial and sexual violence, we are dealing with institutional violence.

Sonia Vaccaro (2016) defines vicarious violence as violence inflicted on children, objects, animals, or individuals who are emotionally significant to the woman, with the intent of causing her harm. In this regard, the devastating effects of the lack of protection caused by vicarious violence are evident, as it weaponizes children to perpetuate violence against mothers—especially those who begin to seek ways out of an abusive or violent relationship: "*If I can't get to you, I'll hurt you where it hurts the most—through your children*".

Furthermore, as an effect of the spiral of patriarchal violence, recent reports have detected threats and attacks on professionals who assist women and children who have suffered sexual violence. This practice has been internationally referred to as *backlash*. It constitutes a negative response to the advancement of human rights and serves as a tool used by abusers and perpetrators of violence to neutralize legal and legitimate strategies for the protection of women and children (Fernandez Boccardo, 2023).

Finally, I would like to issue a collective call to alert our Latin American and Caribbean countries to the need to reconsider the rise of far-right narratives and policies, which seek to dismantle hard-won rights such as legal, free, and accessible abortion and Comprehensive Sexual Education.[5] The latter is a fundamental tool for protecting children from sexual abuse, as it provides them with clear information about bodily autonomy and personal safety. Popular sayings such as "my child, my rules" reinforce patriarchal, adult-centric notions of ownership over children. The family is not an absolute category but a social and historical construct. After all, who decided that homes are inherently safe spaces? The pandemic laid bare this profound contradiction, leaving many children and women confined with their abusers.

5 Argentina's National Law 26.150 (2006) mandates the implementation of the Comprehensive Sexual Education Program across all public and private schools at every educational level. The full text of the law is available on the official website: https://www.argentina.gob.ar/normativa/nacional/ley-26150-121222/texto.

In conclusion, as feminists, professionals, and citizens, we are dedicated to creating egalitarian, violence-free family models that promote the development of future democratic societies free from gender-based violence against women, boys, and girls.

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Violence against women, sexual abuse against children and the Parental Alienation Law: the legalization of human cruelty

Ana Maria Brayner Iencarelli[1]

The study here presented adopts a psychoanalytic approach to issues related to domestic violence and sexual abuse against women and their children. It also explores the consequences of such violence, particularly the application of the Parental Alienation Law (PA Law) against women-mothers who report abuse perpetrated by their ex-partners.

Violence, Power and Fear

Violence. Emotional attack behavior in its various forms. The fear of the other triggers this kind of response. Sometimes, continuous experiences of fear of violence from others lead the victim to adopt violent patterns in various forms of expression.

Power. It is the objective of weak individuals who feel diminished by others and seek to constantly feed their pathological narcissism in order to feel superior to them. In response to the fear of being subjected to others, human beings develop a lust for power in order to oppress those by whom they feel threatened.

Fear. Systemic response to physical, sexual and psychological threats. It is the only one of the four basic anguishes that have threatened human survival and that, since the Stone Age, remains unresolved. The oth-

1 Ana Maria Brayner Iencarelli is a psychoanalyst expert in the assistance of children and adolescents. She treats children and adolescents in her office in Rio de Janeiro, Brazil. She has over 40 years of experience as a psychoanalist, is post-graduated from Sorbonne, and certified by the International Psychoanalytical Association. She is also the former president of the now-dissolved ABRAPIA during its final two terms.

er three—hunger, cold, and pain—have had a "solution," considering the consequences of deeply unequal social and economic systems that have emerged and developed over the centuries.

Fear, this anguish that persists and cannot be resolved like the other two previously mentioned anguishes, is the alert mechanism, in various intensities, that activates when a threat to survival emerges. It has the dual function of protecting life and preventing death. We are referring here to bodily death and psychic death. Fear, as a form of defense, may seek escape, confrontation or submission as a last resort for psychic survival. Therefore, fear is part of the corollary of defenses for ensuring protection. Although this feeling is part of the range of human emotions, it cannot be constantly present, as in such a situation, it becomes detrimental to psychological survival.

It is known by experts, as well as by laypeople, that physical, sexual, and emotional abuse during childhood development is related to emotional difficulties and psychiatric problems in adulthood. However, studies and research (Teicher, M. H., 2000) show that this damage is not restricted to psychological development alone. It is not hard to understand that intrafamilial sexual abuse perpetrated on a child also damages brain structures and functions that are still in development.

The ingredient of fear, the protagonist of the impact of the extreme stress that occurs in the experience of abuse, is said to be related to the atrophy of brain structures in the limbic system, the system that processes emotions.

It is important to emphasize that a balanced level of fear, as a life-threatening warning system, is healthy because it adjusts the child's attention to the surrounding dangers they may encounter. However, excessive fear, or even repetitive fear in smaller doses, fall under the concept of trauma[2] (Laplanche & Pontalis, 1983). In this way, intrafamilial sexual abuse promotes and maintains fear at an unbearable level for the child's mind. It deforms development.

The thesis of parental alienation was introduced with the proposal to remove the focus from fear, a crucial element in cases of child sexual abuse. In other words, the traumatic emotion is set aside, and attention shifts to an alleged accusation of immature behavior by the mother. The posses-

2 The psychoanalytic concept of trauma, which comes from the Greek, refers to a wound with rupture and is defined as an event in an individual's life that relates to its "intensity, by the subject's incapacity to respond adequately to it, and by the upheaval and long-lasting effects that it brings about in the psychical organisation. In economic terms, trauma is characterized by an influx of excitations that is excessive in relation to the individual's tolerance and their capability to master and psychically elaborate these excitations." (Laplanche & Pontalis, 1983).

siveness attributed to the mother becomes a perceived high-risk factor and a supposed justification for protecting the child, completely disregarding the child's uncontested report.

The legalization of human cruelty

The term parental alienation, an ode to male power, was coined for the purpose of defending pedophile fathers and abusers. This statement becomes valid based on the understanding of Richard Gardner, creator of the (false) Parental Alienation Syndrome (PAS), when he states that "It is because our society overreacts to it [pedophilia] that children suffer" (Gardner, 1992). In his writings, the author explicitly and openly defends intrafamilial pedophilia as something beneficial to children. The acceptance of these ideas by family courts in various countries has led to mothers losing custody and being removed from their children's lives. As a dogmatic precept, the loss of custody by the mother due to allegations of parental alienation has surpassed the warnings and fines stipulated by law, becoming a central factor in custody dispute cases with astonishing speed. The effects of this practice are deleterious, given its predatory effect on affection, perpetuation and, above all, its harmful effect on the maturation of brain structures and functions, which causes irreparable damage to child development.

The so-called parental alienation by the mother—curiously, a term now exclusively attributed to women—has resulted in numerous intrafamilial sexual abuse cases being prematurely closed and left uninvestigated. It has also led to the aberration of removing children from their mothers. The loss of custody has become trivialized, at a time when the importance of shared parenting is well established. As an example, the case of Joanna Cardozo Marcenal Marins[3] is emblematic. In response to the father's allegation of Parental Alienation, the court ordered that custody be taken away from the mother and that the child be kept away from her for 90 days. In the first month following such a court order, while living with her father and stepmother, the girl was brutally murdered, with numerous **signs of torture.** What is intriguing is that, to this day — she was murdered in August 2010 — the father and stepmother have not been brought to trial. He was only arrested for about 60 days at the time of the child's death.

The term parental alienation, which is neither scientifically proven nor accepted by medical and psychological associations, and is also rejected by the World Health Organization (WHO), was incorporated into the Brazilian legal system through the PA Law, justifying yet another sophisticated form of vio-

3 Joanna, a victim of abuse, dies after 28 days in hospital. O Globo, 13/08/2010. https://oglobo.globo.com/rio/menina-joanna-vitima-de-maus-tratos-morre-depois-de-28-dias-internada-2966344

lence against women. The PA Law emerged as a backlash against the Maria da Penha Law, which seeks to prevent, address, and curb five forms of domestic and family violence against women (physical, psychological, sexual, financial, and moral), among other actions or omissions of harmful practices against women. Displeased with the regulation of behaviors and the criminalization of actions that became offenses after the Maria da Penha Law, groups aligned with patriarchal values legalized violence against the right to motherhood through the enforcement of the PA Law. As a result, violent men have gained judicial approval to commit incestuous rape of vulnerable people by reversing the roles of victim and perpetrator—by invoking parental alienation—while victimizing themselves as if they were being wronged. In this dynamic, the mother is the one perpetrating parental alienation, causing the child's sexual abuse allegations, reported by the child, to disappear. As a bonus, the court also grants custody of the child to the alleged abuser, completely removing the child from their protective mother.

It should be clarified that the term parental alienation is a syllogism - an Aristotelian model of logical reasoning based on the idea of deduction, composed of two premises and a deduced conclusion. Widely used in law, the syllogism underpins jurisprudence, supporting the idea of equal rights for all.

However, syllogism can lead to an error when it is transformed into another philosophical concept, sophism. Sophism uses the logical structure of syllogism—the three elements of reasoning—to induce a false conclusion without compromising logical coherence, with the intention of deceiving. This is what happens with the use of the term parental alienation to deflect a crime and reverse the roles of perpetrator and victim. Thus, in the illustration provided by philosophy, we have:

> The great Bear (Ursa Major) is a constellation.
> Bears are animals.
> Therefore, animals are stars.

This is an emblematic example of the inducement to error that occurs in sophistical syllogism. When applying this content to the issue of intrafamilial sexual abuse and the doctrine of parental alienation, various sophistical syllogisms can arise, such as:

> The mother's report of sexual abuse did not provide material evidence.
> The occurrence of sexual abuse cannot be confirmed.
> Therefore, it is parental alienation caused by the mother.

Or:

> The child's testimony reveals sexual abuse by the father, which was not proven.
> Children fantasize, children lie.
> Therefore, no sexual abuse occurred.

If it can't be said that sexual abuse has taken place if there is no material evidence, why isn't the child's testimony in specialized hearing[4] procedures accepted as material evidence? It's a veiled crime. And these are the main causes of the impasses: caresses, masturbation, oral sex and digital penetration[5], as they leave no external marks. Only the mind is tattooed; the marks and scars, many of them, are psychological. Indelible. There will never be any material evidence in this type of crime. The pedophile, an individual with a character flaw and infantilized sexuality, takes care of the smallest details to leave no trace. Although it takes place in the field of sexuality, the sexual abuse of children and adolescents is a matter of power. The sexual abuser is not interested in sexual pleasure; their goal is the pleasure of triumphing over a vulnerable person. It is the vulnerability of the weakest that attracts the abuser, in search of a sense of power.

It is necessary to collect data, such as complaints that are concentrated around the time of separation or shortly thereafter, as this is often when the child feels safer and finds the courage to disclose to their mother what has already happened. Sleeping under the same roof as their abuser is deeply terrifying and ensures the secret remains unspoken. Under seduction and/

4 The Specialized Hearing has changed the paradigm of hearing the testimony of a sexually abused child. What used to be an inquiry seeking evidence that the child was lying became the acceptance of the child's voluntary report. To this end, it is necessary to train and specialize, with dedication and seriousness, the individuals who will collect these testimonies. Childhood Brasil has shed light on the path to making this paradigm shift a reality. The care for the child was expanded not only in terms of the interview itself but also concerning the physical space: the arrangement of furniture, and the use of audio and video recordings. Everything was designed to make the child feel as comfortable as possible and to avoid the re-victimization that occurs in long and recurrent psychosocial forensic assessments. Once recorded, it is made available to the Court, the Prosecutor's Office, and the Lawyers, and the child would not need to repeat the pain that hurts so much. It became law, the law 13.431/2017. Unfortunately, it is not being strictly followed, and its principle of defending the child's dignity is being distorted. There is a shift in interpretation that undermines the concept of trust, by introducing a mirror wall that prevents the child from seeing who is watching it, a deceitful strategy, instead of ensuring the child's security (my translation). CHILDHOOD, Crianças e Adolescentes Vítimas ou Testemunhas de Violência Sexual Metodologias Para Tomada de Depoimento Especial. Appris Editora. 2017.

5 Digital penetration is the penetration using the index or middle finger of the hand, practices that leave no trace.

or threats—the two primary means of gaining access to the body—the child protects their abuser. In 82.5% of cases of sexual abuse against children and adolescents, the abuser is known to the victim; and 76.5% of the abuse[6] takes place inside their homes.[7]

Reports of this type of violence face numerous challenges to materialize, starting with the denial of any suspicion by those close to the child. Even with the mother's close involvement, or that of a substitute, in performing hygiene, it is extremely rare for any suspicion to arise, even in the face of unusual genital rashes or anal fissures. The immense perversity of these behaviors triggers the defense mechanism of denial, and she, the mother, punishes herself for having had even a fleeting thought of suspicion.

What has been observed is that, in response to mothers' reports, the allegation of parental alienation emerges, justified by the claim that the mother has an interest in harming the father. It is both unfounded and regressive to believe that every woman is jealous of her ex-husband, seeks to retaliate against him, or feels unsupported by him. There are even cases in which it is alleged that this hatred of the ex-partner is unconscious, leading the mother to "unconsciously" cause parental alienation. How many women continue to take care of their children with affective and financial quality? How many are professionally successful? How many have asked for a separation? It's a step backwards to think that they're all crazy and hysterical and can't come to terms with the break-up. This idea is an expression of institutional violence[8] and gender violence[9] sponsored by the PA Law.

In this context, there has even been a request for a search and seizure to be carried out in the delivery room since, according to the father's lawyers, the mother, who had just given birth, was unconsciously alienating the baby. At least this unusual request was not granted. However, the atrocities are growing exponentially.

From a psychoanalytic perspective, the concept of the unconscious plays a crucial role in treating individuals who struggle to understand attitudes and emotions that cannot be explained by their overall psychologi-

6 Violência Sexual Infantil. Anuário Brasileiro de Segurança Pública, 2022. https://forumseguranca.org.br/wp-content/uploads/2022/07/14-anuario-2022-violencia-sexual-infantil-os-dados-estao-aqui-para-quem-quiser-ver.pdf.

7 Although essential, data on this type of abuse is difficult to research, either because of the secrecy of judicial proceedings or because of the underreporting that prevails in relation to this type of crime.

8 ABRAPIA, Cartilha "Abuso sexual, mitos e realidade". 3ª Edição, Autores & Agentes & associados, Rio de Janeiro. 2002.

9 ABRAPIA, Do Marco Zero a Uma Política Pública de Proteção à Criança e ao Adolescente - 0800-99-0500 sistema Nacional de Combate ao Abuso e à Exploração Sexual Infanto-Juvenil. Apoio Childhood Brasil - Instituto WCF Brasil.

cal profile. But psychoanalysis cannot be used to support what cannot be proven. It's absolutely unreasonable to use a justification of "unconscious parental alienation", suggesting that even the mother herself doesn't know she's causing it. And would that be punishable? It's as if a person who, for example, has an unconscious desire to kill an annoying neighbor could be sentenced for that unconscious wish and be charged with murder.

Another psychoanalytic concept often misapplied in these cases is the Oedipus complex — developed by Freud to explore the affective structuring of the mind. It refers to the evolution of the dual relationship model into triangulation, a dynamic that becomes prevalent in adult life. This concept is mistakenly used in an attempt to find non-existent grounds to support the fallacy of false memories in the abused child. Disqualifying the child's testimony is a strategy used to undermine the substance of their speech. This is another theoretical error, as it does not align with the reality of a child's development. Psychoanalysis is a rich and valuable theory, but it must align with the child's overall, concrete development across its four main axes: psychomotor, cognitive, linguistic, and emotional.

It is necessary for understandings based on psychoanalytic concepts to be grounded in the reality of biopsychosocial development. A child becomes aware of the anatomical differences between the sexes around the age of 2-3, a curiosity based on visually observing another child's sexual organ. This visually acquired knowledge feeds their sexual curiosity and their curiosity concerning the adult world. In this context, as the child progressively moves away from the selfish, self-centered world, the child will want to possess the other, more idealized figure: the father for girls, and the mother for boys. But after the child's attempts at conquest, the boy or girl will feel that they cannot possess their mother or father and will prefer the process of identification: if my father attracted my mother, I will be like him, and when I grow up, I will have a girlfriend similar to my mother; or if my mother attracted my father, I will be like her, and when I grow up, I will have a boyfriend like him. This is a simplification for better understanding of the first romantic disappointment, resulting from the widely discussed Oedipus complex, within the realm of affective development. Sexual practices involving touching, manipulation, masturbation, oral sex, or digital penetration, which make up the majority of legal disclosures by abused children in this age group, are not included; they do not belong to their imagination. The attempt at romantic conquest does not provide fertile ground for memorizing text that is not supported by the cognitive knowledge of a child at that age.

According to Piaget (1968), who scientifically studied cognitive development, at the age of 4, for example, the child reasons under the aegis of

the concrete; in other words, only what the child experiences, what reaches them through their senses and perception, becomes an acquisition of knowledge. At this age, children discover money and start collecting stickers or pebbles, a cognitive development skill that develops seriation, the sequential reasoning of before and after. Thus, cognitive development always takes place through experience, through the concrete.

Young children understand that they can only have a toy if their mother/father buys it with money. They soon discover that their piggy bank has more money if it contains more coins of a certain pattern in it. They may even fantasize that they are going to buy a new car for their mother and that they will buy it with the coins in the piggy bank, because they have plenty and are rich. But they are not going to say that they are going to buy the car with the profits from the investments they made in the stock market. Even if someone explains that there are shares and that you can make or lose money in the stock market, the child won't be able to acquire the vocabulary, the dynamics, or understand the outcomes of investing in the stock market. Likewise, in light of linguistic development, the child will not use new nicknames for the genitals in their verbal communication, nor will they know about a male erection or describe or draw the male organ, with an erect penis, a scrotum with two volumes, and pubic hair.

A distinction needs to be made between the drawing referred to above and the drawing of the *phallus*, present in the human imagination from children's drawings to architecture. Therefore, it is not possible—especially in the extreme manner that it has been alleged in family courts—for a child to memorize a text without intrinsic flaws and that is incompatible with their cognitive, linguistic, and emotional development, which would motivate the statement that it was actually a false memory. This thesis is just another deception. Cognitive development, as well as memory, which is part of cognition, operates only through concrete reasoning until the age of 11. The child's inability to report verbally, express through drawings, or reenact in play with dolls what was memorized reveals inconsistencies between the memorized text and what is communicated in the other two modes of expression, exposing their genuine lack of knowledge about what they were induced to say.

Returning to the philosophical field, the social dogma "a father is a father" is another sophism that leads to psychological disasters when the distinction between entitlement, which is now highly diversified, and the function of human rights is ignored. It's the function that is torn away when a son or daughter is sexually abused. In psycho-legal discourse, this difference is denied, and the rights of this criminal father are upheld. The child

is denied the right to maternal care and affection, with the reciprocal right also being usurped. Doesn't anyone see that this is death for the child and also death for the mother?

It's also a recurring sophism to say that "pedophiles are psychopaths". The issue does not end with this diagnostic impression. Pedophilia, according to its etymology and classification as a disorder is categorized as a paraphilia. Therefore, a pedophile is not merely a psychopath, someone with a social disorder. Technically, pedophiles move between psychopathy and sociopathy. There is sometimes an overlap between these two personality disorders. If the practices of sexual abuse are secret and individual, with each child being targeted one at a time, even if there are multiple children, he is attacking the entire collectivity through one child. Quietly. What seems clear is that, as an antisocial, he does not share the values and principles around him. But he does not let his lack of values and principles be seen. And, in most cases, he shows no signs of social maladjustment in his interactions with others; no symptoms are evident. If there is a slight difference in impulsivity between them, it is that the psychopath is extremely controlled and can even demonstrate normality; this happens because he needs to pretend to be someone above any suspicion. Sociopaths, on the other hand, are cold to affection, incapable of empathy, incapable of feeling guilt for something they have done that has harmed others, and manipulative par excellence, which makes them untreatable by health professionals. There is no room in their minds for emotional suffering. This is a behavior of someone with a character deviation. The combination of these two profiles, the psychopath and the sociopath, obstructs the premises of psychological treatment. It's not a disease, it's not treatable. As such, an individual with a character deviation possesses a tremendous ability to persuade and is an expert manipulator. He is a person above suspicion, since he has a division in his mind and manages it very skillfully, unlike psychotics, who are ruled by it. Seductive by nature, psychopaths are always attentive to every detail, fully aware of the crimes they are committing, yet devoid of any feelings of guilt or responsibility. Contrary to what it seems, as previously mentioned, it is not sexual pleasure that drives them to perpetrate abuse. It is the pleasure of the petty power syndrome, the pleasure of absolute domination over another, the social defiance of committing secret transgressions, and the ecstasy of deceiving everyone. The jouissance of power.

This profile is another complicating factor that is often overlooked in the assessment of these complaints. Instead of examining the suspected father, a confrontation, evoking dungeons, is conducted. It is then asserted, based on the "eye test" (an unscientific and invalid method), that no abuse

occurred since, for instance, the child sat on the father's lap. Once again, there is a serious sophistical syllogism. Of course, the young child will continue to sit on the lap of the abusive father. One must not forget that abusive practices stimulate children and leave them with a complex mix of feelings such as pleasure, guilt and fear. Lots of fear. The child loves and obeys the abusive father. Therefore, this "eye test" is a sophism that has been the basis for forensic reports, all non-standard, filled with assumptions, sophistical syllogisms, and disguised fallacies and pseudoscience.

Other consequences of incestuous sexual abuse

Little is said about scientific research in this area of human knowledge. But, although rarely brought to light, it is evident that sexual, physical, and psychological violence in childhood not only causes psychological trauma. Martin H. Teicher, a professor of psychiatry at Harvard Medical School, states, based on research, that the left hemispheres of individuals victimized in childhood show significantly less development compared to the right hemisphere. Since violence is perpetrated during the period when the brain is being shaped by experience, adverse conditions such as excessive excitation and early irritability affect still-developing areas, interfering with the brain's full development. This leads to atrophy in the left hemisphere, hippocampus, amygdala, and corpus callosum—key components of the limbic system, responsible for processing emotions and the life-threatening danger alert system. In addition, it was also observed that 77% of incest victims exhibited abnormalities in the Electroencephalogram[10].[11]

According to these studies, the impact of extreme stress due to the series of molecular and neurobiological effects inflicted on structures and functions, is associated with external expressions of aggression, delinquency, substance abuse, self-destructive and suicidal impulses. The capacity for empathy is compromised, and perhaps this is where the tendency toward the psychological mechanism of identification with the abuser lies, motivating the repetition of the experienced pattern of violence. Finally, hormone production is also stimulated at an early age. The stimulation to which children are exposed to while being sexually abused by adults, especially pros-

10 The Electroencephalogram (EEG) is a test that records the electrical activity of the brain, mapping changes and identifying areas that cause epileptic seizures or less severe alterations.

11 De Bellis, M.H., et al. Developmental traumatology part II: brain development. Biol. Psychiatry vol.45, 1271-1284. 1999.
Teicher, M.H. et al. Preliminary evidence for abnormal cortical development physically and sexually abused children using EEG coherence and MRI. *Ann. NY Acad. Sci.* 821, 160-175. 1997.
Teicher, M.H. Wounds that time won't heal: the neurobiology of child abuse. Cerebrum 4, 50-67. 2000.

tate massage through digital anal penetration in boys, as well as manipulation of the genitals in girls and boys at an early age, combined with the stress of "hiding it", leads to alterations in the entire endocrine system.

Sexual abuse, supported by the PA Law, often goes unpunished when reliant on verbal allegations[12], as basic guidelines for properly hearing children and adolescents are disregarded. Meanwhile, mothers who report such abuse are penalized with the loss of custody and, in some cases, the prohibition to contact their children. That is to say, doubts are enough to prove the mother's parental alienation, while the allegation of sexual abuse requires material evidence, which would strip the crime of its essence, as it is a crime in the shadows. But what else could a mother do when she learns that the father is sexually abusing her child? The removal of the abuser is essential, for as long as it takes to recover the psychological tissue damaged by the trauma caused to the child.

Considerations on the inventor of the term parental alienation

It is worth mentioning here a little about the creator of the concept of parental alienation: Richard Gardner. Volunteering at Columbia University, he defended men accused of domestic violence and sexual abuse against their children. He forged the concept and, by using it to discredit the child, reversed the roles of victim and offender, eventually achieving success, which earned him the title of visiting professor at the University[13]. Gardner thinks like a pedophile, and writes:

> However, the child who is drawn into sexual encounters at an early age is likely to become highly sexualized and crave sexual experiences during the pre-pubertal years [...] The ideal then – from DNA's point of view – is for the child to be sexually active very early, to have a highly sexualized childhood, and begin procreating at the time of puberty. This increases the likelihood that more survival machines will be produced for the next generation (Gardner, 1992).[14]

12 The forensic assessment reports are entirely subjective; in other words, they consist of statements based on arbitrary interpretations, invariably adhering to the dogma of parental alienation: a crazy, unbalanced, resentful mother and a lying child whose accounts are dismissed as false memories—yet another unscientific fallacy.

13 https://www.nytimes.com/2003/06/09/nyregion/richard-gardner-72-dies-cast-doubt-on-abuse-claims.html

14 Gardner, Richard. *True and False Accusations of Child Sex Abuse*, pp. 24-25.

Those are his own words. Not only these, but many others with the very same content. And the concept of parental alienation, forged by someone who thinks this way, is enshrined in law and is still hegemonic and dogmatic in social and institutional circles.

Gardner then created his thesis on the benefits of pedophilia. For him, when a father abuses a young daughter, it's because the mother hasn't satisfied the father. He argues that incestuous sexual abuse shouldn't be reported, because he considers incest to be natural and beneficial, and it's up to the mother to make her daughter fulfill her father's wishes. He wrote in his book that we all have a bit of zoophilia, pedophilia and necrophilia, with scatological practices to "warm up" our sexuality. He also states that it is not incestuous abuse that causes trauma to the child, but society's draconian response to it. And that's why he recommends that we should be more sympathetic to pedophilia. He also provides guidance on the *theory of desensitization* (1992, pp. 532-541), which, according to him, should be followed as part of the psychological treatment for the victim. This involves the therapist watching child sexual abuse videos, including videos of the victim, alongside the child, so that the child learns to view the experience as natural and commonplace, thereby trivializing it.

For Gardner, every time a mother makes a report of intrafamilial sexual abuse, the father must quickly go to the Family Court to file an allegation of parental alienation. By doing so, as explained in his book, the focus is shifted to the mother, who is accused of being unbalanced and spiteful, while the child's testimony is discredited, dismissed as merely repeating a narrative fabricated by the mother (Gardner, 1992). There is no concern about the foolishness of this allegation. In the face of reports of young children who can only think and memorize through experience, how can we explain that a child lacks knowledge of the erection and ejaculation of an adult man, and refers to it as "daddy's pee-pee that does gymnastics and grows, and white glue comes out of it"? This statement was made and explained during an analysis session by a boy who had been removed from his mother and placed with his pedophile father. Only through perception does a child retain this kind of information about adult sexuality. How can this type of statement be explained—one that includes details, drawings, and elaboration?

However, the instructions given by Gardner are followed to the letter, and everything always ends up being labeled as the mother's parental alienation. It is a legal dogma. The child abuse case is closed by the Criminal Court, leaving the mother as the sole target, with the goal being her conciliation. Happy family. The abuser becomes indispensable for the child's

growth. Everything as in Gardner's writings. How did this become a vicious cycle without the actual reading of its creator's books, a man who made a living writing reports in defense of abusive and violent fathers?

Gardner, idolized in Brazil due to the appeal of winning cases for these violent and sexually abusive fathers, created—through discrediting the child—the reversal of victim and offender roles, assigning it to children as young as 3, 4, or 5 years old. He excluded the child, disqualifying their voice. The focus then shifted to the father, whom he victimized, while the mother was demonized. He combined this sophistic maneuver, in which he uses the ego defense mechanism of projection, a primary defense, with the **threat therapy** to which the mother is subjected in order to paralyze and dissuade her, by any means, from seeking protection and dignity for her son or daughter. The mother is threatened. Threats of losing custody, threats of financial punishment, threats of complete separation from the child. It is astonishing how legal agents carry out this threat therapy so skillfully in times when people are fighting for civil rights, without even realizing the behavior they are exhibiting. And worse, these threats have been carried out with no regard for the consequences they cause, destroying both children and mothers. Threat therapy is part of a repressive system of absolute control. It's yet another form of institutional violence against women.[15]

The specialized hearing protocol and parental alienation

In order to assess the speech and behavior of a child revealing intrafamilial sexual abuse, professionals must receive specific training in the most appropriate and qualitative way. This involves following the protocol for **specialized hearing**[16], which shifts the paradigm from interrogation to

15 Claudia Galiberne Ferreira, a lawyer, and Romano José Enzweiler, a judge, are the organizers of the book *A Invisibilidade de Crianças e Mulheres Vítimas da Perversidade da Lei de Alienação Parental - Pedofilia, Violência e Barbarismo*. The book brings together judges, lawyers, sociologists, forensic experts, psychologists and prosecutors, who discuss the invisibility, violence and barbarism of the Parental Alienation Law. Ferreira, Cláudia Galiberne; Enzweiler, Romano José. *A Invisibilidade de Crianças e Mulheres Vítimas da Perversidade da Lei de Alienação Parental - Pedofilia, Violência e Barbarismo*. Conceito Editora. Florianópolis, 2019.

16 The idea of "Protected Hearing" and the protocol proposed by the Childhood are related to the regulation of the "specialized hearing" and the "special testimony" in Law No. 13.431/2017.
https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/l13431.htm
- Regulation of Law 13.431/2017
https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/Decreto/D9603.htm
- 2019 Resolution from the National Council of Justice (CNJ)
https://atos.cnj.jus.br/files/original000346201912045de6f7e29dcd6.pdf
For further information:
ESCUTA PROTEGIDA DE CRIANÇAS E ADOLESCENTES VÍTIMAS OU TESTEMUNHAS DE VIOLÊNCIAS - Aspectos Teóricos e Metodológicos. Reference Guidelines for Training in Specialized Hearing and Special Testimony. 2020, CHILDHOOD, UNICEF and CNJ:

embracing the child's voice, all while adhering to the rigor of the human sciences. Careful attention to the child's speech, the arrangement of furniture in the room, the selection and sequencing of questions, the respect demonstrated by avoiding confrontation and disbelief, concern for the professional gathering the child's testimony—who is impacted by hearing such atrocities—and the involvement of the Public Prosecutor's Office in the child's life are essential elements in upholding the principle of the child's best interest, a principle that is too often overlooked and contradicted today. Audiovisual recording serves as a technological tool to prevent re-victimization caused by the endless repetition of hearings. It preserves the child's body language, ensuring the testimony remains vivid and accessible to all professionals involved throughout the proceeding. However, the resistance to using this child-centered tool is substantial. There is also a unanimous preference among professionals, who claim to be forensic experts, for the power of personal interpretation, disregarding scientific methodology, technique, and the protocol that standardizes the language. Forensic experts are also influenced by the allure of power and issue sentencing reports that include judgments and penalties.

What occurs is that, besides being much harder to endure than to attribute alienating behavior, the training also exposes professionals to the worst of perversions. Pedophilia is a character deviation, with a compulsive, always repetitive nature, belonging to the realm of subhuman behaviors.

The wealth involved in the commercialization and judicialization of incestuous sexual abuse is well known. A pornographic video of child sexual abuse is sold for 50, 70, 80 thousand *reais* on the deep web, with no major difficulties for either the seller or the buyer. A forensic expert report can also cost the same amounts, with no major issues for the client or the contractor, who does not need to spend time with a scheduled appointment. In many of these reports that claim there was no sexual abuse and that all the incidents reported by the mother were "parental alienation behaviors" on her part, there was no contact between the forensic ex-

https://site.mppr.mp.br/sites/hotsites/arquivos_restritos/files/migrados/File/depoimento_especial/Guia_escuta_protegida_V4_2020.pdf
GUIA DE ESCUTA ESPECIALIZADA - Conceitos e Procedimentos Éticos e Protocolares, MAIO de 2023 pela CHILDHOOD Brasil e Ministério dos Direitos Humanos e da Cidadania:
https://www.gov.br/mdh/pt-br/navegue-por-temas/crianca-e-adolescente/acoes-e-programas/GuiaEscutaEspecializada_ConceitoseProcedimentosticoseProtocolares.pdf
In Brazil, we also have a Brazilian Forensic Interview Protocol (PBEF) for special testimony (2020)
https://www.tjpb.jus.br/sites/default/files/anexos/2020/07/protocolo_brasileiro_de_entrevista_forense_com_criancas_e_adolescentes_vitimas_ou_

pert, the mother, and the child. They are remote forensic reports. Sometimes serious errors slip through in these forensic reports, such as the description of a case involving three children, with their names and ages, when it actually concerns a case involving an only child. But, of course, this is considered a minor issue, perfectly understood by the court as a typographical mistake. If it is not necessary to know either the child victim or their mother to produce the report, what harm would there be in fabricating nonexistent individuals? As long as the document states that the mother is alienating, everything is fine.

Recently, in September 2024, the National Council of Justice (CNJ) unanimously approved the creation of the Specialized Hearing Protocol for cases of Parental Alienation, demonstrating its resistance to and denial of the existence of incestuous sexual abuse. The confusion surrounding the protocol's title, which has emerged quickly, is not due to ignorance of the existing Specialized Hearing Protocol for Child Victims and Witnesses of Sexual Abuse, which, as previously mentioned, has been legally established since 2017 (Law No. 13.431/2017). Everyone working in this field has, at the very least, heard of it. From the title to the content, which validate a term without scientific evidence, this confusion of tongues—a psychoanalytic concept identified and studied by Ferenczi—demonstrates a distortion of the concept's original intent. The new protocol copies and distorts traumatic psychological elements to redirect the focus onto the mother—the guilty one, the irrational one, the unstable one, the resentful one, the self-serving one.

The discrediting of the child's testimony is driven by the lack of technical training among the professionals who should assist in providing clarifications and evidence in the prosecution aimed at protecting the child. When one is not trained to properly observe and listen, anything can be said or shown, but it will not be seen, nor will a coherent thought be formed. In this scenario, the "best way" for this denial of horrendous facts is willful blindness, which is now endemic and takes the place of empathetic responsibility. It must be sought in order to guarantee the child's right to dignity.

It's worth pointing out that **the Parental Alienation Law is an ambush** for a legalized form of violence against women. Its fruitful purpose is to take away the **right to motherhood.** The woman-mother loses her son or daughter based on the presumed risk of psychological harm to the child due to separation from the father, who did not fulfill his parental role. The child can't be taken away from the father, but can they be taken away from the mother? It is the same legal issue: separation. The institution that is supposed to fully protect the child, ensuring their need and right to close contact with the

mother, enforces **judicial maternal deprivation** without considering the consequences. And these consequences are harmful and disabling.

This alleged alienation is invoked without any concern or scruples regarding reasonableness. In another case reported in the clinic, the mother of a 3-month-old baby, yes, a 3-month-old baby, lost custody of the baby and the courts handed the baby over to the father. Allegation: parental alienation caused by the mother. It's hard to imagine how a mother could badmouth the father to a 3-month-old baby. It becomes even harder to imagine that the judicial decision did not take into consideration this baby's need for its mother. Even her right to breastfeed was violated. It is not possible to display the source, once again. It is under court secrecy. Claudia Galiberne Ferreira and Romano José Enzweiler, in the article *Duas abordagens, a mesma arrogante ignorância: como a SAP e a violência doméstica se tornaram irmãs siamesas*- 2019 (Two approaches, the same arrogant ignorance: how PAS and domestic violence became Siamese twins), illustrate the amalgamation of the PAS and domestic violence, as if they shared the same body. The number of cases of violence against women and children is staggering and, most concerning, only 25% of the violence perpetrated is reported.

In 2015, the Dutch Euthanasia Commission granted authorization for euthanasia to a woman in her early 20s. She had been raped from the age of 5 to 15. The request for the procedure was granted after she had undergone years of intensive therapy and been assessed by a medical board, which confirmed that she was fully lucid and in control of her mental faculties. She simply could no longer endure the psychological conditions triggered by those memories. She could no longer bear **the constant pain.** It is not relevant to bring up euthanasia, the medical board, or the young woman's decision to give up here.

As a result of the abuse, she suffered from post-traumatic stress disorder, severe anorexia, chronic depression and delusions. Conditions diagnosed as incurable by the medical board in three assessments. The deep, constant, and silent pain that shaped her suffering through the distortion of her body by anorexia, the sorrow of a subjective holocaust, and the hallucinations that returned her to the oppressive scene of the abuse, were unbearable throughout her short life. Just what has been asserted for years by clinical experience with numerous survivors of incest and intrafamilial abuse. For the first time, the psychological pain was measured within the limits of human endurance, and it was recognized by doctors as being as unbearable as the neoplastic pain of a terminal patient, which justifies the authorization of this procedure in countries where euthanasia is legalized.

Sexual abuse is a tattoo on the souls of boys and girls. Sometimes, violence— not through force, but through the cruelty of tattooing the refinement of perversity— takes on unimaginable proportions, causing a chronic infection in this tattoo that endlessly hurts and bleeds. Probably the case with this always courageous Dutch girl.

Bears are not stars!

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Disciplining and restoring patriarchal power in the family: children, adolescents and their mothers as "targets of attack"

Andrea Tuana[1]

The Extortion,
the insult,
the threat,
the bump,
the slap,
the beating,
the scourge,
the dark room,
the cold shower,
the mandated fast,
the mandated food,
the prohibition on leaving,
the prohibition on expressing one's thoughts,
the prohibition on following one's feelings,
and the public humiliation

are some of the traditional methods of punishment and torture within family life. As punishment for disobedience and freedom – a family tradition to perpetuate the culture of terror that humiliates women – teaches children to lie, and spreads the plague of fear.

– Human rights should start at home – Andrés Domínguez tells me, in Chile (Eduardo Galeano, "A cultura do terror/2", translated).

The family is the setting where the human rights of women and their children are most often violated. Violence against women, children, and adolescents has been naturalized and normalized throughout history, con-

1 Andrea Tuana has a degree in Social Work from UDELAR, she holds an Mphil in Public Policy and Gender from FLACSO Uruguay. She is the director of the NGO *EL Paso*, and the Academic Coordinator of the Post-Graduation Program in Gender-based Violence and Violence against Boys, Girls and Adolescents at FLACSO Uruguay.

tributing to its invisibility. One in every three women worldwide (736 million women) suffers physical or sexual violence inflicted by an intimate partner, and this violence starts at an early age: one in four women between the ages of 15 and 24 who have been in an intimate relationship will have experienced violent behavior from a partner by the time they turn 25 (WHO, 2021). Additionally, the World Health Organization (WHO, 2020) reports that each year, one in two children between the ages of two and 17 is a victim of some form of violence. This illustrates that violence against women, children, and adolescents is a structural issue, rooted in a culture that shapes power dynamics and subordination.

One of the most widespread forms of violence against women and their children is the one that takes place in the domestic sphere. Domestic violence represents a system of domination that reinforces the idea of the paterfamilias's ownership over his intimate partner and children. A specific characteristic of this form of violence is that it occurs within the context of affective relationships, where love, illusion, and the desire/mandate to keep the family united generate strong ambivalence in the victims and make it difficult for them to escape the violent situation.

The emotional and social isolation to which victims of domestic violence are subjected functions as a barrier to seeking help, increases emotional dependency, and fosters a sense of helplessness. Generally, a desperate urge to understand the situation and find a way to cease it emerges. Along this path, individuals subject themselves to increasing violence, seeking explanations that distort reality, self-blame, and the normalization of violence as a form of relationship. The secrecy in which these relations of control and submission develop makes this reality invisible and silenced for those on the outside. Ambivalence and retraction are common expressions among victims, who yearn for an almost magical change, who feel guilty, who experience love and loyalty that binds them strongly to the one at the center of their lives, who feel the omnipotent and omnipresent power of the one who daily violates their rights and treats them as property. It is in these dynamics of pain and emotional dependence, of promises of change, of moments when transformations occur and violence ceases or becomes less apparent, where discipline succeeds in overcoming all resistance from the victims, that the various forms of domestic violence are established, produced, and reproduced (Tuana, 2006:17).

The United Nations Special Rapporteur on Violence Against Women (2019) defines domestic violence as a disciplinary device that enforces women's subordination and is also a fundamental component of the system of domination. It involves the exercise of power and control through

various forms of violence, including physical, psychological, sexual, and economic abuse, among others. Hierarchical relationships and practices of control and submission are often established in a subtle and progressive way, where violence is naturalized and made invisible.

Pateman (1988) has conducted in-depth analyses on the role of the institution of marriage in consolidating and legitimizing women's subjugation, whereby the female body becomes the property of the husband, and the wife is obligated to satisfy the husband's sexual needs. In her analysis, she refers to this sexual contract as a social contract that guarantees men access to women's bodies:

> The original pact is a sexual as well as a social contract: it is sexual in the sense of patriarchal – that is, the contract establishes men's political right over women – and also sexual in the sense of establishing orderly access by men to women's bodies (Pateman, 1988, p. 2).

The author states that marriage is the contractual institution that consolidates this right to property and subjection:

> The sexual contract is made only once, but it is replicated every day as each man makes his own 'original' marriage contract. Individually, each man receives a major part of his patriarchal inheritance through the marriage contract. There are echoes of the story of the primal scene and the slave contract lingering round the marriage contract. When a woman becomes a 'wife' her husband gains right of sexual access to her body (once called 'conjugal rights' in legal language) and to her labor as a housewife (Pateman, 1988, p. 115).

Men's right to property over their wives and their sons and daughters, as well as women's place as obedient wives, was naturalized and incorporated into social norms. Different authors (Bourdieu, 2000; Segato, 2006) argue that becoming a man implies exercising this ownership and domination, given that hegemonic masculinity implies exercising multiple powers. The exercise of male power over women is what defines men's identity, and the domestic space is one of the first settings where this practice takes place. The family is a space of patriarchal domination where the property of the head of the family over his intimate partner and his sons and daughters is legitimized.

Children and adolescents have historically been placed under the tutelage of the adult world. The International Convention on the Rights of the Child (CRC) brings about a substantive shift in perspective by recognizing children as subjects of rights and establishing the obligation for all States Parties to prevent all forms of violence against children and adolescents. The CRC provides a fundamental perspective for redefining the adult-centric and hierarchical relationships that have historically shaped interactions between adults and children. This new framework sheds light on the highly harmful impacts of power abuse power and various forms of violence exercised by adults, particularly within the home. Parental roles are no longer regarded as absolute rights or mere powers/duties; instead, they are recognized as rights limited by the rights of children themselves—that is, by their best interests concerning their development as individuals, free from violence and abuse.

In recent years, growing recognition has been given to the profoundly harmful impact on children and adolescents of witnessing physical or sexual assaults, verbal degradation, humiliation, and subjugation inflicted by one parent upon the other or among other family members. Children and adolescents who witness domestic violence must be considered direct victims of violence, as they grow up in this environment and are systematically exposed to it.

> The World Report on Violence Against Children (Pinheiro, 2006) argues that witnessing this violence over a long period can severely affect, for a lifetime, the well-being, personal development, and social interactions of children, who suffer the same impact as those directly subjected to this violence. According to WHO, the negative impacts to children who live in violent households are similar across culturally and geographically diverse settings. Based on studies of women in Bangladesh, Brazil, Ethiopia, Japan, Namibia, Peru, Samoa, Thailand and the United Republic of Tanzania, children living in violent households (where the mother reported physical abuse from the father) were more likely to have behavioral problems such as bed-wetting, nightmares, and excessively aggressive behavior or timidity, than those in non-violent households. The results suggest that exposure to violence in the home is a warning sign for damage to children (Pinheiro, 2006, p.64).

Institutional violence and anti-rights discourses

The progressive and constant advancement in the recognition of the rights of women and children has generated significant opposition and virulent reactions from a patriarchal system that feels threatened. Reports of gender-based violence, abuse, and/or sexual violence against children challenge these patriarchal norms of male ownership and dominance over their wives and daughters. Challenging this power structure generates multiple consequences for those who report it. The patriarchal structure, embodied by the abusers, their environment, and largely by institutions, is resistant to this challenge, this freedom, and the voices that rises to put an end to the historical arbitrariness and subjugation of women by men.

Judith Herman argues that when a report of gender-based violence or sexual abuse is made, the perpetrator uses various strategies to silence their victims.

> In order to escape accountability for his crimes, the perpetrator does everything in his power to promote forgetting. Secrecy and silence are the perpetrator's first line of defense. If secrecy fails, the perpetrator attacks the credibility of his victim. If he cannot silence her absolutely, he tries to make sure that no one listens. To this end, he marshals an impressive array of arguments, from the most blatant denial to the most sophisticated and elegant rationalization. After every atrocity one can expect to hear the same predictable apologies: it never happened; the victim lies; the victim exaggerates; the victim brought it upon herself; and in any case it is time to forget the past and move on (Herman, 2015, p. 27).

These same strategies are used by institutions that operate by reproducing the patriarchal order, discrediting the reports of women, children, and adolescents, and placing under suspicion professionals who support and assist the victims. These practices constitute institutional violence when perpetrated or tolerated by the State. As Herman states:

> When the victim is already devalued (a woman, a child), she may find that the most traumatic events of her life take place outside the realm of socially validated reality. Her experience becomes unspeakable. [...] It is not only the patients but also the investigators of post-traumatic conditions whose credibility is repeatedly challenged. Clinicians who listen too long and too carefully to traumatized patients often become suspect among their colleagues, as though contaminated by contact. Investigators who pursue the field too far beyond the bounds of conventional belief are often subjected to a kind of professional isolation (Herman, 2015, p.28).

As the recognition of the right of women, children, and adolescents to live free from violence progresses, and States assume commitments to prevent, punish, and repair these situations, a clearly anti-rights regressive movement begins to take shape and consolidate. As early as 2017, the Inter-American Commission of Women warned of discourses against women's equality aimed at deepening and legitimizing sexism and misogyny. Its main strategy was to attack the concept of gender as an explanation for the discrimination of women and coin the term "gender ideology". Additionally, post-truth narratives spread, asserting that violence has no gender, that most reports are false, that women have too many rights, and now men are the ones suffering discrimination by institutions. The feminist movement is attacked under terms such as *feminazi*, and an attempt is made to create a division between a "good" feminism and a "bad or radical" feminism.

The United Nations Special Rapporteur on Violence Against Women, its Causes and Consequences, reports on the rollback of women's rights and the rise of authoritarianism and fundamentalism.

> At the same time, there is a mounting opposition to and backsliding of women's rights everywhere, including an upsurge in retrogressive movements and a backlash against feminism, gender equality and women's empowerment. Within that context, the term "gender" is also being misinterpreted as "gender ideology" and has led to an increase in gender-based violence against women (UN, 2019, p. 5).

Within this framework, various forms of institutional violence are being deployed. Institutional violence is defined as violence tolerated or perpetrated by States (Belém do Pará Convention, 1994) and serves two purposes: to

restore the patriarchal order and men's proprietary power over their children, and to punish and discipline, through practices of torture, those women and children who dare to report abuse and manage to escape violent homes.

To this end, at least three closely interconnected strategies are employed, which are more easily implemented given the existence of an institutional framework that tolerates and enforces them.

The use of ideologies that discredit children's claims

The false Parental Alienation Syndrome (PAS) and its euphemisms (interference, obstruction of bonding, alienation, implantation, among others), along with the implantation of false memories, are part of this set of ideologies. Such beliefs, lacking academic support and rejected by the most relevant scientific communities, aim to silence the voices of those who report abuse and to discipline them through institutional torture practices.

The false or non-existent PAS is an ideology created by a U.S. physician in the 1980s, who unsuccessfully attempted to obtain scientific validation to classify his invention as a syndrome (Tuana, 2006). Despite being rejected by the international scientific community, this ideology spread across various countries, promoted by lawyers who defended domestic perpetrators of violence and sexual abuse.

PAS seeks to discredit any allegations of violence or sexual abuse against a child or adolescent, asserting that they are fabricated lies implanted by one parent (generally the mother) to separate the child from the other parent, usually the father.

When PAS enters a country's judicial systems, it ensures the restoration of patriarchal power within the family. It attempts to convince, through arguments without scientific basis, that women are abusively exercising their hard-won rights by indoctrinating their children to lie and/or reject their fathers. Typically, these arguments are put forward by defense attorneys representing perpetrators, often in collusion with unscrupulous and negligent professionals who "diagnose" PAS or its related variants.

In many judicial proceedings, once the idea of manipulation and false allegations is established, everything that follows is interpreted through this lens. Nothing that the mother, the child, or even other professionals who interact with them (teachers, pediatricians, therapists) say is considered valid, as all statements are placed under suspicion. PAS accusations obliterate children's right to be heard and subject them to extreme suffering, lack of protection, and even to life-threatening situations. Among the various so-called "cures for PAS", its creator proposed reversing child custody, which forces children to live with their violent and/or abusive father, expos-

ing them to ongoing violence and, in some cases, to being murdered by them. In many cases, all contact with the protective mother is prohibited, subjecting children to cruel and intolerable suffering.

The Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI) and the UN Special Rapporteur on Violence against Women (2022) expressed their concern about the illegitimate use of the parental alienation syndrome against women in a joint statement:[2]

> The use of this controversial concept of parental alienation syndrome against women in cases where they denounce gender-based violence against themselves or against their daughters and sons is part of the continuum of gender-based violence and could invoke the responsibility of States for institutional violence. [...] Likewise, they urge the States to eliminate the use of this syndrome to prevent placing both children and mothers in a situation of high vulnerability and to avoid the risk of women losing custody of their children. Instead, they recommend giving priority to the principles of the best interests of children, the equality between men and women, and to acting with due diligence, as well as including the gender and intersectional perspective (OAS-MESECVI, UN, 2022).

A recent study carried out by the Universidade Complutense de Madrid (2023) describes the distorted dynamic to which many children, adolescents, and their protective mothers are subjected when they report violence or sexual abuse perpetrated by fathers.

> If any element of the false PAS is introduced into the case, its integrity is fundamentally compromised. Like a domino effect, this flaw spreads to all subsequent proceedings, reinforcing the invoked stereotypes (it becomes even more evident that the mother's only motivation is to harm the father) thus further exacerbating procedural failures (there is no need to hear the child or adolescent again, investigate the allegations, or justify the decision, since another authority has already done so). When a case against a father for sexual violence within the family or gender-based violence against

2 Full text of the joint declaration published on August 12, 2022: https://www.oas.org/es/mesecvi/docs/Communique%20Parental%20Alienation.pdf

> children and adolescents is dismissed—or if the father is acquitted—based on arguments related to the false PAS, and the mother continues to claim in family court that her child is at risk, there is a strong possibility that, rather than evaluating the violent environment in which the child or adolescent may be living, the focus will shift to assuming that the mother has a questionable motivation and is abusing her legal rights. Within this interpretation, the following scenarios are also presumed to indicate spurious motivation and/or abuse of rights: prior situations of gender-based violence, multiple reports following various medical examinations and visits to health services that document suspicions or indications of violence against children or adolescents, and civil litigation in family matters or family conflict. Thus, adhering to the parameters set by its creator, the more one attempts to document the violence, the more the false PAS is "proven". Moreover, if the mother violates the visitation arrangement to protect her child, the supposed justification for doing so will not be thoroughly investigated; instead, it will be presumed that all previous and subsequent proceedings and reports are merely a sequence of attempts to distance the father from his children (Universidad Complutense de Madrid, 2023, p. 180, translated).

The false PAS entered Uruguay in the early 2000s, promoted by groups of fathers separated from their children due to reports of violence[3]. It was quickly adopted by legal actors as a defense strategy against accusations of violence and sexual abuse, particularly in cases where the accused held social prestige or economic power. During this period, these groups of fathers began to file complaints and launch smear campaigns against professionals and organizations advocating for children's rights. Additionally, some scholars and judicial officials incorporated the false PAS into their practices, resulting in iatrogenic and revictimizing interventions.

3 Regarding some of the interest groups working on this issue, we can mention: Familias Unidas por Nuestros Niños https://familiasunidas.net; Todo Por Nuestros Hijos Ya (TPNHY) https://www.todopornuestroshijos.com.uy; S.O.S PAPÁ http://www.sospapa.com/, the oldest group, created in 1992. See also the following pieces of news: "Padres protestan frente a SCJ", published by *Montevideo Portal*, on August 19, 2013, available at: https://www.montevideo.com.uy/Noticias/Padres-protestan-frente-a-SCJ-uc210928 and "El abuso de los abusadores o el discurso de las 'denuncias falsas' por violencia basada en género", published by the Faculty of Psychology (UDELAR), on May 12, 2023, available at: https://psico.edu.uy/presencias-en-medios/el-abuso-de-los-abusadores-o-el-discurso-de-las-denuncias-falsas-por-violencia.

> It is important to note that initiatives also emerged from within the justice system. For example, a magistrate from a Family Court of Appeals authored an article defending the existence of the false PAS, defining it as a "judicial disease". Around the same time, a bill was introduced aiming to recognize and regulate the use of the false PAS; however, it has not yet been given space for discussion in parliament (ANONG, 2023, p. 21, translated).

During those years, a landmark case slowed the expansion of the false PAS in Uruguay. It involved a five-year-old girl who disclosed to her mother the sexual abuse she had suffered at the hands of her father and his intimate partner. The father was arrested, but a forensic assessment conducted a year later by the Chair of Pediatric Psychiatry at the Faculty of Medicine of the University of the Republic dismissed the allegations of sexual abuse, asserting that the child's testimony was induced and unreliable. As a result, the father was released and filed for visitation rights. A few days before the first scheduled visitation, he perpetrated domestic violence against his intimate partner and mother-in-law, leading to his rearrest and the establishment of a permanent restraining order for the child's protection.

> When all seemed to be lost, a violent incident altered the course of events. The father assaulted his mother-in-law with a knife, injuring her face and other soft tissue areas, in the presence of his girlfriend and their four-year-old daughter. He also threatened both women with a firearm in front of the child. This act led the Family Court of Appeals (Second Instance court) to suspend his visitation rights (Ruling 10/2010). From that moment on, the children had no further contact with their father (ANONG, 2023:20).

Enactment of Forced Shared Custody Laws

The lobbying for these laws across various countries stems from a neosexist movement led by associations of fathers separated from their children. These groups invoke the so-called PAS or its variants as the basis for their claims, portraying themselves as victims of a system that favors manipulative and deceitful women who, out of spite or resentment, keep them away from their children. These collectives lobby for mandatory shared custody laws, advocate for the criminalization of women who file reports of abuse, and push for legislation recognizing the PAS. Many of their members are

the subjects of protective orders against them, are involved in legal proceedings, or have been convicted of violence.

In Uruguay, the second wave of PAS advocacy was driven by these groups and associations, which engaged in intense parliamentary lobbying from 2011 until 2023, when they succeeded in passing Law 20141 on shared parental responsibility. This law mandates shared custody and visitation even in cases involving domestic violence. Article 4 of the law states:

> In all cases, including those where precautionary measures have been ordered, the right of children and adolescents to maintain contact with the accused party must be respected, provided that, in the judge's opinion, such contact aligns with the child's best interests. If deemed necessary, this contact may take place under specific conditions to ensure the child's well-being, such as in public spaces, in the presence of family members, at designated state facilities, or through any other arrangements the judge considers necessary to protect the physical and emotional well-being of the child or adolescent, with appropriate monitoring (Law No. 20141/2023, translated).

This law was passed despite strong opposition from Uruguay's most prominent institutions and organizations, which argued that it represented a significant setback and posed a direct threat to the rights and safety of children exposed to violence. Among the leading opponents of the law were: UNICEF, the Committee on the Rights of the Child, the Association of Public Defenders, the Association of Magistrates of Uruguay, the Uruguayan Society of Child and Adolescent Psychiatry, the Uruguayan Pediatric Society, the National Association of Non-Governmental Organizations for Development, the Uruguayan Network Against Domestic and Sexual Violence, the Pro-Care Network, the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), and the Feminist Intersocial Network.

Institutional practices that subject children and adolescents to torture

Once the idea of PAS or its variations takes hold, certain institutional practices are sometimes triggered, subjecting children and adolescents who are victims of violence, as well as their protective mothers, to torture. Some of these practices include:

Forced reunification with the abuser. Forced visits cause intolerable suffering for children and adolescents who are terrified by the presence of their abuser. Many children develop psychosomatic disorders in the days leading up to these visits, such as vomiting, headaches, respiratory problems, overwhelming distress, heart-wrenching cries, and desperate pleas to their mothers not to be taken to see their fathers, among other symptoms. In many cases, they are subjected to reunification in state facilities, where they endure pressure and inhumane treatment, such as being dragged while crying in fear and distress or having their voices and requests ignored. The following account reveals the inhumane treatment inflicted by the Uruguayan justice system on a child who explicitly states that he does not want to be reunited with his violent father:

> During the proceedings, the child was seeing a psychologist in Salto, and there are several reports stating that he did not want to see his father anymore because his father was violent towards him. None of the reports in Salto were ever taken into account. X is exhausted. They keep forcing him to do things he does not want to". The interviewee frequently states that her son was not heard during the legal proceedings, that he physically and verbally expressed distress, exhaustion, and resignation. She also states that the father tells the child during visits that his mother is to blame for "everything he is going through" (ANONG, 2023, p. 42, translated).

Harassment and Persecution of Protective Mothers Protective mothers are threatened and pressured to cooperate in the forced reunification of their children with the abusive father under the risk of losing custody, facing fines, or even being imprisoned.

Court-Ordered Child Removals. This practice involves a judge ordering a change in custody, forcibly removing children from their home and their secure attachment figure (the protective mother) and compelling them to live with the abusive father or his family. Furthermore, often the child is also prohibited from communicating or having any contact with the protective mother. This practice is considered cruel, inhuman, and degrading treatment, equivalent to torture. The forced separation of a child from their secure attachment figure can have profoundly harmful consequences for their development. Although judicial removals are not as frequent in Uruguay as in other countries, cases have been identified in

which children and their protective mothers have been subjected to this form of torture. The following case, referred to as Case M, exemplifies such violations.

Case M

M, a five-year-old girl, lived with her mother in a town in the countryside of Uruguay. Her parents were separated due to domestic violence. The girl had been both a witness and a direct victim of the violence her father inflicted on her mother. As a result of this violence, M's father was convicted twice for aggravated domestic violence in conjunction with repeated offenses of aggravated contempt, receiving a sentence of eight months in prison. Due to the father's violent behavior, M had always been in her mother's custody and had only supervised visits with her father at a state institution (INAU) until the competent judicial authority ordered the suspension of those visits. The paternal grandparents were granted a visitation agreement and regularly visited the child. Later, M's father initiated legal proceedings for visitation, resulting in an agreement that included both the father and the grandparents. However, every time M had to go with her grandparents, she would cry, become extremely distressed, and refuse to go.

At that time, M experienced vaginal bleeding while using the bathroom, prompting her mother to seek immediate medical attention. The attending physician determined that the protocol for suspected sexual abuse should be activated and referred M to the department/state's capital city for further examination. This diagnostic hypothesis caused extreme distress and alarm for M's mother, especially since the child had recently been in her father's home. At the Departmental Hospital, the receiving medical team determined that M needed further examination due to suspicion of sexual abuse and requested the intervention of a gynecologist. Following these medical examinations, the hypothesis of sexual abuse was ruled out, but no definitive diagnosis was reached regarding the cause of the bleeding, and M was sent home. In the following days, M experienced further bleeding, and the attending physicians diagnosed an anal fissure. Upon learning of these events (though it remains unclear how they obtained this information), M's father and paternal

grandparents filed complaints, accusing the mother of fabricating the bleeding to falsely accuse the father of sexual abuse. The presiding judge, in agreement with the child's legal defense attorney, removed M's custody from her mother and provisionally granted it to the paternal grandparents, without establishing visitation rights or communication between M and her mother.

M was forcibly separated from her mother, the secure attachment figure with whom she had lived since birth. She was uprooted from her home and social environment, as her paternal grandparents lived in the department's capital city. She was enrolled in a new school, and her medical treatments were discontinued. For 40 days, M remained at her grandparents' home, completely isolated from her mother, as the competent judicial authority had not established a visitation schedule, and her guardians (the paternal grandparents) refused to allow any contact between the child and her mother.

Later, an Appeals Court reinstated M's custody to her mother, and after 40 days, she returned home. However, the child was deeply traumatized by the torture she endured, suffering from post-traumatic stress disorder and living in constant fear that she would once again be taken away from her mother.

International child return requests in domestic violence cases. Faced with the institutional violence suffered by children, adolescents, and their mothers when complaints are dismissed and judicial removal is ordered in favor of the abusive father, some mothers flee their countries of residence with their children as the only way to protect them. Rather than complying with the court order and handing their children over to live with a violent or sexually abusive father, they choose to escape. Upon fleeing to other countries, they face the Hague Convention on the Civil Aspects of International Child Abduction, which has significant weaknesses in providing effective protection in such cases.

> 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. 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, frequently compelling women and children to return to abusive and life-threatening situations. 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 (UN, 2023, p. 10)

Children and adolescents fleeing state persecution and violent fathers have no special protection to shield them from forced return. Escaping their countries with their protective mothers becomes their only option to avoid exposure to intolerable and high-risk situations. Protective mothers face international child abduction charges, and many have ended up imprisoned for trying to protect their children.

States blatantly violate the human rights of children and adolescents, pushing them into exile to avoid being returned to abusive or violent fathers. These children are subjected to lives of permanent uncertainty, as if living in a state of war, constantly fearing for their safety, forced to flee from one place to another without the chance to settle, far from their loved ones, schools, friends, and extended family. For a state to chase a child in order to return them to live with an abusive or violent father is an act of institutional violence without precedent.

This issue is not on the public agenda in Uruguay, which results in these cases being rendered invisible and lacking appropriate responses. Legal defenses in such cases are extremely costly, there are few professionals with the necessary expertise for these litigations, and access to specialized organizations that could take on cases pro bono is very limited.

Regional and international mechanisms fail to provide viable protection in concrete cases. For example, the Committee on the Rights of the Child has yet to admit any such case. In one instance, a video recorded by a child herself was submitted, in which she pleaded for the Committee's help and described the sexual abuse she suffered at the hands of her father. Howev-

er, the case was not accepted. The child had spent several months on the run, trying to avoid being handed over to her abuser.

The #MaríaNoSeVA case[4]

#MaríaNoSeVA is the name of a campaign in Uruguay to support a 4-year-old girl with a Spanish father and an Uruguayan mother. This case became paradigmatic as it exposed a form of institutional torture previously unknown in Uruguay. The country complies with the Hague Convention, and restitutions are carried out swiftly, with few cases receiving the thorough approach required by the seriousness and gravity of the situations reported.

María left Uruguay for Spain in search of new experiences. There, she met her partner, and shortly after, their daughter was born. They lived in a mountain village and traveled to Uruguay every year to visit María's family, always with the father's authorization. Both María and her daughter were victims of domestic violence at the hands of the child's father. During their last trip to Uruguay in 2017, strong indications of sexual abuse emerged. Faced with this situation, a legal battle began: María decided not to return to Spain to protect her daughter and filed complaints against the father for sexual abuse and domestic violence. The father, in turn, requested the international return of the child and accused María of kidnapping.

María recounts that, in Uruguay, the judge and the child's legal representative wanted to carry out an expedited return, meaning a quick and uncomplicated process to send the child back to Spain so the other issues could be thoroughly examined there. María's defense presented evidence (technical reports confirming the sexual abuse), and the judge requested expert opinions from the Forensic Technical Institute. A well-known forensic psychologist conducted the assessment and determined that both the child and her mother had been through violent situations. When the psychologist began to address the sexual abuse, the child became physically ill, forcing the assessment to be suspended. Given this,

4 Find news coverage on the case: "'Maria no se vá': un caso emblemático", published in El País on September 29, 2018, available at : https://www.elpais.com.uy/que-pasa/maria-no-se-va-un-caso-emblematico and "La ONU intervino en el 'caso María': le envió una carta al gobierno de España", published in El País, on October 10, 2019, available at: https://www.elpais.com.uy/informacion/judiciales/la-onu-intervino-en-el-caso-maria-le-envio-una-carta-al-gobierno-de-espana.

the psychologist requested more time to interview the child again, but the judge denied the request. In her report, the expert recommended that the mother and child should not be returned to Spain.

What followed is what happens to many children and mothers attempting to escape domestic and institutional violence. The girl was returned to Spain, where legal proceedings were initiated. New assessments were conducted, which neither confirmed nor ruled out the sexual abuse allegations but dismissed the forensic examinations carried out in Uruguay. Forced reunification with the father was then arranged at a supervised visitation center. During each session, the child experienced episodes of anxiety and panic attacks and strongly resisted seeing her father. The judge concluded that the mother was obstructing the relationship, deemed her mentally unstable, and considered her a risk to her daughter, ultimately ordering the change of custody to the father and the subsequent court-ordered removal of the child.

The removal was an act of torture carried out by the Spanish state. The child was taken by the police and handed over to her father. She was torn away from her home, her secure attachment figure—her mother—her school, teachers, friends, and city. She was relocated four hours away from the village where she was born in order to live with her father.

There, another form of institutional torture began: supervised visitation centers. The child was only allowed to see her mother once a week for two hours in a state facility, under the strict supervision of an official. Those 18 months were incredibly harsh. Every Saturday, mother and daughter embraced each other, played, exchanged affection, and experienced profound happiness in their brief time together, only to be torn apart in agony two hours later. Week after week, they transitioned from the intense joy of reunion to the deepest sorrow of separation. The visitation center could be used for up to 18 months, after which the child was unable to see her mother for eight months due to the judge's failure take action. Eventually, María secured a visitation agreement allowing her to spend one weekend with her daughter every two weeks.

It is vital that international and regional mechanisms prioritize these cases and create pathways for resolution in these situations. There is an

urgent need for international protection strategies for those children, adolescents, and their protective mothers who leave their countries to avoid state persecution. The international community must establish support networks, safe-conduct, and the involvement of embassies and international organizations' officials who can offer protection.

It is essential to call on the feminist movement and the movement for the defense of children's and adolescents' rights to incorporate this issue into their agendas and mobilize internationally to denounce this form of torture. It is a priority to advocate for a review of the Hague Convention to explicitly include gender-based violence in the exceptions and to push for international or regional statements on the matter (thematic reports, observations from the Committee on the Rights of the Child, the CEDAW Committee, and MESECVI). It is necessary to conduct research and establish regional observatories aimed at identifying institutional practices that perpetuate these forms of patriarchal violence.

To close this article, I echo the words of Consuelo Barea Puyeta in the end of her book *El maltratador como ex marido y como padre*:

It has been difficult to write all this, a descent into hell. Like a personal exorcism, my account of these horrors has sought to bring them to an end in some way. It had to be said, it had to be explained repeatedly and in detail, because as Judith Herman says: "For crimes to end, the facts must be known" (Barea, 2012, p. 269, translated).

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LEGAL PERSPECTIVES

The challenges for women's access to justice in Brazil

Leila Linhares Barsted[1]

The legislative fight for equality, including equality in family relations, has long been part of the efforts of feminist movements. During the constituent proceedings in 1986, women's movements, which had already established themselves as a political actor in the social arena, presented the Constituent Deputies with a broad agenda of rights to be included in the 1988 Federal Constitution (FC).[2] The achievement of formal rights was a historic and paradigmatic step. However, nearly 40 years later, the formal recognition of rights does not necessarily mean that women feel they possess the rights enshrined in the laws or experience them in practice. Having rights goes beyond simply being granted them; it requires social recognition and the actual ability to exercise them in their lives. A huge contingent of women has historically been excluded from access to rights and subjected to discrimination and violence based on gender and race. In this regard, the fight for rights needs to have an intersectional perspective[3], going beyond a liberal concept of rights. Concerning equality in family relations, as outlined in Article 226 of the Federal Constitution, its application remains influenced by the deep-rooted traditions of the 1916 Civil Code,

1 Leila Linhares Barsted is a lawyer, founder and Executive Coordinator of the organization CEPIA (Citizenship, Study, Research, Information and Action). Member of the Committee of Experts of MESECVI - Follow-up Mechanism to the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women – Belém do Pará Convention of the OAS - Organization of American States. Professor Emeritus at the School of Magistrates of the State of Rio de Janeiro - EMERJ. She was part of the group of feminist lawyers who drafted the foundational text of the Maria da Penha Law.

2 This agenda, included in the Brazilian Women's Declaration to the Constituents, was developed by women's movements in collaboration with the National Council for Women's Rights - CNDM. https://www2.camara.leg.br/atividade-legislativa/legislacao/Constituicoes_Brasileiras/constituicao-cidada/a-constituinte-e-as-mulheres/arquivos/

3 On the meaning of intersectionality: Crenshaw, Kimberlé. *A Intersecionalidade na Discriminação de Raça e Gênero.* https://edisciplinas.usp.br/pluginfile.php/4253342/mod_resource/content/1/IntersecionalidadeNaDiscriminacaoDeRacaEGenero_KimberleCrenshaw.pdf

which embodied male dominance in society and the family, defining women's role within the family as one of submission to male authority. Despite the formal advancement of laws, this has not meant the abolition of the mechanisms of domination.

Family law is a privileged field for identifying gender biases, challenging the supposed neutrality of the law and its interpretation. The treatment of women in family court proceedings during the 1980s, a topic thoroughly analyzed by Pimentel, Giorgi, and Piovesan (1993),[4] has not been fully overcome. All you need to do is randomly select one or more family lawsuits involving shared custody or child support.

Several authors have highlighted how the law has served as an instrument of male domination. Pateman (1988)[5] presents a critical analysis of the law that established family policies, particularly concerning marriage, as a sexual contract, a contract of submission in contrast to the social contract, which would be a contract of freedom between equals. For this author, the sexual contract creates the political and sexual right of men over women. In this regard, Mackinnon (1993)[6] draws attention to the fact that in male supremacist societies, the male point of view is the dominant one in law.

Thus, the law must be analyzed from a feminist critical perspective that helps to understand women's place within the law and how they should engage in creating a new legal framework, informed by gender, race, and ethnicity. Bartlett (2008)[7] emphasizes that legal principles must take into account the personal experience of those directly impacted by traditional norms, warning that legal policies and their enforcement are neither neutral nor objective.

The meeting promoted by the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM) on the Parental Alienation Law highlights the need for reflection on such issues in order to avoid falling into the trap of assuming that equality is available to both men and women. The legal tradition—under the supposed aegis of impartiality and equality—can work to the disadvantage of women, in the form of a thick veil that hides the context of existing inequalities

4 Pimentel, Silvia; Giorgi, Beatriz; Piovesan, Flávia (1993). *A figura/personagem mulher em processos de família.* Porto Alegre, S.A. Fabris.

5 Pateman, Carole (1988). The Sexual Contract. United Kingdom: Stanford University Press.

6 Mackinnon, Catharine A. Hacia una teoría feminista del derecho. *Revista Derecho y Humanidades*, año II, n. 3/4, 1993. https://derechoyhumanidades.uchile.cl/index.php/RDH/article/view/25800/27128

7 Bartlett, Katharine T. (2008). *Métodos Legales Feministas*. https://edisciplinas.usp.br/pluginfile.php/4928666/mod_resource/content/1/334225745-Bartlett-Katharine-Metodos-Feministas-en-El-Derecho.pdf

It is crucial to foster the work and strengthening of a comprehensive human rights network, with special participation from feminist movements and organizations focused on supporting and protecting women. Equally important is strong advocacy aimed at the state and its institutions to eliminate, both in law and in its interpretation, the mechanisms of domination embedded in the 1916 Civil Code, which remain active.[8] This has been the fight of feminist movements and organizations, but it must also be the fight of all movements, organizations and institutions that defend human rights.

The subjugation of women to male domination, as well as to racial domination, is made explicit in the data published by various research organizations, which reveal a rise in gender and race-based violence against women, particularly black and poor women, as reflected in statistics on femicide and sexual violence.[9] Despite this evidence, there is a continued pattern of discrediting women's testimony within security and justice institutions. Only in 2023 did the Supreme Federal Court (STF) declare unconstitutional the popular jury's decision to acquit femicide perpetrators on the grounds of 'legitimate defense of honor.[10] This decision finally addresses the demands of women's movements dating back to the late 1970s.

However, cases of discrediting and depriving women of their rights in family court proceedings remain largely overlooked and under-researched, as they are kept under judicial secrecy.[11] Many of these cases have their origins in incidents of domestic violence against women reported under the Maria da Penha Law.[12] In its text, this law establishes hybrid criminal and civil courts for gender-based domestic violence, designed to prosecute and judge criminal offenses as well as handle civil lawsuits, particularly those related to family law. The failure to comply with this provision of the Maria da Penha Law has led women to turn to Family Court, which is not aligned with the Domestic Violence Court and fails to consider that the couple's separation was caused by violence. Many prosecutors and judges don't take into account that violence against women is also a form of violence against children.

8 See Barsted, Leila Linhares; Hermann, Jacqueline (1999). *As mulheres e os direitos civis. Traduzindo a legislação com a perspectiva de gênero*. Rio de Janeiro, Cepia, n. 3.

9 See the 10th National Survey on Violence against Women, carried out by the DataSenado Institute, in partnership with the Observatório da Mulher contra a Violência (OMV). https://www12.senado.leg.br/noticias/materias/2023/11/21/datasenado-aponta-que-3-a-cada-10-brasileiras-ja-sofreram-violencia-domestica#:~:text=A%20pesquisa%20apontou%20que%20a,viol%C3%AAncia%20f%C3%ADsica%2C%20diz%20o%20estudo.

10 https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=511556&ori=1

11 And also in cases of sexual violence within or outside the family.

12 Lei 11.340/2006. https://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/l11340.htm

In this regard, Barsted (2022) and other authors provide evidence that:

> The patriarchal social order establishes unequal power relations in the "contract" of marriage, maintaining women's subjugation to the family, primarily represented by their submission to the husband. Women's insubordination to this imposed position in this unequal contract is "contested" in family court lawsuits, with punitive arguments of "madness", "depression", "waste of money", among other categories, aimed at the "interdiction" of this insubordination. (translated)[13]

This is a strong barrier that women encounter and which is present in the Parental Alienation Law, a major new form of violence against women. Enacted in 2010, the Parental Alienation Law,[14] based on unrecognized pseudo-scientific arguments, has predominantly been used against women in family court proceedings, where they are labeled as alienating parents for reporting the violence perpetrated against them and their children. In these lawsuits, the gender biases and stereotypes become evident, resulting in the loss of rights and the women's disbelief in the possibility of accessing justice.

Both the United Nations (UN) and the Organization of American States (OAS) have pointed out how the use of the so-called Parental Alienation Syndrome (PAS) serves as a strategy for discrimination and violence against women. For the Committee of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), domestic and family violence against women and children must be taken into account when determining child custody rights. [15]

The CEDAW Committee also acknowledged the significant difficulty women face in accessing justice, including the stereotypical perceptions held by judges. In this regard, it issued General Recommendation No. 33 in 2015, which acknowledges the difficulties faced by women, particularly specific groups of women:

13 Barsted, Mariana de Andrade Linhares. (2022) A insubordinação civil das mulheres à família: estereótipos de gênero e seus reflexos no direito das famílias. *Revista do Curso de Especialização em Gênero e Direito da EMERJ*, n. 3 https://emerj.tjrj.jus.br/files/pages/revistas/genero_e_direito/edicoes/3_2022/pdf/MARIANA_DE_ANDRADE_LINHARES.pdf, p. 3.

14 Law 12.318/2010. https://www.planalto.gov.br/ccivil_03/_ato2007-2010/2010/lei/l12318.htm

15 CEDAW/C/FIN/CO/7, paragraph 39 c):
c) Adopt measures to ensure that domestic violence is a factor to be systematically considered in child custody decisions.
Available at: https://www.ohchr.org/en/documents/concluding-observations/cedawcfinco7-concluding-observations-seventh-periodic-report

> as a result of direct and indirect discrimination [...] Such inequality is apparent not only in the discriminatory content and/or impact of laws, regulations, procedures, customs and practices, but also in the lack of capacity and awareness on the part of judicial and quasi-judicial institutions to adequately address violations of women's human rights. [...] In addition, discrimination against women is compounded by intersecting factors that affect some women to degrees or in ways that differ from those affecting men or other women. Grounds for intersecting or compounded discrimination may include ethnicity/race, indigenous or minority status, color, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital and/or maternal status, age, urban/rural location, health status, disability, property ownership and identity as a lesbian, bisexual or transgender woman or intersex person. These intersecting factors make it more difficult for women from those groups to gain access to justice.[16]

This recommendation is not only aimed at judges, but also at all professionals who work in the justice system, such as members of the Public Prosecutor's Office, defenders, lawyers, forensic experts and psychosocial teams.

In the same vein, in 2022, the Follow-up Mechanism to the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (MESECVI) and the United Nations Special Rapporteur on Violence against Women jointly expressed their concern about the lack of respect for women's rights in the justice system, specifically regarding "the illegitimate use of the concept of parental alienation syndrome against women", as follows:

> have learned of multiple cases throughout the region where justice bodies take into account parental alienation syndrome resulting in denying the mother custody of her children, thereby awarding it to the father accused of family violence or insisting on shared custody with the violent father even in cases where the children and the mother are at serious risk. This situation may also result in the mother being forced to change

16 CEDAW - General Recommendation No. 33 on women's access to justice, paragraphs 22 and 8. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FGC%2F33&Lang=en

> her country of residence so that the father who exercises violence can live with the children. The use of this controversial concept of parental alienation syndrome against women in cases where they denounce gender-based violence against themselves or against their daughters and sons is part of the continuum of gender-based violence and could invoke the responsibility of States for institutional violence.[17]

Barsted, L., Cruz, R., and Barsted, M. (2020)[18] note that the position of women in the law, whether in statutory or customary law, is marked by restrictions and the pitfalls of equality. Issues such as child custody, parental alienation, violence against women, sexual violence against women and children, among others, highlight the persistence of gender stereotypes operating against women. The authors conclude that:

> The Parental Alienation Law turns reporting into an ordeal for women who are victims of violence or whose children are, reversing the roles of perpetrator and victim. The lack of neutrality in this law generates direct and indirect discriminatory impacts on women, reproducing gender stereotypes to their detriment, where any woman is seen as an alienating parent in court—a court that should be protecting women and children—since they are among the most socially vulnerable individuals, especially inside their homes.

Also concerning family law, Souza (2020)[19] states:

17 OAS / UNITED NATIONS - *Communiqué on Parental Alienation* https://www.oas.org/es/mesecvi/docs/Communique%20Parental%20Alienation.pdf

18 Barsted, Leila Linhares, Cruz, Rubia Abs e Barsted, Mariana (2020) - O lugar das mulheres no direito, In Severi, Fabiana, Volkmer, Ela Wiecko e Matos, Myllena Calasans (Orgs.). *Tecendo fios das Críticas Feministas ao Direito no Brasil - Novos Olhares, Outras Questões.* (2020). N. 2, volume 2 — Ribeirão Preto: FDRP/USP. https://www.direitorp.usp.br/wp-content/uploads/2020/12/11-03_VOL-2__TECENDO-FIOS-2-V2-DIAGRAMACAO-FN-1.pdf, p. 357

19 Souza, Paloma Braga Araújo (2020). *O canto da sereia da Lei de Alienação Parental.* Consultor Jurídico. https://www.conjur.com.br/2020-ago-28/paloma-braga-canto-sereia-lei-alienacao-parental/#_ftn1

> A blatant contradiction exists in Brazilian society regarding the maternal figure. Mother's Day ranks as the third most significant commercial date in Brazil. In advertisements, mothers are idealized as celestial, sanctified, and selfless heroines devoted to their children [...] When needed, they are often the ones who give up their careers to care for them and take on most of the housework. [...] However, when this sacrosanct figure, the mother, enters the realm of legal disputes, she is no longer portrayed as the one willing to do anything for her children's well-being, but as a vengeful, resentful, and crazy ex-wife, who only seeks to extort her ex-husband and disrupt his life, who is capable of using her children in the most vile ways (translated).

Mothers' organizations, feminist organizations and lawyers' associations have denounced the extent to which this contradiction expresses the persistent subordination of women in the interpretation and application of the law by legal institutions. These organizations are fighting for the repeal of the Parental Alienation Law, which, since its enactment, has been used against women who are labelled as alienating when they report abuse against their children perpetrated by their fathers. In 2019, the Association of Women Lawyers for Gender Equality (Associação de Advogadas pela Igualdade de Gênero)[20] filed a Direct Action of Unconstitutionality at the Supreme Court in order to challenge the entirety of the Parental Alienation Law, denouncing the extent to which this concept:

> has been used as a discursive defense strategy for perpetrators of violence against women and sexual abusers of children, providing a plausible explanation for the child's rejection of one parent or to undermine allegations of violence or sexual abuse perpetrated by that same parent, shifting the blame to the custodial parent—usually mothers whose sole intentions were to protect their children (translated).

Feminist advocacy at the international level has been an important tool for changing dome0stic legislation and denouncing violence against women and the negligence of institutions. It has also generated precedents, international and national jurisprudence, considering the 1988 Constitution, which recog-

20 https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=751532978&prcID=5823813

nizes human rights conventions as domestic law, as well as it recognizes the legal authority of international courts. In 2001, the Inter-American Commission on Human Rights (IACHR) declared the Brazilian State responsible for the violation of the judicial guarantees and judicial protection rights of Maria da Penha Fernandes, a victim of two attempted femicides, citing unjustified delay and negligent handling in this case of domestic violence in Brazil.[21] In addition to reparations for Maria da Penha and the trial of the perpetrator of the attempted murder against her, the passing of the Maria da Penha Law was Brazil's response to the IACHR's decision.

In 2011, the CEDAW Committee held Brazil accountable for the maternal death of Alyne Pimentel, recognizing the intersection of gender and racism. The Committee declared the Brazilian State responsible for Alyne's death, acknowledging that *"the State party did not ensure appropriate medical treatment in connection with pregnancy"*.[22] That was the first decision issued by the CEDAW Committee regarding a case of maternal death in which the State was considered legally obliged to provide universal access to healthcare due to its direct responsibility for monitoring and regulating public and private institutions that provide health services, making the State accountable for their actions. It stated that the Brazilian State must guarantee effective judicial action, protection and remedies, holding health professionals accountable for their actions and omissions in relation to women's reproductive rights. It also recommended a series of reparatory or compensatory measures for Alyne's family, proportional to the severity of the violations committed against her, as well as broader measures aimed at ensuring safe motherhood for all women.

In 2021, the Brazilian State was also held accountable by the Inter-American Court of Human Rights (I/A Court H.R.) for its omission in relation to the femicide of Márcia Barbosa.[23] This was the first Brazilian femicide case admitted by that Court, which, in its ruling, concluded that the investigation and criminal proceedings regarding this crime had a "gender-discriminatory character and were not conducted with a gender perspective." It also considered various types of reparation for Márcia Barbosa's family as well as the adoption of non-repetition measures, such as the implementation of training and awareness-raising programs for justice officials; the adoption of a standardized protocol for the investigation of gender-based violent deaths of women; the design and implementation of a national, centralized system for the collection of disaggregated data to enable quantitative

21 https://cidh.oas.org/annualrep/2000port/12051.htm

22 https://reproductiverights.org/sites/crr.civicactions.net/files/documents/Alyne%20v.%20Brazil%20Decision.pdf

23 https://www.corteidh.or.cr/docs/casos/articulos/seriec_435_por.pdf

and qualitative analysis of acts of violence against women; the creation of a plan for the continuous training, education, and sensitization of police forces and justice operators responsible for investigations; the payment of established amounts for rehabilitation, as well as compensation for pecuniary and non-pecuniary damages; among other measures.

Motivated by the case of Barbosa de Souza et al. v. Brazil, in which the Inter-American Court of Human Rights held the State of Brazil accountable, the Brazilian National Council of Justice (CNJ) developed and published its Protocol for Judging with a Gender Perspective.[24] In this Protocol, the National Council of Justice emphasizes that this document is

> an additional tool for advancing gender equality, aligning with Sustainable Development Goal (SDG) 5 of the UN 2030 Agenda, to which both the Federal Supreme Court and the National Council of Justice have pledged their commitment. This instrument offers theoretical reflections on the issue of equality and serves as a guide to ensure that judgments across various branches of the judiciary uphold the rights to equality and non-discrimination [emphasis added] for all individuals so that the exercise of judicial functions does not perpetuate stereotypes or reinforce differences but becomes a space for breaking away from cultures of discrimination and prejudice. [...] This protocol is the result of the institutional advancement of the Judiciary, which now acknowledges the influence of historical, social, cultural, and political inequalities faced by women throughout history in shaping the development and application of the law. It further highlights the need to foster an emancipatory legal culture that recognizes the rights of all women and girls. [...] In this context, the National Council of Justice (CNJ), by issuing this document, takes a step toward recognizing that the influence of patriarchy, machismo, sexism, racism, and homophobia permeates all areas of law, extending beyond domestic violence to impact its interpretation and application in fields such as criminal law, labor law, tax law, civil law, social security law, and others. [...] The Protocol for Judging with a Gender Perspective was created to guide judges in making decisions on real cases,

24 The full text of this Protocol is available at: https://www.cnj.jus.br/programas-e-acoes/protocolo-para-julgamento-com-perspectiva-de-genero/

> encouraging them to apply a gender lens in their rulings, thereby advancing in the implementation of equality and equity policies. [...] It is crucial to emphasize the importance of this protocol, given the close relationship between law and the reproduction of inequalities in Brazil, but also its emancipatory potential when practiced by judges committed to equality. Thus, it is expected that this protocol will impact judicial practices, enabling a cultural shift that leads us toward fulfilling one of the fundamental goals of the Republic: to build a freer, fairer, and more compassionate society (translated).

The acknowledgement that this protocol "serves as a guide to ensure that judgments across various branches of the judiciary uphold the rights to equality and non-discrimination" must necessarily result in the application of a gender perspective in family court decisions.

This poses a challenge for feminist legal practitioners, who are aware that, although patriarchy has been formally excluded from legal norms, it remains embedded in the implementation and interpretation of laws, as well as within legal institutions. A legal framework with an intersectional perspective of gender, race, and class must address the needs and demands of women, many of whom have been marginalized under patriarchal liberal law. This new legal framework can act as a tool for emancipation.

Institutional violence also affects migrant women living outside their countries of origin, where reporting violence against themselves and their children, or attempting to return with their children to their home country, can result in the loss of child custody, characterizing them as kidnappers. For Brazilian women in this situation, it is essential that the Brazilian State be open and prepared to assist them with a gender perspective.[25] Women's movements and legal experts also emphasize the need for feminist advocacy at the Hague Conference on Private International Law to advocate for the inclusion of a gender perspective and the consideration of domestic violence in the application of the Convention to migrant women.[26]

25 On this issue see: Araujo, Nadia and Vargas, Daniela (2012). Comentário ao RESP 1.239.777: O dilema entre a pronta devolução e a dilação probatória na Convenção da Haia sobre os aspectos civis do sequestro internacional de menores. *Revista Brasileira de Direito das Famílias e Sucessões*. n. 28. https://www.gov.br/mj/pt-br/assuntos/sua-protecao/cooperacao-internacional/subtracao-internacional/arquivos/comentario-ao-resp-1239777-o-dilema-entre-a-pronta-devolucao-e-a-dilacao-probatoria-nadia-de-araujo.pdf

26 In support of these women, the organization Revibra was created in 2012, an European network of anti-racist and feminist professionals that offers support and

Recently, a Permanent Joint Committee[27] on international migration was established in the Chamber of Deputies, focusing on the coercive measures outlined in the Hague Convention, designed to prevent the international abduction of children. Some lawmakers have argued that the Convention's implementation has led to the separation of hundreds of mothers from their children by partners of different nationalities. Senator Mara Gabrilli has stated that the application of the Convention has caused the separation of numerous mothers from their children.

> They are Brazilian women who, in general, have been victims of domestic and family violence in other countries and flee back to Brazil with their children, leaving behind the lives they built abroad in order to protect their children from violence, often of a sexual nature. However, once in Brazil, they continue to suffer persecution from their abusers, who use the Hague Convention to regain custody of their children. Often, these mothers, due to the international agreement, are accused of the crime of international abduction and end up living with their children in conditions of insecurity and indignity.28

It is from this practical and theoretical observation that legal activism and feminist criticism focus on law and its institutions. This observation also arises from the lived experiences of both white and black women in accessing justice. Women need to write their own rights. The feminist practice of writing the law was present in the Federal Constitution, in the drafting of the Family Planning Law, in the Maria da Penha Law. Therefore, it is important that they continue to exercise this practice.

Writing law in the field of domestic violence against women meant breaking paradigms by bringing the issue that the private is political to the legislative and judicial agendas. Women need to exercise their critical view of the law, advance their technical knowledge of substantive and procedural law in relation to various matters, including family law.

And, in very concrete terms, in addition to overturning the Parental Alienation Law, it is necessary to introduce a gender perspective to the Hague

assistance to migrant women who are victims of domestic violence and/or anti-migrant discrimination. https://www.revibra.eu/quem-somos

27 Agência Câmara de Notícias. https://www.camara.leg.br/noticias/1003427-comissao-debate-efeitos-colaterais-da-aplicacao-de-convencao-sobre-sequestro-internacional-de-criancas/

28 Agência Câmara de Notícias. https://www.camara.leg.br/noticias/1003427-comissao-debate-efeitos-colaterais-da-aplicacao-de-convencao-sobre-sequestro-internacional-de-criancas/.

Conference on Private International Law, also to ensure that the Protocol with a Gender Perspective is adopted throughout the Brazilian justice system, especially in family law, and that training and awareness programs on judging with a gender perspective are extended to all justice operators involved in this branch of law. It is also necessary to seek an alliance with the Ministry of Women to join the movements advocating for the repeal of the Parental Alienation Law.

Legislative aspects of the Parental Alienation Law

Roberta Viegas[1]

The Brazilian Parental Alienation Law (Law No. 12.318/2010[2]) was passed by Congress and enacted by President Luiz Inácio Lula da Silva on August 26, 2010. It stemmed from Bill No. 4,053/2008[3], introduced in the Chamber of Deputies by Deputy Régis de Oliveira (Partido Social Cristão – PSC/SP[4]), allegedly in response to increasing concerns about suspected cases of parental alienation. Such cases were described as situations in which one parent manipulated a child in an attempt to undermine the child's relationship with the other parent following divorce or separation. The law's stated aim was to protect children's rights and ensure healthy relationships with both parents.

In Brazil, debates about parental alienation gained prominence in the mid-2000s, largely driven by associations of separated fathers[5], particularly non-custodial fathers. These discussions began even before the legal recognition of shared custody. Notably, the Parental Alienation Law bill was introduced on October 7, 2008, less than four months after the concept of shared custody was incorporated into Brazil's legal framework through Law No. 11.698 of June 13, 2008, which itself emerged in response to demands from civil society.

1 Roberta Viegas is a legislative consultant for the Federal Senate on Human Rights and Citizenship. She is the General Coordinator of the Brazilian Ministry of Women's *Observatório Brasil da Igualdade de Gênero*. She is also a lawyer expert in human rights, with a focus on gender and women's rights.

2 Law No. 12,318 of 2010 *which deals with parental alienation and amends Article 236 of Law No. 8,069 of July 13, 1990*. https://www.planalto.gov.br/ccivil_03/_ato2007-2010/2010/lei/l12318.htm

3 Law bill no. 4.053, of 2008. *which deals with parental alienation*. https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=411011

4 Taking into consideration the classificatory inaccuracies that will be discussed along the text, the PSC (Partido Social Cristão/Social Christian Party) can be considered a right-wing party in Brazil.

5 Mastrioanni, F.C., Vellosa, F.R.F., Malara, L.C.M., Leão, A.M.C. 2019, September-December. *Alienação parental em processos judiciais*. https://www.historia.uff.br/revistapassagens/artigos/v11n3a82019.pdf

The Shared Custody Law, which amended provisions of the Civil Code, was enacted following the approval of House Bill PLC 58/06 by the Plenary of the Federal Senate in October 2007. Originally introduced in the Chamber of Deputies in 2006 by then-Deputy Tilden Santiago (Workers' Party – PT, Minas Gerais[6]), the bill's justification argued that shared custody would fill a gap left by the 2002 Civil Code, which had not regulated the matter. It further emphasized the need to guarantee "the best interests of the child and equality between men and women in the responsibility for their children[7]."

In this context, collectives of separated fathers would refer to Parental Alienation Syndrome (PAS) as scientific support for their demands. Coined by physician Richard A. Gardner, the term is used to describe an alleged childhood disorder arising in the context of custody disputes. According to Gardner, the disorder stemmed from one parent's defamatory campaign against the other, leading the child to develop hostility toward the targeted parent. In line with this view, the justification[8] for Bill No. 4,053 of 2008 explicitly referenced the pseudo-scientific concept of PAS[9] as the foundation of its proposal.

Also, the PA Law came into effect 45 days after its publication in the Brazilian Official Gazette of the Union[10], less than two years after the bill was proposed—an unusually short timeframe for the approval of a law[11] from

6 Taking into consideration the classificatory inaccuracies that will be discussed along the text, the PT (Partido dos Trabalhadores/Workers' Party) can be considered a left-wing or center-left party in Brazil.

7 House Bill No. 58, of 2006, *establishes provisions for shared custody.* https://www25.senado.leg.br/web/atividade/materias/-/materia/77996

8 The justification of a bill, while not normatively binding on the law it will become, is an appendix to the proposal, as it contains the reasons for its presentation. It allows for examining the convenience and appropriateness of introducing the bill, as well as understanding the positioning of discussions on the topic to be legislated. Throughout this text, we will present excerpts from some of the justifications that we believe are relevant to understanding the political and legislative phenomenon of the Parental Alienation Law.

9 Parental Alienation Syndrome (PAS) is considered a pseudoscientific concept because it lacks solid scientific support and does not adhere to the rigorous criteria of the scientific method. Among other things, the concept of PAS is not based on robust, peer-reviewed empirical studies, and often the evidence presented is anecdotal or based on isolated cases. http://educa.fcc.org.br/scielo.php?script=sci_arttext&pid=S1981-04312022000100202

10 The Brazilian government's official publication where federal laws, decrees, regulations, and other official acts are published and made legally binding.

11 The time required for a bill to move through the legislative process can vary significantly, depending on factors such as the legislative body's workload, public interest in the issue, the complexity of the subject, and other considerations. According to the website "Jota," "During periods of normalcy, and based on proposals presented between 1990 and 2019, the estimated average time was 1,279 days for Constitutional Amendments (PECs) and 1,263 days for Bills (PLs) and Legislative Decrees (PLPs)." (Translated) https://www.jota.info/legislativo/congresso-tramitacao-aprovometro-25052020

proposal to enactment. This rapid passage was largely due to the mobilization of associations of separated parents, which not only succeeded in raising public awareness on the issue but also influenced the Judiciary, thereby creating a sense of urgency within the Legislative Branch.

Later, in 2017, the Federal Senate established the Parliamentary Inquiry Commission on Mistreatment (CPIMT)[12]. Parliamentary inquiry commissions are provided for in Article 58, Paragraph 3 of the Federal Constitution and are created:

> by the Chamber of Deputies and the Federal Senate, jointly or separately, at the request of one third of its members, for the investigation of a specific fact and for a certain period of time, and its conclusions, if applicable, will be forwarded to the Public Prosecutor's Office, so that it may promote the civil or criminal liability of the offenders. (Federal Constitution). (translated)

The Parliamentary Inquiry Commission on Mistreatment (CPIMT) was established at the request of Senator Magno Malta to investigate irregularities and crimes involving the abuse of children and adolescents in Brazil. In its final report[13], the commission referred to the so-called Parental Alienation Syndrome in the following terms:

> Throughout the work of the Parliamentary Inquiry Commission, we encountered reports of cases in which parents accused of abusing or committing other forms of violence against their own children allegedly manipulated or pressured the other parent to file a false or unfounded complaint, as a tactic to secure shared custody or have custody reversed in their favor. It would be a cunning way in which one violent parent would manipulate the other in order to obtain the double benefit of access to the victim and the removal of the protector. [...] If the father, mother, another relative, or caretaker has reason to suspect that someone is perpetrating some kind of violence or abuse against the child or adolescent, they may overcome any initial hesitation and investigate

12 See https://legis.senado.leg.br/atividade/comissoes/comissao/2102/

13 Report of the Parliamentary Inquiry Commission created by means of request No. 277 of 2017, with the aim of "investigating irregularities and crimes related to the mistreatment of children and adolescents in the country". https://legis.senado.leg.br/sdleg-getter/documento?dm=7892940&ts=1549309753527&disposition=inline

> or report the matter. It is possible that the complainant is mistaken and that the complaint, even if made in good faith, is false. Certainly, the behavior of a complainant who is loyal to the child or adolescent is distinct from that of someone who knowingly files a false report simply to harm the relationship with the other parent. In the first case, the error is excusable. In the second case, it's unjustifiable. Whether the facts reported are true or not is up to the justice system to determine, but malicious reporting, as a form of parental alienation, cannot be tolerated. One cannot override the presumption of innocence of the accused, but neither can the complainant's bad faith be automatically presumed. They are two sides of the same coin, distinct, but essentially interconnected. The Parental Alienation Law provides an opportunity for abusers to manipulate the system against their legitimate accusers, which we cannot accept. [...] **We simply believe that this law does not resolve conflicts of interest, nor does it establish norms of social conduct, nor does it protect children and adolescents from the harmful behaviors of either parent throughout the parenting process**. In this scenario, one can only sympathize with the suffering of those who lost the legal custody of their children due to the actions of the police (that failed to adequately investigate whether the child had truly suffered any form of abuse), or the conduct of the Public Prosecutor's Office (that did not prioritize the best interest of the child), or the decision issued by the judge (who modified the child's custody as a means of punishing the complainant), proposing, within the strict constitutional and legal limits, the complete repeal of the Parental Alienation Law (translated).

The foregoing excerpt from the final report of the Inquiry Commission on Mistreatment (CPIMT) formed the basis for Law Bill No. 498 of 2018[14], introduced as an outcome of the commission's proceedings. However, the bill, which sought the complete repeal of the Parental Alienation Law, was eventually dismissed at the close of the legislative term.

It should also be noted that, as the theory lost scientific credibility, the term "parental alienation syndrome" was gradually abandoned,

14 Senate Bill No. 498 of 2018, which *proposes the repeal of the Parental Alienation Law.* https://www25.senado.leg.br/web/atividade/materias/-/materia/134835

giving way to the term "parental alienation," which remains embedded in current legislation. In other words, although the pseudo-theory has been discredited, this has not yet been reflected in legislative revisions, and the law continues to be enforced.

The following sections will present the ongoing bills that aim either to amend or to repeal the Parental Alienation Law (PA Law). It is worth noting that all of these bills remain in their House of Origin, whether in the Chamber of Deputies or in the Senate. That is, they are still at the early stages of the legislative process. Under Brazil's legislative system, a bill must necessarily pass through both its House of Origin and the Revising House before being sent to the President of the Republic for approval or veto. If the Revising House makes any modifications, the bill is returned to its House of Origin for review of those changes prior to moving forward.

Another important feature of the Brazilian legislative process concerns the rules governing the dismissal of proposals. Under a recent amendment to the Internal Rules of the Chamber of Deputies[15], a proposal may only be dismissed after it has been carried over for a minimum of three full legislative terms[16]. In the Federal Senate, by contrast, the rule established in its Internal Rules[17] remains unchanged, providing that, as a general rule, all proposals under consideration are automatically discarded at the close of each legislative term.

It is also worth noting, as mentioned above, that the bills proposing amendments to the Parental Alienation Law (PA Law) have been introduced by deputies and senators from across the political spectrum—ranging from progressive to conservative groups—both in terms of authorship and rapporteurship.

In Brazil, the structure of political parties reflects the country's social diversity and complexity. This characteristic makes it particularly challenging to categorize parties strictly as "right-wing," "center," or "left-wing." With few exceptions, the Brazilian party system has historically exhibited fluid and shifting alignments[18]. Scholarly literature on the subject generally classifies parties along the right–left spectrum accord-

15 https://www.camara.leg.br/noticias/901610-camara-aprova-novas-regras-para-arquivamento-de-propostas-dos-parlamentares/

16 In the Chamber of Deputies, a legislative term lasts for 4 years, coinciding with the duration of the deputies' mandate. In the Senate, a legislative term lasts 8 years.

17 Art. 332. *Internal Rules of the Federal Senate*. https://www25.senado.leg.br/web/atividade/legislacao/regimento-interno

18 Bolognesi, B., Ribeiro, E., Codato, A., 2023. *Uma nova classificação ideológica dos partidos políticos brasileiros*. https://www.scielo.br/j/dados/a/zzyM3gzHD4P45WWdytXjZWg/#ModalTutors

ing to their positions in parliamentary debates and voting behavior on socially and politically contentious issues, such as abortion legalization, gun control, and economic taxation.

With regard to the issue of so-called Parental Alienation, a preliminary classification of the political affiliations of deputies and senators reveals that the matter is debated across different party lines. Both supporters and opponents of the PA Law can be found in diverse political groups. This stems largely from the heterogeneous nature[19] of the pressure groups mobilized for and against the PA Law, which exert influence on both parliamentarians and public opinion. As will be demonstrated below, this diversity is reflected in the positions taken by deputies and senators who authored bills aimed at amending or repealing the PA Law, though always within the limitations highlighted above.

Another important aspect of the Legislative Branch is the role of pressure groups and political forces in shaping legislative outcomes. When effectively coordinated, such groups may block the approval of laws that conflict with their interests, just as they may facilitate the passage of laws aligned with their agendas. Thus, the interplay of forces within the National Congress can operate both to advance and to obstruct legislative initiatives.

Whichever path is pursued, navigating the National Congress requires a deep understanding of the legislative process and of the multiple political forces at play. Such knowledge is indispensable for achieving any desired legislative outcome.

At present, two bills related to the Parental Alienation Law are under consideration in the Federal Senate, both of which propose its full repeal: Bill No. 2235 of 2023 and Bill No. 1372 of 2023.

Bill No. 2235 of 2023[20], introduced by the Committee on Human Rights and Participatory Legislation (CDH), originated from the approval of Legislative Suggestion (SUG)[21] No. 15 of 2021. The bill essentially re-

19 In the case of the Parental Alienation Law, examples of pressure groups include women's movements, early childhood advocacy groups, organizations for separated fathers, child and adolescent protection groups, among others.

20 Bill No. 2235 of 2023, which *Repeals Law No. 12,318 of August 26, 2010*. https://www25.senado.leg.br/web/atividade/materias/-/materia/157150

21 Legislative suggestions are provided for in the Internal Rules of the Federal Senate (RISF) as a way for civil society to participate in the legislative process. Any citizen, association, class body, trade union or organized entity can submit a draft legislative proposal in the form of a "legislative idea" on the Federal Senate's website*(e-Citizenship)*. Any legislative idea that has received more than 20,000 individual supports becomes a *legislative suggestion* and is then considered by the Commission on Human Rights and Participatory Legislation (CDH). Once approved by the CDH, it will be processed as a bill authored by this Committee in the Senate.

produces the content of Bill (PLS) No. 498 of 2018, which also sought to repeal the Parental Alienation Law (PA Law). The proposal was referred to the Committee on Social Affairs (CAS) for review and is scheduled to proceed next to the Committee on Constitution and Justice (CCJ). Within the CAS, the bill was initially assigned to Senator Leila Barros (Democratic Labor Party – PDT/DF[22]) as rapporteur. However, according to the legislative tracking system, on October 10, 2023, the Senator returned the assignment. Since then, no new rapporteur has been appointed, and the bill has remained inactive.

The second bill currently under consideration in the Senate with the aim of repealing the PA Law is Bill No. 1372 of 2023[23], authored by Senator Magno Malta (PL/ES). The bill was referred to the CDH, CAS, and CCJ, which will issue a final decision without the need for deliberation in the plenary, after which it will be sent for presidential sanction or veto. The role of rapporteur passed through several senators—Leila Barros (PDT/DF), Márcio Bittar (UNIÃO/AC), and Eliziane Gama (PSD/MA). After being returned[24] several times, the role was ultimately assumed by Senator Damares Alves (Republicans/DF), who presented a report in favor of the bill, later approved by the CDH. The bill was then referred to the CAS, where it has remained without an appointed rapporteur since August 22, 2023.

In the Chamber of Deputies, the latest legislative records[25] indicate that six bills are currently under consideration, aimed either at amending the Parental Alienation Law or repealing it altogether. Each of these proposals will be outlined below.

The oldest of these proposals is Bill No. 9446 of 2017[26], introduced by Congresswoman Carmen Zanotto (CIDADANIA/SC[27]). It seeks to

22 With the limitations of such an analysis, the PDT can be considered a center-left party in Brazil.

23 Bill No. 1372, of 2023, which repeals Law No. 12.318, of August 26, 2010, which *deals with parental alienation.* https://www25.senado.leg.br/web/atividade/materias/-/materia/156451

24 To return the bill refers to the act of ceasing to report on it. The rapporteurship of a bill can be returned for various reasons, such as the senator leaving the committee where the bill is being discussed, losing interest in the bill, facing public pressure, or other factors.

25 Survey conducted by the author on November 30, 2023.

26 *Bill No. 9446, of 2017, which amends Law No. 10,741, of October 1, 2003, which provides for the Statute of the Elderly and makes other provisions, to provide for the affective abandonment of the elderly by their relatives, and Law No. 12,319, of August 26, 2010, which provides for parental alienation and amends art. 236 of Law No. 8,* 069, *of July 13, 1990.318, of August 26, 2010, which deals with parental alienation and amends art. 236 of Law No. 8.069, of July 13, 1990.* https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=1635260&filename=PL%209446/2017

27 With the limitations of such an analysis, CIDADANIA can be considered a centrist party in Brazil.

amend three existing laws: Law No. 10.741 of October 1, 2003 (Statute of the Elderly); Law No. 12.318 of August 26, 2010 (Parental Alienation Law); and Law No. 8.069 of July 13, 1990 (Statute of the Child and Adolescent).

The bill introduces the idea that the elderly may also be victims of "alienation," understood as situations in which they are abandoned by their children or deprived of contact with their children and/or grandchildren. In this way, the proposal reinforces and broadens the concept of parental alienation, extending its scope of protection from children and adolescents to include the elderly. Its justification even states that:

> An aggravating factor is that parental alienation constitutes a form of emotional abuse, which is more difficult and time-consuming to identify than physical abuse, such as sexual violence or maltreatment. Nevertheless, as a form of moral abuse, parental alienation is no less serious and has become increasingly frequent (Bill No. 9446/2017, translated).

Eventually, Bill No. 9446 of 2017 was coupled to Bill No. 4562 of 2016, which proposes amendments to the Statute of the Elderly in order to address the emotional abandonment of older persons by their family members. The proposal remains pending before the Plenary of the Chamber of Deputies, with no legislative action recorded since February 7, 2018.

The second oldest bill concerning "parental alienation" currently before the Chamber of Deputies is Bill No. 2287 of 2021[28], authored by Deputy Bosco Costa (Liberal Party – PL/SE[29]). It proposes amendments to Law No. 12.318 of 2010 (Parental Alienation Law) in order to classify as parental alienation behaviors: "preventing a parent from attending prenatal care and the labor or delivery of their child, and obstructing access to medical records about the pregnancy and the mother's needs during pregnancy." The justification for this proposal is minimal, consisting only of a few brief remarks outlining the reasons for its submission.

If approved, this bill would grant the child's father—whether or not he maintains a relationship with the mother—the right to unrestricted

28 Bill No. 2287, of 2021, which *provides for the guarantees of the parent during pregnancy and childbirth, and to this end amends Law 12.318/2010 (Parental Alienation Law), and makes other provisions.* https://www.camara.leg.br/propostas-legislativas/2287932

29 With the limitations of this type of analysis, the PL can be considered a right-wing party in Brazil.

access to medical records concerning the woman's pregnancy and delivery. It would also grant him the right to be present at these events. The measure applies throughout the gestational period, that is, while the fetus remains in the mother's body. Notably, the bill makes no reference to requiring the woman's consent for such access.

The bill was initially referred to the Committee on the Defense of Women's Rights, the Committee on Social Security and Family, and the Committee on Constitution, Justice, and Citizenship (CCJC). In October 2023, following the dissolution of the Committee on Social Security and Family, the bill was reassigned to the Committee on Social Security, Social Assistance, Childhood, Adolescence, and Family, where it has not yet been assigned a rapporteur. Once reviewed in this committee, it will proceed to the CCJC.

The third bill currently before the Chamber of Deputies on this matter is Bill No. 2354 of 2022[30], authored by Deputy Sargento Alexandre (Podemos – PODE/SP[31]). It proposes a set of amendments to the Parental Alienation Law, outlined below.

The first amendment proposed in the bill addresses Article 2 of the PA Law, modifying both the *caput* and its sole paragraph. In the *caput*, it replaces the phrase "by the grandparents" with "by relatives." In the sole paragraph, however, the amendment as currently drafted (and not marked with dotted lines) would remove the non-exhaustive list of parental alienation behaviors. This does not appear to be the author's intention, since the justification expressly refers to that list. Accordingly, this drafting error will need to be corrected during the review process or in the final consolidated version. Substantively, the amendment seeks to expand the scope of parental alienation to include the following behavior:

> The failure to ensure the child or adolescent's right to healthy and balanced coexistence with their parents and extended family, by judges, members of the public prosecutor's office, professionals from multidisciplinary teams, lawyers, guardianship counselors, or any other public servant acting in an official capacity.

30 Bill No. 2354, of 2022, which *amends Law No. 12.318 of August 26, 2010, to deal with cases of parental alienation, provide for sanctions and make other provisions.* https://www.camara.leg.br/propostas-legislativas/2334357

31 With the limitations of this type of analysis, PODE can be considered a center-right party in Brazil.

In other words, the bill provides that judicial authorities, prosecutors, lawyers, and even public servants could be deemed perpetrators of parental alienation.

The bill also proposes the amendment of Article 6 of the PA Law, modifying its *caput* and paragraphs 1 and 2, while introducing two new paragraphs. In the *caput*, the wording is changed from "may" to "must" requiring judges to act once alleged acts of parental alienation are identified:

> *Article 6. Once typical acts of parental alienation or any conduct that makes it difficult for a child or adolescent to have regular contact with a parent are identified, either in a separate proceeding or in an ancillary action, the judge must adopt appropriate measures, either cumulatively or individually, depending on the severity of the case. These measures shall be applied without prejudice to possible civil or criminal liability and may include a wide range of actions intended to mitigate or remedy the effects of parental alienation.*

As currently drafted, the amendment would also remove the illustrative list of measures available to judges, which is likely an inadvertent drafting error to be corrected later.

In its paragraph 1, the bill proposes adding phrases "by the custodial parent, or by ascendants, descendants, or collateral relatives" and "the imposition of a fine and the transfer of child custody in the event of non-compliance with a court order". Such amendment would authorize judges to sanction custodial parents if a change of address is deemed abusive. Those sanctions may also include transferring the duty of transporting the child between parental residences.

Paragraph 2 of the bill proposes the elimination of the required periodic psychological or biopsychosocial follow-up reports, replacing it with provisions sanctioning authorities and professionals who fail to guarantee the child's right to regular family contact[32]. In such cases, judges, prosecutors, lawyers, guardianship counselors, or public servants would be subject to an Administrative Disciplinary Proceeding (PAD), while professionals from multidisciplinary teams or lawyers could face disciplinary proceedings for serious misconduct.

32 That would apply to the cases in which it is understood that judges, members of the public prosecutor's office, professionals from multidisciplinary teams, lawyers or guardianship counselors have failed to guarantee children and adolescents' right to healthy and balanced parenting timeshare.

The bill also introduces paragraphs 3 and 4 to the PA Law. Paragraph 3 criminalizes "acts aimed at prohibiting, hindering, or altering contact with ascendants, descendants, collateral relatives, or others with recognized family ties", making such conduct punishable by imprisonment. Paragraph 4 (erroneously numbered as paragraph 2 in the text of the bill) increases penalties where such acts are committed "for a wrongful purpose, by misusing the Maria da Penha Law (Brazil's domestic violence law[33]), or by making false accusations of any kind, including claims of child sexual abuse." Although the bill's justification does not explicitly refer to the so-called Parental Alienation Syndrome (PAS), it cites Richard Gardner, the psychiatrist who formulated the concept. The text also stresses the need to hold professionals accountable for what it calls "activism in the proceedings to the detriment of children and adolescents."

Just like Bill No. 2287 of 2021, the proposal was referred to the Social Security, Social Assistance, Childhood, Adolescence, and Family Committee, where it has remained without a rapporteur since October 17, 2023. It will subsequently be forwarded to the CCJC.

The fourth bill, Bill No. 2812 of 2022[34], was passed in 2024 by the Chamber of Deputies. It was authored by Deputies Fernanda Melchionna (Socialism and Liberty Party – PSOL/RS[35]), Vivi Reis (PSOL/PA), and Sâmia Bomfim (PSOL/SP) and it proposes the full repeal of the Parental Alienation Law (PA Law). Following the same legislative path as the previous two bills, it is currently under review by the Committee on Social Security, Social Assistance, Childhood, Adolescence, and Family, with an assigned rapporteur. Once reviewed, it will proceed to the Committee on Constitution, Justice, and Citizenship (CCJC).

The fifth bill currently under review is Bill No. 3179 of 2023[36], authored by Deputy Jonas Donizette (PSB/SP). It seeks to amend Article 6, item III, of the Parental Alienation Law by establishing fines ranging from R$5,000.00 to R$25,000.00. In its justification, the bill references the opinions of a lawyer and a psychologist who defend the PA Law and argues that the number of parental alienation cases in Brazil has been

33 Law No. 11.340 of 2006 is also known as the Maria da Penha Law.

34 Bill No. 2812, of 2022, which *repeals Law No. 12.318, of August 26, 2010 - Parental Alienation Law.* https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2338753

35 With the limitations of this type of analysis, PSOL can be considered a left-wing party in Brazil.

36 Bill no. 3179, of 2023, which *amends item III of art. 6 of Law 12.318 of August 26, 2010, to stablish the amounts of the fine.* https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2370611

rising each year. The proposal has been referred to the Committee on Social Security, Social Assistance, Childhood, Adolescence, and Family; the Finance and Taxation Committee; and the Constitution, Justice, and Citizenship Committee. A rapporteur has not yet been designated.

The most recent proposal is Bill No. 5360 of 2023[37], introduced by Deputy Silvye Alves (União Brasil – UNIÃO/GO[38]). It aims to add Article 10-A to the Parental Alienation Law, establishing that the law shall not apply in cases involving domestic or sexual violence. In its justification, the bill cites the report *Ending Violence in Childhood: Global Report 2017*, which concludes that children and adolescents are particularly vulnerable in judicial proceedings on parental responsibilities when the PA Law is applied in isolation, to the detriment of criminal law or the Child and Adolescent Statute. The bill has been referred to the Committee on Social Security, Social Assistance, Childhood, Adolescence, and Family, as well as to the Constitution, Justice, and Citizenship Committee. A rapporteur has not yet been appointed.

In conclusion, this essay underscored the role of the Legislative Branch and the processes through which bills move within Brazil's democratic framework. As demonstrated, laws can be enacted before cultural shifts are consolidated, particularly when propelled by active, well-organized pressure groups with privileged access to lawmakers. Such processes may unfold without broad public debate or well-developed discussions inside or outside Parliament.

Regarding the Parental Alienation Law, and given the problems arising from its misuse—made possible by the very design of the legislation, which allows abusive fathers to instrumentalize it to obtain sole custody or expanded access to their children—three paths are currently under consideration: leaving the law unchanged, amending it to mitigate its risks, or repealing it altogether.

Of these, the full repeal of the PA Law appears to be the most effective solution. The PA Law was rooted in the discredited, pseudo-scientific notion of Parental Alienation Syndrome, and its abolition would not leave children and adolescents unprotected from family smear campaigns. Existing civil, criminal, and procedural provisions already address such conduct through the crimes of insult, slander, and libel, as well as

37 Bill No. 5360 of 2023, which *amends Law No. 12,318 of August 26, 2010 - Parental Alienation*. https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2401319

38 With the limitations of this type of analysis, UNIÃO can be considered a center-right party in Brazil.

remedies for moral damages and the possibility of modifying child custody arrangements. All of these rely on due process and require robust evidence, not merely circumstantial claims.

That said, further legal amendments could be introduced into the current legislation in order to create mechanisms that improve the application of the shared custody law. If proposed, such amendments could modify the Child and Adolescent Statute and the Civil Code, ensuring that the system serves the best interests of the child without exposing either the child or the mother to risks associated with shared custody.

Indeed, on September 4, 2023, the Federal Senate established a Commission of legal experts to revise and update the Civil Code (Law No. 10,406/2002), with a deadline of April 12, 2024. The commission's task was to present a draft amendment within 180 days. Although the Family Law Subcommittee's report did not explicitly mention the term "parental alienation"[39], it addressed custody in the following terms:

> Regarding parenting time-sharing arrangements, the Subcommittee consolidated the principle of shared custody, always prioritizing the best interests of the child and adolescent, while reserving sole custody for specific and justifiable circumstances (translated).

In this context, several provisions on child custody and parental rights were amended. For example, Paragraph 1 of Article 1,583-A provides that: "Neither parent, even by mutual agreement, may renounce the exercise of parenting time or the responsibilities inherent to parental authority."

The report also states that children will have dual residence, with each parent's home considered their domicile, and that either parent may monitor how the other exercises parenting time. In cases of sole custody, it specifies that the right to parenting time is not suspended and may, depending on the seriousness of the situation, be carried out under supervision.

Lastly, while the report does not explicitly refer to parental alienation, Paragraph 2 of Article 1,583-F provides that:

39 Report of the subcommittees to amend and update the Civil Code. https://legis.senado.leg.br/comissoes/arquivos?ap=7935&codcol=2630

> The repetition of such behaviors (interference in the child's psychological development through acts that disqualify the child's relationship with either parent or their relatives) may result in the imposition of sole custody in favor of the other parent, with supervised visitation, until shared custody can be re-established.

Finally, regardless of the legislative path chosen, it is essential to develop strategies for engaging with the National Congress and its procedures, while also closely monitoring the influence of pressure groups within Brazil's political system. Such engagement is vital to ensure that meaningful reforms move forward.

Human Rights Violation: The Brazilian Case of the Parental Alienation Law

Romano José Enzweiler[1]

Introduction

The issue of discriminatory policies and practices in family law and access to justice is highly significant and demands genuine sensitivity from those involved in the promotion and protection of human rights. This is particularly critical when it concerns mothers, children, and adolescents who are victims of domestic violence and sexual abuse, as well as survivors of accusations of Parental Alienation Syndrome (PAS) and similar constructs.

The existence of these forms of violence reveals a painful reality marked by the historical negligence of the justice system when it comes to protecting these vulnerable groups. Such a context becomes even more concerning when we consider the enactment of the Parental Alienation Law (PA Law), which, rather than serving as a protective measure, emerges as a legal tool that deepens the vulnerability of women-mothers. The discussion on structural and institutional violence underscores the complexity of the situation, encompassing issues ranging from discriminatory cultural norms to the lack of access to fundamental rights, ultimately culminating in the implementation of the PA Law.

Structural violence, deeply embedded in Brazilian society, has a negative impact on women's lives across multiple dimensions. In addition to its physical dimensions, this type of violence manifests in psychological, economic-financial, sexual, moral, and social forms, and it is revealed through cultural norms, justice systems, and the absence of effective public policies.

1 Romano José Enzweiler holds a PhD in law from the University of Alicante, Spain and a Post-Doctorate in Law. He is a professor in the Master's program at the Federal University of Santa Catarina (UFSC), the director of the Judicial Services Training at the Judicial Academy of the Santa Catarina State Court of Justice, and a professor at the Higher School of Magistrates of the State of Santa Catarina (ESMESC). He serves as a judge in Florianópolis, Santa Catarina, Brazil.

The gender pay gap and the under-representation of women in political positions are among its consequences. Overcoming this violence requires comprehensive efforts, including cultural transformation, gender equality policies, economic and educational empowerment, and the strengthening of laws against gender-based violence.

Institutional violence, defined by systematic discrimination based on various characteristics, becomes evident in the lack of access to essential rights, discriminatory policies, and abuse of power. Impunity and the perpetuation of violence are fueled when institutions fail to hold abusers accountable or lack effective mechanisms to fight such abuses.

In this context, the PA Law emerges as an element that contributes to the subjugation of women-mothers, compromising the effective protection of vulnerable individuals. By stereotyping and stigmatizing mothers during family court proceedings, this law fosters an environment favorable to inequality within the judicial process, in which women encounter financial and temporal barriers, while perpetrators often have greater resources to influence the legal system.

This text will delve deeper into the nuances of the Parental Alienation Law (PA Law) and its role in perpetuating gender-based violence, examining the implications of this complex situation for the protection of the rights of women and children, while exposing the unconstitutionality of the PA Law.

Failing to protect vulnerable individuals: gender-based violence, failed states and the unconstitutional state of affairs

Fundamental rights theory is deeply connected to the historical evolution of human dignity, freedom and justice. The earliest declarations of rights, such as the 1789 Declaration of the Rights of Man and of the Citizen, are landmarks in the consolidation of these rights, with human dignity as a core principle. This Kantian-based concept states that every individual possesses intrinsic and inalienable value, demanding respect and protection. In this regard, the failure to protect the vulnerable undermines the very essence of fundamental rights. The Responsibility to Protect doctrine, derived from the concrete dimension of these rights, reinforces that the contemporary welfare state must not only refrain from interfering with individual freedoms but also adopt positive measures to protect rights holders from abuses or violations by third parties, particularly by guaranteeing positive rights (Alexy, 2002a).

The concept of *Failed States* is characterized by the fragility or ineffectiveness of a nation's political institutions, resulting in the collapse of its governmental power (Chomsky, 2007). According to the *Fragile States In-*

dex, Brazil is classified in the "alert" category, indicating structural vulnerabilities that facilitate the breach of its Responsibility to Protect. In this regard, the unconstitutional state of affairs doctrine, introduced by the Colombian Constitutional Court, reflects the existence of massive and widespread human rights violations, sustained by governmental omissions and structural failures in public policies, resulting in an overloaded judiciary.

Brazil imported this doctrine, and in 2015 , during the *ruling of ADPF – Arguição de Descumprimento de Preceito Fundamental* (Claim of Non-Compliance with a Fundamental Precept[2]) – No. 347, the Federal Supreme Court (STF) deemed the situation of prisons in Brazil an "unconstitutional state of affairs", recognizing the "massive violation of fundamental rights" against the incarcerated population due to the omission of public authorities. Contributing to this issue is Brazil's staggering incarcerated population of 645,000 individuals confined in physical cells, as reported by the National Secretariat for Penal Policies (SNPP, 2023), which underscores the scale of the challenges inherently arising from such a scenario. One of the consequences of this ruling is the significant reduction of custodial sentences, leading to less time spent in jail for those subjected to such unconstitutional conditions. However, not all detainees endure degrading circumstances; thus, the doctrine of the unconstitutional state of affairs does not apply to all prisons or detainees in Brazil.

In this context, it is worth exploring more deeply the nuanced interplay between gender-based violence, the concept of *Failed States*, and the unconstitutional state of affairs doctrine.

Data from the former Ministry of Women, Family, and Human Rights (MDH) reveal that, between 2011 and 2017, Disque 100—the official hotline of the MDH at the time—recorded 203,275 reports of sexual violence against children and adolescents. In 92% of the complaints, the victims were female. It is estimated that only 10% of cases of sexual abuse and exploitation against children and adolescents are, in fact, reported to the authorities. Nearly 80% of reports of violence against children and adolescents pertain to sexual abuse. This specific type of violence has an alarming pattern: a significant number of perpetrators are victims's family members, such as parents, stepparents, uncles, and grandparents.

Similarly, the *Anuário Brasileiro de Segurança Pública* (Brazilian Public Security Yearbook), published in 2023, points out that, in 2022, Brazil recorded

2 The term *"Allegation of Violation of a Fundamental Precept"* translates the Brazilian constitutional action *Arguição de Descumprimento de Preceito Fundamental (ADPF)*, provided for in Article 102, §1 of the 1988 Constitution and regulated by Law 9.882/1999. The ADPF is filed directly before the Federal Supreme Court (STF) to prevent or remedy violations of fundamental constitutional precepts, particularly in cases where no other effective constitutional remedy is available.

the highest number of rapes in its history, with nearly 75,000 victims, 61% of whom were children under 13 years old, and 10% were under 4 years old. Among the victims aged 0 to 13, in 86% of these cases, the perpetrator is known to the victim, and 64.4% of the rapes were perpetrated by family members (Anuário, 2023). Furthermore, according to a recent study published by researchers from IPEA, the same Yearbook highlights that this violence is underreported due to fear, the inefficiency of the protective system (police, Public Prosecutor's Office, and courts), and difficulties in gathering evidence, as the victim's testimony is repeatedly discredited by those who should hear, believe, and protect them. For this reason, according to this study, only 8.5% of rapes in Brazil are reported to the police, and 4.2% are reported by health information systems. As a result, according to the authors of the IPEA Study, the number of rapes in Brazil is estimated to reach around 822,000 annually.

The 2022 Atlas of Violence, published by IPEA, reveals that between 2009 and 2019, 50,000 women were murdered in Brazil, with the majority of these femicides occurring within the family setting (IPEA, 2023). The Violence Monitor published by the G1 portal (2023) reveals that, despite the enactment of Law No. 13.104/2015 (the Femicide Law), femicide cases in Brazil saw a significant 37% increase between 2017 and 2022.

Comparing these data (Brazilian incarcerated population vs. *Fragile States Index* vs. gender-based violence [femicides and rapes]), one can conclude that governmental decisions, at least as perceived, do not appear to be rational choices based on objective data. While incarcerated individuals have garnered attention from state institutions (as well as from NGOs, prison ministries, and the media), which is undeniably important, this level of attention is not extended to women and children who suffer from severe physical, psychological, sexual, economic, and moral violence, both inside and outside their homes. Additionally, these vulnerable individuals also endure structural violence (misogyny, machismo) and institutional violence.

Consider the following in absolute numbers: The total incarcerated population reaches approximately 645,000 individuals. Rapes committed in Brazil result in over 800,000 victims per year, the majority of whom are children and adolescents. Over a period of 10 years, around 50,000 women were murdered in the country. The data is compelling, revealing not only a proliferation of victims in an alarming process of normalizing gender-based barbarism, but also an unconstitutional state of affairs in a country that, in terms of its "Responsibility to Protect," has clearly failed to address such a deeply disturbing issue.

Statistical data reveal an apparent depletion of the state's capacity to address gender-based violence, demonstrating that its governmental

power is incapable of adequately protecting vulnerable individuals, failing to fulfill its constitutionally guaranteed Responsibility to Protect. This policy failure regarding public security leads to an unconstitutional state of affairs. Regarding this specific issue – the guarantee of the fundamental right to a sufficiently dignified life for women and children – we are a *failed state*. The UN, through its Human Rights Council (document AL BRA 10/2022, dated October 27, 2022, authored by Special Rapporteur Dr. Reem Alsalem) (UN, 2022), has urged Brazil to provide a response regarding the application of the PA Law in cases of violence and domestic abuse affecting mothers and children. As of the publication of this text, the Brazilian government had not yet replied to Dr. Reem Alsalem's letter.[3]

The forms of violence endured by the vulnerable (women and children) - structural and institutional: the Parental Alienation Law

The official figures for violence against women and children demonstrate the system's historical and systematic neglect of those who should be protected. It is worth noting that it was only after much effort that the Maria da Penha Law (Law No. 11.340/2006) was enacted, highly questioned by male abusers and partially neutralized by the Parental Alienation Law (Law No. 12.318/2010).

Structural violence against women refers to deeply entrenched patterns of discrimination and oppression within Brazilian society, which is highly sexist and aggressive, as evidenced by the numerous distressing statistics on the daily violence many women endure. This kind of violence does not solely or necessarily involve acts of physical violence but also includes psychological, economic-financial, sexual, moral, and social violence. It manifests through systems, cultural and legal norms, and the absence of effective protective public policies, all of which collectively subjugate women and place them at a glaring disadvantage compared to men.

An example of this violence is the normative system[4], the glaring pay gap between men and women—perpetuating financial dependency and thus limiting autonomy, resulting in situations where domestic violence is concealed due to the absence of viable alternatives for women. In addition,

3 UN (2023). Report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem. "Custody, violence against women and violence against children". A/HRC/53/36, April 13, 2023. See: https://documents.un.org/doc/undoc/gen/g23/070/18/pdf/g2307018.pdf

4 The concept of "normative systems" can be found in various legal texts, such as the one published in the Revista do Ministério Público do Estado do Rio de Janeiro No. 82, Oct./Dec. 2021, authored by Prof. José Manuel de Oliveira. Reis Friede. In fact, it deals with the entire set of rules that make up the Brazilian "system" responsible for regulating life in society.

although women today have greater access to education, their employability rates between the ages of 25 and 34 are still lower than those of men, according to the 2021 *Education at a Glance* (EaG) report issued by the Organization for Economic Co-operation and Development (OECD). A clear reflection of this is the underrepresentation of women in political and leadership positions, which prompted the National Council of Justice (CNJ) to issue a policy aimed at increasing the number of women working within the judicial system (CNJ, 2023). It is no coincidence that, according to the NGO *Save the Children*, "Brazil is the worst country in South America in terms of opportunities and development for girls" (O Globo, 2022). (translated)

Overcoming structural violence against women requires efforts on several fronts, including changes in: cultural norms, public policies that promote gender equality, women's economic and educational empowerment, and the strengthening of laws and protective mechanisms to prevent gender-based violence.

With regard to institutional violence, it occurs as a result of systematic discrimination based on characteristics such as race, gender, sexual orientation, ethnic origin, religion, age, disability, and other factors. It manifests, for instance, in the lack of access to essential rights and services, such as justice. It also arises from discriminatory policies and practices, as well as abuse of power and authority, that is, when authorities or public agents misuse their power, either through action or omission, thereby harming groups or individuals. Institutional violence is also marked by a harmful and discriminatory organizational culture that enables violence against victims, including the tolerance of discriminatory practices such as harassment or abusive behavior. Finally, institutional violence is evident when institutions fail to hold perpetrators accountable or lack effective mechanisms to report and combat such brutality, all of which contribute to impunity and the perpetuation of this abhorrent form of intimidation.

Official statistics reveal the widespread epidemic of domestic violence and violations of human dignity endured by women, which intensifies when the woman is a mother, as this is where structural violence is institutionalized through the legalization of the Parental Alienation Syndrome in the Parental Alienation Law.

The PA Law, in fact, turns the woman-mother into an undeserving figure, practically without resources for defense (subjecting her to a situation often referred to as *probatio diabolica*)[5], making her a potential suspect of employing a perverse strategy to turn the couple's chil-

5 The expression "*probatio diabolica*" or "diabolical proof" refers to the difficulty, if not impossibility, of proving the absence of a fact. This applies, for instance, to the moral and psychological violence women endure in abusive relationships with their partners.

dren against the father, thereby destroying the father's reputation and the bonds of affection and care between them. And the remedy for the "mother's poison" is, similarly, draconian. According to the logic of the PA Law, since it is claimed that the mother undermines the reputation of the father and seeks to distance or prevent the father's contact with the children, the only solution is to apply a severe penalty: to threaten and, if necessary, condemn the mother to lose custody of the children. This occurs even in cases where there is clear evidence of physical, psychological, moral, sexual, and economic-financial violence perpetrated by the father against the mother, often in the presence of the children, and, sometimes, even against the children. This is one of the many serious issues regarding the PA Law: it establishes an irrefutable and absolute presumption that mothers deliberately undermine the father's reputation, while men — regardless of the severity or brutality of their actions — are granted a second or third chance to be in touch with their children and, perhaps, to raise them according to their own values. The mere existence of such a law undermines any possibility of effectively protecting and promoting the rights of vulnerable individuals — both mothers and children.

The enforcement of the PA Law in our country has made the situation unbearable, especially when women-mothers involved in family court proceedings — particularly those who challenge patriarchy and fight for custody, visitation, support, and assets — are stereotyped. They are then called crazy, unstable, and labeled as "malicious mothers". These gender stereotypes allow for the presumption that mothers are intentionally harming the father-child relationship. Furthermore, out of fear of losing custody or even contact with their children, mothers end up becoming silent about the father's abuses and neglect, sometimes even in cases of sexual abuse. This is the consequence of the blind enforcement of a law that is the only one of its kind in the world. To make matters worse, mothers who challenge the *status quo* often face significant time and, primarily, financial barriers in their pursuit of justice, while many of the perpetrators have abundant resources to hire prominent law firms, resulting in a deeply unequal judicial process. Furthermore, it should be noted that the judicial system can be — and often is — extremely intimidating and complex, especially for those without legal knowledge.

Analysis of the unconstitutionality of the PA Law

The theory of constitutional review refers to a legal system's capacity to review and ensure that laws and normative acts comply with the Constitution. Each country adapts the doctrine of constitutional review according

to its legal tradition, political system, and constitutional philosophy. These differences reflect the choices made to balance the need to protect the constitution while respecting democratic principles (Canotilho; Moreira, 2007). In fact, several approaches discuss how this review should be exercised, with two primary models widely accepted and practiced worldwide (Favoreu, 1994): the concentrated and the diffuse or decentralized models.

In the concentrated or centralized model, it is up to the Court to define the constitutionality of laws and normative acts (Herrera Torres; Correa Calderon, 2023). In Brazil, this responsibility primarily rests with the Federal Supreme Court, and its decisions are binding for all. In the diffuse model, also accepted in our country, any judge or court can declare the unconstitutionality of a normative act in a specific court case. However, the decision will impact only the parties directly involved in the case.

Alexy (2002b) presents the proportionality formula in the context of constitutional review, consisting of "three sub-principles: the principles of suitability, of necessity, and of proportionality in its narrow sense" (Alexy, 2005, p. 572). According to the theory he supports, summarized here, restrictions on fundamental rights must be adequate for achieving the proposed objective, as minimally invasive as possible, and, ultimately, their benefits must outweigh the detriment to the rights involved, thereby justifying the interference.

Given these considerations, it is now important to investigate the subjection of the PA Law to constitutional control.

Based on self-referenced texts and without any scientific evidence, the North American Richard Gardner introduced the concept of "Parental Alienation Syndrome" (PAS) in the 1980s, describing it as a set of symptoms exhibited by children who would be alienated from one of their parents, usually in the context of custody disputes during divorces. According to Gardner's linear model, there is a single cause (the alienating parent) and a clear effect (alienation), implying that when a child refuses to have contact with one parent, it is due to the participation or, at least, the support of the other parent, which would constitute parental alienation (Sthal, 2003). His role as a forensic expert in court notably supported those accused of child sexual abuse, "which he considered to be the product of a kind of national hysteria" (Ferreira; Enzweiler, 2019). (translated) Several scientists, doctors, psychiatrists, and psychologists have published studies demonstrating the argumentative and logical flaws in Gardner's work, the lack of a clear and verifiable methodology in formulating his hypotheses, the impossibility of falsifiability, the absence of reliable data, the obscurity of his analyses (including statistics), the lack of

peer review, the absence of publication (his work was never accepted by prestigious scientific journals), and the replication of results.

Based on the "assertion" of this "syndrome," the Brazilian government enacted Law No. 12,318/2010, subsequently amended by Law No. 14,340/2022. The legal text comprises 11 original articles. It is founded on the premise of the actual existence of parental alienation as a "syndrome" (Article 1), defining it (Article 2) and providing examples (sole paragraph of Article 2). The law asserts that engaging in alienating behaviors violates the fundamental right of the child or adolescent to a healthy family life, constituting moral abuse and a breach of the duties inherent to parental authority (Article 3). Under Article 4, if there is "evidence" of acts of parental alienation, the judge may, on their own initiative and without a request from the parties, order urgent provisional measures at any time to safeguard the psychological well-being of the child or adolescent, "including ensuring contact with the alienated parent or effectively promoting reconciliation between them, if applicable". The law reiterates that if there are signs of acts of parental alienation, the judge may, if deemed necessary, "order psychological or biopsychosocial forensic assessments" (Article 5). It specifies the procedures for conducting and issuing forensic reports (§1), identifies who is qualified to serve as a forensic expert (§2), establishes the deadline for submitting the report (§3), and provides guidance for situations where a qualified professional is unavailable (§4). Article 6 outlines the sanctions for those who engage in "typical acts of parental alienation or any conduct that obstructs a child or adolescent's contact with a parent." These sanctions may be applied either cumulatively or individually, "without prejudice to any resulting civil or criminal liability and the extensive use of procedural measures designed to inhibit or mitigate their effects, according to the severity of the case." The punishments for the alienating parent range from a warning notice declaring the occurrence of alienation (item I), to extending the parenting time-sharing arrangement in favor of the alienated parent (item II), imposing a fine on the alienating parent (item III), determining psychological and/or biopsychosocial follow-up (item IV), modifying custody to shared custody or reversing it (item V), and ordering the precautionary modification of the child's or adolescent's residence (item VI). In case the court identifies an abusive change of address, or any hindrance or obstruction to family contact, the judge may "shift the responsibility for dropping off or picking up the child or adolescent at the other parent's residence during transitions between periods of parenting time" (§1). The text of Paragraph 2 of Article 6 provides specifications concerning the forensic report. If shared custody is not feasible, it will be awarded, "preferably" to the

parent who facilitates the effective contact of the child or adolescent with the other parent (Article 7). Article 8 clarifies that the modification of the "domicile of the child or adolescent is irrelevant for determining the courthouse (or jurisdiction) in which the proceedings related to parental contact rights will take place, unless it results from a consensus between the parents or is established by a court order". Finally, Article 8-A specifies that "the testimony or hearing of children and adolescents in cases of parental alienation must be conducted in accordance with Law No. 13.431/2017, under the risk of procedural invalidity," meaning it must comply with the law that establishes the system for guaranteeing the rights of children and adolescents who are victims or witnesses of violence.

The impartial reading and analysis of the Parental Alienation Law (PA Law) reveal it to be substantively (materially) unconstitutional, as it violates fundamental principles and values enshrined in the Federal Constitution, particularly by directly contradicting human dignity (Ferreira, Enzweiler, 2019) and failing to uphold the principle that mandates adequate protection for vulnerable individuals.

Federal judicial rulings and acts – such as the drafting of law bills and the pronouncement of judgments and sentences, for example – presume a rational relationship that guarantees rights, necessarily grounded in its reasoning/justification (Larenz, 1997). If not, that is, if there is no rational support that can be reviewed, such ruling or acts may be considered arbitrary because the motive behind the decision will, to a large extent, be subject to unverifiable subjectivity, thus containing a high degree of opacity, obscurity, and impenetrability, contradicting empirically falsifiable scientific objectivity (Popper, 2014).

This careful approach must be present in the drafting of laws and the writing of judicial decisions—logic, scrutiny, transparency, reasoning, intelligible justification, falsifiability, scientific rigor, and result-oriented thinking (Aarnio, A., Alexy, R., & Peczenik, A., 1991) — but it has never been observed in the PA Law, which lacks concern for the consistency of the reasons articulated in its foundation and in the justification for its existence in Brazil. In fact, it is based on arguments that are intended to be logical (a response to the supposed maternal alienating behavior), but which only serve a rhetorical and persuasive effect of justification. Since the PA Law fails to meet the basic criteria of logic/falsifiability, it is the responsibility of the Judiciary to review its legitimacy (in terms of constitutionality and conventionality - the compliance with international conventions), by assessing the validity of its foundation to ensure that the judicial decision upholds the legitimacy of the very activity carried out by the Judiciary. This is the basis/motiva-

tion of the judicial decision which functions as an essential condition for the democratic process itself. Therefore, both the law and the judicial decision operate based on the principle of reasonableness, making it essential for the law (and the judgment) to be not only legally possible but concrete and socially acceptable. The PA Law stands in direct opposition to the entire framework outlined so far.

The Supreme Court has applied Alexy's (2002b) proportionality formula to assess the constitutionality of policies, reviewing the principles of suitability, necessity, and proportionality in its narrow sense. In the Direct Action for the Declaration of Unconstitutionality[6] 5953, for example, the Court ruled unconstitutional a provision in the Civil Procedure Code (CPC) that prohibited magistrates from presiding over cases involving clients of law firms associated with their relatives, even when represented by attorneys from a different firm. The decision was based on the unsuitability of the rule, which established an absolute presumption of partiality while disregarding existing provisions, such as Article 144 of the CPC, that safeguard judicial impartiality. In the Direct Action for the Declaration of Unconstitutionality 6930, the Supreme Court found the indiscriminate application of the spending cap to special public funds to be disproportionate, as the measure failed to achieve its objective of promoting fiscal responsibility In the Direct Action for the Declaration of Unconstitutionality 6119, the Supreme Court ruled that allowing gun ownership based on "presumed necessity" was unsuitable, as there was no scientific evidence to demonstrate that it would enhance public security. On the other hand, in Direct Actions for the Declaration of Unconstitutionality 4013 and 4017, the prohibition on the sale of alcohol along highways was deemed constitutional, as the restrictions demonstrated their effectiveness in reducing traffic accidents and were thus proportionate to the protection of life and public safety.

Hence, *e.g.*, in the case of firearms, the Supreme Court considered the regulation that restricted their use to be constitutional, emphasizing the need to base decisions on scientific evidence and empirical analysis. The Court reaffirmed that the possession of firearms is not a fundamental right, but an exception that must be justified with clear data on public safety. Since there was no evidence to support the claim that relaxing firearms restrictions

6 The term *"Direct Action for the Declaration of Unconstitutionality"* translates the Brazilian *Ação Direta de Inconstitucionalidade (ADI)*. This is a constitutional action filed before the Federal Supreme Court (STF) to challenge a law or normative act enacted after the 1988 Constitution that allegedly conflicts with constitutional provisions. The ADI has *erga omnes* (general binding) and *ex tunc* (retroactive) effects once granted, and may be brought only by specific actors listed in Article 103 of the Constitution (such as the President, legislative bodies, political parties with representation in Congress, and professional associations).

would enhance safety, the rights to life and security prevailed. Similarly, the Parental Alienation Law should adhere to the same epistemic rigor. However, unlike the regulation on firearms, the PA Law lacks a scientific foundation. Its central premise, which assumes the practice of parental alienation by custodial mothers, is not supported by studies or data proving that removing children from the mother's care results in less trauma or benefits to child well-being. On the contrary, the PA Law enshrines a rigid and unfounded presumption, without demonstrating, through legal practices or empirical evidence, that its measures genuinely protect the best interests of children, as required by the Supreme Court in other cases. Thus, the PA Law fails to meet the criteria established by the Supreme Court for evaluating the constitutionality of laws that adversely affect fundamental rights.

The PA Law fails since the Brazilian Civil Code (CCB) includes an entire chapter on child safety (Chapter XI – On the Protection of Children, Articles 1583–1590). This chapter exhaustively establishes the rules concerning child custody and provides a general clause for the protection of children in Article 1.586. Such clause grants judges the discretion, based on their experience and sensitivity, to "regulate the child's situation with the parents in a manner different from what is established in the preceding articles, prioritizing the well-being of the child".

The enactment of the PA Law is, therefore, absolutely unsuitable, as its intended objectives—namely, safeguarding the best interest of the child and regulating custody—are already effectively addressed by the Brazilian Civil Code (CCB), which provides efficient and effective mechanisms to this end. For the same reason, the PA Law is entirely unnecessary due to the existing legal alternative (the CCB), which is less traumatic for the child and thus less onerous from the perspective of sacrificing/negotiating fundamental rights, achieving results that are undeniably more consistent with the protective principle in question. Lastly, it is undeniable that the costs and harmful consequences of enforcing the PA Law—which restricts a mother's visitation and parental time with her child—far exceed any potential benefits it might offer. Indeed, as already mentioned, the PA Law is draconian, as it imposes a punishment on the mother that is much more severe than the "alienating" act she is accused of (such as obstructing visitation, etc.). In fact, it is not only the mother's rights that are being destroyed by the enforcement of the PA Law, but especially the child's.

The extensive body of literature on child protection, which underscores the indispensability of the mother's presence for the healthy development of the child, was ignored in the design of the PA Law—something the Judiciary cannot legitimately do. The PA Law disregards the detrimental ef-

fects on the physical, mental, and emotional health of children deprived of maternal presence, particularly (but not exclusively) in the early years of life, with long-term consequences on their physical, intellectual, and social development. Thus, the longer the deprivation of contact with the mother, the greater the harm.

On the other hand, the PA Law turns a deaf ear to statistical data released by IPEA, as previously mentioned, which reveal the systematic, structural, and institutional violence repeatedly perpetrated in Brazil against vulnerable groups (nearly 1 million rapes per year, most of them against girls under 14 years old and perpetrated by someone known to the victim, and around 5,000 femicides annually). What's more, it is argued in the decisions issued by the Supreme Court that "the efficiency of the measure must be analyzed from a historical perspective". In the case of the PA Law, there is no scientific study showing the situation of children before and after the law came into force.

The design of the PA Law does not take into consideration empirical data regarding Brazilian contexts (structural violence). As a result, the PA Law facilitates the granting of custody of young children to abusive fathers, disregarding the profound cultural weight of machismo and misogyny in Brazil. It normalizes all forms of violence against the vulnerable and neglects the extent to which this grim reality stems from how violence is often addressed in courts. Moreover, it fails to acknowledge comparative research conducted in other nations, such as Spain, which prohibited the use of the concept of PA. Finally, the application of the PA Law clearly demonstrates how detrimental it is to the lives of Brazilian women (mothers and children).

Still, the Supreme Court also uses international experience as an auxiliary decision-making parameter. In this context, it is important to note that Brazil is the only country in the world to have a law of this nature (the PA Law), something that is also taken into consideration by the Supreme Court in the review of policies based on general truths, such as in the previously discussed case regarding blood alcohol levels for operating motor vehicles, and, in the case of the PA Law, child protection. Therefore, if the scope of a policy (the PA Law) is, in fact, the promotion of the best interest of children, it is clear that this law is not the best option to achieve the intended goal.

Another symptom of the serious distortions caused by the PA Law and its clearly misogynistic nature, revealing its material unconstitutionality, lies in the fact that it promotes a clear gender divide (men vs. women) in its practical application: on one side, countless groups of mothers (women) across the country are calling for the repeal of the PA Law, pointing to the injustices committed under its veil, such as the abrupt removal of children

from their homes and the reversal of custody based on evidence that lacks even empirical support. On the other side, fathers' (men's) associations are working not only to prevent the repeal of the PA Law but also to expand it, including the criminalization of so-called alienating behaviors. Such a finding alone—the existence of a clear gap between male and female interests—would be enough to demonstrate the dysfunctionality of the PA Law and justify the demand for its declaration of unconstitutionality, since it is neither logical, justifiable, nor reasonable for a law—any law—to "benefit" one gender at the "cost" of another.

Conclusion

Ignorance and evil are closely related concepts.

Judicial defense of interests that are not always legitimate and are morally questionable has become recurrent. The PA Law, for example, has been used for various purposes, including defending perpetrators of child abuse. As shown by a search on the website of the Superior Court of Justice, out of the 800,000 rape victims each year in Brazil, the majority are children. Often, in divorce proceedings, disputes over assets and child support are masked as claims of emotional bonds between fathers and their children, with fathers frequently accusing custodial mothers of engaging in alienating behavior. The instruments used for bargaining are the demonization of the mother and the degrading treatment she receives from the entire legal system that should be protecting her: malicious, irascible, unstable, and crazy are the adjectives commonly used to describe mothers who genuinely defend their children, many of whom are even exposed to paternal violence.

The PA Law has offered legal "professionals" a shortcut—an easy, quick, and legislated (and thus presumably legitimate) solution to highly contentious family disputes. However, the cost is staggering: the rights of mothers and children, justice, life, and the protection of vulnerable individuals are being systematically undermined. This opens the door for structural violence to intertwine with institutional violence, perpetuated by the indifference of those who should act, turning the country into a *failed state* (regarded as one of the worst places in the world to be born a woman). The outcome of this tragic situation is an unconstitutional state of affairs.

There is ample evidence to prohibit the demoralization and dismantling of Brazilian motherhood and childhood, to prevent so many murders and rapes. There is no shortage of statistics, scientific studies, warnings from national and international organizations, examples, and qualified literature demonstrating the harmful impacts of the PA Law on the country. What is lacking is action.

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The Parental Alienation Law: a response to advances in women's rights

Rubia Abs da Cruz[1]

As a women's human rights lawyer, I have been approached by several mothers who, along with their children, were suffering rights violations in the Judiciary as a result of the enforcement of the Parental Alienation Law. Considering my legal practice, I will present an overview of this law and its application, highlighting how the violations occur, reinforcing machismo and misogyny, and, in a sense, reaffirming the outdated concept of *paternal authority* that has been removed from our legislation. Finally, I will discuss how this law undermines the protective framework for women and children, which is already established in national legislation and in line with international human rights treaties.

The Brazilian legal system already had provisions to guarantee the right to family contact for children and adolescents before the enactment of the Parental Alienation Law (PA Law). This law ended up pathologizing, judicializing, and punishing situations of conflict and violence by recognizing the unfounded *parental alienation syndrome*, providing a disproportionate legal arsenal and imposing sanctions to address a sensitive issue. The result has been an exacerbation of family violence, further intensifying judicial litigation.

1 Rubia Abs da Cruz has been a feminist lawyer and activist since 1997. Master in Human Rights from Uniritter Laureate International Universities (Rio Grande do Sul), specialist in Women's Human Rights (Human Rights Center, University of Chile), specialist in Human Rights and the UN System (American University Law School - Washington). She was the general coordinator of the NGO Themis (July 2005 to April 2011), and the director of the Department of Justice of the Secretariat of Justice and Human Rights of the State of Rio Grande do Sul. She was a member of the Consortium of NGOs that drafted the Maria da Penha Law. Rubia Abs da Cruz is a popular legal educator and was a professor in the postgraduate program in Ethics, Education, and Human Rights at UFRGS. She is currently the national co-coordinator of the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM Brazil) and she also regularly conducts workshops and lectures and provides advisory services. She has served on several law councils and is the author of several publications on women's human rights.

Lacking any scientific validation, certain interest groups in Brazil introduced the concept of "parental alienation", falsely portraying it as a legitimate syndrome. The justification for the bill that gave rise to Federal Law No. 12.318/2010 reveals the superficiality with which the issue was addressed, relying on translations of texts published on websites, with no scientific basis whatsoever. In this regard, among the justifications for drafting such law was the need to ensure the protection of children against emotional abuse, to prevent chronic depression, feelings of isolation, hostile behavior, despair, guilt, and dual personality as potential consequences of alleged alienating behavior. However, there is no research validating or supporting these claims, as these symptoms are very similar to those observed in children who experience violence or neglect.

Given this brief context, I assert that the Parental Alienation Law fails to fulfill its purpose of providing comprehensive protection to children and adolescents, and its application in family courts shifts the focus away from children as the core of the issue. Additionally, I note that numerous situations concerning domestic and family violence are classified as mere couple conflicts. As a result, by discrediting the testimony of women and children, mothers are predominantly punished, without any assessment of the impact these punishments have on the lives of the children.

Examples of this institutional violence resulting from the PA Law include the reversal of custody without any preparation of the children and the suspension of visitations, even online contact, which leads the child to feel abandoned by the preferred parent, usually the mother. And this is due to discriminatory court decisions that disregard the structural violence present in this area, in which women and children are raped and murdered by their husbands, intimate partners, boyfriends, fathers and stepfathers on a daily basis. Unfortunately, this is a fact reflected in real data. According to the Public Security Yearbook: 2024[2], there are 41.4 rapes for every 100,000 inhabitants, meaning that one rape occurs every six minutes in Brazil, with 76% of the victims being vulnerable, 88.2% female, and 61.6% under the age of 13. Finally, in cases of femicide, 64.3% of the victims were killed in their homes.

The law is for everyone, but due to the sexist bias of the PA Law and its interpretation, male abusers have started to use this law as a shield or defense in relation to the Maria da Penha Law (Brazilian domestic violence act), claiming that the reports of violence against the woman were false, and that the complaints made were just attempts to prevent them from having contact with their sons and/or daughters. This happens even though it is

2 https://forumseguranca.org.br/publicacoes/anuario-brasileiro-de-seguranca-publica/

well known that violence against women in Brazil is severe, often resulting in femicides. It is important to mention that, in general, the claim of parental alienation arises when violence against women or children is reported to the police and/or it is judicialized.

The sanctions provided for in the Article 6 of the Parental Alienation Law[3] are measures that are already provided for in the Brazilian legal system and that were applied based exclusively on the best interests of the child and adolescent, as established in the Statute of the Child and Adolescent and the Federal Constitution, as well as the International Conventions on the Rights of Children and Women (CRC, CEDAW and Belém Pará) ratified by Brazil.

Moreover, by establishing false claims (stemming from the testimony of children and adolescents) aimed at hindering the relationship between parent and child as one of the hypotheses of parental alienation, the PA Law fails to recognize the child or adolescent as a subject of rights, contradicting the progressive autonomy of children and adolescents, which is strongly upheld in judicial decisions and international jurisprudence. As a result, concerns and reports of child and adolescent sexual violence, abuse, and neglect are minimized or disregarded, allowing the perpetuation of abuse. The child is then required to maintain contact with the accused parent in order to avoid estrangement, even when there are concerns or evidence of sexual, physical, or psychological violence, or other forms of neglect. Thus, the escalation of violence against children, adolescents, and women in the domestic sphere continues even after judicial involvement, whether in family or criminal courts.

In addition, the PA Law violates the principles of adversarial proceedings, judicial inertia, the right to an appeal, substantial equality between men and women, and judicial impartiality. It also breaches the Protocol for Judging with a Gender Perspective[4] established by the National Council of Justice (CNJ) by disregarding the years of violence suffered by women who litigate against abusers — often described as narcissistic perpetrators in forensic

3 Article 6. Once typical acts of parental alienation or any conduct that makes it difficult for a child or adolescent to have regular contact with a parent are identified, either in a separate proceeding or in an ancillary action, the judge must, cumulatively or not, without prejudice to the civil or criminal liability outcomes and the wide range of measures available to mitigate or reduce its effects, depending on the severity of the case: I- declare the occurrence of parental alienation and issue a warning notice; II- extend the parenting time-sharing arrangement in favor of the alienated parent; III- impose a fine on the alienating parent; IV- determine psychological and/or biopsychosocial follow-up; V- modify custody to shared custody or reversing it; VI- order the precautionary modification of the child's or adolescent's residence.

4 https://www.cnj.jus.br/wp-content/uploads/2021/10/protocolo-para-julgamento-com-perspectiva-de-genero-cnj-24-03-2022.pdf

reports — yet still granting these individuals parental rights over their children. This occurs even though they have physically assaulted the women and/or the children, placing them at risk and neglecting their well-being.

Parental Alienation and its unconstitutionality

The PA Law has brought the expectation of resolving complex social issues through judicialization. However, it was built on a false premise. The idea is that family conflicts, particularly those stemming from the dissolution of a marital relationship, can be effectively resolved through the implementation of this law and the application of its sanctioning mechanisms.

According to the Brazilian Parental Alienation Law, a judge can provisionally reverse custody without notifying the other party—typically the mother—or allowing them to present a defense, resulting in the abrupt removal of the child by a bailiff. This represents an unprecedented form of violence, particularly against the child: neither the law nor the judiciary ensures any assessment or follow-up on the child's adaptation to a new home. Additionally, visitation rights are typically not granted initially to the parent who lost custody, leading to an abrupt and traumatizing rupture for the child. Often, this father's violence was already present during the relationship with the mother and continues throughout the court proceedings related to separation and child custody and visitation arrangements, potentially including psychological, physical, financial, and even sexual violence.

Thus, by focusing on the couple's relationship, the best interests of the child are completely disregarded in hundreds of cases. The judiciary often acts in a discriminatory manner, showing no respect for the children's fears and thereby perpetuating institutional violence. Judicial orders are being carried out in schools, which is outrageous, as this disregards the stigma imposed on the child, who is subjected to the trauma of an arrest warrant in a school environment.

In this context, it can be argued that the law violates the principle of due process, as judges may classify any behavioral conduct—often involving psychological factors—as alienating and subsequently impose sanctions in an arbitrary manner, exceeding their area of expertise.

To provide context, here is an excerpt from the Technical Note of the Specialized Center for the Promotion and Defense of Women's Rights (NUDEM), based in São Paulo[5]:

5 https://assets-institucional-ipg.sfo2.cdn.digitaloceanspaces.com/2020/01/NUDEMDPSP_NotaTecnicaAlienacaoParentalJSetembro2019.pdf

> The law ensures the possibility for the judge to determine provisional measures to preserve the psychological well-being of the child and adolescent (Article 4), with or without requesting a forensic examination.
> Once again, the law allows the judge to apply measures, even on a provisional basis, without prior input from professionals in other fields of expertise, who are essential for identifying the behavior that is nowadays classified as parental alienation. It is important to note that there is no provision specifying a deadline for the opposing party to respond to such a decision, nor any guidance on notifying the alleged alienation or on how the right to a defense may be exercised, even if deferred. This broad (and arbitrary) scope of judicial incidence not only underscores the lack of scientific support of the "parental alienation" concept but also contributes to the pathologization of relational conflicts, which are common in divorce proceedings and require careful attention but may be exacerbated by arbitrary interventions. (translated)

Brazilian legislation already had provisions for all the measures outlined in the PA Law regarding child custody and arrangements in court proceedings, such as modifications to visitation arrangements, changes in custody, and the suspension of parental authority, always based on forensic psychosocial examinations presented in court. In this regard, the PA Law did not innovate; it in fact created a type of "civil penalty" that is much more severe, by predicting the removal of the children themselves as a penalty, often without respecting the right to defense.

After the law came into effect, these judicial measures began to take on a punitive character, predominantly sanctioning alienating mothers, and rarely alienating fathers. Thus, the "threat therapy" emerged in order to correct the "alienating" behavior. The measures began to be applied as gradual forms of punishment, sidelining the principle of the best interests of the child.

There is no evidence that the removal of a mother labeled as an alienating parent serves the best interest of the child. As a matter of fact, it is observed that the child is prevented from having contact with the mother in cases where there are no signs of violence; the child is then placed in the father's custody amid serious suspicions of physical, emotional, psychological, or even sexual violence against the mother or the child. In this context, parental conflict is prioritized at the expense of protecting the child and adolescent, since, in many cases, after the final decision, there is no monitoring of the father suspected of violating rights.

> The list of measures that can be adopted seems to suggest that, now, the State has the right to alienate one of the parents from the child's life [...] Would this overlook the emotional harm inflicted on the child, who will be abruptly separated from the parent with whom they live and share strong bonds? (Souza and Brito, 2021) (translated)6

The Federal Council of Social Service[7] and the Federal Council of Psychology, in their Technical Note No. 4/2022/GTEC/CG11, which discusses the impacts of the Law 12.318/2010 - the Parental Alienation Law, expressed their opposition to the PA Law. Similarly, the National Council for the Rights of Children and Adolescents (CONANDA)[8] has also called for the repeal of several articles of the PA Law:

> Regarding Law No. 12.318 of 2010, which addresses 'parental alienation', [CONANDA] expresses concern towards the fact that the **concept of 'parental alienation' is not based on scientific studies, and that there is no record of other countries having or maintaining similar legislation on the matter [emphasis added]**. Furthermore, the Council notes that this law was approved without a broad discussion or consultation with the stakeholders directly involved with the issue, including this Council. [...]
>
> Although Law No. 12.318 of 2010 is already in force, this council identifies that, **in some aspects, it is neither timely nor suitable, as there are provisions that lead to serious violations of the rights of children and adolescents [emphasis added]**. Therefore it is important to highlight some specific points, as detailed below.
>
> [...] if one of the parents suspects that some form of violence is being perpetrated by the other parent, they may feel pressured and avoid reporting it to the authorities, fearing being labeled as an 'alienating parent' and, therefore, subjecting themselves to the sanctions imposed by Law No. 12.318 of 2010. (translated)

6 Souza, Analícia, Brito, Leila (2011). Síndrome da Alienação Parental, da Teoria norte-americana à nova lei brasileira. Psicologia: ciência e profissão. https://doi.org/10.1590/S1414-98932011000200006

7 https://www.cfess.org.br/arquivos/nota-tecnica-LAP-2022-dez-cfess.pdf

8 https://www.alienacaoparentalacademico.com.br/wp-content/uploads/2021/11/2018-CONANDA.pdf

That is, even though it operates within the civil domain, the PA Law allows for the imposition of penalties on the parties, and, in practice, judges and prosecutors threaten the parents during hearings as if they were giving them advice, treating the parties as though they were equal litigants, which, in general, is not the case, since the gender-based violence established by the system and structure still affects hearings and judicial decisions.

Although the PA Law emerged with the intention of protecting children and adolescents, its practical application turns out to be discriminatory and disregards the status of children and adolescents as subjects of rights, focusing on the litigation between the parents. In this sense, the comprehensive protection aimed at children and adolescents becomes merely an object of intervention, while women are viewed with suspicion when revealing the violence.

It is also important to highlight cases of child sexual abuse perpetrated by fathers, in which the PA Law is used as a shield, under the claim that the mother is making false accusations out of revenge. Many cases of sexual abuse are never reported, and when they are, the crime may leave no traces. However, the lack of a criminal conviction does not mean the abuse did not occur, and that it was, therefore, a supposed case of parental alienation, as the accused fathers generally try to claim, and the courts agree.

Furthermore, the following is worth noting:

> While the courts require victims to provide material evidence to substantiate allegations of sexual crimes, the same standard is not applied to accusations of parental alienation, resulting in inequality. [...] The Parental Alienation Law turns reporting into an ordeal for women who are victims of violence or whose children are, reversing the roles of perpetrator and victim. The lack of neutrality in this law generates direct and indirect discriminatory impacts on women, reproducing gender stereotypes to their detriment, where any woman is seen as an alienating parent in court—a court that should be protecting women and children—since they are among the most socially vulnerable individuals, especially inside their homes. (Barsted et al., 2020) (translated)[9]

9 Barsted, Leila Linhares, Cruz, Rubia Abs e Barsted, Mariana (2020)- O lugar das mulheres no direito, In Severi, Fabiana, Volkmer, Ela Wiecko e Matos, Myllena Calasans (Orgs.). Tecendo fios das Críticas Feministas ao Direito no Brasil- Novos Olhares, Outras Questões. (2020). N. 2, volume 2— Ribeirão Preto: FDRP/USP. https://www.direitorp.usp.br/wp-content/uploads/2020/12/11-03_VOL-2__TECENDO-FIOS-2-V2-DIAGRAMACAO-FN-1.pdf *Alienação parental: uma nova forma de violência contra a mulher*.

It should be clarified that filing a report requires only suspicion of violence, as the competent authorities are the ones responsible for investigation. In this regard, there are even different provisions in the Statute of the Child and Adolescent.

In addition, the MESECVI has taken a stand against the PA Law, as it has been concerned since 2014 about the use of the so-called parental alienation syndrome against women:

> The Committee of Experts of the MESECVI and the Special Rapporteur on Violence against Women and Girls of the United Nations express their concern about the **illegitimate use of the concept of parental alienation syndrome against women [emphasis added]**. The Committee of Experts of the Follow-up Mechanism of the Belém do Pará Convention (MESECVI) and the United Nations Special Rapporteur on Violence against Women and Girls, Reem Alsalem, express their concern about the illegitimate use of the figure of parental alienation syndrome in legal proceedings in various States Parties to the Belém do Pará Convention.
>
> The Committee of Experts and the Special Rapporteur have learned of multiple cases throughout the region where justice bodies take into account parental alienation syndrome resulting in denying the mother custody of her children, thereby awarding it to the father accused of family violence or insisting on shared custody with the violent father even in cases where the children and the mother are at serious risk. This situation may also result in the mother being forced to change her country of residence so that the father who exercises violence can live with the children. **The use of this controversial concept of parental alienation syndrome against women in cases where they denounce gender-based violence against themselves or against their daughters and sons is part of the continuum of gender-based violence and could invoke the responsibility of States for institutional violence [emphasis added]**. (Washington, DC, August 12, 2022.)10

UN experts[11] have expressed their opposition to the PA Law, asserting that it perpetuates and exacerbates violence against women and girls.

10 Official English version: https://www.oas.org/es/mesecvi/docs/Communique%20Parental%20Alienation.pdf

11 https://www.ohchr.org/en/statements/2022/11/brazil-un-experts-urge-new-government-target-violence-against-women-and-girls

They have urged the Brazilian state to repeal the law and restore effective access to sexual and reproductive rights for women and girls.

The False Premises of the Law

In addition to allegations of parental alienation, other dubious and underlying themes have emerged with the introduction of the PA Law. These include claims of false memories (blaming mothers for fabricating abuse situations) or fantasies attributed to children after they report sexual violence, leading to a complete disqualification of the child's testimony and behavior, as well as the mothers' attempts to protect them. Many psychologists working as forensic experts are facing disciplinary actions from their professional councils (and receiving sanctions) for violations of the Code of Ethics, specifically due to technical incompetence and a lack of scientific knowledge in reports that cite parental alienation without any scientific basis. While it is notoriously challenging for forensic experts to confirm sexual violence, confirming parental alienation appears to be significantly easier. The consequences, however, can be severe. For instance, custody or residency modifications can completely alter a child's life, often breaking the parental bond with the mother (previously the main caregiver) for long periods.

Furthermore, the PA Law has been used as a shield against the Maria da Penha Law, with abusers claiming that the alleged violence was fabricated and that the police report was solely intended to alienate the father. The same occurs with reports of sexual crimes against children filed by their mothers, when their daughters and/or sons report abuse. In these cases, the mothers are accused of parental alienation, while the alleged perpetrators of sexual and other forms of violence—typically the fathers—portray themselves as victims as a defense strategy.

CLADEM Brazil, which is a member of the Maria da Penha Law Consortium of NGOs and is active in Latin America and the Caribbean, has taken a regional stance against the PA Law. The organization understands that the law fundamentally seeks to discredit the testimony of women and children, serving as a shield against laws that protect their rights. It also leverages the constant threat of women losing custody or contact with their children to silence them. Currently, CLADEM and Equality Now are running a Global Campaign to denounce gender discrimination in family law in Brazil, highlighting the growing use of the false syndrome of parental alienation in the region, which violates the fundamental rights of women and children.

Furthermore, in 2023, the news agency Intercept Brasil exposed cases of rights violations committed with the support of the PA Law. The agency identified, by name, the key architects of the law who received significant

financial resources for drafting reports, offering courses, and delivering lectures. It also revealed discriminatory reports and judicial decisions. However, the dissemination of links to these exposés was suspended by the Brazilian judiciary.

The repeal of the PA Law and the banning of non-scientific concepts will broaden the scope for actions to protect the lives of women/mothers, children, and adolescents who are victims and survivors of domestic and family violence, as well as intrafamilial sexual abuse, ensuring protection against the institutional violence perpetuated by the Brazilian justice system.

Final remarks

Repealing the PA Law and banning the use of terms without scientific recognition are necessary actions to ensure the full protection of the rights of women, children, and adolescents. The lack of scientific basis undermines and discredits the reports and studies conducted by judicial experts, negatively affecting decisions in custody disputes. Such actions include the need for training programs on gender-based violence, domestic and family violence, and intrafamilial sexual violence, specifically aimed at members of the judiciary, prosecutors, forensic experts, social workers, psychologists, and guardianship counselors. Currently, the Protocol for Judging with a Gender Perspective issued by the CNJ (National Council of Justice) is one of the few judicial tools that promotes future improvements in the qualifications of experts and judges.

As previously mentioned, the Brazilian legal framework already provided mechanisms to safeguard the right to family contact for children and adolescents even before the PA Law was enacted. Therefore, the PA law has only generated more litigation and trauma for children who speak the truth but are discredited by the various authorities involved in the proceedings. These children are being taken away from their mothers, who have always been their primary caregivers, and are left frightened and confused, unable to understand the situation or speak out about ongoing violations. This silence may stem from fear of losing their loved ones or from threats made by the abusive father. Given that the legal framework already included measures to address family conflicts arising from the dissolution of intimate partnerships or domestic and family violence, the PA Law is unnecessary. Thus, in light of the principles of proportionality and reasonableness, which govern interventions in individual rights, the Parental Alienation Law should be repealed, especially because it overlooks structural issues that disproportionately affect women and children.

Research on the Application of the Parental Alienation Law in the Brazilian Justice System

Ela Wiecko V. de Castilho[1]

Introduction

The Parental Alienation Law (Law No. 12.318), enacted on August 26, 2010, introduced the concept of parental alienation into the Brazilian legal system. This concept is related to a syndrome described by U.S. pshysician Richard Gardner, which is currently understood as a pseudotheory due to the lack of scientific evidence supporting it. This syndrome is said to affect children and adolescents in the context of disputes between parents regarding custody arrangements following the couple's separation. Gardner described the syndrome as a behavioral disorder in which the child rejects one parent and associates with the other, engaging in a campaign of disqualification, which may include accusations of serious crimes. In June 2019, the World Health Organization (WHO) recognized the term parental alienation but rejected the pseudoscientific concept of Parental Alienation Syndrome (PAS), that is, as a psychological disorder of the child or adolescent. In 2022, the WHO stood for the removal of parental alienation from the International Classification of Diseases (ICD-11).

In Brazil, several councils and civil society organizations have called for the repeal of the law and the ban on the use of the term parental alienation, arguing that it exacerbates family conflicts due to its adversarial nature, vi-

1 Ela Wiecko V. de Castilho holds a PhD in Law, is a lawyer and a senior collaborating researcher linked to the Post-Graduation Program of the Law School and the Center for Studies and Research on Women of the Advanced Multidisciplinary Studies Center (NEPeM/CEAM) at the University of Brasília (UNB). She coordinates the Law, Gender, and Families Research Group, affiliated with CNPQ, which includes a dedicated research line focusing on parental alienation. She is a member of the Maria da Penha Law Consortium for Fighting Gender-Based Violence against Women and the Latin American Network of Legal Academics (RedAlas). She is a retired Deputy Attorney General.

olates the rights of children and adolescents, and serves as a mechanism of lawfare[2] against women/mothers. However, there are groups that support the Parental Alienation Law, claiming that it is "an important and efficient legal tool for protecting children and families, ensuring balanced relations between parents who do not live together, in the best interest of the children" (IBDFAM, 2023).

In 2019, Direct Action for the Declaration of Unconstitutionality (ADI) 6273 was filed with the Supreme Court by the Associação de Advogadas pela Igualdade de Gênero (Women Lawyers for Gender Equality Association). In 2021 the action was dismissed without the analysis of the merits of the case, as the Supreme Court did not recognize the association's procedural legitimacy. However, the action contributed to increased social mobilization calling for the repeal of the law. The Parental Alienation Law (PA Law) was also the subject of Bill No. 6371/2019 in the Chamber of Deputies and Bill No. 498/2018 in the Senate. During the legislative process regarding the first bill, along with other proposals to amend the PA Law, a Global Substitute Amendment was approved, resulting in Law No. 14,340 in 2022.[3]

The controversy continues in the fields of law and psychology, with the introduction of Bill No. 2812/2022, Bill No. 1,372/2023, and Bill No.

2 The term "lawfare," a combination of "law" and "warfare," literally translates to "legal warfare." In the 1970s, it referred to the use of legal mechanisms as a complementary tool to military action. Today, lawfare has evolved to encompass new dimensions and meanings in various contexts. At its core, it involves "the use or manipulation of laws as a weapon against an opponent, disregarding legal procedures and violating the rights of the targeted individual" (POLITIZE). In the context of gendered lawfare, women are the primary targets.

3 The PA Law underwent amendments to ensure "the child or adolescent and the parent are granted at least supervised visitation at the court where the case is being heard or at entities partnered with the judiciary, except in cases where there is an imminent risk to the physical or psychological well-being of the child or adolescent, as certified by a professional appointed by the judge to supervise the visitations." In case there is a "lack or insufficiency of personnel responsible for conducting psychological, biopsychosocial, or any other type of forensic examination required by this law or by a court order, the judicial authority may appoint an expert with relevant qualifications and experience", in accordance with the Code of Civil Proceedings. It was also established that "psychological or biopsychosocial follow up must undergo periodic assessments, with at least an initial report that includes the case assessment and the methodology to be employed, as well as a final report upon the conclusion of the follow up." Moreover, "whenever it is necessary to hear testimony from children or adolescents in cases of parental alienation, this must be conducted in compliance with Law No. 13,431, of April 4, 2017, under penalty of procedural nullity." Lastly, the sanction of suspension of parental authority was repealed.
On the other hand, the Child and Adolescent Statute (ECA) was also amended to stipulate that in requests for the loss or suspension of parental authority, "the granting of a precautionary measure will preferably be preceded by an interview with the child or adolescent conducted by a multidisciplinary team and the hearing of the other party." Furthermore, if there are "indications of violations of the rights of a child or adolescent, the judge shall notify the Public Prosecutor's Office and forward the relevant documents".

2,235/2023 in the Chamber of Deputies, all aiming to repeal Law No. 12,318/2010. In this context, both proponents of the law's maintenance and those advocating for its repeal seek empirical evidence to substantiate their arguments.

One way to provide evidence is through research in the justice system, analyzing cases involving parental alienation and decisions that either accept or dismiss the concept.

For this article, a literature review was conducted on Brazilian research from 2011 to 2023 that examined judicial documents and aimed to analyze the application of the PA Law. The findings of the studies, along with the challenges posed by judicial secrecy and confidentiality in accessing case files, documents, and information, are presented.

The Direct Action for the Declaration of Unconstitutionality 6273 and its empirical foundations

The Direct Action for the Declaration of Unconstitutionality 6273 cited a number of scientific studies as its empirical foundations. First, it was based on the pioneering research coordinated by Analicia Sousa (2019) that analyzed over 400 second-instance decisions from four state courts (Minas Gerais, São Paulo, Rio Grande do Sul, and Bahia) issued between 2010 and 2016 in which the author observed that the concept of parental alienation had become a catch-all term to categorize all types of disagreements in divorce disputes, custody battles, visitation arrangements, investigations, and criminal cases involving sexual abuse, whether used to attack, defend, or simply as a supporting argument.

Analicia Sousa concluded that the PA Law operates within a pathological and judicializing logic, framing relational conflicts as issues requiring a diagnosis or as an infraction to be identified and punished, viewed from the individualizing and adversarial perspective characteristic of the criminal-legal field. A perspective that disregards sociocultural factors, such as the influence of gender roles in parenting (division of parental responsibilities) and the extent to which they shape conflict, as well as the dynamics of divorce or separation and their potential to perpetuate discrimination against women. Additionally, it produces stigma and exclusion (Sousa, 2018). It is further noted that, in this context, forensic psychosocial assessments are intended to interpret the individual and their family, ultimately serving the purpose of imposing punishments (Barbosa, 2013).

Another study referenced in the action (ADI) is Fabiane Simioni's 2015 thesis, which analyzes jurisprudence from the Rio Grande do Sul Court of Justice between 2010 and 2013 on shared custody. The study reveals

how women involved in cases invoking the parental alienation theory are stereotyped as malicious, vengeful, and manipulative, accused of fabricating lies and implanting them in their children to alienate them from their fathers. Simioni found that essentialized representations of good fatherhood and good motherhood, based on a traditional view of family, lead the justice system to normalize the idea of supposedly dysfunctional families (separated and conflicting parents).

Thus, judicial proceedings involving allegations of parental alienation are fertile ground for reinforcing gender stereotypes that devalue women's dignity and discredit women's testimonies, as seen in cases of domestic violence, sexual violence, paternity recognition, or when mothers report sexual, physical, or psychological abuse inflicted on their children by their fathers.

Ciarallo (2019) notes that the enactment of the PA Law has impacted the political-affective dynamics within the family system, generating conflicts in policies for the protection of children. While a custodial parent aware of abuses perpetrated by the other parent may face accusations of omission; reporting it could result in allegations of alienating the child or adolescent. It is clear that this does not suggest there is no need to investigate reports involving violations of children and adolescents or that the right to defense and the adversarial principle should not be respected. However, it urges critical reflection on the consequences of judicializing affective relationships with punitive practices that reduce children and adolescents to legal objects and possessions of the adult world.

The initial petition (complaint) for the Direct Action for the Declaration of Unconstitutionality also drew on research conducted by the Law, Gender, and Families Research Group at the University of Brasília Law School. After gathering available second-instance judgments from the websites of the country's courts, the group conducted a study of rulings from the Court of Justice of the state of Rio Grande do Sul between 2016 and 2019. This was because, in a global survey of all state courts, the aforementioned court had presented a higher number of parental alienation cases compared to others. Several decisions were cited in the initial petition to prove the violation of the principle of proportionality in the application of the law.[4]

4 Subsequent research conducted by the same Research Group, through a scientific initiation project titled "The Application of Parental Alienation by Brazilian Courts," analyzed decisions from the São Paulo Court of Justice (TJSP) in both first and second instances from 2016 to 2019. The study found that it is typically the father who most often invokes parental alienation. In a comparative analysis, it was identified that if a woman is found to be alienating, she faces more severe sanctions than a man who is found to be alienating. In all cases where the mother reported the father for child sexual abuse, and he was acquitted, this fact served as the basis for recognizing parental alienation committed by the mother and applying a measure to promote the reestablishment of the child/adolescent's relationship with the father.

Despite the statistical evidence presented in the Direct Action for the Declaration of Unconstitutionality 6273, the Brazilian Institute of Family Law (IBDFAM) filed a petition to be admitted as *amicus curiae*, arguing that Law No. 12.318 aligns with constitutional values, particularly the principle of the best interest of the child, primary concern, and sufficient family contact. The institute claims that the law was:

> one of the most important and recent achievements in Family Law, precisely because it defined and outlined a concept for creating a new legal construct—the Parental Alienation—for an old problem [...]. Once it became possible to identify and define parental behaviors that obstruct or interfere with the exercise of Parental Authority and its associated responsibilities, protecting children from conflicts between their parents became more feasible. (STF, 2019).

The action was dismissed without the merits' analysis, as the active legitimacy of the Women Lawyers for Gender Equality Association was not recognized. In Congress, rather than repealing the law, a consensus was reached to amend the PA Law[5], supposedly to provide greater protection to children and adolescents. However, to date, no evidence suggests that this instrument has fostered a protected and healthy family environment, as its creators claimed, nor that the amendments have mitigated its adult-centered perspective or reduced gender-based violence against women.

The search for more empirical evidence

On June 15, 2023, the Brazilian Family Law Institute (IBDFAM) filed a Petition for Measures (Request No. 0003894-08.2023.2.00.0000) with the National Council of Justice (CNJ), requesting the collection of sample data from courts across Brazil's five regions concerning parental alienation cases and their outcomes. This request was made in light of the bills currently under consideration in Congress, which seek to repeal the PA Law, arguing that the law is being weaponized and applied against mothers to reinforce abusive relationships.

Qualitative and quantitative research in other courts is ongoing at the level of scientific initiation, as well as more in-depth analyses in theses and articles, outlining a portrait of how the justice system uses the legal tool of parental alienation in a discriminatory and more severe manner toward women. It is also observed that the child is treated in these cases as an object of dispute rather than as a subject of rights. Thus, one parent files a claim on behalf of both themselves and the child against the other parent. There is a triad, but the accusations and defenses only come from the two adult parties, meaning that the PA Law does not operate in the best interest of the child and adolescent. On the contrary, it intensifies family conflicts (Ananias, 2020; Castilho, 2021;2023; Demétrio, Castilho, Magalhães, 2023).

5 Regarding the amendments to the PA Law, see footnote 3 *above*.

The request was forwarded by the National Justice Ombudsman to the Judicial Research Department of the National Council of Justice, seeking its opinion on the feasibility of gathering data, particularly concerning the collection of quantitative data related to: 1) Parental alienation lawsuits; 2) Ancillary motions of parental alienation during child custody proceedings; 3) Ancillary motions of parental alienation during divorce proceedings; 4) Ancillary motions of parental alienation during separation proceedings; 5) Forensic psychosocial expert reports; 6) Court-appointed expert reports; 7) Father's expert witness (technical assistant) interventions; 8) Mother's expert witness (technical assistant) interventions; 9) Signs of parental alienation identified by the court during child custody proceedings; 10) Signs of parental alienation identified by the court during divorce proceedings; 11) Signs of parental alienation identified by the court during separation proceedings; 12) Parental alienation identified by the court during child custody proceedings; 13) Parental alienation identified by the court during divorce proceedings; 14) Parental alienation identified by the court during separation proceedings; 15) Legal measure: warning notice against the father; 16) Legal measure: warning notice against the mother; 17) Legal measure: fine imposed on the father; 18) Legal measure: fine imposed on the mother; 19) Legal measure: increase in father parenting time; 20) Legal measure: increase in mother parenting time; 21) Legal measure: determination of psychological and/or psychosocial follow-up for the mother; 22) Legal measure: determination of psychological and/or psychosocial follow-up for the father; 23) Legal measure: determination of psychological and/or psychosocial follow-up for the child/adolescent; 24) Legal measure: determination of psychological and/or psychosocial follow-up for the child/adolescent and others; 25) Legal measure: custody modification to shared custody with the father's home as the primary residence; 26) Legal measure: custody modification to shared custody with the mother's home as the primary residence; 27) Legal measure: modification to paternal sole custody; 28) Legal measure: modification to maternal sole custody; 29) Legal measure: precautionary measure concerning the child's residence.

The Judicial Research Department (DPJ) stated that it is not within its purview to conduct research for individual interests, but only for institutional purposes; clarifying that the quantitative data on parental alienation cases requested are available for public consultation and can be accessed on the DataJud Statistics Panel, following the detailed steps it provided. It noted that there are still no parameters in place to enable the extraction of data from reports on the recognition of parental alienation and the measures applied. However, it further noted that the Brazilian Institute of Family

Law (IBDFAM) could independently conduct the desired data collection, as the DataJud Statistics Panel includes a Download tab that provides access to a comprehensive listing of court cases for various indicators. These indicators include the oldest 5% of ongoing cases, resolved cases, finalized cases, adjudicated cases, newly filed cases, pending cases, net pending cases, and cases without activity for over 50 days. To access this information, users simply need to select the relevant courts and indicators and click the download button. Lastly, it emphasized that "the files are provided in an open, machine-readable format, enabling the identification of case numbers (when not confidential), judicial units, case classifications, and subject codes, thereby facilitating research."

Review of research on the application of the PA Law in the Brazilian Justice System from 2011 to 2023

The platform of the Brazilian Digital Library of Theses and Dissertations (BDTD) claims to provide full texts of theses and dissertations defended at Brazilian institutions of education and research. A search was conducted using the term "parental alienation" for the period 2011–2023, resulting in 67 studies. The abstracts of the studies were then reviewed to identify those that used judicial case files as a research source. A provisional total of 15 was identified, comprising 11 from Psychology, one from Public Health, two from Social Work, and one from Linguistics. However, access to the texts of the dissertations by Josimar Mendes (University of Brasília, 2013) and Thais Tononi Batista (Federal University of Espírito Santo, 2016) was not possible. Their respective titles are "Reflexões sistêmicas sobre o olhar dos atores jurídicos que atuam nos casos de disputa de guarda envolvendo alienação parental" (Systemic reflections on the perspective of legal actors involved in custody disputes involving parental alienation) and "Judicialização dos conflitos intrafamiliares: considerações do Serviço Social sobre a alienação parental" (Judicialization of intrafamilial conflicts: Social Work considerations on parental alienation).

Based on the abstracts, it is noted that Maria Isabel Saldanha dos Martins Coelho (University of Fortaleza, 2013), in her dissertation titled "A lei de alienação parental (Lei 12.318/2010): concepções e práticas de psicólogos peritos" (The Parental Alienation Law (Law 12.318/2010): Concepts and practices of forensic psychologists) investigated the conceptions and practices of court-appointed psychologists from the Court House Support Center of the Fórum Clóvis Beviláqua in Fortaleza, Ceará, regarding the Parental Alienation Law. Three forensic experts (psychologists) were interviewed. The content analysis of the interviews revealed the following key findings:

> the trivialization and generalization of the concept of parental alienation; an increase in requests for forensic assessments; the use of the law as a new market niche for lawyers and as a "tool" for revenge/punishment by the alienating party; the welcoming approach of the forensic experts (psychologists), as well as the systemic, mediating, and therapeutic perspective of their interventions; the lack of training courses on parental alienation in the judicial institution; the dynamics of the assessed families, marked by intense suffering/dysfunctions and the transgenerational nature of parental alienation; the significant sensitivity of the forensic experts to the suffering of the families and children involved. (Coelho, 2013, translated)

Ana Katarina Leimig Saraiva de Melo (Universidade Católica de Pernambuco, 2013), in her dissertation "Síndrome de alienação parental: um estudo através do olhar de psicólogos e assistentes sociais peritos" (Parental Alienation Syndrome: A study through the perspective of forensic psychologists and social workers), aimed to understand "the consequences of Parental Alienation Syndrome (PAS) in the family" through the perspectives of Psychology (three professionals) and Social Work (three professionals) linked to the Judiciary of Pernambuco state. The study concludes that:

> The main findings point to a gradual approach by the professionals, aimed at issuing a report that seeks to clarify the family context in which the child is involved, while also being concerned with the experts' approach, aiming to protect the child and/or adolescent from the consequences of a poorly managed separation. (Melo, 2013, translated)

Denise Cabral Carlos de Oliveira (Universidade Estadual do Rio de Janeiro, 2015), in her dissertation "Vítimas e monstros: a construção do tipo 'abuso sexual infantil' em laudos psicológicos no Judiciário" (Victims and Monsters: The construction of the 'child sexual abuse' category in psychological reports within the judiciary), analyzed the construction (of the child sexual abuse type in forensic reports) in a sample of psychological examinations regarding sexual abuse accusations in Family and Criminal Courts in Rio de Janeiro state. The reports were written by psychologists from the permanent staff of the Court of Justice of the State of Rio de Janeiro, court appointed psychologists, professionals from institutions that support vic-

tims of sexual violence, and private practitioners. Interviews with five psychologists from the permanent staff of the Court of Justice of the State of Rio de Janeiro were also analyzed:

> The analysis identified two distinct approaches within psychology. The first, observed in Family Courts, adopts a deterministic perspective that links litigation, false accusations of sexual abuse, and parental alienation. The second approach, prevalent in Criminal Courts, is marked by the exclusion of assessments of the accused man and shaped by significant preconceptions, also supported by psychological frameworks that emphasize sexual abuse, the understanding of abusive dynamics, and the testimonies of child victims and those reporting the abuse (Oliveira, 2015)

Sheila Machado de Jesus (Tuiuti University, 2016) published her dissertation "Lei de alienação parental (Lei n° 12.318/2010): análise da aplicabilidade e efetividade no processo" (Parental alienation law (Law No. 12.318/2010): analysis of applicability and effectiveness in lawsuits). In her text, she explains that, unable to access case files shielded by judicial confidentiality, she conducted a descriptive statistical analysis (n = 50) of decisions (jurisprudence[6]) from the Court of Justice of the State of Paraná. The cases were randomly selected based on exclusion criteria from rulings issued in 2015 and 2016, using a recording sheet and IBM SPSS Statistics software as analytical tools. She concluded that:

> the results revealed attempts to trivialize the phenomenon and manipulate the Judiciary by those involved. These efforts included obstructions, unfounded disqualification campaigns, and false accusations of criminal conduct, facilitated by the irresponsible and indiscriminate use of Law 12.318/2010 to serve personal interests, ultimately harming the physical and psychological well-being of children and adolescents (Jesus, 2016, translated).

Edna Fernandes da Rocha Lima's thesis (Pontifícia Universidade Católica de São Paulo in 2016), titled "Judicialização dos Conflitos Intrafamiliares: Considerações do Serviço Social sobre a Alienação Parental" (Judicialization of Intrafamilial Conflicts: Social Service Considerations on Parental

6 We note the inappropriate use of the term "jurisprudence" instead of "judgments", since the object of the study is not the set of court decisions, but a random sample.

Alienation), is a quantitative and qualitative study covering the period from 2013 to 2015. The research included "interviews with social workers operating in Family Courts and the analysis of forensic social reports in which parental alienation was invoked by the expert (social worker) or in the court order requesting the assessment". According to its abstract, "the topic demands an in-depth debate within the professional category, and the contributions of social workers in cases involving parental alienation must be guided by the promotion and guarantee of the right to family contact".

Rossana Nadolny Munhoz's dissertation (Universidade Tuiuti, 2017), titled "Argumentos embasadores do processo de alienação parental no estado do Paraná" (Arguments Supporting Parental Alienation Lawsuits in the State of Paraná), analyzed court decisions accessed through the website of the Court of Justice of the State of Paraná. Its specific objectives were: to identify understandings of parental alienation, the arguments presented by the alienating and alienated parties, and the reasoning used by judges; to analyze whether decisions relied on expert reports and the consequences of psychological assessments; and to compare "the legal understanding (Law 12.318/10) with the understanding according to forensic psychology concerning Parental Alienation, Parental Alienation Syndrome, and Psychological Abuse."

Maria da Graça Pacheco (Universidade Tuiuti, 2018) focused on forensic psychological assessments in her dissertation titled "Análise qualitativa da atuação dos peritos psicólogos em casos de suspeita de abuso sexual em disputas de guarda" (Qualitative Analysis of the Role of Forensic Psychologist in Child Custody Proceedings Involving Suspected Sexual Abuse). She interviewed five psychologists, using content analysis to identify relevant themes in their statements. The findings demonstrated that:

> it was not possible to find a consensus among participants regarding methods and procedures used in the assessments. Some psychologists described using their own assessment methods, often lacking technical and scientific basis. Additionally, participants demonstrated differing understandings of issues such as parental alienation, the evaluation of the credibility of the victim's testimony, and false memories, potentially undermining the investigative nature of their assessments (Pacheco, 2018, translated).

In her dissertation titled "A escuta das crianças em juízo: uma análise dos significados atribuídos pelos profissionais do Direito à luz da Psicolo-

gia Sócio-Histórica" (Hearing Children in Court: An Analysis of the Meanings Attributed by Legal Professionals Through the Lens of Socio-Historical Psychology), Jordana de Carvalho Pinheiro (Universidade Federal de Goiás, 2018) employed bibliographic and empirical research. The latter involved interviews with eight legal professionals (judges, prosecutors, public defenders, and lawyers) working on judicial proceedings. The author concludes the analysis by emphasizing "the critical need to recognize and uphold the status of children as subjects of rights, particularly those involved in judicial proceedings, in order to identify the perpetration of injustices and promote dignified treatment." She highlighted "the urgent need to implement, in practical, theoretical, professional, and institutional dimensions, the legislation for the comprehensive protection of children, which has been in force for over 20 years but remains largely overlooked in Brazilian courtrooms".

Paulo Mateus Elmor's dissertation (Universidade Federal de Juiz de Fora, 2019), titled "Alienação parental como forma de violência doméstica: percepção e crenças de profissionais que trabalham em varas de família" (Parental Alienation as a Form of Domestic Violence: Perceptions and Beliefs of Professionals Working in Family Courts), aimed to explore professionals' beliefs and examine whether parental alienation could be seen as a form of domestic violence. He conducted 19 semi-structured interviews with professionals and applied Bardin's (2011) content analysis. All participants recognized parental alienation as a form of intimate partner violence (IPV), potentially occurring even before divorce. The abstract notes that "certain gaps became evident, including the lack of appropriate psychological resources to support legal professionals and other practitioners". Therefore, it is stated that, on one hand, it is "important to develop studies that can create tools to provide greater objectivity in the analyses conducted by the judiciary". On the other hand, since he could not find in his systematic review "experimental studies that could establish the causality between the constructs of parental alienation and domestic violence;" he also recommends "more robust experimental studies with representative samples aimed at establishing the relationship between these two constructs".

Ricardo Pereira da Silva Oliveira (Universidade Federal de São Carlos, 2020), in his dissertation titled "Alienação parental: revisão sistemática de estudos documentais e análise da aplicação do conceito em sentenças judiciais" (Parental Alienation: Systematic Review of Documentary Research and Analysis of the Use of the Concept in Judicial Decisions), sought to understand how the judiciary examines suspected cases of parental alienation. To this end, two studies were conducted: the first consisted of a systematic review of national and international studies with judicial samples, using four

databases and the book collection from the Laboratory of Analysis and Prevention of Violence; the second involved an analysis of judicial decisions from Family Courts in São Paulo addressing allegations of parental alienation. His findings revealed a scarcity of studies on parental alienation using judicial samples and that "the judiciary bases most decisions on conclusions drawn from psychological reports produced by court-appointed experts. However, the studies in the systematic review identified shortcomings in psychological assessments regarding suspects of parental alienation (PA)".

For the second study, Oliveira used an electronic information access tool from the São Paulo Court of Justice to gather 217 decisions mentioning "parental alienation" issued between 2010 and 2019. He selected 128 court decisions for the analysis. Among the findings, he highlighted "the role of the forensic experts (psychologists) in the outcomes of the cases, as 75% of the decisions relied on forensic psychology reports, demonstrating the judges' confidence in their conclusions". He notes that primary custodial mothers accounted for the majority of parents accused of parental alienation, as well as the majority in the 19 decisions where an individual was declared an alienating parent. "Women were also more frequently the target of false accusations than men, indicating that allegations of parental alienation were often used as a tool of gender-based violence". He notes that these results are similar to those of other studies on the subject. In his view, the assessment of parental alienation in judicial proceedings "proved to be complex and challenging, requiring strong professional commitment from the experts and judges involved, considering the diversity in family dynamics". Each case requires a personalized assessment "in order to address its specificities while prioritizing the rights of the children involved".

Giselle Corrêa de Carvalho's dissertation (Universidade de São Paulo, 2022), titled "Guarda compartilhada e litígio: análise da produção de psicólogos e assistentes sociais do Tribunal de Justiça paulista" (Shared Custody and Litigation: An Analysis of the Work of Psychologists and Social Workers from the São Paulo State Court), employed content analysis methodology to categorize a sample of 22 documents produced by professionals based on theoretical and practical reflections from their study groups. She eventually identified three analytical categories: (i) the paradox between the specificity of the cases and the shared custody law as a rule; (ii) the paradox between the dynamics of the cases and the ideal of the law; and (iii) the perspective on the possibilities of shared custody. She concluded that "this type of custody can enhance the post-divorce relationship between parents and children. However, it should be assessed on a case-by-case basis, taking into account the specifics of the litigation involved".

Camila Antonelli Pires (Universidade de São Paulo, 2022), in her dissertation "Representações sociais da alienação parental: entre o senso comum e a práxis em psicologia" (Social Representations of Parental Alienation: Between Common Sense and Practice in Psychology), conducted research through media, social networks, and institutional documents, along with interviews with psychologists working on the issue in the São Paulo State Court, the São Paulo State Public Defender's Office, and the Legal and Psychological Support Centers associated with the Specialized Reference Centers for Social Assistance. Through her analysis of social representations in these contexts, she observed that "certain discourses rooted in common sense, particularly those disseminated through the media and social networks, also permeate specialized knowledge. This highlights the pressing need for an alliance between technical expertise and critical reflection within Psychology, ensuring that practice fosters emancipatory rather than harmful actions".

Finally, in Bethânia de Souza Rodrigues' dissertation (Universidade Estadual do Oeste do Paraná, 2023), titled "Alienação parental: Uma análise do discurso jurídico" (Parental Alienation: An Analysis of Legal Discourse), the author, using Michel Pêcheux's discourse analysis, selected "Discourse Excerpts from five court decisions in three Brazilian states—São Paulo, Rio Grande do Sul, and Minas Gerais—since these courts do not keep parental alienation cases under judicial secrecy". The method enabled her to "observe how judges' preconceived notions shape the discourse in legal proceedings and impact decision-making, as some judgments extend beyond the evidence presented while failing to consider the testimony of the children involved—testimony that should be prioritized given the Law's focus on protecting their best interests". As a result, "judges view the child's testimony as the product of parental alienation rather than recognizing it as a statement with discernment that must be taken into consideration. This creates a gap in understanding how legal discourse generates meaning, reproduces power dynamics, and shapes worldviews".

The obstacles of secrecy and judicial confidentiality

The survey conducted through the website of the Brazilian Digital Library of Theses and Dissertations revealed a lack of dissertations and theses in the field of law, as well as the indirect use of judicial documents from court cases. It appears that accessing court records is less difficult in the São Paulo State Court. In this section, some comments seek to explain such findings.

According to the experience of members of the Law, Gender, and Families Research Group (DGF) regarding research conducted for the National

Council of Justice (CNJ) on Protective Orders under the Maria da Penha Law (CNJ, 2022), it is possible to gather quantitative data on lawsuits through the DataJud platform. However, reports and other documents that are not converted into metadata must be individually identified within each lawsuit to access their content. Although the CNJ has made progress in improving the database through advancements in the implementation of the electronic lawsuits (and prosecutions), achieving the level of detail sought by IBDFAM and by the DGF requires combining an initial quantitative analysis of metadata with qualitative research based on reviewing case lists provided by the courts. This requires time and a pre-trained team, and often presents insurmountable challenges.

Based on the study by Wânia Pasinato and Fabiana Severi (2022), titled "Análise descritiva dos metadados de processos judiciais sobre Medidas Protetivas de Urgência extraídos do DataJud" (Descriptive Analysis of Judicial Process Metadata on Emergency Protective Orders Extracted from DataJud), Myllena Matos, Leila Barsted, and Thainara José conducted a descriptive quantitative analysis specifically focusing on the variable of procedural confidentiality (CNJ, 2022). They analyzed data from the DataJud database on cases registered between January 2020, when the Courts of Justice finalized the implementation of the electronic lawsuits, and May 2022, the most recent data available during Pasinato and Severi's study. The metadata analysis revealed a significant number of cases with high levels of confidentiality and inconsistencies among courts regarding the classification of confidentiality.

The rule of Article 93 of the Federal Constitution (Brazil, 1988) is that anyone may have access to legal proceedings and follow their progress. However, under the provisions established by Constitutional Amendment No. 45 of 2004, **the law allows for limiting access to certain proceedings to only the parties involved and their attorneys, or exclusively to the attorneys, in cases where safeguarding the privacy of the party granted confidentiality does not compromise the public's right to information.** Thus, Article 189 of the Brazilian Code of Civil Proceedings (2015) establishes that legal proceedings shall be conducted in secrecy under the following circumstances: (i) when required by public or social interest; (ii) cases involving marriage, legal separation, divorce, common-law marriage, filiation, child support, and custody of children and adolescents; (iii) when containing information protected by the constitutional right to privacy; (iv) cases involving arbitration, provided that the confidentiality stipulated in the arbitration is proven before the court. In these cases, the right to access the case files is restricted to the parties and their attorneys.

Since parental alienation is related to child and adolescent custody, confidentiality of the proceedings is automatically applied. Curiously, Bethânia de Souza Rodrigues' research states the opposite for the Courts of Justice of São Paulo, Rio Grande do Sul and Minas Gerais.

According to the National Council of Justice (CNJ), there are five levels of confidentiality applicable to court cases and proceedings. The higher the level of confidentiality, the more restricted public access to information concerning cases and proceedings becomes, even for the parties involved in the litigation. Thus, at level 1, known as "court secrecy", legal files can be accessed by court staff, attorneys involved in the case, and the parties or third parties involved in the case, provided they have the password to the lawsuit/prosecution. At level 2, access is restricted to the staff of the courthouse handling the case, the prosecutor's office, public agencies registered as entities at the Eproc system, attorneys involved in the case, and parties under explicit permission. At level 3, access is permitted solely to court staff of the specific courthouse handling the proceedings. At level 4, access is restricted to select users, including judges, court clerks, cabinet advisors (permanent and commissioned staff), and others only under explicit permission. At level 5, access is available exclusively to the judge or those to whom they grant access (*apud* Matos, Barsted, and José, 2022, p. 110).

Pasinato and Severi (2022) found that the majority of the cases are classified as confidentiality level 1 (38.72%), where access is restricted to the parties involved. Another 29.16% are classified as confidentiality level 0, corresponding to cases with public access. There are also cases classified as level 2 (20.48%), level 3 (9.67%), and level 4 (1.97%) (CNJ, 2022, p. 37). The number of cases classified as confidentiality level 5 is not disclosed.

The results would likely be quite similar if the analysis focused on family court cases concerning "parental alienation", "custody", or "visitation arrangements". Therefore, Pasinato and Severi's essay is useful for reflecting on the challenges of researching alienation addressed in this article.

The first immediate challenge is identifying a list of cases where parental alienation is discussed. The second challenge lies in obtaining access to cases from each Court of Justice and, at times, from individual courthouses where the cases are or were handled. A third challenge is the confidentiality of documents and personal information, which either prevents or significantly hinders access to psychosocial reports and expert assessments, as well as the development of a sociodemographic profile of the parties involved.

It is evident that cases under judicial secrecy are classified as confidentiality level 1 lawsuits, which is not the highest level. Confidentiality and judicial secrecy are not synonymous. Thus, while all cases under judicial se-

crecy require confidentiality, the reverse is not true. For instance, criminal investigations require confidentiality to successfully execute search and seizure warrants or preventive arrests, but they are not proceedings conducted under judicial secrecy. Civil lawsuits involving requests for banking or tax information, for example, also require confidentiality.

Confidentiality is temporary and concerns access to case files or specific documents within them. Judicial secrecy, on the other hand, is a permanent feature of the cases outlined in Article 189 of the Brazilian Code of Civil Procedure (CPC). For discourse analysis research or judicial workflow analysis, confidentiality, rather than judicial secrecy, has posed a greater challenge. Therefore, the essay by Matos, Barsted, and José suggests objective and standardized criteria for establishing the level of confidentiality that serves to protect women in situations of domestic or family violence, rather than increasing their vulnerability. *Mutatis mutandis*, it is desirable to allow access to case files related to parental alienation for researchers committed to the fair application of the law.

Judicial secrecy has not prevented the Court of Justice of the state of São Paulo from allowing research by academic institutions, researchers, and private entities, provided that specific requirements and commitments are met, as regulated by Ordinance No. 10,304 of December 15, 2023. The real obstacle to research lies in cases classified under higher levels of confidentiality.

The research conducted by the Law, Gender, and Families Research Group (DGF), which is still ongoing and supported the filing of the Direct Action for the Declaration of Unconstitutionality No. 6273, relies on first-instance decisions and, especially, appellate decisions published on the courts' online portals. These concise legal documents provide relevant but insufficient information to fully understand the case or conduct a quantitative analysis of representative variables such as race/color, age, education level, occupation, profession, etc. For theses or articles seeking a deeper analysis—such as those examining gender stereotypes or understanding procedural dynamics—it is necessary to request access to case files from the Court of Justice. However, these requests may be denied or take a long time to be granted. Access to older case files that have not been digitized requires research in the physical judicial archives.

Conclusion

Studies within the justice system, especially in the legal field, are essential to provide compelling evidence to support the need to repeal the PA law and recognize the unconstitutionality of the concept of parental alienation,

as was done with the legal argument of "legitimate defense of honor". In Claim of Non-Compliance with a Fundamental Precept (ADPF) No. 779 (Brazil, 2023), the Federal Supreme Court (STF) unanimously declared on August 1, 2023, that invoking the "legitimate defense of honor" thesis in cases of femicide or assault against women is unconstitutional. Defense attorneys, prosecutors, law enforcement, and court officials are prohibited from using, either directly or indirectly, any argument that invokes this thesis during the pre-trial or criminal trial phases, or during Jury Court deliberations, under penalty of nullification of the act and judgment.

As seen, conducting research in court case files is not an easy task due to constitutional and legal barriers to accessing procedural acts and documents such as examinations, psychosocial reports, and psychiatric or psychological assessments. Paradoxically, confidentiality intended to protect the privacy rights of children, adolescents, and women can work against them by also concealing institutional violence.[7]

This issue requires reflection to identify pathways ensuring that judicial intervention in family conflicts is transparent and subject to oversight, safeguarding the fundamental rights of all parties involved.

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A Close Relationship Between Mandatory Shared Custody and the Parental Alienation Law in Brazil: Challenges to Overcoming Gender Inequalities in Custody Disputes

Nathálya Oliveira Ananias[1]

Introduction

In 2020, when I completed my undergraduate essay on the application of the Parental Alienation Law in the Court of Justice of the State of São Paulo (Ananias, 2020), one finding stood out: in all seven cases analyzed, the only punitive measure was applied against the mother. Why? What does this say about the broader context? Is this truly an exception? It did not seem so.

The Brazilian Parental Alienation Law (PA Law - Law No. 12,318/2010) is presented as gender-neutral. Its Article 2 defines primary custodial parents or primary residence parents, who are predominantly mothers, as potential alienating parents. This is a strategy employed by the law's proponents to argue its gender neutrality, which is far from true.

Although the law applies to primary custodial parents regardless of gender, it obscures the reality that mothers, as women, are the primary targets of its measures. This is evident from empirical research conducted in Brazil, which will be discussed later.

Such an outcome was predictable, given the fact that primary custody, as previously mentioned, is most often granted to mothers. According to

1 Nathálya Oliveira Ananias has a law degree from the University of Brasília (UnB), is a researcher at the Center for Studies and Research on Women (NEPEM) at UnB, a member of the "Law, gender and families" research group at UnB and a feminist family lawyer.

the Civil Registry Statistics report published by the Brazilian Institute of Geography and Statistics (IBGE, 2021), women were granted sole custody in 54.2% of cases, men in just 3.6%, while joint custody was determined in 34.5% of first instance concluded divorce proceedings in 2019.

At the same time, merely modifying custody arrangements does not demonstrate the neutrality of the PA Law. Punitive measures continue to target mothers, and the stereotypes underpinning the law's design do not apply to fathers.

Similarly, addressing the relationship between child custody arrangements and the reduction of gender-based violence requires a deeper, more nuanced debate that considers the realities of Brazilian society; merely implementing shared custody is insufficient.

These are questions that I continue to reflect upon. Gradually, some pieces are coming together, and it is from this place that the considerations presented in this text emerge. Based on the reflections discussed at our in-person meeting in Rio de Janeiro, which were later deepened for this article[2], I conclude that there is a relationship between domestic violence, shared custody, and parental alienation. And understanding how these three contexts combine helps to open new horizons in the pursuit of gender equality within the judiciary.

This article will present the context of the emergence of the Shared Custody Laws, Laws No. 11,698/2008 and No. 13,058/2014, and the Parental Alienation Law, Law No. 12,318/2010, the actors involved, and their key demands, as well as the relationship between these legal institutes within the Brazilian Judiciary and their implications in cases of domestic violence.

The custody dispute in the Brazilian Legislative Branch, the relationship between shared custody, parental alienation, and domestic violence

On June 13, 2008, Law No. 11,698 was enacted, amending Articles 1,583 and 1,584 of the Civil Code to include provisions on shared custody. The Bill that originated this law, PL 6350/2002, was proposed with the support of the "Associação de Pais e Mães Separados" (Association of Separated Fathers and Mothers) (APASE, 2024), which at the time was called "Associação de Pais Separados" (Association of Separated Fathers), and it also

2 This article was written based on my speech at the Regional Strategic Meeting on False Parental Alienation Syndrome in Family Law in Latin America and the Caribbean, where I had the opportunity to discuss the legal aspects of the relationship between shared custody and the pseudoscience of Parental Alienation Syndrome (PAS). I participated in the first panel, where we addressed the correlation between gender-based violence against women and girls, shared custody practices, PAS, and related concepts.

referenced the work of a professor from "Associação Pais para Sempre" (Association Fathers Forever).

The aim of the new law was to establish shared custody as mandatory, even in cases where there were conflicts between the parents. In this sense, the original text of the bill did not foresee specific cases in which shared custody should not be adopted. However, it underwent changes, no longer mandating its compulsory application in all custody dispute cases and establishing guidelines for determining sole custody. (Câmara dos Deputados, 2024).

The bill's definition of custody invoked feminist arguments advocating for equality, though presented out of context. It argued that the notion of shared custody arose from imbalances in parental responsibilities and sought to mandate its application in all cases as a means to reverse genuine inequalities concerning caregiving roles.

Failing to address cases of violence seemed to be a strategy adopted by the groups involved in drafting the bill. In a patriarchal society, the protection of women and children, when sought, must be expressed in law, even when it concerns basic and seemingly obvious rights, such as living a life free from violence, because otherwise, they are not guaranteed.[3] The aim, from the outset, was to make shared custody compulsory, which was not achieved at the time. Consequently, father's rights groups (APASE and Associação Pais Para Sempre) shifted their focus to the issue of parental alienation (PA).

The bill that led to the Parental Alienation Law (PA Law) also involved the participation of APASE and Associação Pais Para Sempre in its elaboration (Projeto de Lei 4.053, 2008). Discussions for the proposal of the bill began in 2005 (APASE, 2024). According to Analícia Martins de Sousa (2009), during this period, APASE decided to shift its focus, prioritizing the spread of Parental Alienation Syndrome (PAS) by hosting a seminar on the topic in collaboration with the School of Magistracy of the State of Rio de Janeiro (EMERJ) in 2005, and subsequently promoting it at other significant legal events in the following years.

It was also noted that these fathers' rights groups had financial objectives, as they sought to eliminate the obligation of paying child support in cases where mandatory shared custody was established (Senate, 2014), though this has not been recognized by the courts so far.

3 For example, the Belém do Pará Convention, ratified by Brazil in 1995 and enacted through Decree No. 1,973/1996, establishes in its Article 3 that every woman has the right to a life free from violence, whether in the public or private sphere (Decreto 1973, 1996). Nevertheless, the number of cases of violence against women continues to rise each year.

The justification for the PA Law bill focuses on the pathologization of post-divorce conflicts, categorizing dysfunctional behaviors in this context as a form of emotional abuse that would cause psychological damage to children and adolescents, a phenomenon called parental alienation. The bill calls for the need for responsible parenthood in line with children's rights, as well as shared custody (Projeto de Lei 4.053, 2008).

However, this is only rhetoric. The measures outlined in Article 6 are punitive and intensify family conflicts. Moreover, it is striking that the behaviors classified as alienation do not concern the children and adolescents but rather the mothers.

The bill cites a passage from retired Judge Maria Berenice Dias (2006 as cited in Bill 4,053/2008), one of the leading authors on PAS in family law, founder of the Brazilian Institute of Family Law (IBDFAM), and responsible for beginning to apply this pseudoscience in rulings from the Court of Justice of Rio Grande do Sul even before the law was enacted. In the passage, the author claims there has been a change in families with increased responsibility for fathers, but divorce leads mothers to feel abandoned, leading to vengeful tendencies. Out of revenge, the mother would start to discredit the father to the child in an attempt to alienate the child from the father.

However, national data shows that there has been no significant change in families to achieve balance in parental responsibilities concerning childcare. In Brazil, women are still primarily responsible for the care of children.

The 2022 National Household Sample Survey (PNAD) found that women devote far more hours to caregiving tasks weekly (21.3 hours) compared to men (11.7 hours) (Nery, Britto, 2023).

In analyzing the PNAD data, the Gênero e Número Association highlighted that men's caregiving activities for children are focused on tasks such as reading, playing, and gaming, while the other responsibilities, especially those requiring daily commitment and a lot of time, such as preparing meals, assisting with studies, and taking care of health and hygiene, fall entirely to women. The data showed that biracial women dedicate more time to unpaid caregiving tasks, followed by Black women, White women, and, in significantly smaller numbers, biracial men, Black men, and White men (Boueri, 2019).

Furthermore, the understanding put forth by the author cited in the bill is entirely supported by Richard Gardner's pseudoscience of Parental Alienation Syndrome (PAS), as evidenced by the direct references to it in the bill and also in the content of the legislation. In Article 2, for example, the behaviors listed correspond mostly to those described by Gardner (2002).

Similarly, the measures available to magistrates under Article 6 align with Gardner's proposed "threat therapy," notably including the previously mentioned examples of custody reversal and the imposition of fines in favor of the "alienated" parent (Lei n° 12318/2010; Asociación Española de Neuropsiquiatría, 2010). In this regard, Brazilian studies on PAS mostly (86%) support the assertions of parental alienation. Among the primary issues associated with it, shared custody stands out (12%) (Mendes, *et al,* 2016).

With the PA Law, a stereotyped idea of post-divorce conflicts is constructed, reducing the causes of a child's estrangement from the non-custodial parent to the mother's culpability. According to this pseudoscience, mothers are blamed for relationship issues between children and their fathers following divorce or separation. However, the estrangement of children and adolescents from their parents after divorce is a consequence of multiple factors, as demonstrated by a study conducted by psychologist Leila Maria Torraca de Brito (2007).

Its emotional appeal is rooted in gender-based stereotypes that portray ex-wives as vindictive, self-serving, and manipulative, while depicting men as innocent victims. At the same time, children and adolescents are depicted as gullible beings, a portrayal that fails to consider their autonomy and self-determination.

Thus, the narrative spread by proponents of the false PAS supports the understanding that women are responsible for their overload, as they supposedly prevent men from caring for their children. As a solution, they advocate for the punishment of the custodial mother or, at least, the establishment of shared custody, a supposed remedy for preventing parental alienation.

Similarly, just as the Brazilian far-right construct of the communism specter has long justified unjustifiable measures, the concept of Parental Alienation became the specter that haunts families during divorce proceedings. As a pretext, extreme and punitive measures that harm mothers and children/adolescents have been implemented. In order to avoid the specter of parental alienation, the rhetoric that shared custody is the most appropriate solution is propagated. However, its proponents disregard the fact that mandatory shared custody can become a tool of control in cases of violence, while also failing to address issues related to parental responsibilities or gender roles.

The mere modification of custody arrangements does not, on its own, reduce gender inequalities. These inequalities persist and may even intensify when custody is assigned in a way that overlooks the actual distribution of parental responsibilities and the presence of intrafamily violence.

The establishment of child custody arrangements should be gradual and accompanied by a progressive increase in parents' self-responsibility for their children. Otherwise, as is the case now, it merely serves to maintain power.

The arrangement advocated by fathers' groups establishes a model in which women remain primarily responsible for the care of their children, but without autonomy to make important decisions about the children's lives, since such decisions are conditioned on the fathers' agreement regarding the main aspects of the children's daily lives.

Bill 1.009/2011, which established mandatory shared custody, was proposed just one year after the enactment of the PA Law and also involved significant participation from APASE (APASE, 2024). It is important to note that the primary objective of the first bill proposed in 2002 was to establish mandatory shared custody (Câmara dos Deputados, 2024, b). Parental Alienation was one of the central arguments for establishing mandatory shared custody, even in cases of significant conflict between the parties.

> However, the assumption that an agreement or positive relationship between parents is a prerequisite for establishing shared custody enables any belligerent parent, including a potential alienating parent, to intentionally provoke and sustain conflict with the other parent solely to obstruct the implementation of shared custody. This prioritizes their own interests over the child's best interests, ultimately rendering the enacted law ineffective. Furthermore, it is common to encounter cases where a precautionary measure for separation was primarily aimed at obtaining provisional custody of the child, using the child as a "weapon" against the former spouse, thereby engaging in the much-despised practice of Parental Alienation (Bill 1009/2011).

What happens is that the ongoing violence is often reduced to mere conflict, motivating the court to order shared custody. Only recently, in October 2023, Law No. 14.713/23 was passed, preventing shared custody from being established in cases where there is a risk of domestic violence.

The groups involved in the enactment of those bills on shared custody and parental alienation are the same and seek, far beyond guaranteeing contact between parents and their children, to control the lives of women and children after divorce. Establishing child shared custody as mandatory was their initial objective which, although not achieved at first, became viable after the introduction of the punitive thinking of the pseudo-science of PA.

With the PA Law, the control of subjective conduct is legitimized. Any subjective behavior of the custodial mother is used as a pretext to apply measures that reduce her parental rights. Shared custody, on the other hand, is mandatory and guarantees the power of non-guardian parents to decide on their children's day-to-day lives, although it does not necessarily increase their parental participation and accountability. In cases of violence, this power represents the legitimization of persecution, control and threats.

Family law and the judiciary in Brazil

Studies with a gender perspective on the intrafamilial context in custody disputes show that women are the one who are mostly affected by the PA Law and the imposition of mandatory shared custody, especially in cases of violence.

According to data from empirical research, the concept of PA is present in other lawsuits, the majority concerning child custody and time-sharing arrangements. A survey carried out by Mariana Cunha Andrade and Sérgio Nojiri (2016) about court decisions issued between 2009 and 2014 by the Minas Gerais and São Paulo state courts, found that only 10% of the decisions referring to PA accusations correspond to incidental lawsuits. In 72% of the cases, PA claims are present in child custody and time-sharing arrangement proceedings.

Bringing up similar data, Fabiana Severi and Camila Villarroel (2021) identified the following percentages in the courts of southeastern Brazil: i) in the São Paulo Court of Justice (TJSP), 32% of first instance decisions concerned child custody and/or arrangements, increasing to 51% in second instance decisions; ii) in the Minas Geraos Court of Justice (TJMG), 52% of first instance decisions and 70% of second instance decisions concerned child custody and/or arrangements; and iii) in the Rio de Janeiro Court of Justice (TJRJ), 77% of second instance decisions concerned child custody and/or arrangements.

Likewise, it is clear that PA is strongly related to child custody issues. It is an argument used to establish shared custody. It is also used in cases where fathers are accused of domestic violence and/or sexual abuse, as a justification for granting fathers child custody or increasing their parental rights, among other things.

Empirical research data shows that women are most frequently accused of PA and that they are also the ones who, in most cases, are the primary custodial parent.

In 2019, the research group "Law, gender and families", from the University of Brasilia, UnB, carried out a survey on the decisions issued by the Rio

Grande do Sul state Court of Justice (TJRS) up to that year. The findings were used to support the Direct Action for the Declaration of Unconstitutionality 6273 - which sought the declaration of the unconstitutionality of the Parental Alienation Law[4].

In this research it was found that fathers, in most of the cases, are the ones who report parental alienation, therefore, mothers are the most accused parent. Considering the 41 decisions analyzed, in 29 of them (70.73%) the fathers appeared as applicants, while in 5 of them (12.2%) the mothers were the applicants. In 31 cases (75.6%), the mother was accused of PA, while in only 4 cases (9.75%) the father was accused of PA. Regarding child custody or primary residence, in 28 cases, it was given to the mother (68.29%), and in 5 (12.19%), to the father.

In another study conducted by Sousa (2019), which analyzed decisions issued by Brazilian courts between 2010 and 2016, the author found that in 63% of the cases, PA claims were made by non-resident fathers, while 19% were made by non-resident mothers.

Fabiana Severi and Camila Villarroel (2021) also observed that fathers are the ones who most frequently file accusations, while mothers are the main ones accused of parental alienation, as shown in the chart below.

People who alleged parental alienation and those who were the target of the allegation

		TJSP	TJMG	TJRJ
Reported PA	Father	44% - 46%	39% - 47%	P - 35%
	Mother	11% - 15%	11% - 8%	P - 5%
Target of the allegation	Father	14% - 15%	15% - 18%	P - 12%
	Mother	57% - 54%	53% - 60%	P - 54%

Source: Severi, F., & Villarroel, C. M. de. (2021). Análise jurisprudencial dos tribunais da região sudeste sobre a aplicação do instituto: (síndrome da) alienação parental. Pensar, v. 26 (2), 7.

The use of the pseudoscience of PA, mostly by fathers and in the context of custody disputes, demonstrates that it serves as a tool to maintain the interests of these groups. This becomes problematic as it is used to control and punish mothers and children.

4 The Federal Supreme Court dismissed the action since it considered that the Association of Lawyers for Gender Equality does not meet legitimacy standards to file the action. Although the research data was presented, the prevailing understanding was that the Parental Alienation Law is not a gender issue.(STF, 2019).

Currently, the Brazilian Judiciary recognizes two custody models and differentiates custody from parenting time-sharing arrangements. Custody, in a broad sense, refers to the set of rights and duties parents have toward their children. In a stricter sense, it pertains to the decision-making authority over important aspects of the children's lives, such as changing schools, choosing medical professionals, and other significant matters. Visitation, or time-sharing arrangements, refers to the contact between children and the non-custodial parent or the parent without primary residential custody.

The implementation of a custody arrangement by the courts determines who will make decisions regarding significant aspects of the child's life (custody in the strict sense) and how parenting time-sharing will be organized. Thus, even with shared custody, where both parents are responsible for decision-making, the father's contact may take place every two weeks, for example.

Therefore, shifting custody from sole to shared does not represent an increased responsibility for the parent toward the children, nor does it entail a redistribution of caregiving duties between the parents.

Considering that it is still mothers who are primarily responsible for the care of their children and that, with shared custody, they are dependent on the agreement of the father to make relevant decisions about the child's/adolescent's life, the establishment of shared custody may exacerbate gender inequalities, as it legitimizes the control over mothers' subjectivity.

The reduction of gender inequality within families necessarily requires men's active engagement in caregiving responsibilities. Overcoming gender inequality within families requires highlighting intrafamilial gender roles, challenging the normalization of violence, and prioritizing the protection of individuals. Without this understanding, joint custody contributes to the perpetuation of masculine power and control, which is further intensified in cases of violence.

Domestic violence, shared custody and parental alienation

Nayara Felizardo (2023), a journalist with the news agency Intercept Brasil, authored a series of articles addressing the violations of the rights of women and children resulting from the application of the PA Law. While investigating men accused by the mothers of their children of domestic violence, sexual abuse, or unpaid child support, she discovered that some of these men had influenced the 2022 amendment to the Parental Alienation Law[5]. Here's what the journalist wrote about one of the fathers:

5 The original project, PLS 19/2016, proposed an amendment to the PA Law to include a provision prioritizing its proceedings over other family court lawsuits and proceedings. It was then joined to other bills and approved by law makers in the form of a substitute bill (Senado, 2022).

> On a social media platform, Leopoldo even advises men: "Request joint custody, ask to have the child spend half the time at your home, request the elimination of child support due to shared expenses, etc.". In court, he contests the debt by claiming that he spends 12 days a month with his daughter—according to the maternal grandmother, his father has been covering the child support payments since 2020. According to Leopoldo, men are typically the ones who build the family's wealth, which makes them victims of opportunistic women. "It's the famous 'went in with her butt and came out with a house,'" he wrote in a comment on Facebook. (Felizardo, 2023).

In the news article, Felizardo showed that one of the provisions added by mothers was removed from the bill, specifically the one addressing situations of violence:

> One of the provisions proposed by groups of mothers opposed to the Parental Alienation Law, which was removed by the rapporteur, was the prohibition of parents under investigation in "inquiries and proceedings related to physical, psychological, or sexual violence against children and adolescents, as well as domestic or sexual violence" from using the law. Such provision would prevent abusers from benefiting from the PA law (Felizardo, 2023).

Once again, there is no guarantee of protection for women and children in cases of domestic and intrafamilial violence. The intentional omission of this provision, allows men to invoke parental alienation even in cases where they have been previously reported. As previously mentioned, it was only in 2023 that the amendment preventing shared custody in cases of domestic violence was enacted. As it is recent, it is not yet possible to understand how it has been applied by the courts.

In general, the Family Courts ignore the existence of violence against women. In an ethnographic study of hearings in the family court of Maceió, the authors Lages, Allebrandt, and Calheiros (2021) analyzed the relationship between gender, the implementation of joint custody, and fathers' participation and accountability.

> In these hearings, there is little to no mention of the physical, psychological, and social violence that women suffer in marital relationships. Junqueira and Melo (2016) point out that the myth of romantic love is directly related to the perpetration of stereotypes and gender violence. According to the authors, this aspect is central to understanding gender asymmetries in intimate relationships. Many of these asymmetries are reinforced during court hearings. By ignoring the significant occurrence of violent events that could justify divorce, in favor of preserving marriage, legal agents tacitly contribute to the reproduction of gender-based violence. (Lages, Allebrandt, and Calheiros, 2021).

In a study conducted at the Family Court of Ceilândia, Federal District, André Oliveira (2015), drawing on feminist perspectives of custody disputes, concluded that family law is inadequate to address the complexity of these cases. For him:

> the legal system has incorporated a timeless, nuclear family model in which domestic violence is invisible or minimized. This family model assumes a relative equality between men and women, which is not reflected in the reality of violent incidents, which are actually marked by the presence of inequalities. (Oliveira, 2015, translated).

In cases of violence, shared custody has led to continued contact between victims and abusers, as well as it has allowed the perpetuation of other kinds of post-separation abuse (Oliveira, 2015). It is often disregarded that separation or divorce may promote an increase in violence.

According to the research "Visível e invisível: a vitimização de mulheres no Brasil" (Visible and invisible: the victimization of women in Brazil), carried out by the Brazilian Public Security Forum, in 2023, there was an increase in all forms of violence against women. It is estimated that 18,600,968 women experienced some form of violence or abuse during that year (yes, you read that right), with 31.3% of the perpetrators being their ex-partners.

Meanwhile, according to data collected by the Brazilian Institute of Geography and Statistics (IBGE) from notary offices, 299,846 first-instance divorces were granted in Brazil in 2021 (IBGE, 2021). Additionally, the National Council of Justice (CNJ) statistics panel reports that 445,865 new

cases of dissolution of civil partnership and divorces were filed in 2021 (CNJ, 2024). Even if divorces and consensual and litigious dissolutions are added together, the estimate of women who suffered domestic violence in the same year is significantly higher, around 24.94 times. This means that, although domestic violence is not included in the rule applied to custody disputes, its occurrence is no exception, as its numbers are much higher than the divorce numbers themselves.

Allegation of parental alienation often arises in cases where there is also reference to domestic violence. In the cases analyzed by Fabiana Severi and Camila Villarroel (2021), approximately 50% of first-instance decisions indicated the occurrence of domestic violence. Combining this with other data, the authors conclude that PA is used as a defense strategy in cases of domestic violence.

Accusing the mother of parental alienation causes the judiciary to focus on her behavior, neglecting the allegations made and failing to adopt protective measures (Sottomayor, 2011). With the PA, the mother is blamed for suffering domestic violence and is punished for reporting it. This is a well-known strategy often used by masculinist groups (Barea, 2009).

Conclusion: Challenges that go beyond the repeal of the PA Law

Overcoming gender inequalities in custody disputes requires the repeal of the Parental Alienation Law, but is not limited to it, as the patriarchal perspective within the judiciary persists. Therefore, compulsory shared custody appears and remains in the legal system as an instrument of control, and is directly linked to the concept of PA.

The connection between custody arrangements and parental alienation is further highlighted when examining the historical context and the legislative process behind the creation of Laws No. 11,698/2008, 12,318/2010, and 13,058/2014. The interest groups are all the same: associations of separated fathers. Furthermore, their goals are similar and directly linked. In the legislative proposals, although there is reference to the distribution of parental responsibilities, the concept of custody, the imposition of mandatory shared custody, and the measures outlined in the PA Law reveal that the aim is to control and penalize mothers, as well as to remove the obligation of paying child support.

These legal concepts develop based on half-truths, that is, partially true reasoning, which contributes to their legitimization. They invoke gender inequality between mothers and fathers by assigning sole custody to the mother, while blaming her for her own burden.

In this sense, the proposed measures intensify conflicts, sustain and reinforce gender roles and the inequalities based on them, by ensuring that fathers maintain control over mothers and children. Its application violates the right to equality, guaranteed in the 1988 Constitution of the Federative Republic of Brazil (CRFB/88). It also violates international women's rights conventions ratified by Brazil, including the Convention on the Elimination of All Forms of Discrimination against Women and the Convention of Belém do Pará.

The measures proposed in the PA Law also intensify post-separation violence. "Turning a blind eye" to intrafamilial violence, whether in the text of the law or even in the judicial analysis, does not mean that it ceases to exist, but rather that it is no longer considered a highly relevant variable in custody dispute proceedings. Thus, there are decisions that, at their core, violate the rights of women and children, while also reinforcing violent behaviors in men.

The Parental Alienation Law needs to be repealed as a matter of urgency. Legal concepts similar to parental alienation, or those correlated with or supported by the pseudoscience of Parental Alienation Syndrome, must no longer be applied, while discussions on shared custody should be further developed. Its progress in contributing to the reduction of gender inequalities must be viewed in the context of the patriarchal framework in Latin America and the available data and studies on violence in Brazil.

Any discussion about custody disputes that effectively contributes to changing unequal relationships supported by hierarchical structures, including gender, must acknowledge the complexities and prioritize the protection of those involved. It is crucial to recognize that, in the presence of violence, the notion of competing interests should not be addressed, since the protection of individuals must never be up for negotiation. Protection is non-negotiable, this is the fundamental basis for any discussion.

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Parental alienation and the reproduction of gender violence in Brazilian court proceedings

Fabiana Cristina Severi[1]
Camila Maria de Lima Villarroel[2]
Gabriela Cortez Campos[3]
Maria Eduarda Souza Porfírio[4]

This essay presents some data relating to studies we have carried out over the last 5 years on access to justice for women in which the issue of parental alienation has been addressed. The studies were carried out as part of the Human Rights, Democracy and Inequalities Research Group, coordinated by Professor Fabiana Severi and linked to the Ribeirão Preto Law School of the University of São Paulo (FDRP-USP). The organization of these data was carried out during the event organized by CLADEM in 2023, in Brazil, which focused on a critical and feminist analysis of the effects of parental alienation in the region, in terms of harm to the protection of women's human rights.

The topic of parental alienation became the focus of analysis in the research promoted by the aforementioned Research Group after we joined the agenda of proposals stemming from the workshop "Tecendo Fios para Discussão das Críticas Feministas ao Direito no Brasil: A produção teórica do direito das mulheres e o Direito Civil em uma perspectiva feminista"

1 Fabiana Cristina Severi is a Full Professor in the Department of Public Law at the University of São Paulo Law School.

2 Camila Maria de Lima Villarroel is a PhD candidate at the Getúlio Vargas Foundation Law School in São Paulo.

3 Gabriela Cortez Campos is an MPhil student at the University of São Paulo Law School in Ribeirão Preto.

4 Maria Eduarda Souza Porfírio is an MPhil student at the University of São Paulo Law School in Ribeirão Preto.

(Weaving Threads for the Discussion of Feminist Critiques of Law in Brazil: Theoretical Perspectives on Women's Rights and Civil Law from a Feminist Perspective), organized by the Maria da Penha Law Consortium in 2017. The event took place at the Escola Superior do Ministério Público (the Public Prosecutor's Office School of Higher Education) in Brasília, and parental alienation was discussed in one of the panels by Ana Liési Thurler (PhD in Sociology from the University of Brasília), Fabiane Simioni (Federal University of Rio Grande and member of the feminist organization THEMIS), and Susana Chiarotti Boero (lawyer and member of CLADEM/Argentina). The title of the discussion panel was: "15 Years of the New Civil Code of 2002 and the Protection of Women's Rights: families, shared custody, and the parental alienation syndrome".

Most of the panels at the event focused on family law, highlighting the absence of feminist legal perspectives in this area and its connection to the implementation of the Maria da Penha Law up to that point. An important starting point was the discussion on the concept of family enshrined in the 1988 Constitution and the 2002 Civil Code, considering the implications it should have for the legal application of institutions such as child custody in the lives of women and their children. The key elements of this conception include equal and non-discriminatory treatment within family relations, as well as the elimination of all forms of domestic and family violence, especially against women and girls.

The understanding of some of the panelists was that, despite the legal advances derived from the historical feminist mobilization for rights in the country, the justice system still reproduces a stereotypical image of women (vengeful, manipulative, etc.) in family law proceedings, causing significant harm to the protection of women's rights. Two of the most debated concepts at the meeting—shared custody and parental alienation—do not focus on promoting an equal division of caregiving responsibilities. In the case of parental alienation, it has been used as a procedural strategy against women who report fathers for perpetrating sexual abuse against their sons or daughters.

It was also emphasized that parental alienation is being used in child custody or domestic violence lawsuits, often as a defense strategy by the parent and/or ex-partner, to undermine women's rights and guarantees. An example is a situation where a woman, as a victim of domestic violence, reports abuse by her partner or ex-partner and requests supervised or restricted visitation, particularly when the violence occurred in the presence of children. In such cases, if they are unable to provide evidence of the risks posed to the children, they end up being accused of parental alienation.

Women were also frequently being accused of lying in these proceedings, especially in cases involving violence against children (such as neglect and sexual abuse). Sexual abuse reports were viewed as defamation by mothers against fathers. The consequences of this, in general, included the reduction or even elimination of child support, the imposition of shared custody, or the reversal of custody, often accompanied by restrictions or the interrupting of contact between the mother and the child.

The panelists also explained how the legislative process for Bill No. 4,053, which became Law No. 12,318/2010 (the Parental Alienation Law), was gendered, masculinist, and supported by a punitive and coercive bias, with more severe consequences for women. Although this law does not make a gender distinction, accusations of parental alienation are not neutral. The primary accused is the woman. The accuser is the man, who often feels wronged by demands made by women, such as child support, restricted custody arrangements, and allegations of sexual abuse against their children.

By the end of the event, among the items outlined in the collaborative agenda for organizations and experts in attendance, the issue of parental alienation was addressed as follows:

> 7. Coordinating the women's rights agenda with that of children and adolescents. [...] 12. Promoting dialogue with IBDFAM for discussing and incorporating the perspective of women's rights into the proposals presented by the Institute. [...] 23. Intensifying efforts for critical analysis and political-legal advocacy on the issue of parental alienation. Exploring the possibility of filing a "Claim of Non-Compliance with a Fundamental Precept" (ADPF) against the PA Law (translated).

The debate in the *workshop* was based on empirical studies conducted in other countries facing similar realities to Brazil's, as well as on the first Brazilian surveys and studies on the subject, mostly of a qualitative nature, conducted by Fabiane Simioni and Ana Liési Thurler[5]. In order to expand on the volume of existing evidence, we incorporated the issue of parental alienation into the agenda of the Human Rights, Democracy, and Inequality Research Group at FDRP-USP, converting some of the assertions made by the panelists into research hypotheses.

5 See: Severi, Fabiana; Calasans, Myllena (Orgs.). Tecendo Fios das Críticas Feministas ao Direito no Brasil. Ribeirão Preto, FDRP/USP, 2019.

Our research group had been studying domestic violence and the Maria da Penha Law (Law No. 11.340/2006) for six years. Thus, one of the first investigations we undertook focused on the interaction between parental alienation and domestic violence against women. The aim was to identify the effects of parental alienation claims in legal cases involving domestic violence against women and girls. The hypothesis to be tested was that the Parental Alienation Law (PA Law) negatively impacted women's protective orders.

This study was carried out by Camila Maria de Lima Villarroel between 2018 and 2020, with support from the "Fundação de Amparo à Pesquisa do Estado de São Paulo" (São Paulo State Research Foundation). Its main results have already been published in scientific articles (Villarroel; Severi, 2021; Severi, Villarroel, 2023). A brief summary of the findings is provided in the next section.

Analysis of court cases in the southeast region of the country where the parental alienation issue arises

The main hypothesis of the study conducted by Camila Villarroel was that the recognition of parental alienation by Brazilian courts negatively impacts the protection of the rights of women in situations of domestic and family violence. Another more specific hypothesis was that parental alienation is used as a legal defense strategy by fathers, especially when there are allegations of sexual abuse against children. These hypotheses were tested by analyzing court cases from state courts in the southeastern region of the country. We analyzed 913 cases from the São Paulo Court of Justice (TJSP), 250 from the Minas Gerais Court of Justice (TJMG) and 315 cases from the Rio de Janeiro Court of Justice (TJRJ). It was not possible to obtain data from the Espírito Santo Court of Justice.

The data was analyzed based on the following questions: what are the impacts of the application of the Parental Alienation Law on women's access to justice? To answer this, it was necessary to understand how the courts were dealing with conflicts involving parental alienation. When parental alienation is alleged against the mother, is the father acquitted? Are there gender stereotypes against women in these lawsuits?

The study confirmed the hypotheses, following the assessments made by the panelists at the event organized by the Consortium and the inferences already present in the literature on the subject. Studies from other countries on parental alienation, identified through literature review, also indicate that parental alienation is used as a defense strategy by fathers, particularly in custody cases and when the mother alleges sexual abuse perpetrated by fathers against their children.

Regarding the types of lawsuits and prosecutions considered, custody/visitation was the main one, accounting for more than 70% of cases in both the TJMG and TJRJ, and 50% in TJSP. Domestic violence cases made up about 10% of the total sample. The main type of appeal is the "agravo de instrumento"[6] (interlocutory appeal). This reinforced an assertion in the literature that parental alienation is a defense strategy with characteristics of abusive litigation, adding elements to the case to cast doubt on the woman's word or to delay the proceedings.

With regard to the people who allege alienation, the analysis suggests a gender bias: men allege it more often than women: 47% against 11%. Furthermore, the target of the allegation is almost always the mother - 60% of cases, compared to 14% of cases in which the woman alleges it against the man. In most cases, the party alleging alienation does not provide any evidence. Often, in these cases the court requests forensic expert evidence regarding women and children.

The sample also included a set of cases related to compensation requests due to allegations that were not confirmed by the court. When the parental alienation alleged by the woman was not recognized by the courts, the compensation obtained by the fathers was quite disproportionate to what is often awarded in civil cases for moral damages. There are cases, for example, in which the woman was ordered to pay compensations of 25,000, 31,000 and 95,000 reais. In general, it is common for compensations in TJSP to be capped at around 5,000 reais for moral damages.

In cases involving allegations of sexual abuse against a child or adolescent, the father was the one who alleged parental alienation in his defense. The woman was the target of this claim in more than 80% of the cases in which she was the complainant in the main case. In other words, these numbers suggest that the allegation is used as a defense strategy by fathers in cases where there are indications of sexual abuse in custody proceedings.

Domestic violence is indicated in the body of the lawsuit, but it tends not to be addressed in court decisions. It is mentioned in more than 7% of cases in the TJSP and in 47% of cases in the TJMG. The study confirms, through the analysis of these cases, that parental alienation was used in proceedings involving domestic violence as a defense strategy by men who were also fathers. Judges often perpetuated harmful gender stereotypes against women to discredit their reports of violence or to revoke previously granted protective orders. The most common stereotypes were those of the vengeful woman and the negligent mother.

6 In Brazilian law, the "agravo de instrumento" is a type of appeal used to challenge interlocutory decisions, that is, those made during a judicial proceeding but which do not bring a definitive end to the dispute in question.

The allegation of parental alienation reinforced and fueled these stereotypes. Furthermore, it also served to undermine the evidentiary value of the woman's testimony in the proceedings.

Therefore, the hypothesis that parental alienation has been used as a legal defense strategy by fathers in custody and domestic violence cases was confirmed by the research, considering the analyzed sample. The concept of PA is used to secure changes in custody arrangements, suspension of protective orders, or simply to delay the resolution of the case due to the need to gather further evidence.

The adoption of harmful gender stereotypes by judges in these cases to recognize parental alienation was also confirmed. Women are the targets of the allegation, and as a result, they have their protective orders revoked and face custody changes that follow the shared custody model. When women allege alienation, the success rate is low. The amounts of compensation they are ordered to pay for alleging that the father is an alienating parent are disproportionately high in relation to what the courts adopt as a standard amount.

Findings on parental alienation in studies on domestic and family violence against women and girls

In addition to the study conducted by Camila, which is more directly related to parental alienation, the topic emerged in other studies carried out by the Research Group. These studies addressed various aspects of access to justice for women experiencing domestic and family violence. One of these studies, conducted by Gabriela Campos, focused on analyzing the impacts of hybrid judicial authority—encompassing both civil and criminal matters—in courts specialized in domestic and family violence against women and girls. Her study was conducted in specialized domestic violence units of the Mato Grosso state Court of Justice.

The broad or hybrid authority established by Article 14 of the Maria da Penha Law refers to a court's authority to address both civil and criminal aspects of a case arising from the same fact: domestic and family violence against women. Under this concept, specialized judicial units for domestic violence should handle, adjudicate, and execute all proceedings arising from the same relationship, including criminal prosecution of the perpetrator and other measures such as divorce, child custody, child support, compensation, among others.

Through an integrative literature review, we identified the effects and expectations of women's movements regarding the implementation of the hybrid authority. The steps of this review were detailed in a previous article (Cam-

pos; Severi, 2024). According to the literature reviewed, the hybrid courts may offer the following advantages: (i) it avoids navigating between different courts; (ii) it prevents revictimization; (iii) it protects women's dignity; (iv) it reduces procedural costs; (v) it promotes procedural speed and effectiveness; (vi) it avoids conflicting decisions; (vii) it ensures a comprehensive approach to the phenomenon of domestic and family violence; (viii) it prevents the disregard of domestic violence in civil proceedings; (ix) it fosters specialized training of involved professionals; and (x) it prevents a solely punitive response.

By analyzing the judicial practices in the domestic and family violence courts of Cuiabá, Gabriela identified that, although this is one of the few state courts in the country that recommends the adoption of hybrid authority in domestic violence cases, many of the advantages cited above are not put into practice due to resistance within the judiciary. Given the exceptional nature of hybrid judicial authority in Brazil's legal system, the prevailing legal framework reinforces criminalizing narratives while neglecting the broader context of women in situations of violence.

In her field research, the researcher observed that many cases of violence begin or are exacerbated by civil lawsuits, particularly those related to child custody and child support proceedings. However, she noted that such proceedings, which involve the interests of children and adolescents, are often classified as purely civil lawsuits, failing to acknowledge the impacts of domestic and family violence in these cases. Consequently, they are referred to family courts, which favors conflicting decisions.

There are cases, for example, in which the mother had a protective order in place and, due to a lack of support networks to mediate the father's visitations, she ended up facing difficulties in enforcing the father's contact rights. Often, this results in the father filing parental alienation claims in family courts, using visitation rights as a means to target the mother and challenge the validity of the domestic violence proceedings. Hybrid courts, if implemented as proposed by the Maria da Penha Law, could prevent such situations by centralizing all aspects of the case in one court, thereby avoiding revictimization and the need to navigate between courts. In more direct terms, the claim of parental alienation is a defense strategy that can exploit the lack of proper implementation of the hybrid courts provided for in the Maria da Penha Law.

Another study by the Research Group was conducted by Maria Eduarda Porfírio, who analyzed judicial proceedings in family courts where the plaintiffs simultaneously requested protective orders under the Maria da Penha Law. The goal was to identify markers of revictimization in civil proceedings and understand the consequences of not implementing the hybrid

authority of the women's domestic violence courts, forcing women who experience domestic violence to engage with multiple judicial proceedings, particularly in family courts.

Based on the analysis of the selected cases, Porfírio found that, in addition to the need to engage with multiple judicial proceedings, the current organization of the judicial system— which compartmentalizes and segments legal matters—forces women in situations of domestic violence to seek resolution in courts that are unprepared to address their needs in a specialized way. As a result, among the 19 family law proceedings analyzed, 15 referenced domestic violence and the plaintiff's request for protective orders, yet none took these factors into consideration for the continuation of the proceedings.

As a result of this disregard, the judiciary often maintained standard procedures without modifications, such as bypassing the conciliation phase. In family courts, these women were exposed to environments where decisions frequently contradicted protective orders, employed stereotype-driven discourses, and prioritized the child's "best interests" over their own rights and needs.

In cases involving children, court decisions or legal documents frequently contained passages that sought to delegitimize women's maternal capabilities, accusing them of misusing child support, obstructing the father's access to the child, or "manipulating" and "alienating" the child. Below are excerpts from such decisions, as documented in Villarroel's study, referencing the São Paulo state Court of Justice (Villarroel; Severi, 2021, p. 10):

> The most painful part – and it almost always happens – is that the results of numerous expert assessments, examinations, and interviews conducted over the years end up being inconclusive. [...] There is no other option but to try to identify the presence of other symptoms that would lead to the conclusion that this is actually a case of Parental Alienation Syndrome and that the abuse allegation was fabricated out of a desire for revenge, as a tool to damage the child's relationship with the father. (TJSP, 2010). (tranlated)
>
> The fear and hatred that the young victim feels toward her father cannot be justified solely by the alleged sexual abuse. It is important to emphasize that XXX has been subjected to various forms of distress over the past three years, as experts observed. The mother and grandmother repeatedly recited the same lines, preventing the victim from forgetting the incident or even leading her to internalize the fabricated story created

> by the mother, which, through constant repetition, became a perceived truth for the child. It is worth noting that, if the abuse did indeed occur, the psychological damage caused to XXX would be severe and perhaps even irreversible. However, even if she did not experience sexual abuse, this implanted memory has still caused significant harm. (TJSP, 2014) (translated)
>
> The plaintiff frequently resorts to intellectual constructs rooted in imagination, fantasy, and daydreaming, consistently presenting herself as a difficult person with a dual personality, controlling, and highly jealous, according to the testimony of her long-time friend XXXXXXXXXX, which is recorded in the case file on pages 80/81. Thus, it appears that everything was merely a mental fabrication by the plaintiff, aimed at targeting her ex-husband, as no concrete proof or evidence was presented to substantiate the accusations made in the initial petition, only mere conjectures (TJSP, 2012). (translated)

In cases where the father's defense explicitly accused the woman of practicing parental alienation, we observed significant concern from the Public Prosecutor's Office and the judge regarding the situation. They prioritized addressing and putting an end to the practices alleged by the father's defense, threatening sanctions, despite the lack of concrete evidence beyond the father's narrative. Meanwhile, allegations of domestic violence were often downplayed as "minor disagreements between the parents", while the mother's concerns that certain measures could harm the child's best interests were dismissed as "unsubstantiated unilateral claims".

This scenario illustrates how legal officers, through their opinions and decisions made during the proceedings, perpetuate stereotypes that stigmatize and discredit women. These rulings contradict protective orders and undermine both the safeguarding of women's rights and the best interests of children. In this context, parental alienation appears as an additional tool in the dynamics of undermining women's rights.

Final remarks

The studies presented here provide results that contribute to a broader body of evidence regarding the harmful effects of the concept of parental alienation on women's human rights and the protection of children. They align with other analyses that view the Brazilian law, which introduced the term as a new legal concept, as a conservative and patriarchal reaction to recent advancements in women's rights, particularly those brought by the Maria da Penha Law (LMP).

The use of the concept of parental alienation, even in cases unrelated to domestic and family violence but involving family law matters, has resulted in harmful impacts on women. Such outcomes are reinforced by the absence of adequate policies within the judicial system to ensure the effective implementation of the Maria da Penha Law (LMP). The primary shortfall lies in the failure to implement hybrid judicial authority within domestic violence courts.

The implementation of the Maria da Penha Law, as envisioned by the women's movement regarding the broad authority of domestic violence courts to handle both criminal and civil matters, could, at least in part, prevent the weaponization of custody, visitation, and child support proceedings as a means of exacerbating gender-based violence. In turn, the failure to implement the provisions of the Maria da Penha Law, or their partial implementation, may create an environment favorable to an increase in cases of alleged parental alienation.

These studies contribute to the most recent perspectives shared by various feminist organizations and the regional feminist movement, asserting that the Brazilian Parental Alienation Law must be repealed. Until the law is repealed, strategies can be developed in order to guarantee better access to justice, prioritizing preventive measures that address the intersections of violence against women and violence against children.

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Equality before the law and the use of Non-existent Parental Alienation Syndrome: the patriarchal barriers of the judicial system

María Florencia Piermarini[1]

In all the violence inflicted upon women, children, and adolescents, there is a shared pattern: the abuse of power or authority; an asymmetrical relationship that implies the possibility of controlling and manipulating the victim, either physically or emotionally.

Family or intrafamilial violence refers to all forms of power abuse that occur within family relationships, and they cannot be analyzed or understood in isolation, as they are part of the broader structural violence that disproportionately affects the most vulnerable and victimized groups, particularly women and children.

When these situations arise, victims navigating the judicial system quickly realize that the principle of equality before the law, enshrined in Article 16 of the Argentine National Constitution, exists only in a formal sense; in practice, it remains theoretical and inadequate to eliminate gender- and age-based discrimination within the legal system.

The Argentine state ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was incorporated into its constitution under Article 75, Clause 22, as well as the Inter-Amer-

1 María Florencia Piermarini is a lawyer, specialist in in criminal law, legal representative of children and adolescents who are victims of sexual violence, and defender of protective mothers. Since August 2020, she in charge of the Justice Access Directorate at the Secretariat for Women, Gender Policies, and Diversity of the Municipality of La Matanza, Argentina. She served as the director of the Penitentiary Service of the Province of Buenos Aires (from 02/2012 to 12/2015).

ican Convention to Prevent, Punish, and Eradicate Violence against Women (Belém do Pará Convention). These treaties establish the obligation of States Parties to: (1) eliminate discrimination and violence against women and (2) guarantee women's economic independence and substantive equality with men in all areas of life, **including parental responsibilities** (CEDAW, arts. 13, 2, and 16, cf. Argentine Constitution, art. 75, clause 22).

The Inter-American Court of Human Rights (I/A Court H.R.) in regard to the case "Campo Lodeiro" vs. Mexico (2009)[2] - as the Inter-American Commission on Human Rights (IACHR) in the case of Jessica Lenahan and others vs. United States (2011)[3] - among others cases, established that there is a strengthened obligation of due diligence, which arises from the general obligations set forth in the American Convention on Human Rights (ACHR) and the Convention on the Rights of the Child (CRC), both mechanisms ratified by Argentina and incorporated into the National Constitution (CN) in Article 75, Clause 22.

This same normative framework with constitutional hierarchy governs the right guaranteed to children and adolescents to be duly heard and protected. However, equality before the law is also theoretical in this situation, it is insufficient in practice.

The First Chamber of the National Court of Appeals in Criminal and Correctional Matters (CNCCC) of the Federal Capital made observations regarding the right of children and adolescents to be heard when they claim to have been victims of a crime, particularly when involving sexual abuse. It was ruled that a sentence is arbitrary if it disregards or fails to conduct a thorough examination of multiple testimonies, explicitly rejecting their relevance in proving the facts of the accusation. This information is not supplementary; rather, it is central to the case. Specifically, it was emphasized that ignoring the child's testimony implied a violation of their right to be heard, a right that the State has the duty to guarantee, according to Articles 12, 19, and 34 of the CRC.[4]

The jurisprudence of the CNCC, in these cases involving children and adolescents, has also indicated that the veracity of their testimony has traditionally been questioned, largely due to views that support the cognitive incompetence of children, the belief that they are highly gullible and their supposed inability to differentiate between reality and fantasy. This perspective has al-

2 I/A Court H.R. *Case of González and others ("Cotton Field") Vs. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C, No. 205.

3 IACHR. *Jessica Lenahan (Gonzales) and others vs. United States*. Case[No.] 12.626. Report N[o.] 80/11.

4 *Cfr.* Decision (CNCCC) of 06.08.18, First Chamber, judges Luis M. García, Horacio L. Días and Daniel Morin, register No. 912/2018.

ready been challenged by some authors who emphasize that false or inaccurate statements are not a result of potential cognitive deficits in children, but rather of the way expert assessments are conducted.[5]

It is crucial, then, to consider that the forms of communicating in childhood are not comparable to those of adulthood and that asking children to express themselves in an adult manner violates the constitutional principle of equality before the law. Therefore, making visible how the judicial system undermines the constitutional principle of equality before the law for women and children and adolescents through discriminatory mechanisms and practices will allow us to develop strategies that guarantee access to justice, effective legal protection, and the application of a gender and childhood perspective. This is the only way to make visible the concrete vulnerability of victims, both at the time of the crime and throughout the judicial process that begins with the complaint.

The use of the Inexistent Parental Alienation Syndrome (IPAS)[6] in civil and criminal proceedings: violation of the principle of equality before the law and institutional violence.

When members of the court staff dismiss the testimony of a child or adolescent without justification and resort to the IPAS, they violate national and international legal guarantees regarding children's rights.

The use of IPAS in both civil and criminal proceedings constitutes a misogynistic and discriminatory practice that violates the principle of equality before the law and perpetuates institutional violence against women and children.

Far from being a theory supported by any scientific field, IPAS is a judicial practice with no scientific basis that infringes on constitutional rights and guarantees recognized at national, regional, and international levels. Its application reflects a particular vision of family and childhood that stigmatizes and punishes women who report sexist violence against children and adolescents, particularly sexual violence within the family, thereby depriving children and adolescents of their fundamental rights.

IPAS is founded on two false premises: gender stereotypes and adult-centrism, with a singular objective—ensuring the impunity of violent men.

5 *Cfr.* Decision (CNCCC) of 02.09.15, Second Chamber, judges Bruzzone, Sarrabayrouse and Morin, register No. 400/15.

6 Translation note: in this book we use the term "inexistent parental alienation syndrome" in the same sense as "false parental alienation syndrome," as synonyms. The term inexistent parental alienation syndrome is more commonly used in Argentina, while false parental alienation syndrome is more common in Brazil.

On one hand, sexist gender stereotypes fuel prejudices against women, assuming that, by virtue of their gender, they exhibit negative behaviors and intentions. It is common to find legal documents from judges and court staff referencing terms such as "spiteful woman," "lying mother," "scheming woman," "manipulative mother," "instigating woman," "alienating mother," "vengeful woman," and "fabricating woman".

Julieta Di Corleto[7] states that stereotypes have a significant impact on sexual violence, summarizing four common generalizations or beliefs that sustain them:

1. Only a stranger can perpetrate rape, so if a woman initially consents, she is seen as having given a "blank check" for anything.
2. Rape only occurs if the victim has injuries; therefore, if she did not resist, it means she has consented.
3. The victim's prior behavior is considered relevant. Some individuals are seen as inherently "immune" to victimization. On the other hand, those who deviate from expected norms are perceived as having facilitated the assault.
4. A true victim will report it immediately, any delay in reporting suggests dishonesty.

It is important to emphasize that these generalizations, which Di Corleto defines as elements of "rape culture"[8] also pervade judicial proceedings involving children and adolescents as victims.

Thus, the intersectional approach that should guide the analysis and decisions in cases of sexual violence against children and adolescents, in accordance with the standards established by the CRC, the American Convention, the Brasília Regulations[9], CEDAW, the Belém do Pará Convention, among others, is instead replaced by the reinforcement of stereotypes, imposing on child victims the same expectations placed on adult women victims.

The second false premise of IPAS is that children lie, fabricate, imagine, and lack competence, making them unreliable subjects with dimin-

7 "Límites a la prueba del consentimiento en el delito de violación", Julieta Di Corleto https://www.researchgate.net/publication/325553943_Limites_a_la_prueba_del_consentimiento_en_el_delito_de_violacion

8 The term was coined by the feminist movement in the 1970s and refers to the set of beliefs, ideas and attitudes that justify and normalize sexual violence. For the UN, it is "omnipresent". (https://www.unwomen.org/es/news/stories/2019/11/compilation-ways-you-can-stand-against-rape-culture)

9 Brasilia Regulations Regarding Access to Justice for Vulnerable People were issued at the Ibero-American Judicial Summit in 2008. The Nation's Supreme Court of Justice adhered to them through Decision No. 5, of February 24, 2009.

ished rights. Their testimonies, emotions, and perceptions are deemed less credible than those of adults and are often dismissed as products of an overactive, childlike imagination, manipulated and contaminated by a vengeful mother who despises the man she has accused.

In many cases, the application of this invented yet seemingly plausible concept involves direct questioning by judges and court officers, focusing on the alleged "imaginative exaggeration" and the "possibility of influence by third parties" in the testimonies of children and adolescents. That is, without evidence, it is presumed that the testimonies are tainted. Thus, the implementation of IPAS constitutes a violent practice perpetrated by judicial officers that revictimizes children, adolescents, and also their mothers.

When mothers are questioned as key witnesses, children and adolescents are discredited as being "contaminated", and the testimonies of professionals indicating signs of sexual abuse are ignored, the evidence is destroyed. This prevents the restoration of the facts and prevents the physical, emotional, and often financial restitution of victims of child sexual abuse.

It is evident that the judicial system, when resorting to IPAS, decides who holds the truth. Silvia Chejter (cited in Rozanski, 2003) states:

> But, fundamentally, the aim of the officials' discourse is to create a narrative that supports, rather than justifies, the decision. This is because the decision does not stem from the arguments; instead, it is the decision that shapes and influences the arguments. For the official, the key issue is how to ensure that the decision gains the backing of other officials involved in the case and/or those who will review it in the future.[10]

When a woman is a victim of gender-based violence and she reports it, she seeks for the violence to stop. When that woman, in addition to being a victim of gender-based violence, learns that her child is a victim of physical and sexual violence perpetrated by the same abuser, she seeks not only for the violence to stop, but also for justice and protection. If, in the process of seeking justice, she is granted restraining orders, but the violence DOES NOT STOP; she continues to be victimized, continues to be violated, and continues to be treated outrageously. Not like before, face to face with the abuser, but through third parties. If that third party is the State (the judiciary being part of it), it becomes an even more harrowing form of violence: institutional violence.

10 Rozanski, Carlos Alberto. *Abuso sexual infantil ¿Denunciar o Silenciar?* Ed. B Argentina S.A. Buenos Aires. 2003, p. 213. (My translation)

What are the reasons for something that does not exist to continue being applied in judicial settings?

Dr. Dr. Eva Giberti, coordinator of the Program Victims Against Violence at the Ministry of Justice and Human Rights, gave her position on the IPAS and expressed:

> It may seem perplexing that, despite the complete discrediting of PAS—both as lacking any clinical basis and as a tool of discrimination against women (CEDAW)—as well as a mechanism for distorting legal proceedings in divorce cases, it remains necessary to continue challenging its persistence in certain psychological and legal circles. Thus, a double reflection is required: 1) pedagogical, to question the academic training of colleagues who do not distinguish between a scientifically described condition (from psychopathology and other instances) and the accumulation of unsubstantiated statements that Gardner includes in his writings, and 2) ethical. **The core premise of PAS consists of the conservative principle of leaving everything as it is, without allowing the complaints raised by the woman and the rejection of the children to have any significance. As long as its project is the defense of patriarchal norms and the subjugation of the child as a hostage rather than a subject of rights who refuses to meet with the parent because they recognize themselves as their victim [emphasis added]**. The acceptance of victimization by a child is a complex process, which slowly emerges through painful dissociations. It does not arise from a maternal discourse aimed at destroying the father's role.[11]

How does this patriarchal stance crystallize in our judicial system?

By dismissing the diagnoses made by specialists.

Whether they are psychologists, medical doctors, or psychiatrists specializing in children and adolescents, justice system operators often disregard their reports. Instead, they may recommend that family assessments be conducted by professionals without specialized training, who primarily work with adults and lack the expertise to address or understand the specific ways in which childhood suffering manifests in clinical settings.

11 Eva Giberti, Bachelor of Psychology, former coordinator of the "Victims against Violence" Program of the Nation's Ministry of Justice and Human Rights. Response to the president of the Council of Psychologists of Córdoba, quoted in Bill 5346-D-2021.

As far as procedural practice is concerned, there is the arbitrariness of a judiciary that only takes the word of the child and/or adolescent before an official expert as valid.

Susana Toporosi[12], a specialist in childhood sexual abuse, explains that the disregard for children's voices aligns with patriarchal power asymmetries:

> children, as the most dependent and therefore weakest individuals in the power hierarchy, are neither heard nor considered in their suffering. Under this patriarchal framework, family assessments are conducted under the mandate of achieving reunification, prioritizing the abuser's continued contact with their child. The child's request is not taken into consideration [nor is their enormous pain] (Toporosi, 2014, translated).

Through the Law on Contact Obstruction.

Another legal mechanism in force in our country is the Law on Contact Obstruction (Law No. 24,270, enacted on November 3, 1993), which represents a central element for the crystallization and use of IPAS ideas in family court proceedings.

This law imposes criminal penalties on any "parent or third party" who unlawfully prevents or obstructs a child's contact with the "non-primary residence parent". While the text of the law is neutral, in practice, it is designed to (and is used to) criminalize women.

This law serves as a tool of violence, persecution, and coercion against women who have reported abuse by the "non-primary residence parent", whether against themselves or their children. In reality, mothers are the primary caregivers of young children, while the non-primary residence parent is usually the father. Thus, women are "primary residence mothers", the active subjects of this criminal offense. This law also fails to ensure children and adolescent's right to be heard and respected in legal proceedings.

In Argentina, the provinces of Santa Cruz (Law No. 2928, enacted on September 28, 2006), Mendoza (Law No. 7644, enacted on January 2, 2007), Río Negro (Law No. 4456, enacted on October 29, 2009), and Chubut (Law XIII No. 23, enacted on June 7, 2018) have established a Registry of Contact Obstructors. These registries are used to persecute protective mothers who defend their children, victims of sexual abuse, whose reports are processed in criminal court. When this registry is applied in cas-

12 Toporosi, Susana (2014). Justicia patriarcal: ¿cómo obstruye en casos de abuso sexual infantil?, Revista Topía. https://www.topia.com.ar/articulos/justicia-patriarcal-como-obstruye-casos-abuso-sexual-infantil

es where children and adolescents have suffered violence, it enables perpetrators to continue exerting abuse with the impunity granted by judicial interpretations of the law.

By fragmenting the complaint of violence.

In Argentina, the enactment of Law No. 26485, which provides for Comprehensive Protection of Women, passed on March 11, 2009, known as the Law for Comprehensive Protection to Prevent, Punish, and Eliminate Violence Against Women regarding the areas in which they develop their interpersonal relationships, has been a paradigm shift for our country.

However, the organization of the judiciary and the division of competencies by subject (criminal, civil, commercial, etc.) directly leads to the fragmentation of reports of violence. What happens is that we have a system unable to provide an integrated response to a demand: the protection and cessation of violence. The continuous growth of this demand is a consequence of feminist activism that de-naturalizes it.

Protective mothers, together with their children, navigate the hallways of the courthouses, submitting themselves, with no alternatives, to forensic examinations and assessments in both civil and criminal courts. This is because the current legal system, at least within the national judiciary and the province of Buenos Aires, has never taken into account the scope or the particularities of violence as a matter of concern. Therefore, when a unique situation of violence is reported, the judicial system responds with multiple legal prosecutions and proceedings, since a single conflict leads to the violation of many rights, it is fragmented into many proceedings.

The Comprehensive Experimental Program for Free Legal Representation for Protective Mothers

Our direct experience of more than three years of service at the Secretariat for Women, Gender Policies, and Diversity of the Municipality of La Matanza has enabled us to identify the barriers that victims face in accessing justice.

A major problem faced by those who report violence is the lack of specialized free legal representation. And this is no small issue. Protective mothers who report violence, which often includes complaints of sexual violence, are also victims of economic violence. They are frequently forced to leave their homes, and many of them have to quit their jobs for they are scattered across multiple hearings that are never held in the same place.

In this context, and because we understand that the issue of Protective Mothers is a form of violence against women, the Program for Protective

Mothers was created. We understand that this violence is one of the cruelest forms, as it persists over time, depriving these women and children of the possibility of leading a normal life. As stated by 21-year-old Tomás Vázquez, who was a victim of sexual violence as a child: "We want to have a life free from judicialization and for people to believe us".[13] Which is something that hasn't happened so far.

The program's goal is to ensure support for women, particularly mothers attacked by the system, as well as for their children, providing socio-therapeutic assistance during the judicial process, legal representation, and advice. To do so, we have established an agreement with the Civil Association of Advanced Studies in Violence and Sexual Abuse, aiming to comprehensively address situations of sexual abuse and provide professional training on the subject in La Matanza. Similarly, we actively work with the NGO Mundanas[14], a feminist group that fights against sexual abuse, and which offers training related to the assistance of children who were victims of sexual abuse.

From August 2020 to September 2023, we have supported 159 protective mothers and managed to reunite 85 children who were "legally" taken from their homes under a court order. For the first time, as stated by the Secretary of the Secretariat of Women, Gender Policies and Diversity of La Matanza, Liliana Hendel: "The State intervenes comprehensively to overturn the judicial system's arbitrariness against women who report violence and the children they seek to protect, recognizing the validity of their testimonies, perceptions, and experiences" (translated).

Our intervention in the cases of Protective Mothers is fundamentally based on formally and institutionally requesting that the judicial system apply a gender perspective and a child protection perspective, as these are positive and current rights. Mothers and children, instead of being considered "suspi-

13 Tomas Vázquez was a victim of sexual violence perpetrated by his father when he was only 9 years old. His mother is Andrea Vázquez, a doctor and feminist with a third newborn child, who separated from her husband in 2009. He (her ex-husband) is a renowned doctor - an obstetrician and gynecologist - and a medical entrepreneur from Lomas de Zamora, in the province of Buenos Aires. She denounced him 40 times for the violence perpetrated against her children and herself, but was systematically ignored. In 2012, the judges of the former Family Court No. 3 of Lomas de Zamora issued a search and seizure order, instructing the police to forcibly enter her home while she was at work and remove her three children, citing IPAS as justification. On September 12, 2023, he was acquitted by Criminal Court No. 3 of Lomas de Zamora, once again using IPAS as justification. The ruling relied on the family court's decisions while disregarding both the documented injuries resulting from the violence inflicted on one of his children and the mother's testimony. So far, the decision has been appealed and the appeal is pending before Chamber 1 of the Criminal Court of Appeal of the Province of Buenos Aires. The Protective Mothers Program originated with the case of Andrea Vázquez.

14 https://www.instagram.com/mundanasagrupacion/?hl=es

cious" by the system, should have their rights guaranteed in accordance with the criteria established in section 23 of article 75 of the Argentine Constitution (CN), in alignment with article 16 and article 75, section 22 of the CN, referring to article 2 of the Universal Declaration of Human Rights (UDHR); article 2.1 of the International Covenant on Civil and Political Rights (ICCPR); article 1.1 of the American Convention on Human Rights (ACHR); and especially the preamble of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Belém do Pará Convention.

Each situation involves interactions with different areas of the judicial system that are not particularly welcoming to other State entities becoming involved in their actions and decisions. However, we continue progressing with the goal of improving coordination for the benefit of those who approach us.

Requests are received via the toll-free hotline 0800-999-7272* (PARÁ) for advice on situations of gender-based violence, which operates 24 hours a day, 365 days a year. This hotline is open 24 hours a day, 365 days a year, through district police stations, at the request of hospital social services, and through requests from organizations in the area. If medical intervention is necessary, coordination with provincial and municipal hospitals is also arranged to ensure medical care.

From that point on, the protective mother receives support while navigating through the judicial proceedings, where she is advised to file a lawsuit asking for the "return" of the child. We then monitor the decisions issued by the judiciary and submit supplementary expert reports prepared by the team of specialists from the relevant assistance division of the Secretariat. These reports not only provide a professional assessment of the violence the woman is experiencing but also investigate whether there are prior complaints against the abuser and/or ongoing criminal proceedings. These inquiries cover both family and criminal courts.

There is permanent collaboration with the General Defense of La Matanza regarding matters in family law and criminal law, especially when a protective mother has been accused of obstructing contact. We also coordinate with specialized prosecutors in cases of violence and sexual abuse when the report involves the perpetration of a crime. We actively work to advance cases and request hearings when necessary. We encounter challenges and obstacles along the way, yet we also discover unexpected alliances and compassionate support.

It is therefore essential to establish working groups involving entities dedicated to children's assistance and local services to ensure ideological

alignment and collaboratively develop agreements and mechanisms that safeguard and protect protective mothers and children who report violence. We have frequently encountered cases where authorities in these spaces decide to remove children from their mothers and place them in the custody of the abuser's family members. The lack of gender-sensitive training among these teams is concerning. This is why we strongly advocate for the institutionalization of gender-transformative approaches in professional training programs for those who will later intervene in these cases, where cruelty is overt, and impunity prevails.

Thus, the Protective Mothers Program seeks and demands that access to justice be guaranteed and that gender and child perspective be applied in judicial proceedings so that the constitutional principle of equality before the law is respected. This is the only way to make visible the concrete vulnerability of victims both at the time of the crime and throughout the judicial process that begins with the complaint, since this perspective is the only one that can reverse the arbitrariness of the judicial system.

As UN Special Rapporteur on Violence against Women Reem Alsalem stated, institutional forms of male violence against mothers, girls, and boys within the State inflict suffering and pain, which may constitute torture and other cruel, inhuman, or degrading treatment.[15]

15 Alsalem, Reem (2023). Custody, violence against women and violence against children. *Report of the Special Rapporteur on violence against women and girls, its causes and consequences.* A/HRC/53/36.

False Parental Alienation Syndrome in cases of child sexual abuse in Argentina

Dania Guadalupe Villanueva[1]

In this article, I share my experience as a criminal lawyer in Argentina regarding the application of the false Parental Alienation Syndrome (PAS) in cases of sexual abuse against children, adolescents, and youth (CAYSA), particularly in the Province of Córdoba.

Sexual abuse—just like crimes related to family and gender-based violence—is generally committed in private spaces where no other people are present: family environments, bedrooms, offices, among others. Due to the way these offenses are committed, the victim's testimony is fundamental as evidence, serving as the main pillar of the case, since they are the only direct witness to the act. The Superior Court of Justice of the Province of Córdoba has recognized this in numerous rulings, stating that:

> the particular characteristics of domestic and gender-based violence cases make the victim's testimony especially relevant, as is the case with sexual, physical, and psychological violence. Such testimony acquires a probative value of preferential consideration as long as it is reliable and corroborated by circumstantial evidence, provided that these converge in a way that sufficiently substantiates the conclusion (translated).[2]

1 Dania Guadalupe Villanueva is a criminal lawyer with a degree from the National University of Córdoba (UNC) Law School. She is currently pursuing a Master's in Gender and Rights. She serves as President of the *Vivir Libres* Foundation, a Board Member of Córdoba's Bar Association, and a Assistant lecturer in Criminal Procedure Law at the UNC Law School.

2 Superior Court of Justice of the Province of Córdoba, Argentina, Criminal Chamber: "Sánchez", Ruling No. 84, 4/5/2012; "Delfino", Ruling No. 299, 4/10/2013; "Peralta", Ruling No. 328, 25/10/2013; "Ramos", Ruling No. 276, 5/8/2014; "González", Ruling No. 98, 29/3/2016; "Díaz" Ruling No. 158, 23/6/2016; "Vinovo", Ruling No. 202, 26/5/2016;

All other evidence—known as contextual evidence—serves to reinforce this testimony and must be properly assessed. In this regard, the highest court of the province states that:

> it is necessary to analyze the act within the violent context in which it occurred. Criminal offenses are structured as events that isolate specific offensive behaviors against a particular legal interest. However, this segmentation must not diminish the probative value of an offense that is part of a multi-offensive phenomenon of violence in the specific context in which it occurs. This is because different forms of violence, such as physical and psychological abuse, threats, severe restrictions on freedom, etc., often overlap. This is especially true when these acts occur in a context of vulnerability and are rarely committed in the presence of third parties, as one of the characteristics of domination through violence, in its multiple manifestations, is precisely the isolation of the victim (translated).[3]

There are cases in which CAYSA — having caused physical harm or left biological evidence — is reported immediately, so the evidence is primarily based on genetic material and/or physical injuries documented by forensic medical experts. However, in practice, such cases are rare. Reports are often delayed, as most perpetrators are known to the victim or even family members. These acts take place within a power dynamic that can leave the victim feeling unprotected, guilty, fearful, or even threatened. In Argentina, according to data from the program "Las Víctimas Contra las Violencias[4]" (Victims Against Violence), covering the years 2020 and 2021, indicate that in 74.2% of cases, sexual abusers were individuals within the victim's

"Santoro", Ruling No. 290, 27/6/2016; "Funes", Ruling No. 398, 12/9/2016; "Llanes", Ruling No. 352, 11/8/2016; "Vizgarra", Ruling No. 504, 22/11/2016; "Oviedo Yoldes", Ruling No. 528, 30/11/2016; "Flores", Ruling No. 103, 7/4/2017; "Alfonso", Ruling No. 216, 22/6/2018; "Zuccarelli", Ruling No. 228, 4/8/2020.

3 Superior Court of Justice of the Province of Córdoba, Argentina, Criminal Chamber: "Sánchez", Ruling No. 84, 4/5/2012; "Martínez", Ruling No. 268, 13/4/2013; "Delfino", Ruling No. 299, 4/10/2013; "Peralta", Ruling No. 328, 25/10/2013; "Amato" Ruling No. 403, 11/12/2013; "Ramos", Ruling No. 276, 5/8/2014; "Benegas", Ruling No. 34, 13/3/2015; "Cort", Ruling No. 237, 6/6/2016; "Vizgarra", Ruling No. 504, 22/11/2016; "Orellano", Ruling No. 50, 8/3/2017; "Maldonado", Ruling No. 324, 3/8/2017; "Carabante", Ruling No. 487, 3/11/2017; "Rojas", Ruling No. 498, 13/11/2017; "Mamonde", Ruling No. 309, 3/8/2018; "Castellari", Ruling No. 291, 4/9/2020.

4 UNICEF. (2020-2021). *Serie Violencia contra Niñas, Niños y Adolescentes: Un análisis de los datos del Programa Las Víctimas Contra Las Violencias*. (Nº 9). This study was presented by UNICEF Argentina based on data from violence cases addressed through the National Hotline 137 of the "Las Víctimas Contra Las Violencias" Program, under the Ministry of Justice and Human Rights of the Argentine Republic.

close circle—56.5% were family members, while 17.7% were non-family acquaintances. Additionally, within the family environment, 44.4% of child and adolescent victims were abused by their father or stepfather (24% by their father and 20.4% by their stepfather). Similarly, the Specialized Prosecutor's Unit on Violence Against Women in Argentina, in its protocol for investigating and litigating cases of sexual abuse, states that: "Individuals affected by sexual crimes within the family environment often remain silent due to fear, guilt, helplessness, or shame". [5]

For these reasons, children's testimonies, their symptoms, and their behavior become key elements in the evidentiary process. This is where the application of the false PAS becomes a strategic tool for pedophiles and child abusers, as it allows them to discredit the child's testimony, shift the blame onto the mother, and ultimately secure impunity.

In 2013, the Family, Women, Childhood, and Adolescence Commission of the Argentine Chamber of Deputies expressed

> its concern over the use of the false PAS in criminal and family court proceedings, stating that PAS contradicts Law No. 26.061 on the comprehensive protection of children and adolescents' rights, and lacks scientific support or recognition from the scientific community.[6]

Along the same lines, the Federation of Psychologists of the Argentine Republic declared in 2019 that PAS has no scientific basis and warned professionals and the public about the dangers of its use.[7] More recently, the UN Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem, issued a thematic report[8] opposing the use of PAS. However, in Argentina, this false syndrome continues to be invoked subtly or implicitly, alongside other pseudoscientific theories with similar characteristics and objectives, such as "memory implantation," "co-construction of

5 "Protocolo de investigación y litigio de casos de violencia sexual" (Protocol for the Investigation and Litigation in Cases of Sexual Violence) developed by the Specialized Prosecutor's Unit on Violence Against Women (UFEM), Public Prosecutor's Office of the Argentine Republic, 2023.

6 Family, Women, Childhood, and Adolescence Commission. Honorable Chamber of Deputies of the Argentine Nation, Regular Sessions, Agenda No. 2253, 2013.

7 Statement: "Ataque a psicólogos y psicólogas que intervienen en la temática de abusos sexuales contra la niñez", Federación de Psicólogos de la República Argentina, 2019.

8 United Nations, General Assembly, Human Rights Council, 53rd session, Report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem. Custody, violence against women and violence against children, A/HRC/53/36, April 13, 2023.

memories," and "contaminated discourse".[9] The way PAS is introduced into legal proceedings complicates judicial practice, as it operates indirectly within the evidentiary process, making it difficult to identify and expose it.

In various court proceedings involving CAYSA, as shown in the excerpts below[10], it is evident that both judicial operators and defense lawyers support the use of the false PAS:

1. Regarding expert examination: in requesting a forensic psychological evaluation of a CAYSA victim, the court order states: "The girl should be assessed to determine whether she has been psychologically influenced by her mother or another person to hold negative or accusatory views of the accused, particularly concerning sexual matters. That is, whether the mother has manipulated the child with the intent of incriminating the accused".
2. In a forensic interview, the girl stated that "her mom had taught her to say the word 'vulva' and had also told her that no one could touch her private parts", prompting the defense lawyer to request a psychological examination of the mother to determine if she had influenced the girl.
3. Regarding mother's forensic examination. We can observe that in many cases of child sexual abuse, psychological assessments are conducted on mothers to investigate whether they have a "tendency to manipulate or influence" their children.

These situations often arise during the preliminary criminal investigation, frequently leading to case dismissals, acquittals without trial[11], or the accused being found not guilty at trial.

9 These pseudotheories suggest that psychologists implant false memories of events that never happened, that children's memories are co-constructed by an adult—usually the mother—or that their testimony is contaminated by the discourse of the mother or an important caregiver.

10 These cases are still under investigation and are subject to judicial secrecy, which means their full references are not accessible, as only the parties involved are allowed access them.

11 Translation note: In the original Spanish text, the term "sobreseimientos" is used. The criminal justice process in Argentina consists of two stages. The first is the Instruction Stage, during which the prosecutor conducts the initial investigation and gathers evidence. At this stage, the prosecutor may choose to "close" the case, meaning it is dismissed without charges against the accused. If new evidence emerges later, the case can be reopened, and the investigation resumed. Alternatively, the prosecutor may request the judge to issue a "sobreseimiento", which results in the case being permanently and definitively closed in favor of the accused during the instruction stage. The third possibility, if the evidence suggests a reasonable likelihood that the crime occurred, is for the prosecutor to request that the case proceed to trial. The second stage is the Oral Trial. At this stage, the court may convict the defendant if it determines beyond a reasonable doubt that the crime took place and was committed by the accused. Conversely, the court may acquit the defendant, which also leads to the total and final closure of the case in favor of the accused, but this time at the trial stage.

As a result, these mechanisms cast doubt on the testimony of children, relying on an adult-centered system that undermines the children's right to be heard[12]. This directly violates the rights enshrined in the Convention on the Rights of the Child, which Argentina ratified in 1990.

Through the invocation of the false PAS, we observe not only the violation of children's rights — who, in the first place, have been victims of a crime against their sexual Inviolability and, consequently, against the normal development of their sexuality according to their age — but also a further violation of their right to be heard, perpetrated by the judicial system, thereby constituting institutional violence.[13]

Similarly, we also observe the violation of the rights of the mothers who protect these children. Mothers who listen to their children's testimonies, believe them, and decide to support them in putting an end to these violations of their rights are then subjected to violence by the judicial system through the use of gender stereotypes — those generalized and preconceived ideas about how women supposedly are. In this way, children's voices are discredited. The most common stereotypes applied in the enforcement of the false PAS are those of "the lying or deceitful woman" (which suggests that women tend to "lie", "fantasize", or "fabricate stories") and "the manipulative woman" (accused of using criminal law to "harm the father" and "gain an advantage").

In Argentina, protective mothers[14] have organized against the epidemic of child sexual abuse and the impunity granted to perpetrators. In response to this movement of women, an organized movement of men has emerged[15], promoting *narratives* against mothers who report child sexual abuse. They claim that these mothers file "false reports" to prevent children from having contact with their fathers.

Among the numerous cases of criminalization of protective mothers in Argentina is that of Flavia Saganías[16], who was sentenced to 23 years

12 Art. 12 Convention on the Rights of the Child. This Convention has acquired constitutional hierarchy in the Argentine State, established in Article 75, paragraph 22 of the National Constitution, since the constitutional reform of 1994.

13 National Law 26.485, Article 6, Section B: "Institutional violence against women: violence perpetrated by officials, professionals, staff, and agents belonging to any public body, entity, or institution, with the purpose of delaying, obstructing, or preventing women from accessing public policies and exercising the rights established in this law. This also includes violence exercised within political parties, labor unions, business organizations, sports institutions, and civil society organizations".

14 Fundplata presented a report on 'protective mothers' and the situation in the city of La Plata. https://fundplata.org.ar/fundplata-presento-informe-sobre-madres-protectoras-y-la-situacion-en-la-ciudad-de-la-plata/. Instagram @madresprotectorasargentina

15 Some of these organizations in Argentina are: APADESHI (Asociación de padres alejados de sus hijos), Padres Impedidos, among others.

16 Flavia Saganías: Confié en la verdad y en la justicia, y termine presa. (2022). La Tinta. https://latinta.com.ar/2022/04/27/flavia-saganias-justicia/ Instagram: @justiciaparaflaviasaganias

in prison for a crime she didn't commit. Flavia reported the sexual abuse of her daughter; the justice system did not believe her, nor did it respect the child's pace in the investigation, ultimately dismissing the complaint. In response, Flavia made a Facebook post, publicly *exposing* what had happened. Following this, Flavia's mother and brother assaulted the accused, and she was implicated in the case as an instigator, resulting in her conviction and 23-year prison sentence.

Another case is that of Lila[17], a child whose mother was not only disbelieved when she reported her ex-partner's violence, but also when she denounced him for sexually abusing their daughter. As a result, the mother had her parental rights and custody suspended, preventing her from seeing her daughter since February 2023.

In conclusion, gender stereotypes, sexism, and adult-centered perspectives create a society where justice for abused children does not exist; instead, there is revictimization and the violation of their mothers' rights. We must develop strategies to dismantle a societal framework that is more willing to label a woman as manipulative and deceitful than to believe a child's testimony about their own experience of sexual abuse.

To this end, it is essential to focus on several key aspects:

1. Stance of the scientific community

Ensure that international and national organizations and agencies, branches of government, non-governmental organizations, professional associations, and experts take a clear stand against this false syndrome and similar pseudotheories.

2. Training for judges, officials, and court staff

Establish critical training spaces for court staff, including public prosecutors, judges, and other legal professionals, to raise awareness about the rights of children, adolescents, and women, as well as the existence of these pseudotheories and the risks and negative consequences of their application.

3. Authorization of the active participation of victims in criminal proceedings

Promote the enactment of legislation that guarantees the effective exercise of victims' rights within the criminal justice process, emphasizing the need for the active hearing of children and protective mothers. Ensure

17 Cosquillitas case: A year ago she was separated from her mother after reporting abuse (2024). Page 12. https://www.pagina12.com.ar/713178-hace-un-ano-la-separaron-de-su-madre-luego-de-que-denunciara. Instagram: @justiciaxlila

comprehensive support, including free legal advice and representation, to accompany victims throughout the proceedings.

4. Strategic litigation in court cases

Provide strategic legal support in cases where these pseudotheories are invoked, with the goal of establishing court precedents rejecting the use of these pseudotheories. This includes filing appeals, submitting *amicus curiae* briefs, presenting expert witness reports, and securing statements from relevant organizations and institutions regarding legal proceedings.

How does a non-existent illness or syndrome become incorporated into family laws and judicial practices?

Ana Lima[1]

From the experience in Uruguay[2], I present some hypotheses to try to answer the question: How does a non-existent illness or syndrome become incorporated into family laws and judicial practices?

The non-existent illness or syndrome referred to in the question is the parental alienation syndrome (PAS). Once a non-existent disease, PAS was easily incorporated into the practices of a patriarchal, misogynistic judicial system, heavily influenced by discriminatory stereotypes about women, promoting double standards in judgments of identical behaviors, depending on the person exhibiting them. PAS is a condition that is typically "diagnosed" during child custody and visitation proceedings, and it is often brought up by fathers who have been accused of violence and/or sexual abuse against women and children. These fathers claim that women wrongfully deny them contact with their children. Strangely, this syndrome can supposedly be cured through two main judicial decisions: shared custody and/or forced contact between children and their perpetrators.

1 Ana Lima is a feminist lawyer with over 20 years of experience in human rights and the rights of women, girls, and boys. She holds a PhD in Law and Social Sciences from the Law School of the University of the Republic in Montevideo, and has extensive experience in advanced studies and field research. She is also the co-drafter of the Uruguayan domestic violence bill (Law No. 17514). For 13 years, from 1989 to 2002, Ana served as a criminal judge, thus contributing to the administration of judicial issues in her community. She is currently a human rights and gender consultant and the national coordinator of CLADEM Uruguay.

2 This article is based on both the lecture given at the strategic meeting in Rio de Janeiro in September 2023, organized by CLADEM and the Global Campaign for Equality in Family Law, and the research titled "Alienación parental y su avance en cinco países de la región. Identificación de actores claves" (Parental Alienation and Its Progress in Five Countries in the Region. Identification of the main stakeholders). CLADEM Uruguay report, written by Estela de Armas, Ana Lima and Ivana Messano.

A timeline is helpful for understanding how legislative advances in the protection of women's rights unfold, while also illustrating how conservative, anti-rights groups respond and organize in reaction to these changes.

Timeline

In 1995, the crime of domestic violence was incorporated into the Uruguayan Penal Code. Supposedly neutral, it faced difficulties in being effectively enforced due to the lack of understanding among judges and criminal prosecutors about violence against women, girls, boys, and adolescents, its various manifestations, how it occurs, the unequal power dynamics that sustain it, its systemic nature, and, especially, the harm it causes to victims and society as a whole. The judiciary expects these issues to be handled in family courts, disregarding the fact that they are crimes against the life and the physical and emotional well-being of the victims.

In 2002, Law No. 17,514 was enacted[3], the first civil law against domestic violence. This was the result of the Alternative Report issued by CLADEM Uruguay to the CEDAW Committee[4], which stated that there is no *de facto or de jure* equality in Uruguay and recommended the adoption of a civil law against domestic violence. The law was the result of the joint efforts of feminist organizations and legislators from all political parties, overcoming resistance from men within those same parties.[5]

Just like in Argentina, during the same historical period, there was a strong reaction to this progress, and the pseudo-syndrome of parental alienation was openly incorporated into judicial practices. It emerged from the fields of psychology and social work as forensic support to judicial decisions regarding child arrangement proceedings in cases involving violence against women, even when the violence was perpetrated in front of the children. Judges argue that while violence against women may exist, this does not necessarily mean it is also directed at the children. The ideal, heterosexual, perfect family is not just the model to be followed; it is the imaginary model that guides judicial decisions. The conspiracy theory, claiming a plot between mothers and professionals against the father, is frequently used to explain the child's refusal to visit their father and the woman's opposition to leaving her child unprotected. There are even rulings from the late 90s that emphasize the importance of maintaining contact based on biological ties, despite any reports made by mothers.

3 Law 17.514/2002. https://www.impo.com.uy/bases/leyes/17514-2002

4 https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=URY&Lang=EN

5 https://guiaderecursos.mides.gub.uy/innovaportal/file/19693/1/2_plan_nacional_de_lucha_contra_la_violencia_domestica_2004-2010.pdf.

From 2005 onwards, and over the past few decades, a series of legislative and state actions aimed at protecting historically vulnerable groups, primarily women, LGBTQIAPN+ communities, and children, have been proposed due to the advocacy of feminist organizations and the feminist movement.

Uruguay advanced with a national framework and led a regional framework such as the Montevideo Consensus (2013[6]), the most progressive, comprehensive, and intersectional framework for the recognition and protection of sexual and reproductive rights, the right to live free from violence, based on human rights, with a gender perspective, generational approach, and the inclusion of historically and structurally vulnerable groups. At the same time, each initiative for change sparked resistance, some of which materialized in concrete actions aimed at halting or reducing the positive impacts of such progress.

The anti-rights backlash

Since 1995, anti-rights organizations have been active in Uruguay, including groups such as: S.O.S Papá, Stop Abuso Uruguay, Todo por nuestros hijos ya, Colectivo masculino, Familias Unidas por Nuestros Niños, Con mis hijos no te metas, Colectivo Papás Presentes, Abuelas sin nietos, Varones Unidos, among others[7]. "Stop abuso" and "Todo por nuestros hijos ya" are the organizations leading this anti-rights offensive.

According to information on their *websites*, they offer socio-legal assistance, possess financial resources, receive political support and fundamentalist religious backing (Opus Dei), and count among their members: lawyers, psychologists, judges, and academics. They have even managed to register with the National Human Rights Institution.

We find the following in their networks:

> The government authorities have acknowledged they have not been able to handle Domestic Violence (what a surprise). The day they [the authorities] recognize that violence is entrenched in society — largely due to their own actions, such

6 https://www.cepal.org/pt-br/publicaciones/21884-consenso-montevideu-populacao-desenvolvimento and https://cladem.org/noticia/10-anos-del-consenso-de-montevideo-un-compromiso-por-la-igualdad-y-la-democracia.

7 http://www.sospapa.com/, https://www.facebook.com/p/Stop-Abuso-Uruguay-100066819458601/, https://www.todopornuestroshijos.com.uy/ , https://www.facebook.com/colectivoMasculino/ , https://familiasunidas.net/ , https://www.facebook.com/ConMisHijosNoTeMetasUruguay/ , https: //www.facebook.com/groups/402498124846069/ , https://varonesunidos.com/

> as creating discriminatory laws, violating the human rights of fathers and children, and preventing the paternal-child bond—along with the presence of judges in many Family Courts who act more like tyrants than judges, among other reasons, and [the day] that [authorities] are strong enough not to be influenced by feminist groups (many of which act out of economic interests), they will realize how significantly violence will decrease. Also, when false accusations are punished and the rule of law functions as it should, people will stop taking the law into their own hands as an alternative to the State's inequity.[8]

Since 2007, the pseudo-PAS has been increasingly used by defenders of abusive fathers. In 2009, judicial rulings began to recognize, give priority, and admit the false PAS. The most notable case involves rulings written by judge María del Carmen Díaz Sierra, a member of the First Family Court of Appeals of Montevideo and a reference on the matter, who has tried to provide scientific grounding for the supposed syndrome, as well as validate its use through comparative law[9]. The judge, who is still serving in the judiciary, has reiterated her stance in other rulings, setting a court precedent. She is a professor at a Law School (Universidad de la República - UDELAR) and has written many articles on what she calls the "legal disease". In that Law School, PAS is part of the course syllabus.

In 2016, the current president, Luis Lacalle Pou, who was then a senator, unsuccessfully introduced a bill proposing mandatory shared custody.

In 2017, Law No. 19,580[10] on Gender-Based Violence Against Women was enacted. This comprehensive law complies with the CEDAW and Belém do Pará Conventions—international human rights standards—by establishing an integrated inter-institutional response system within the Uruguayan state to fulfill its due diligence obligations. It also incorporated sexual offenses in line with these standards; however, the 1930 Penal Code remains in effect, classifying such crimes under its Chapter X as Crimes against family values, good morals, and decency.

8 https://www.todopornuestroshijos.com.uy/, https://www.todopornuestroshijos.com.uy/sap/omunicado/, https://www.todopornuestroshijos.com.uy/sap/

9 Stating that: *"The identification of maternal behavior with alienation corresponds to the term proposed by specialist Richard A. Gardner in 1985, 'Parental Alienation Syndrome' [...] This parental alienation syndrome, which appears in domestic rulings (USA, England, Israel, Spain, France, Italy, Argentina) as well as in decisions with international comprehension (European Court of Human Rights, Elsholz v. Germany), has been defined in Gardner's latest work, published by the American Association of Forensic Psychologists, as: 'a disorder that primarily arises in the context of custody disputes'"* . https://bjn.poderjudicial.gub.uy/

10 https://www.impo.com.uy/bases/leyes/19580-2017

In 2019, Law No. 19,747 was enacted[11], reformulating the Childhood and Adolescence Act and incorporating the doctrine of comprehensive protection for children and adolescents.

In 2020, with a parliamentary majority held by the ruling right-wing and neoliberal coalition, President Lacalle Pou's shared custody bill, backed by the previously mentioned groups, regained traction. Despite the well-founded opposition from the Coalition of Organizations Defending Human Rights and Women's Rights, UNICEF, the Association of Public Defenders, doctors, psychiatrists, and judges, among others, the Parliament simply ignored the opposition. The ruling coalition's legislators argued that the law was necessary because thousands of citizens were allegedly suffering due to biased judicial decisions, which they claimed favored women as victims when, in reality, they were deceitful and filed false accusations to separate children from their fathers, children who, according to those legislators, were unable to express autonomous and independent opinions about their fathers. They further claimed that this obstruction of contact—which they have never proved—was a form of abuse. The proponents of the bill failed to provide any data or reliable information confirming the existence of the alleged false reports and/or arbitrary court decisions.

Thus, they successfully promoted a narrative portraying the legal system as gender-neutral while reinforcing the stereotype of the deceitful, manipulative women and the delusional children who were influenced by their mothers. As a result, eventually**,** in May 2023, Law No. 20,141[12], known as the Co-Parenting Responsibility Law, was passed.

Biased decisions: an example of the argument's fallacy

Examples of judicial practices that violate children's rights are presented and analyzed below. In a visitation proceeding involving a father and his 12- and 15-year-old children—who stated they did not want to maintain contact due to repeated abuse, rather than because their father was homosexual—the judge issued the following decision:

> Although both children are intelligent and have age-appropriate cognitive development, they are deeply affected by the separation of their parents. In the judge's opinion, this, combined with their instinct to protect their mother, hinders their ability to clearly recognize the long-term benefits of maintaining a relationship with both parents. Hearing and listening to a child does not mean strictly following everything they say.

11 https://www.impo.com.uy/bases/leyes/19747-2019.

12 https://www.impo.com.uy/bases/leyes-originales/20141-2023.

As part of the ruling, the judge addressed the children directly, stating:

> Adults sometimes make mistakes; we don't always know how to handle separation issues, matters of sexuality, and so many other things. However, we do the best we can for our children because we love them, even when we make mistakes, even when those we love the most end up caught in the middle of our conflicts.
> **I have listened to you, and I understand that your wish is not to reconnect with your father. However, I do not believe that this is in your best interest. My role is to determine what is best for your growth and well-being [emphasis added]**. And I can tell you that, throughout my life and career, I have seen children grow up without their fathers and still develop meaningful relationships later on. I have seen deep disappointments that have been healed through forgiveness and love. I have no doubt about the love your father has for you. Despite everything working against him—including the fact that you do not want to see him—and while facing his own struggles as an adult (the separation, being judged), he continues to fight tirelessly to see you, to show you his love, to be a present father in your lives, and to ensure your future.

Have the teenagers been heard? No. They were not taken into consideration. It is the adult, the judge, who decides for them and despite them, without considering the context. The focus of the decision is on the adult, who is not questioned or required to demonstrate responsible behaviors; on the contrary, he is protected. The burden of resolving the conflicts of the adult father is placed on the children, making them responsible for forgiving in the name of filial love.

Considering that this example is not an isolated case, but rather that decisions like this are countless, the magnitude of the problem becomes evident. This judicial reasoning violates the principles of impartiality and the obligation of judges to thoroughly, impartially, and exhaustively investigate the case, free from prejudice or stereotypes. Finally, this conduct endangers children, sending a message of impunity while simultaneously fostering a lack of trust in the justice system.

The current Law No. 20,141/2023 and its confrontation with child protection laws

The justification for the passage of this law was based on the unfounded claim of a pattern of false accusations aimed at depriving fathers of contact with their children due to a justice system biased in favor of women.

In the Chamber of Deputies, the real motive for approving the law was made explicit: by labeling mothers' accusations of violence and sexual abuse by fathers as false claims and framing children's estrangement from their fathers as parental alienation, they are explicitly introducing the false PAS, with the aim of annulling Law No. 19,580/2017 (Law on Gender-Based Violence Against Women). According to one deputy (MP), this represents a shift in the paradigm, asserting that children's rights should always have priority over women's rights.

In short, the law distorted the principle of co-responsibility in upbringing children, which serves as a guide for judges in custody and visitation cases. Articles 3, 4, and 5 prioritize shared custody as a general rule and uphold visitation rights between children and parents, even in cases where the parent has been reported for violence, abuse, or mistreatment. The best interests of the child are determined based on their ability to express a thoughtful and autonomous will, which is then assessed by experts appointed by the judge—experts who are not required to have any specific training in the applicable legislation. The law has paved the way for the introduction of the pseudo-concept of PAS, even if it is framed using different terminology.

The law also permits mediation and conciliation and introduces the aggravating circumstance of the crime of false reporting in cases where allegations of violence are made against a co-parent, leading to the issuance of precautionary measures under Law No. 19.580/2017 on gender-based violence against women.

Other discriminatory provisions

In addition to the discriminatory application of supposedly neutral legal provisions against women, such as shared custody, the Uruguayan legal system still upholds other laws that directly violate the rights of women and girls to live free from all forms of discrimination and violence. Below are some examples:

→ **CIVIL CODE**

Minimum age for marriage: 16 years old

Articles 112 and 113 prohibit widows or divorced women from remarrying before 301 days after the death of their spouse or divorced ex-husband.

90 days if they can prove they are not pregnant.

→ **CRIMINAL CODE**

CHAPTER X - CRIMES AGAINST FAMILY VALUES AND GOOD MORALS

CHAPTER III - KIDNAPPING

Article 266 (Kidnapping of a single woman over eighteen, widow, or honest divorced woman)

Anyone who, through violence, threats, or deceit, abducts or unlawfully detains an unmarried woman over eighteen, a widow, or a woman of reputable character for the purpose of engaging in sexual relations or forcing marriage shall be punished with imprisonment from twelve months to five years.

Article 267 (Married woman or woman under 15)

Anyone who, through violence, threats, or deceit, abducts or unlawfully detains a married woman for the purpose of engaging in sexual relations shall be punished with imprisonment from two to eight years.

The same punishment applies to anyone who abducts or unlawfully detains a minor under the age of fifteen for the purpose of engaging in sexual relations or forcing marriage, regardless of whether violence, threats, or deceit are used.

CHAPTER IV - SEXUAL VIOLENCE, GROOMING OF MINORS, PUBLIC INDECENCY

Article 276 (Incest)

Incest is committed by those who, in a manner of causing public outrage, engage in sexual relations with legitimate ascendants, natural or legally declared parents, legitimate descendants, and natural or legally declared children, or with legitimate siblings.

This crime will be punished with imprisonment from six months to five years.

Conclusion

To guarantee women and children's access to justice in Uruguay, the Supreme Court of Justice must take women's rights seriously. However, the place given to family law and family courts is of little importance. In the training of judges, it does not count. At the Center for Judicial Studies (CEJU), the training workload is 20 hours per year of courses, in which studying gender-based violence against women is not mandatory. Civil, procedural, and criminal law are far ahead and above family law. There is no clear message from those in power showing that violence against women, children,

and adolescents will not be tolerated, a message that is crucial to ensure access to justice.

To address the initial question, a significant challenge remains, particularly for feminist organizations and human rights advocates working on this issue: effective communication. Fundamentalist groups excel in at least three areas: 1) they appropriate the language of human rights, historically used to promote justice; 2) they manipulate and distort this language to advance their agenda of undermining human rights norms; and 3) they communicate using simple, non-technical language, with phrases like: "gender ideology incites hatred and destroys families," "children orphaned by living parents," and "women seek revenge," among others.

In other words, they present false narratives as truths and, through this distortion of history, undermine the defense and rigorous application of international laws and standards designed to protect human rights. As an example of this strategy, these groups repeatedly claim that laws protecting women, children, and adolescents in situations of violence violate the principles of equality before the law, the presumption of innocence, and, consequently, due process.

In the case of Uruguay, these groups deliberately conflate and transfer principles from criminal law to family law in their debates and narratives, particularly regarding the application of precautionary measures aimed at protecting the lives of women, children, and adolescents facing violence and/or sexual abuse by their partners/fathers. This distortion of the law and its scope achieves significant results (in favor of abusers), driven by conservative and ultra-conservative legislators, one of whom stated: "Is there a more harmful law than this one?"

An example of this is the misuse of the principle of the presumption of innocence, a fundamental concept in criminal law. These groups have effectively invoked this principle to argue that men are being convicted of gender-based violence "without being heard". It is important to clarify, however, that the crime of gender-based violence itself does not exist as a separate criminal offense. There is no specific criminal tipification for gender-based violence in Uruguay. Femicide is considered a special aggravating circumstance when a man kills a woman, provided that the requirements established for such a circumstance are met.

These groups refer to Law No. 19,580/2017. The situation in Uruguay mirrors what is happening in the region. In 2024, the repeal or modification of essential provisions of the law was formally introduced in Parliament. One of the law bills proposing changes to four articles of the law was submitted by the President of the Republic. In justifying the modifications, it is

stated that they are necessary due to the widely recognized existence of false accusations, meaning, once again an assertion lacking any evidence. The changes are intended to protect the accused and allow them to "prove otherwise" in a pre-trial procedure.

The reference to specific conventions and treaties such as CEDAW, the International Convention on the Rights of the Child, and the Belém do Pará Convention, among others, is removed (Article 3 of the current law) from the principle of interpretation and integration, replacing it with the expression "and treaties related to the subject". This strategy aligns with the argument used repeatedly that the law would privilege women's testimonies, a narrative that distorts the legal principle of interpretation that should be applied to all laws. In cases of convictions for sexual offenses, the provision for compensation under Law No. 19,580/2017 is removed, compelling victims to seek compensation through civil litigation instead.

Furthermore, criminal liability is established for anyone who reports acts of violence against a woman to the authorities. Currently, individuals who report credible acts of violence are exempt from liability. It is clear that this change seeks to intimidate and discourage reporting.

Finally, regarding the technical arguments supporting the statements and opinions of children and adolescents, the accused is allowed to request expert opinions. In this way, the non-existent PAS is introduced into law.

Another principle that these groups transfer from criminal law to family law is the principle of equality. They claim that only women's words are valued and privileged. This is false, since judges use technical risk assessment reports to grant restraining orders. The Supreme Court of Justice has issued many rulings in which it rejected the unconstitutionality of Law No. 19,580/2017 on the grounds that it allegedly violated the principle of equality, the presumption of innocence and, consequently, the due process of law.

Many challenges lie ahead. Feminist organizations and human rights defenders must devise counter-strategies with clear, simple narratives that reach citizens. These groups are unlikely to be convinced, and the goal is not to change their minds. The broader objective is to foster understanding of the utility of legal tools, their appropriate application, and resistance to regressive changes (that lack solid data on the existence of enough false accusations to repeal protective laws), as well as to train lawyers in the proper application of the law.

Being in communication and sharing achievements using different tools is also fundamental. As in the case of the monitoring conducted by CLADEM before Treaty Bodies to assess compliance with international conventions. In

the case of Uruguay, in October 2023[13], during CEDAW's 86th session, the adoption of the law on shared parenting time and shared custody was reported as a serious setback to the comprehensive child protection doctrine and a risk of introducing the false concept of PAS into laws and practices in child arrangement proceedings involving fathers accused of violence. The Committee recommended that Uruguayan judges take into account the context of violence against women when ruling on these matters, establish a monitoring mechanism to ensure that shared custody is effectively implemented, and require courts to consider gender-based violence against women in family relationships when deciding on child custody or visitation rights. Additionally, the Committee urged Uruguay to provide mandatory and ongoing training for prosecutors, lawyers, and public officials.[14]

A clear and sustained narrative must be established to expose the misleading nature of these claims, using activities, articles on social networks, and vigilant monitoring of all attempts to roll back protections, alongside the organized response of feminist organizations and child advocates.

Another essential area is the training of lawyers and legal professionals who work in litigation, to ensure the proper use of all these tools. In this regard, the global alliance in which CLADEM participates, dedicated to eradicating discrimination in family law, is vital in bringing global visibility to the issue.[15]

Other crucial partnerships are those that can be established with the media and allied journalists, creating a continuous flow of reliable, rigorous and respectful information about the reality of the courts of justice and judicial practices. A key tactic of these anti-rights groups to change the law, focusing on the inefficacy of protective rights, should be countered by emphasizing that the issues or supposedly unjust situations are not generated in the legal text itself, but in its application. The enforcement of laws requires adequate budgets, training, and strengthening of public defenders.

The disaggregation of reliable data on the magnitude of so-called false reports, as well as the clarification that simulating a crime is already criminalized, at least in Uruguay, is central. It is also important to strengthen the reporting of judicial violence in all regional and universal monitoring bodies for treaties and conventions, as well as at the national level, reinforcing the State's duty to protect and refrain from violating rights, while adhering to the principle of non-regression of rights.

13 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FCSS%2FURY%2F55780&Lang=en.

14 https://www.ohchr.org/en/documents/concluding-observations/cedawcuryco10-concluding-observations-tenth-periodic-report

15 https://equalfamilylaws.org/

Parental Alienation in Mexico

María Guadalupe Ramos Ponce[1]
María del Pilar Delgado Ortiz[2]

Parental Alienation Syndrome (PAS) was coined by the American (U.S.) psychiatrist Richard Gardner in 1985, and it is described as the situation in which a child is manipulated by one parent to turn against the other and resist contact with him/her.

The discussion concerning the concept of parental alienation (PA) is not new in Mexico. More than a decade ago it began to emerge in different areas, as a family law issue which would directly affect the principle of the best interests of the child and as a human rights issue. The National Human Rights Commission compiled an analysis of these aspects several years ago, publishing in 2011 a collection of texts that address parental alienation from different perspectives.[3]

In this compilation, the text *Alienación parental y derechos humanos en el marco jurídico nacional. Algunas consideraciones* (*Parental Alienation and Human Rights in the National Legal Framework: Some Considerations*) by Lucía Rodríguez Quintero conceptualizes parental alienation as:

> The behavior carried out by the father or mother who has primary custody of the child and engages in acts of manipulation with the purpose of making the child unjustifiably hate, fear, or reject the non-custodial parent (translated).

This definition is based on the human rights approach, which emphasizes the principle of the best interests of the child.

1 María Guadalupe Ramos Ponce is a feminist lawyer and research professor at the University of Guadalajara, Mexico. She is the National Coordinator of CLADEM in Mexico.

2 María del Pilar Delgado Ortiz is the coordinator of the Legal Department of Ver eda Themis - Legal Defense and Education for Women S.C. She is a member of CLADEM Mexico .

3 http://appweb.cndh.org.mx/biblioteca/archivos/pdfs/allienacionParental_2aEd.pdf

Meanwhile, Valdez, H., and Santana, M., in their text *Avances de la alienación parental y su regulación en el Estado Mexicano*[4] *(Advances in Parental Alienation and Its Regulation in the Mexican State)*, highlight that, various states in Mexico have incorporated PA into their civil codes[5], recognizing its different impacts on children and adolescents in cases of separation, divorce, and custody disputes. However, within these legal frameworks, errors in interpretation and application have been identified.[6]

As a precursor to the institutionalization of this legal figure in the country, in 2014 the Mexico City Assembly (CDMX) made an addition and reform to the Civil Code in which it incorporated PA into Article 323 *Septimus*. In this article, PA was described as a form of family violence in which a child's or adolescent's perception was altered to the extent that it disrupted their relationship with one of their parents. This transformation could be carried out by any family member, and if such behavior was proven, parental authority would be suspended, along with the alienating parent's residence time. Thus, if the alienation was considered to be grave, the relationship with the mother or father had to be completely interrupted.

Fortunately, in 2017, Mexico City Assembly itself repealed article 323 *Septimus* of the Civil Code, considering that this precept, which apparently protected children and adolescents, actually violated their rights. The interpretation of this legal figure violated the legal and conventional principles established in the General Law on the Rights of Girls, Boys, and Adolescents (LGDNNA)[7], as well as in the Convention on the Rights of the Child (CRC), ratified by Mexico[8].

Parental alienation was incorporated into the Civil Legislation of the State of Oaxaca in 2016, through Decree number 1,380[9]. Parental alien-

4 Valdéz, H. & Santana, M. (2022). Avances de la alienación parental y su regulación en el Estado Mexicano. *Saber, Ciencia y Liberdade,* 17(1), 110–137. https://doi.org/10.18041/2382-3240/saber.2022v17n1.8469

5 In the case of Mexico, as it is a federated country, each state of the Republic has its own civil code and therefore there are different regulations in this regard.

6 In Mexico, each one of the 32states that form the federal state is called a federative entity. Thus, Mexico's political division is made up of 32 federal entities: Aguascalientes, Baja California, Baja California Sur, Campeche, Coahuila, Colima, Chiapas, Chihuahua, Durango, Distrito Federal (now Mexico City or CDMX), Guanajuato, Guerrero, Hidalgo, Jalisco, México, Michoacán, Morelos, Nayarit, Nuevo León, Oaxaca, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tabasco, Tamaulipas, Tlaxcala, Veracruz, Yucatán and Zacatecas. Provisions on parental alienation are currently present, through different variations of the concept, in the civil laws of some states of the Mexican Republic, including: Aguascalientes, Baja California Sur, Coahuila, Colima, Durango, Guanajuato, Jalisco, Michoacán, Morelos, Nayarit, Nuevo León, Querétaro, Tamaulipas, Veracruz, Yucatán and Baja California.

7 https://www.gob.mx/sipinna/documentos/ley-general-de-los-derechos-de-ninas-ninos-y-adolescentes-reformada-20-junio-2018

8 https://portales.segob.gob.mx/work/models/PoliticaMigratoria/CEM/UPM/MJ/II_20.pdf

9 http://187.217.210.214/62/decretos/files/PODLXII_1380.pdf Decree 1380 of 2016

ation was classified as a form of family violence in Article 336 Bis B and as grounds for the loss or suspension of parental authority in Article 459, Section IV. And in Article 429 Bis A, parental alienation is defined as:

> the manipulation or influence carried out by one parent toward their child through disapproval or criticism aimed at causing the child to reject, resent, hate, fear, or despise the other parent (translated).

An important step was taken by the Supreme Court of Justice of the Nation (SCJN) in the action of unconstitutionality 11/2016, filed by the Human Rights Ombudsman of the People of Oaxaca against the incorporation of parental alienation into the Civil Code of Oaxaca. The Plenary of the SCJN analyzed the unconstitutionality of the aforementioned provisions; and finally the LXIV Legislature of the Congress of the State of Oaxaca, in 2021, repealed them[10].

The Supreme Court's ruling on the unconstitutionality action allowed PA to be studied in depth by the plenary of Mexico's highest court.[11] Among other considerations, the Court noted that there was no consensus in specialized doctrine on how to conceptualize, regulate, or define parental alienation. It also noted that including PA in family conflicts arising from parental separation could impact children, leading them to reject any form of contact or communication with one of the parents.

In its resolution, the SCJN argued that the causes of this behavior involve multiple factors, which may even be influenced or justified by negative or inappropriate actions from the rejected parent. It further emphasized that there may not be an objective justification for the child's behavior, even in the context of a family separation dispute. The root cause of the rejection against one parent must be examined to determine whether it stems from influences or actions that violate the rights of the child or adolescent, carried out by the other parent or any other family member. To conclude, it was stated that the existence of these situations can cause damage to the holistic development of the child, including psycho-emotional damage.

reforms art. 336 Bis B, art. 459, item IV and art. 462, item IV, and adds art. 429 Bis A and art. 429 Bis B, all of the Civil Code of Oaxaca.

10 https://www.congresooaxaca.gob.mx/docs64.congresooaxaca.gob.mx/documents/legislacion_estatals/Codigo_Civil_del_Estado_de_Oaxaca_(Ref_dto_2888_aprob_LXIV_Legis_22_oct_2021_PO_49_6a_secc_4_dic_2021).pdf

11 https://bj.scjn.gob.mx/doc/sentencias_pub/PCqZ3XgB_UqKst8ooJ2c/%22Ingenuos%22

It is also important to distinguish parental alienation from parental alienation syndrome. For Montaño[12], who distinguishes between PA and PAS, the first is viewed as a tool through which the custodial parent seeks to discredit the other parent in order to hinder or prevent their relationship. These actions can have psychological effects, including emotional distress and suffering in children and adolescents, as well as disrupting the child's bond with the non-custodial parent. Regarding the second, Montaño describes it as the unjust rejection of a child by one of their parents, often resulting from the so-called "implantation of false memories" or "programming" process, typically initiated by the non-custodial parent. These actions are imposed on the child or adolescent through a series of negative behaviors and emotions, including defamation of the alienated parent and the unjustified rejection or fear the child develops toward that parent. This can lead to a psychological or emotional disturbance in the child or adolescent.

However, as the SCJN points out in the aforementioned action of unconstitutionality 11/2016, none of these concepts are based on scientific studies or legal doctrine.

According to Mexican law, PAS has no scientific basis, but different legal systems in the country recognize the existence of parental manipulation that produces negative effects on the psyche of those who are subjected to such manipulation.

It is also recognized that such manipulation is a form of psychological violence, which can be part of intrafamilial violence and that any family figure can be the one who carries out the manipulative behavior: father, mother, grandparents, siblings, uncles, cousins, etc.

It should also be emphasized that, in cases of parental manipulation, the negative effects on the person subjected to such manipulation and the measures taken to address it (such as protective or restraining orders) must be carefully considered in light of the child's best interests. It is important to avoid making definitive claims about a change in the child's perception or mindset.

When making decisions regarding parental authority, child custody, and parenting time-sharing, it is important to recognize that the right to maintain a relationship with both parents belongs to the child. Additionally, priority should be given to the child's perspective, taking into account their age and level of cognitive development.

The mere act of manipulation should not automatically lead to the separation of the child from the manipulative parent. Instead, it should prompt ordered psychological or psychiatric follow-up for both the manipulative

12 Montaño Barreto, C. E. (2019). Alienación parental, custodia compartida y los mitos contra su efectividad. Un desafío al trabajo social. *Social Perspectives*, 20(2). https://perspectivassociales.uanl.mx/index.php/pers/article/view/73

parent and the child affected by the manipulation, with decisions made on a case-by-case basis. It is essential to distinguish the origin of manipulation or the actual existence of physical or emotional abuse. Expert opinions are crucial and should be aimed at delving deeper to identify the real causes of the rejection experienced by the affected party. Above all, they must be based on the premise that the general rule is that children have the right to live with both parents for their healthy and balanced physical and emotional development (unless it is contrary to their best interest). Decisions regarding custody and visitation schedules must be issued by judges and must be guided solely by the principles of suitability, capability, and convenience. The child's well-being should be prioritized, and sanctions based on the concept of parental alienation should not be imposed.

Finally, in Mexico, parental alienation is currently addressed, with different variants, in the civil laws of some states of the Mexican Republic, including Aguascalientes, Baja California Sur, Coahuila, Colima, Durango, Guanajuato, Jalisco, Michoacán, Morelos, Nayarit, Nuevo León, Querétaro, Tamaulipas, Veracruz, Yucatán, and Baja California.

In conclusion, the Supreme Court of Justice of the Nation (SCJN), in a full court session, declared that:

> There is no scientific or academic consensus on the phenomenon known as "parental alienation". Despite multiple proposals for its conceptualization and empirical evidence from some researchers, the results reveal contradictory positions. Some recognize its existence and attribute a specific origin to it, while others acknowledge it as having a multifactorial origin, and still others deny it on the grounds that there is no solid scientific foundation to support it.[13]

Currently, there is still a disparity of legislative criteria across the country, and a considerable number of feminist activists and civil associations advocating for the rights of children, adolescents, and women, disapprove of the acceptance of PAS. They warn that its recognition prevents the detection of abuse and violence against children, and that this figure fosters discrimination and creates gender-based stereotypes, which particularly affect women and children during separation and divorce proceedings, as an expression of hate or vengeance between parents.

Therefore, PAS is a socially and culturally controversial term that stigmatizes women as manipulators and children as liars.

13 https://bj.scjn.gob.mx/doc/sentencias_pub/PCqZ3XgBUqKst8ooJ2c/%22Ingenuos%22 paragraph 31.

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Rangel Hernández, Laura M. [s.d.]. "El control de las omisiones legislativas en México. Una invitación a la reflexión", La ciencia del derecho procesal constitucional. Estudios en homenaje a Héctor Fix-Zamudio en sus cincuenta años como investigador del derecho, t. VIII. *Procesos constitucionales orgánicos*, México, UNAM, Instituto de Investigaciones Jurídicas. https://archivos.juridicas.unam.mx/www/bjv/libros/6/2553/26.pdf

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The institutionalization of violence against women and children in family law in Puerto Rico

Maricarmen Carrillo Justiniano[1]

Introduction

The feminist movements in Puerto Rico achieved important reforms in private and public law regarding family issues. These changes marked a paradigm shift by challenging the traditional, oppressive concept of *family*, where violence could previously occur with impunity. Intimate partner violence, along with the needs arising from it, was reframed as a public issue. As a result, the State became responsible for implementing measures of care, prevention, and protection to safeguard families affected by violence.

Sectors of society opposed to gender equity and women's human rights employed complex and diverse strategies to ensure the perpetuation of abusive family relationships. They succeeded in implementing a series of child custody-related reforms based on a distorted notion of the best interests of the child, tied to the principle of maximum contact with both parents. As a result, Puerto Rico became one of the few jurisdictions in the world to explicitly recognize, through legislation, the concept of parental alienation as acceptable evidence to be taken into consideration in child custody proceedings.

This article will discuss how this new legislation and public policy institutionalizes violence against women and children. It also exposes the factors that made this alarming setback in human rights possible and its impact on Puerto Rican families.

1 Maricarmen Carrillo Justiniano JD, LL.M. , co-coordinator of CLADEM-Puerto Rico.

Puerto Rico: historical, political and socio-economic context

Puerto Rico is an archipelago[2] in the Caribbean Sea. It became a colony of the United States of America (USA) after being ceded by Spain in 1898 following the Spanish-American War. Since then, Puerto Rico has remained under the sovereignty of a foreign political power that unilaterally determines its residents' fundamental rights and political *status* in accordance with the colonizer's interests.

Today, Puerto Rico is a Spanish-speaking country considered an unincorporated territory of the United States, subjected to the full authority of the U.S. Congress without voting representation. According to the U.S. Supreme Court, the recognition of such plenary powers was deemed necessary for the development of the "U.S. Empire" due to the "inherent racial difference" of the native population in its newly acquired territorial possessions.[3] This undemocratic, racist, and discriminatory legal doctrine remains in effect today.[4]

Puerto Rico's colonial *status* also means it is subject to the international obligations assumed by the United States. Consequently, its opportunities for advocacy in defense of human rights at the international level are limited. As a result, Puerto Rico's situation is often overlooked and excluded from international and federal discussions and the development of public policy strategies led by organizations and influential figures regarded as authorities on issues impacting human rights.

In addition, Puerto Rico faces greater challenges that exponentially increase the vulnerability of women and girls. As a Caribbean archipelago, it is susceptible to the effects of climate change. Besides its ongoing crisis due to poor planning and response to natural disasters[5], Puerto Rico also faces the impact of austerity measures imposed during the re-

2 The Puerto Rico archipelago is just over 110 miles [180 km] long and 40 miles [65 km] wide; it is composed of its main island, 4 smaller islands and hundreds of islets.

3 Downes v. Bidwell, 182 U.S. 244, 286-287 (1901).

4 The Supreme Court of the United States has responded to a series of controversies related to laws imposing different treatment on its territories. These cases are known as the Insular Cases, in which a legal theory was created to justify the selective application of fundamental rights recognized in the U.S. Constitution to unincorporated territories, even when their residents were U.S. citizens. Balzac v. Puerto Rico, 258 U.S. 298 (1922); United States v. Vaello Madero, 596 U.S. 159 (2022).

5 Quiles, Cristina & Nieves Torres, Valeria (October 6, 2022). Sin Plan el Gobierno para enfrentar el aumento de la violencia de género tras los desastres. *Centro de Periodismo Investigativo*. Puerto Rico. https://periodismoinvestigativo.com/2022/10/sin-plan-el-gobierno-para-enfrentar-el-aumento-de-la-violencia-de-genero-tras-los-desastres/#:~:text=Podcast-,Sin%20plan%20el%20Gobierno%20para%20enfrentar%20el%20aumento%20de%20la,sobrevivientes%20de%20violencia%20de%20g%C3%A9nero.

structuring of a public debt, mostly acquired through speculative strategies of private investment firms.[6]

During this state of crisis, we have seen an increase in gender-based violence[7], especially against women and children living in poverty and from historically oppressed populations.[8]

Origin of Family Law in Puerto Rico

The legacy of Puerto Rico's historical colonial *situation* is reflected in its family law. Personal relations were primarily regulated by private law codified in the Spanish Civil Code, extended to the island by Royal Decree in 1889 and coming into force the following year. This regulation continued to govern private and property rights in Puerto Rico with the consent of the new colonizing authority, provided it was "not incompatible with the changes in conditions made in Puerto Rico," in which case it would be suspended by the appointed U.S. authority.[9]

The concept of family—around which the family law inherited from the Spanish Civil Code was codified—was oppressive for women and children. It replicated the asymmetric power relations characteristic of colonial exploitation, shaped according to the interests of the dominant party through subordination and control. This conceptualization of family was even socially and formally recognized and validated by Spanish-speaking authorities.

According to the First Etymological Dictionary of the Spanish Language, the family was defined as "the people who live in a house under the command of the master of that house". In its "natural history" section, it is explained that its origin comes from the word *famulus*, which primitive

6 *Deuda Pública, Política Fiscal y Pobreza en Puerto Rico.* Report presented to the Inter-American Commission on Human Rights, prepared by the International Human Rights Clinic of the Law School of the Inter-American University of Puerto Rico and others. pp. 31-35, 154-181 (April 2016). https://periodismoinvestigativo.com/wp-content/uploads/2016/04/FINAL-Informe-Audiencia-Pu%CC%81blica-PR-4-DE-ABRIL-2016.pdf

7 *La Persistencia de la Indolencia: Feminicidios en Puerto Rico 2014-2018*. (abril de 2023). Projeto Matria e Kilometro Zero. https://www.proyectomatria.org/team-3

8 Tighe, Claire & Gurley, Lauren (May 7, 2018). Datos oficiales de violencia contra la mujer en Puerto Rico no son confiables después del huracán María. *Centro de Periodismo Investigativo*. https://periodismoinvestigativo.com/2018/05/datos-oficiales-de-violencia-contra-la-mujer-en-puerto-rico-no-son-confiables-despues-del-huracan-maria/

9 Fraticelli Torres, M., Un Nuevo Acercamiento a los Regímenes Económicos en el Matrimonio: La Sociedad Legal de Gananciales en el Derecho Puertorriqueño, 39 *Rev. Jur. U. Inter. P.R.* 113 (2004), citing General Order No. 1 of October 18, 1898, signed by Major John R. Brooke, Head of the Department of Puerto Rico. Cited and translated by Muñoz Morales, L., El Código Civil de Puerto Rico: Breve reseña histórica, 1 *Rev. Jur. U.P.R.* 75 (1932), at p. 77.

meaning is "servants". Later, the term was extended to "mean the group formed by the wife, children and other people who live in a house under the command of the lord of the house [or] who are under his power [or] serve [his] orders".[10]

As we can see, the oppressive conceptualization of family was considered part of a natural order in which the man was superior to the woman. The private law inherited from Spain, endorsed by the new political power, legitimized and sustained this imaginary. While both the man and the woman had the legal obligation to contribute to the family as a community, the authority over the disposition and management of the couple's assets and the official representation of the family in legal matters were exclusively delegated to the man. He had parental authority over his children and would not be prosecuted for rape unless he committed the crime against "a woman other than his own".[11]

On the other hand, women were obliged to obey their husbands. Upon marriage, she had to change her surname to that of her husband and could not report him to the police in the case of rape.[12] She did not have parental authority over the children but had the duty to care for them and perform household tasks.[13] She was only recognized as having the ability to act independently regarding her personal assets. That is, her capacity to act would be recognized as long as it did not affect the husband's authority to control all matters related to the couple's assets.[14]

For decades, the Supreme Court of Puerto Rico upheld the discriminatory nature of the legislation that allowed the legal subordination of women within the family. Its justices justified the broad powers of the husband over the administration of the couple's assets based on gender constructs. The supremacy of men over women was described as part of a natural order for the benefit of the family, since the husband, being "stronger, more energetic, more [involved] in society or the external world... is, of course, in

10 Barcia, Roque(1880). *Primer DiccionarioGeneral Etimológico de la lengua española*. Tomo segundo. Madrid (Alvarez Hermanos) the etymology defines it as part of the primitive name "which implies the reason for the word, and the universal reason is the beginning." P. XII /significación más natural y directo de origen p. 351 en su versión económica arreglada y aumentada tomo 4 Madrid : José María Faquineto, Editor, 1887-1889 (Álvarez Hermanos, Impresores) edición corregida y aumentada por Echegaray, Eduardo Edición económica arreglada del Diccionario etimológico de D. Roque Barcia, del de la Academia Española y de otros trabajos importantes de sabios etimologistas. T. Tercero p. VI prólogo.

11 Ramos Buonomo, I. (2000). Discrimen por Género en las Determinaciones Judiciales de Custodia, Patria Potestad y Pensión Alimentaria, 69 *Rev. Jur. U.P.R.* 1055, 1056.

12 Ramos Buonomo , *p . cit.* p. 1056.

13 Parental authority is the set of rights and obligations that parents have over their unemancipated minor children.

14 Fraticelli, *op. cit.* p. 119.

a better position to take this direction."[15] "The husband's right to manage the couple's assets without the wife's involvement [was] clear", affirmed the country's highest court in an opinion issued in 1948.[16]

First attempts to equalize the rights of men and women

The Puerto Rican feminist movement promoted important reforms in family law for the benefit of women in the 1970s. Among the factors that made this possible was the approval of a constitution in Puerto Rico that adopted the principles of international human rights law concerning the inviolability of human dignity and equality of rights for all human beings, regardless of their origin, race, sex, or social condition.[17] Additionally, there was significant influence from international feminist struggles that demanded the recognition of women's rights in all areas of life.[18]

Legislative reforms have focused on eliminating gender discriminatory language. For example, the provision that gave the husband exclusive authority with regard to parental rights[19] and the administration of the couple's assets was removed. Additionally, the language that considered the woman as the innocent party regarding the causes of the separation was eliminated.[20] According to the legislator, "in justice, one cannot argue that women's rights are equated to men's rights and, at the same time, promote the maintenance of situations of privilege for women over men".[21]

A significant change was granting the Court discretion in decisions regarding custody matters. The rule that tied custody decisions to a parent's culpability or blamelessness in the divorce proceedings was abolished.[22] Instead, the best interest and welfare of the children became the guiding principle. According to the legislator at that time, this new principle was essential to ensure that children were "as little impacted as possible by the failure of their parents' marriage." "A person can be a bad spouse and a good parent, or vice versa".[23]

These reforms represented, without a doubt, a great advancement, but their impact on women's rights was limited. Even after the removal of discriminatory provisions, the narratives outlined in the previous paragraphs

15 Fraticelli, *op.* cit. pp. 118-119, quoting *Pérez v. Hawayek*, 69 D.P.R. 50, 56 (1948).

16 *Ibid.*

17 Fraticelli, *op. cit.* pp. 116-117.

18 Fraticelli, *op. cit.* pp. 116-117.

19 Law No. 99 of June 2, 1976.

20 Law 101 of June 2, 1976.

21 *Ibid.* Explanatory memorandum.

22 Law No. 100 of June 2, 1976.

23 Explanatory Memorandum to Law No. 100 of June 2, 1976.

continued to reflect patriarchal discourses that place blame on women for the abuse they endure and burden them with the responsibility of preserving the family unit.

For example, this framing also erases the image of the abusive father after the separation, as the situation is merely referred to as a "failure of the parents' marriage". It is also assumed that all divorces negatively affect children. The law embraced and promoted a traditional view of the nuclear heteronormative family as the institution that responded to the best interests of the children.

Formal equality between men and women would not translate into real equality

Formal equality as a remedy to equalize the rights between men and women did not imply a change in the subordinate reality of many women due to gender inequalities and other social disparities. The Penal Code was not amended to repeal the provision that defined rape as a crime committed against a woman "other than your own". Even with the removal of discriminatory language, public law continued to uphold the notion of the family as an institution where men could wield power and control through violence without accountability.

Real equality was not the aim of the family law reforms. The Puerto Rican legislature was bound by the formalist and universalist vision of equal protection of the law linked to the liberal tradition imposed by the colonial power, and adopted the legal fiction that presupposes the existence of equal conditions and opportunities for all people. On the other hand, it confines the family to the domestic and private spheres, relying on the liberal philosophical dichotomy between the public and the private. This division serves to reinforce legal structures and cultural norms that justify state policies of non-intervention in matters deemed private.[24]

However, we observed the interdependent relationship between the so-called private sphere, the public sphere, and the State. In her book *Más Allá de la Ley: Sexo, Género y Violencia en las Relaciones de Pareja*, Professor Esther Vicente explains that "the structures, practices, and patriarchal relationships that take place within the family are deeply intertwined with and sustained by the State". The construct that separates the public from the private, the personal from the political, and the binary logic that underpins subordinating gender conceptions functioned for decades "as a shield protecting the perpetrator of violence from state intervention and from

24 Vicente, E. (2017). *Más Allá de la Ley: Sexo, Género y Violencia en las Relaciones de Pareja.* Editorial InterJuris. pp. 64-68.

other societal actors". This framework effectively "banished the respect for women's human rights and those of other marginalized groups from political action and analysis".[25]

Domestic violence: a public and political issue

The high incidence of crime, particularly against women in intimate partner relationships, and its extensive media coverage were key factors in fueling a collective outcry against domestic violence. A broad range of movements joined forces with feminist activism to denounce intimate partner violence as a systemic issue that extended beyond the behavior of abusers. The state's failure to intervene made it complicit in this type of violence.[26]

Increasing pressure from Puerto Rican society ultimately led to the recognition of domestic violence as a public and political issue. Society has denounced this form of violence as one of the most critical manifestations of unequal power relations between men and women, a threat to human dignity, and a violation of constitutional rights, particularly those of children.[27] Eventually, after years of struggle, this advocacy led to the enactment of Law No. 54 of August 15, 1989, the "Law for the Prevention and Intervention of Domestic Violence" (Law 54-1989).

The new law established a strong public policy against domestic violence. It recognized intimate partner violence as a distinct and serious social issue, separate from family or intrafamilial violence.[28] The law framed domestic violence as a gendered issue with deep structural roots, requiring a differentiated and integrated response to protect survivors and their families.

Domestic violence was now classified as a criminal offense with legal consequences. Its legal definition was not limited to physical violence, but also included its different manifestations, such as psychological, sexual and economic abuse, which were classified separately as grave offenses. Marital sexual assault would no longer go unpunished.

The key innovation of Law No. 54-1989 was its shift from a purely punitive approach towards offenders to the provision of preventive and protective measures.[29] Criminal, civil, and administrative remedies have been established, each assigned to specific branches of the justice system. The primary objective was to address the basic and safety needs of individuals affected

25 Vicente, E., *op. cit.* pp. 68-71.

26 *Ibid.* pp. 198-203.

27 Explanatory Memorandum to Law No. 54 of August 15, 1989. Art. 1.2 (8 L.P.R.A. § 601) - Domestic Violence Prevention and Intervention Act", as amended.

28 Explanatory Memorandum to Law No. 54 of August 15, 1989. Art. 1.2 (8 L.P.R.A. § 601) - Law for the Prevention and Intervention of Domestic Violence, as amended.

29 *Ibid.*

by domestic violence through a multi-sectoral and inter-agency approach. Five years later, in 1994, the U.S. Congress passed the *Violence Against Women Act* (VAWA), adopting a similar approach. However, the funding required for its implementation depends on periodic reauthorization.

Domestic violence threatens children's well-being

Domestic violence began to be recognized as a threat not only to the survivor but also to the physical and emotional well-being of children. In its definition of psychological violence, Law No. 54-1989 included threats to deprive a parent of custody of their children.[30] In addition, Article 3.2 stipulates that the severity of the crime of abuse increases if the domestic violence occurs in the presence of children and adolescents.

The new policy explicitly acknowledges the complex issues that domestic violence raises when it comes to children. To this end, it provides civil remedies such as obtaining a protection order through a simple and expedited process for determining provisional custody and even suspending the abuser's parental rights (art. 2.1). Through these and other measures, the policy was aimed at adequately responding to the demands for safety and protection of women and children in situations of domestic violence (art. 1.2).

In 1999, the Puerto Rico Civil Code was amended to include a history of domestic violence as a factor that *should* be considered in child custody and parental authority decisions. From that moment, family courts were required to consider this type of violence, its various manifestations, and its impact on both adults and children in the family.[31] The abusive conduct of the perpetrator of domestic violence was presumed contrary to the best interests and well-being of the child, regardless of a prior criminal conviction.

Four years later, a new public policy on comprehensive child protection was adopted. It explicitly recognized the complexity of child abuse and its connection to domestic violence as part of the same matter. The paradigm of comprehensive protection for children and adolescents was framed within their right to "develop, be understood, cared for, and protected as a whole person, with consideration to their needs, rights, and aspirations". Ensuring "justice for Puerto Rican children and families" required a strong policy against all forms of violence and measures that promoted "a more dignified living environment and a life free from violence".[32]

30 Explanatory Memorandum to Law No. 54 of August 15, 1989. Art. 1.3 (x) - Law on Prevention and Intervention in Domestic Violence", as amended.

31 Act No. 233 of August 13, 1999, to include Article 107 and amend Article 166A of the Civil Code of Puerto Rico of 1930, now repealed.

32 Art. 3, Law no. 177 of August 1, 2003, as amended, "Law for the Welfare and Comprehensive Protection of Children", repealed shortly afterwards.

As part of the new measures, acts of domestic violence perpetrated in the presence of a child were classified as child abuse.[33] In such cases, the State was required to ensure that the child was not removed from the custody of the domestic violence survivor without first taking appropriate steps to separate the abuser from the home and hold them accountable for their violent behavior.[34] Additionally, children were granted the right to be heard in all proceedings initiated under this law.[35]

These new policies have challenged the paradigm of the traditional nuclear family as the ideal model for the best development of children. Families would no longer be, at least as a matter of public policy, spaces where one parent could perpetrate coercive control against the human rights of family members without facing accountability. This shift triggered reactions from "social forces opposed to women's interests".[36]

Responses from groups opposed to gender equity

This shift in the family paradigm was continuously contested by those upholding the colonial and patriarchal power structures. Under the U.S. constitutional framework of liberal philosophy, children within the family remain subordinate to their parents' rights. The "liberty interest at issue in this case – the interest of parents in the care, custody, and control of their children – is perhaps the oldest of the fundamental liberty interests recognized by this Court", stated the U.S. Supreme Court.[37] This "natural parent's 'desire for, and right to'" is considered "an interest far more precious than any property".[38] It could only be affected by a higher interest following an "accurate and just decision".

Under the "modern" civil law doctrine of Spanish origin, Puerto Rico's highest court of justice conceived the role of parents as one of protection in a 1995 ruling, stating:

> The figures of the father and mother are conceived not as owners or masters of the children, but rather as loving protectors. This concept of parenthood is grounded in the principle that, for our society to remain in harmony with natural laws, parents are obliged "to sacrifice themselves for their children, to seek their

33 *Ibid.* art. 2 (s).

34 *Ibid.* art. 51 (c).

35 *Ibid.* art. 45.

36 Vicente, E., *op. cit.* p. 22.

37 Santosky v. Kramer, 455 U.S. 745, 753-754 (1982).

38 Santosky v. Kramer, *op. cit.* 758-759.

> happiness, to care for their education, their moral, intellectual and physical development, and to prepare them, ultimately, to face the challenges and responsibilities of the future, within the family and in the broader society" (Emphasis added) (translated). [39]

According to this court, fulfilling the duties imposed by parental authority "is precisely what fosters the family's ability to develop within a stable environment".[40] Therefore, in Puerto Rico, "the well-being of the family, the concept of parental authority, and good parent-child relations are all afforded the highest legal protection".[41] A few years later, the same court upheld the validity of a regulation that prevented unmarried couples from jointly adopting a child. It concluded that the prohibition served a legitimate state interest and that the means used to achieve it were appropriate. Marriage, the court argued, "offers a certain security and stability necessary for the protection of children".[42]

> We continue to value the matrimonial family as the most socially desirable model. Moreover, in our country, there exists a clear public policy of protection and strengthening of the family, and marriage is the initial step for its establishment.[43]

The traditional nuclear family, reinforced in judicial and legislative discourse through the legal fiction of equal protection under the law, among other factors, would help shifting judicial assistance for mothers who are victims of domestic violence to private law proceedings.[44] In a society as patriarchal and colonized as Puerto Rico's, it was not difficult to develop public policies in private family law aimed at sustaining the family's asymmetric power relations. Many factors contributed to this, but we focus on the development of legislation regarding shared custody and parental alienation.

39 Soto Cabral v. E.L.A., 138 D.P.R. 298, p. 323 (1995), citing Llopart v. Mesorana, 49 D.P.R. 250, 254 (1935).

40 *Ibid* . p. 325.

41 *Ibid.* p. 323.

42 Pérez Vega y Román Padilla v. Procurador Especial de Relaciones de Familia, 148 D.P.R. 201, 214-217 (1999).

43 Pérez Vega y Román Padilla v. Procurador Especial de Relaciones de Familia, 148 D.P.R. 201, 216 (1999), citing dissenting opinion in Sostre Lacot v. Echlin de PR, Inc., 126 DPR 781, 791 (1990).

44 Vicente, E., *op. cit.* 288-291.

The Parental Alienation Syndrome (PAS): a construct originating in the United States

In the United States, the concept of Parental Alienation Syndrome (PAS) gained traction in custody disputes during the mid-1980s, when U.S. physician Dr. Richard Gardner introduced the term in response to a perceived rise in child abuse allegations in that country.[45] According to him, allegations of sexual abuse by children against the father were a syndrome triggered by the "vindictive mother", who employed a series of strategies (alienating behaviors) to punish her ex-partner and secure custody of her children.

However, the premises underlying PAS and the behavioral pattern proposed were not supported by empirical studies.[46] Due to its lack of recognition as a pathology by the scientific community, U.S. courts declined to admit it as evidence. As a result, the concept was rebranded without the term "syndrome", shifting the focus to the conscious or unconscious actions of a parent allegedly attempting to sever the bond between their ex-partner and their children.

PAS started to be conceptualized with apparent gender neutrality as a form of abuse due to its supposed irreparable harm to children. However, the premises behind this reframing lacked scientific validation.[47] Nevertheless, it was highly effective for the discursive strategy aimed at rendering invisible the well-documented adverse effects of abusive and/or neglectful behavior toward children.[48]

Credibility for the efforts that led to the use of PAS in family courts was granted by the patriarchal cultural premises deeply embedded in the U.S. society. The assumption that all fathers are safe and functional parents gave credibility to the unfounded belief that an unsubstantiated report is equivalent to a false report. The assumption that a mother files false child abuse complaints against the father of her child out of malice or mental instability implies that she is unfit for her role as a mother. Assuming that false sexual abuse allegations are common in custody proceedings leads to the discrediting of mothers in court and prevents the conduct of thor-

45 Richard Gardner. Recent Trends in Divorce and Custody Litigation. *Academy Forum,* 3, 5 (1985).

46 Faller, K. (1998). The Parental Alienation Syndrome: What is it and What Data Support it? *Child Maltreatment* 2(3): 100-115. http://hdl.handle.net/2027.42/67847

47 American Professional Society on the Abuse of Children. APSAC Advisor (April 2020). Vol. 32, No. 1, p. 31. https://apsac. org/wp-content/uploads/2023/09/APSAC-Advisor-May-14-2020.pdf

48 Adverse Childhood Experiences Study , http://www.cdc.gov/violenceprevention/acestudy/; Centers for Disease Control and Prevention. (2014). http://www.cdc.gov/violenceprevention/childmaltreatment/consequences.html#).

ough and objective investigations.[49] PAS has become an effective tool for implementing strategies that obscure allegations of abusive behavior.

Parental Alienation Syndrome in Puerto Rico

In 2001, the Puerto Rican Senate passed a resolution to investigate the incidence of PAS in children from households where parents had gone through separation proceedings. The purpose of this measure was to draft legislation that would recognize PAS and "address the root causes of the social issues" it was believed to create.[50]

As a result, the head of the agency responsible for implementing social welfare policies presented a report warning that the concept of PAS posed a threat to the best interests of children. She urged the entire community, including social welfare professionals and members of the judiciary, to be "more sensitive and aware of the rights of children to access justice in the courts".[51] However, her call did not succeed. Instead, PAS was embraced and promoted by a broad group of psychosocial professionals and legal experts.

A limited study of rulings issued by the Court of Appeals revealed that PAS began to be used in the Puerto Rican judicial system around the year 2000.[52] With the exception of two cases, courts would not admit it as a defense, primarily due to its lack of scientific recognition.[53] In general, the father was the one who alleged it as a defense against accusations of sexual abuse or to characterize the child's rejection and preference for the other parent in pathological terms. PAS was rejected as a defense against allegations of sexual abuse[54] but was accepted in family civil cases to pathologize

49 American Professional Society on the Abuse of Children. APSAC Advisor (April 2020). Vol. 32, No. 1, p. 38. https://apsac. org/wp-content/uploads/2023/09/APSAC-Advisor-May-14-2020.pdf

50 Senate Resolution 339, 14th LegislativeAssembly, 1st Regular Session (April 5, 2001).

51 Final Report on R. del S. 339, 14th Legislative Assembly, 5th Ordinary Session (February 18, 2003).

52 The documentation of family law case files is confidential. Therefore, the case study was based on a total of 25 rulings issued by the Puerto Rico Court of Appeals on requests for the review of family court decisions in cases involving allegations of parental alienation from 2003 to November 2022. The appellate rulings are published and can be easily accessed online. The exact number of rulings issued during the examined period may be higher. On the other hand, the analyzed rulings represent only a small sample of the cases handled by family courts and do not necessarily reflect the true prevalence of PAS allegations in these courts. This sample has the added limitation of potentially excluding the reality of parties living in poverty who lack the financial resources to request an appellate review of unfavorable decisions. Nevertheless, they are useful insofar as they show the application of PAS in family courts. This allows for the identification of patterns or trends that result in hypotheses deserving of empirical investigation.

53 Only 5 cases were identified in which allegations of PAS were made. Of these, 4 were related to civil custody matters and 1 was of a criminal nature.

54 Pueblo v. Colón Montalvo, KLAN2009-0527(Decision ofMay25, 2011); Crespo Cardona v. Ramírez Casellas, KLCE201000958(Decision ofAugust 21, 2009).

the child's rejection of the father or respond to allegations of maltreatment, with one notable exception.[55]

In one case, in which the mother alleged PAS as a defense against her daughter's preference for the father, both the first instance court and the higher court rejected the claim of the syndrome due to its lack of scientific validity. In this case, great weight was given to the child's preference to be under her father's custody, despite the fact that the father had prior convictions for domestic violence against the other parent and for abusing a child other than his daughter.[56]

Another case demonstrates the impact of PAS on the human rights of children and women. After being diagnosed with PAS by a psychologist, a boy was removed from his mother's custody and placed in his father's custody "for the purpose of undergoing psychological follow-up in a residential emotional desensitization program". The mother was required to undergo psychological treatment to regain custody of her son after being diagnosed with "parental alienation" by another psychologist. Based on the opinion of these so-called "experts" in psychology and social dynamics, the family court concluded that,

> The defendant emotionally abuses her son by preventing him from having a relationship with the plaintiff, completely alienating him from his father. This, as we have pointed out, is detrimental to the best interests and well-being of the child.[57]

In other words, a Puerto Rican court issued a court order for an eight-year-old boy to be admitted to a mental health facility to undergo treatment for a condition that is widely discredited by experts. This fact was deemed irrelevant by the Court of Appeals that reviewed the decision. While the court stated that it did not recognize parental alienation as a syndrome, it nevertheless concluded that the evidence presented "undoubtedly" demonstrated that the child "had been coached by the custodial mother against his father" and that there was an "urgent need for therapeutic intervention to address the severe emotional harm suffered by [the child]". The ruling also emphasized that the child was "approaching adolescence, a stage of development in which the presence and involvement of the father is vital".[58] Without conducting any further inquiry beyond accepting a document from the

55 Vargas Arce v. Martínez, KLCE2006-1376(Decision of October 27, 2006); López González v. López Rodríguez, KLCE201000958(Decision of July 16, 2010).

56 Ayala Cordero v. Alvarado Robles, KLAN2011-0245.

57 Vargas Arce v. Martínez, KLCE2006-1376(Decision of October 27, 2006).

58 Vargas Arce v. Martínez, KLCE2006-1376 (Decision of October 27, 2006).

institution certifying the child's participation in deprogramming treatments, the Court of Appeals upheld the decision of the Court of First Instance.

A few years later, serious breaches in the programs and centers providing "treatments" for so-called "alienated" children were exposed.[59] Investigative reports revealed that these were unregulated and unmonitored facilities offering "treatments" based on a pseudoscientific concept. The effectiveness of the treatments was not proven, and they were found to lack compliance with applicable scientific, ethical, and professional standards.[60] Some of the children who were removed from their homes—where they felt safe—and forced to undergo these treatments, described their experiences in these facilities as traumatic.[61]

From the best interests of the child to the supremacy of parental rights

According to the ideology behind PAS, maximum contact with both parents would promote ideal child development. Therefore, regardless of whether domestic violence or child abuse was present, the relationship between the abusive father and his children had to be encouraged.[62] This premise supported efforts to shift the assistance of survivors to private law proceedings in cases where the abused child was the offspring of the abuser, a premise Law No. 54/1989 sought to address.

The Puerto Rican legislature enacted Law No. 223 on November 21, 2011, commonly known as the "Protective Law of Children's Rights in Custody Proceedings" (Law 223-2011). It established a public policy promoting shared custody as the primary form of child arrangement. According to the bill's statement of purpose, this new law was necessary in order "to foster healthy relationships between couples and, above all, between parents and their children". In this way, the right of children to "achieve a fulfilling life with the benefit of the active and constant participation of their parents" would be guaranteed (Law no. 223/2011, art. 2, as amended).

Although shared custody should certainly be recognized as a legitimate alternative, the new legislation marked a significant setback for the prog-

59 Susan Taylor Margin. (May 23, 2010). Parental Alienation: Sickness or Psych Job? *Tampa Bay* Times. https://www.tampabay.com/archive/2010/05/23/parental-alienation-sickness-or-psych-job/

60 Mercer, J. (2022). Reunification therapies for parental alienation: Tenets, empirical evidence, commonalities, and differences. *Journal of Family Trauma, Child Custody & Child Development*, 19(3-4), 383-401. https://doi.org/10.1080/26904586.2022.2080147

61 *A Court Ordered Siblings to a Reunification Camp With Their Estranged Father. The Children Say It Was Abusive.* (May 18, 2023). Hanna Dreyus for ProPublica. https://www.propublica.org/article/family-reunification-camps-kids-allege-more-abuse

62 Douglas Darnall. (1999). *Parental Alienation: Not in the Best Interest of the Children.* 75 N. DAK. L. REV. 323, 323-38.

ress made in protecting the rights of women and children. According to Article 3, shared custody is defined as the responsible exercise of parental rights and duties by both parents, and a balanced distribution of parenting time as much as feasible. On the one hand, it is presumed to be in the best interests of the child unless proven otherwise. On the other hand, according to Article 9 (6), the law assumes that both parents are equally fit to parent, and a history of domestic violence is not considered a determining factor in custody decisions unless one party has been formally accused and successfully prosecuted.

While Law No. 223/2011 claims that the best interests of the child remain the guiding principle in custody decisions, it does not recognize the child's opinion as a factor to be considered. It reminds courts that they must act in the child's best interests but then adds in Article 4: "Courts must be vigilant against any frivolous or unfounded actions by either parent aimed at preventing the other from exercising shared custody".

These significant changes deny children their recognition as rights-bearing individuals with the capacity to express their opinions. They also minimize the impact of domestic violence on both the child's rights and those of the mother.

The real motivations behind the new shared custody policy

According to legislative records, the perceived threat to the traditional nuclear heteronormative family was the primary motivation behind efforts to implement *the new shared custody policy*. During discussions on the bill, its proponent stated:

> And the fundamental question we must raise before the public and ask ourselves as legislators and representatives of a people facing attacks from certain groups that, through hidden agendas, seek to establish a new family structure is: Will we, through our inaction, be complicit in promoting child-rearing and responsibility falling solely on one parent? Or, on the contrary, will we fight for what is just and divinely ordained—a man and a woman raising their children together?[63]

According to advocates' claims, the shared custody law had the following effects: a) assessments of domestic violence or child abuse allegations were limited to determining whether there was a conviction or a protective

63 Senado de PR, 19 de junio de 2007 num. 37 V. LV DIARIO DE SESIONES PROCEDIMIENTOS Y DEBATES DE LA DECIMOQUINTA ASAMBLEA LEGISLATIVA QUINTA SESIÓN ORDINARIA AÑO 2007, p. 30766.

order issued against one of the parties; b) coercive control through economic violence, manipulation, harassment, and psychological abuse was not considered domestic violence and, therefore, was not recognized as a risk factor; c) even when a history of domestic violence between the parents was confirmed, the abusive father was not considered a risk to the child after separation.

The new shared custody policy drives efforts in favor of PAS.

As already mentioned, the new paradigm of the child's best interests established the objective of ensuring maximum contact with both parents. The court was required to take immediate action against any proceedings that went against this goal. Thus, PAS offered a tool for simplifying disputes: any allegation of abuse or child rejection was presumed unfounded. However, its lack of recognition within the scientific community led courts to refrain from using it.

In 2013, a bill was introduced to classify parental alienation as a criminal offense by including it in the definition of child abuse.[64] Under the proposed definition at the time, it could only be committed by the custodial parent against the non-custodial one. During the public hearings on the bill, proponents made claims such as:

> It is common practice to use precautionary measures, protective orders, and false allegations of lewd conduct and sexual violence. The system is designed to automatically suspend relationships whenever such an allegation arises, without verifying the validity of the claims. [65]

The State opposed the proposal due to the subjectivity of its language and the problems it would cause in situations where there were allegations of abuse. The Department of Justice, for example, warned that there could be legitimate concerns behind a mother's behaviors. It also warned that the proposed punitive approach went against the best interests of the child.[66]

The Social Workers Council also issued a declaration against the bill, and questioned: "Where does the list of criteria presented in the bill for assessing parental alienation come from? How is it defined, and in what way will

64 C. Project No. 1309 (2013).

65 Objeción de Familia y Justicia a proyecto sobre la alienación parental; Grupos que abogan por la custodia compartida apoyan que se tipifique como delito. *Periódico Primera Hora*, 28 de janeiro de 2015. https://www.primerahora.com/noticias/gobierno-politica/notas/objecion-de-familia-y-justicia-a-proyecto-sobre-alienacion-parental/

66 *Ibid.*

these allegedly alienating behaviors be measured?". Another statement came from Dr. Brenda Mirabal, a retired professor from the School of Medical Sciences with decades of experience caring for abused children. According to Dr. Mirabal: "We should not perpetuate or legislate based on a term that lacks scientific validation".[67] Eventually, this bill, along with a subsequent proposal, failed to advance.

Meanwhile, social service and mental health professionals and legal agents who supported PAS intensified their efforts to promote its use in family courts. The people who led the public discussions about PAS used clearly patriarchal and unfunded anecdotal premises to validate it. The media did not challenge them.

Various law schools in Puerto Rico published articles in their legal journals in support of PAS.[68] Without any analysis beyond merely replicating the patriarchal premises underlying the concept, their primary justification relied on its judicial recognition in other jurisdictions. Years later, these articles would be cited by various judicial panels to support compensation claims related to PAS. A panel of judges in Puerto Rico stated the following in a 2019 ruling:

> Although PAS has not been officially recognized by the scientific community, several jurisdictions have outlined the criteria to be considered in cases involving such allegations.[69]

A year later, Law No. 70 of July 19, 2020 was passed, amending the Shared Custody Law (Law No. 223/2011) to include parental alienation as an additional factor to be considered in child custody decisions. The concept was framed as a "legal pathology" simply by removing the word "syndrome". The law referred to it as parental "enajenación"[70] instead of PAS or PA, although it kept the same meaning, defined in Article 7 (13) as follows:

67 Pérez, Sharon Minelli. (March 4, 2015). Le dicen no a criminalizar a un progenitor en disputa por custodia. *Periódico Primera Hora*.

68 Ayala, Lourdes L. Vallejo. (2007). Efectos de la alienación parental en pleitos de custodia de menores. *46(1) Rev. D. Pqño. 86*. Lin Collazo Carro(2014). Maltrato por alienación parental: Un análisis de las consecuencias penales del desarrollo jurídico del Síndrome de Alienación Parental en Estados Unidos, España, Argentina y Puerto Rico. 48 *Re. Jur. U. Inter P.R.* 195.

69 Vidro Martínez v. Collazo Vega, KLAN201800835(Decision of May 31, 2019); see also Albors-Lahongrais v. Riera Carrión, KLCE201700976(Decision of August 31, 2017).

70 Translation note: The terms "enajenación" and "alienación" are synonymous in Spanish. However, "enajenación" is typically used to describe the supposed behaviors associated with alienation, while "alienación" is more commonly used to refer to the alleged emotional and psychological consequences of these behaviors.

> the obstruction by one parent of the relationship between the other parent and their minor children, using various strategies to manipulate or influence the children's minds in order to vilify, prevent, obstruct, or destroy their bond with the other parent. The child exhibits thoughts or feelings of rejection toward the other parent, demonstrates negative attitudes, or, in fact, experiences a disruption in the emotional connection with the other parent. All behaviors described in this paragraph must occur repeatedly, forming a pattern, rather than isolated incidents.

According to the new amendment (art. 7 (13)), the courts will be able to order a forensic social assessments to determine whether the rejection of the child is related to parental alienation. Additionally, the law listed a series of presumed alienating behaviors—many of which were protective, subjective, and stereotypical— such as preventing contact with the other parent, failing to inform the non-custodial parent about social or family activities involving the child, intercepting calls, speaking negatively about the other parent, or criticizing their gifts.

Finally, the law instituted coercive measures against the "alienating" parent and any party who opposed or obstructed the court-ordered shared custody. For example, the court could order psychological treatment or modify custody arrangements.

Both the executive and judicial branches endorsed the proposal, considering it necessary for implementing a public policy that prioritizes shared custody as the primary option of child arrangement. The Department of Justice recognized the lack of scientific consensus on the validity of parental alienation as a syndrome or disorder. However, it supported the bill as long as all references to PAS were removed.[71] The entity responsible for child protection policies expressed support for the legal recognition of PAS.[72]

Puerto Rico's Judiciary initially raised concerns about the language in the bill's statement of purpose but eventually endorsed it. It also recommended several changes, including: a) incorporating the child's rejection of either parent into the definition of parental alienation to align it with the "characteristics associated with Parental Alienation Syndrome"; b) requiring the Social Unit, during assessments regarding child custody, to refer the case to a psychology professional to determine whether the child's

71 Legal Comments from the Department of Justice on House Bill No. 2168 (August 26, 2019). https://www.oslpr.org/sutra

72 Explanatory Memorandum of the Department of the Family on House Bill No. 2168 (September 4, 2019). https://www.oslpr.org/sutra

behavior stems from PAS or other factors, such as mistreatment or sexual abuse. The judiciary explicitly stated its commitment to upholding the public policy of the Custody Law, emphasizing efforts to train and equip its staff with the necessary knowledge about the law and the issue of parental alienation.[73]

Some social service and mental health professionals also supported the bill. The Puerto Rico Psychological Association referred to PA as a form of abuse that causes emotional harm and requires immediate sanctions upon identification. On the other hand, the Social Workers Council of Puerto Rico (CPTSPR) opposed the law concerning its text because "it immediately biases a child's resistance toward the hypothesis of alienation". However, it endorsed the consideration of parental alienation as one factor among others in explaining a child's rejection of a parent. It recommended that the judiciary establish a "training program" on "children's resistance" and "assessments for such situations". This stance marked a shift from the position previously expressed by the organization in 2015.

A family therapy center in Puerto Rico also expressed support for the project. Through its director, the Family Therapy Institute endorsed the project as "a step forward in family reunification proceedings". The institute stated that the validation of the identified behavioral pattern was conducted by professionals with academic expertise and specialized training in Parental Alienation (PA) from U.S. institutions. The director emphasized that courts frequently recommend the institute to "intervene with families and children displaying alienating dynamics". Finally, it was assured that the foundation of their intervention was "grounded in an evidence-based scientific methodology," developed through their experience handling those cases. According to the director, this has enabled them to "develop non-traditional intervention models", such as parental coordination and a program called "Permission to Love My Mom and Dad".[74]

However, the studies underpinning such interventions are scarce and poorly designed. Therefore, it is inaccurate to claim that they are based on evidence meeting rigorous scientific standards. In fact, there is no consistent theoretical model guiding these practices, making it impossible to objectively assess their effectiveness.[75] On the contrary, there have been

73 Presentation before the Judiciary Committee on House Bill 2168 (September 12, 2019). https://www.oslpr.org/sutra

74 Joint supportive report on House Bill 2168, endorsed by the Committees on Social Welfare, Family Affairs, and Government of May 8, 2020, at the 18th Legislative Assembly, 7th regular session.

75 Deutsch, R. M., Misca, G. and Ajoku, C. (2018). Critical Review of Research Evidence of Parenting Coordination's Effectiveness. *Family Court Review*, 56: 119-134. doi:10.1111/fcre.12326

serious scientific and ethical concerns raised regarding so-called family reunification therapies.[76]

The legislative debate took place amid a *lockdown* imposed on the Island due to the COVID-19 pandemic, which limited broad public participation. The lack of rigor and intellectual honesty by those dominating the discussions on PA also contributed to the approval of Law No. 70/2020. The complete absence of human rights and gender perspectives in the positions expressed by social service and mental health professionals was alarming, though not surprising.

From the dominant medical model in U.S. culture, the understanding of violence against women has primarily been based on a discourse of individualized pathology. Women are often portrayed as responsible for their own victimization, as if they desired to be abused due to personality traits—"either too submissive or controlling"—that would drive men's violence. In other words, the issue is framed as an individual pathology, requiring individualized treatment, such as psychotherapy. [77]

This approach to domestic violence, framed as an individual pathology, justified and reinforced the idea that such violence is a private matter. The justice system was not considered the appropriate space to address what the scientific community had categorized as an individual, pathological issue. This, in turn, allowed the development of a legal culture that minimized and condoned domestic violence while blaming the survivor.[78] On the other hand, some sociological perspectives emphasize situational factors and frustration as triggers for violence, suggesting that violence arises from relational dysfunction within the family, exacerbated by social factors such as job loss or poverty.

Both perspectives fail to recognize that dozmestic violence is deeply rooted in social systems and structures. They do not place this violence within the broader social context, where multiple systems of oppression based on gender, class, race, and other social inequalities are shaped and perpetuated.[79] Instead, dominant perspectives explain domestic violence through an *individualized* lens, and propose corresponding *individualized solutions.*

As a result, an entire industry has been created, focused on addressing partner violence from an individual and familial pathology standpoint. Under

76 Kleinman, T. (2017). Family court ordered "reunification therapy:" junk science in the guise of helping parent/child relationships? Journal of Child Custody. 1-6. 10.1080/15379418.2017.1413699

77 Valle Ferrer, D. *Espacios de libertad: mujeres, violencia doméstica y resistencia.* Ed. Espacio 2011, pp. 48-51.

78 Vicente, E. (2017). *Más Allá de la Ley: Sexo, Género y Violencia en las Relaciones de Pareja*, Editorial InterJuris, pp. 65-66

79 Valle Ferrer, *op. cit.* p. 55.

such frameworks, family therapies focused on communication issues, anger management programs, and mediation are common interventions. [80]

Impact on women's and children's human rights

One of the most significant impacts was placing women and children in a position of total helplessness. The legal recognition of parental alienation prevents its scientific validity from being challenged in forensic social and psychological assessments since its determination leads to legal consequences, as if it could be assessed through reliable evaluative criteria grounded in empirical evidence. Faced with the threat of losing custody of their children in a legal system that denies them a fair defense and labels protective behavior as alienation, mothers are coerced into accepting custody arrangements that guarantee the abuser continued access to the survivors.

When parental alienation is alleged, attention is diverted from considerations directly related to the best interests of the child. The abusive father is not held accountable for his behavior unless convicted of domestic violence. Advocates consistently observe this pattern in their practice. Parental alienation has proven to be a tool for perpetrating coercive control through abusive litigation. The abuser does not hesitate to allege it, knowing the fear it instills in the other party—the threat of losing child custody.

By simply making parental alienation a legal concept and imposing gender-biased evidentiary standards, women are prevented from challenging it in fair and impartial legal proceedings. Moreover, presuming the adequacy of parenting by abusive fathers while framing mothers' protective behavior as alienating exposes women and children to heightened vulnerability and risk. This undermines the best interests of the child and violates their right to physical and mental integrity.

Another alarming effect of the legislation was the tendency to frame the abusive behavior of an abuser as parental alienation. This validates an unfounded concept that minimizes the harmful effects of domestic violence on women and children. It also allows the abuser to claim that the child's behavior is a result of parental alienation, not their abuse. Therefore, the proposed legal proceedings and remedies may jeopardize the safety of children and penalize or endanger the protective mother, including extreme interventions that fail to uphold the principle of the best interests of the child.

80 Valle Ferrer, *op. cit.* pp. 50-52.

Conclusion

The legislative recognition of parental alienation as a means of promoting the enforcement of a law providing for shared custody as the primary form of court-ordered child arrangement has legitimized violence against women and children. Patriarchy has created a legal structure that establishes gender bias as the legal basis underlying child custody judgments and decisions, perpetuating oppressive relationships. The principle of the best interests of the child has been distorted to reinstall oppressive structures that disregard abusers' accountability, as courts grant explicit advantages to abusive fathers, reinforcing the notion of the family as an unsafe and discriminatory space.

The widespread use of the concept of parental alienation among legal professionals, social service workers, and mental health experts highlights a systemic issue that extends beyond the legal system. It raises important concerns about the role of academic institutions and professional associations and councils in reinforcing unequal power dynamics within families. I echo the call for universities and academic institutions to critically reflect on their role in shaping a decolonial education that better equips university students to challenge these power imbalances.

Hague Convention: civil aspects of international child abduction

Reinaldo Amaral de Andrade[1]

The Hague Convention on the Civil Aspects of International Child Abduction was concluded on October 25, 1980, in Hague, Netherlands, and Brazil became a Contracting Party on April 14, 2000, through Decree No. 3413.[2] The Convention prioritizes cooperation among its Contracting States to ensure that children who have been wrongfully removed from the State of their habitual residence are promptly returned, primarily to maintain, when possible, their balanced contact with both parents.

Procedures related to the Hague Convention are initiated through an administrative request for cooperation, submitted by the Central Authority of the country from which the child was removed to the Central Authority of the country where the child has been wrongfully taken or retained. In Brazil, these requests from abroad are forwarded to the Federal Central Authority (ACAF). According to the *website of* the Ministry of Justice and Public Security, ACAF's responsibilities and functions are defined as follows:

> The Federal Central Administrative Authority (ACAF) is the body in Brazil responsible for adopting measures for the adequate fulfillment of the obligations imposed by the 1980 Hague Convention on the Civil Aspects of International Child Abduction, the 1989 Inter-American Convention on the International Return of Children and the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.[3]

1 Reinaldo Amaral de Andrade is a family law attorney and works on cases related to the Hague Convention on the Civil Aspects of International Child Abduction. He is a partner at the law firm Amaral de Andrade & Pinheiro Lima.

2 Decree No. 3,413, of April 14, 2000, *promulgates the Hague Convention on the Civil Aspects of International Child Abduction, adopted on October 25, 1980.* https://www.planalto.gov.br/ccivil_03/decreto/d3413.htm

3 https://www.gov.br/mj/pt-br/assuntos/sua-protecao/cooperacao-internacional/acaf

The description of the duties of the Ministry of Justice and Public Security continues as follows:

> The Central Authority is the internal body responsible for conducting legal cooperation in a State, and its establishment results from the ratification, accession or acceptance of an international treaty that determines its establishment. The Central Authority is responsible for coordinating the implementation of legal cooperation and may, when necessary, propose and promote improvements in the system of cooperation and implementation of an international treaty.
> The main role of a Central Authority is to facilitate swift and effective international cooperation by streamlining the processing of legal claims between countries. Depending on the treaty being implemented, the Central Authority may, in some cases, bypass other mechanisms of international legal cooperation, such as the enforcement of foreign judgments or the use of rogatory letters. In this regard, the Central Authority is responsible for preventing failures in international communication and the follow-up of requests, ensuring that procedural steps comply with general and case-specific legal requirements. Additionally, it must avoid adopting cooperation mechanisms that are inappropriate for the specific situation. Therefore, it is up to the Central Authority to receive and transmit international legal cooperation requests involving its country, after analyzing their admissibility requirements.
> The work of the Federal Central Administrative Authority (ACAF), the Central Authority for Adoption and International Abduction of Children and Adolescents, aims to swiftly, accurately, and appropriately implement the international conventions under its responsibility. This includes addressing situations of international abduction, transnational visitation, or cases of abandonment and the removal of parental authority that could lead to the placement of a child or adolescent for international adoption.
> From the perspective of the nature of the work carried out, it involves processing active or passive international cooperation requests related to international child abduction, implementing transnational visitation rights—a process that may precede court proceedings—or addressing proceedings regarding international adoption. (translated)

In this article, the administrative procedures and judicial proceedings involving Brazilian mothers who—for various reasons—have left the

countries where they were living and returned to Brazil with their children will be discussed.

From the moment these mothers remove their children from the State of their habitual residence and separate them from the other parent, referred to as the "wronged" parent, an administrative procedure is initiated by the foreign Central Authority, requesting the Federal Central Administrative Authority (ACAF) to return the child(ren) to the country from which they were taken.

At this stage of the administrative procedure, certain difficulties arise, such as notifying the mothers about the existence of the process. The notification is required to be carried out personally and *unequivocally*, but this is not always the case. In fact, for reasons that remain unclear, the addresses of these mothers in Brazil—although often known by the so-called "wronged" parents—are frequently not accurately provided in the proceedings. As a result, when the mothers cannot be located, they are treated as if they are fleeing or hiding with their children. Other times, ACAF itself confirms in the case files that the mother has been notified but fails to provide evidence of this notification, often leading to the assumption that the mother was properly informed about the case but did not present a defense within the given deadline. There are times when the notification confirmed by ACAF did not actually reach the mother. However, when *unequivocal* notification is achieved, the mother submits her administrative defense to ACAF, which may be drafted and submitted either by herself or through legally appointed attorneys.

This leads to another issue. In one case concerning the defense of a mother in an administrative procedure before ACAF, the parties and their respective legal representatives were restricted in their access to the case files, to the extent that, on one occasion, a request to access the files was completely denied. This issue was later resolved after a formal complaint was filed and upheld by the then-director of ACAF, who authorized access to the case files and its supporting documentation, but only for a restricted period. Such conduct by ACAF evidently harms the right to full defense, which depends on the party or their attorney having unrestricted access to the case files, including all claims and evidence presented by the Central Authority of the requesting State, in order to examine the allegations and determine the validity or lack thereof of the accusations.

Once these challenges are overcome and the mother is duly notified, she presents her defense in the ongoing administrative procedure before ACAF. Often, this defense includes reports of severe issues experienced abroad, such as domestic violence (physical, psychological, or financial),

suffered by both the mother and the child, and the lack of support from agencies or authorities in the country where they lived, particularly because the mother was neither a citizen nor a naturalized resident of that country. Other common testimonies refer to situations where the child had a disability and lacked adequate support from the father or the government in the country of residence, a painful reality for the mother who had to bear the responsibility of caring for a child with disabilities alone, without a support network or access to necessary treatments—resources that are often more readily available in Brazil. Financial difficulties faced by the mother in maintaining herself and her children abroad are also frequently noted, especially when they do not receive sufficient support from the other parent in the country where they lived.

As the Hague Convention on the Civil Aspects of International Child Abduction provides for certain exceptions that may be invoked to prevent the return of the child(ren) under specific circumstances, ACAF should have sufficient autonomy to assess whether such exceptions apply in a given case, in accordance with Article 27 of the Convention.[4] Regardless of the assessment or the content of the defense, ACAF, after the mother's defense, issues a Technical Note to the Office of the Attorney General of the Union (AGU), directing it to either execute or refrain from executing a Search and Seizure warrant, followed by the return of the child.

Similarly, the AGU should conduct a preliminary analysis to determine whether the case justifies filing the lawsuit or if any of the exceptions outlined in the Hague Convention, which would prevent the child's return, apply. However, often without carrying out this analysis and driven by a desire to enforce the Convention's provision mandating the return of the child, AGU proceeds with the warrant for Search and Seizure, and the return of the child. This places the burden on the mothers – even when the exceptions under the Convention apply – to defend themselves and prove that these exceptions are met. The **exceptions** are essentially:

1. **Consent or approval of the child:** If the child has attained an age and degree of maturity at which it is appropriate to take account of its views and objects to being returned, the requested State is not bound to order the return This exception is grounded in the child's right to be heard in matters that affect them.

4 Article 27: "When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons."

2. **Exposure to grave risk:** If there is evidence that his or her return would expose the child to physical or psychological harm, the authorities of the requested State may refuse to order the return. This exception is subjected to restrictive interpretation and requires substantial evidence for its acceptance.
3. **In the case of domestic violence or child abuse:** Cases where there is a belief that the child was subjected to domestic violence or child abuse in the State of their habitual residence may lead the requested State to deny to order the return of the child to the requesting State.
4. **Time elapsed since the removal or retention of the child:** In some cases, if the return request is filed after a significant period of time, and the child has already become accustomed to and adapted to the new environment, the courts may consider that the return would not serve the best interest of the child.
5. **The decision of the requesting party to seek an alternative legal remedy:** If the person responsible for the child does not exercise their right to apply under the Convention immediately after the wrongful removal or retention, such a delay may be seen as a failure to meet the necessary criteria for filing a claim under the Convention.
6. **When it is incompatible with the fundamental principles of the requested State** (in this case, Brazil) **regarding the protection of human rights and fundamental freedoms**, including, from a personal perspective, the issue of domestic violence, when the requesting country lacks laws or means of protection for foreign women and their children.

It is important to note that exceptions to the Hague Convention are subjected to restrictive interpretation, and courts generally seek to ensure that the decision on whether or not to return the child is made based on their best interest. The application of these exceptions varies according to the laws and policies of each Contracting State. In Brazil, most judges tend to rely on expert psychosocial assessments to verify the paramount and best interest of the child in each case.

The judicial proceeding for issuing a warrant for the search, seizure, and return of the child is filed by the AGU before the Federal Court, and the mother is served with a notice to present a defense. In such cases, there is always a request for a preliminary injunction to, at the very least, retain the passports of the mother and the child(ren), and notify the Immigration Police, airports, and ports of the prohibition on the mother leaving with her child(ren). Most of the time, these measures are granted by the network judges who oversee these cases.

Network judges are part of the International Hague Network of Judges (IHNJ) and are appointed by the signatory States of the Hague Convention on the Civil Aspects of International Child Abduction, with the purpose of facilitating the handling of judicial procedures related to the treaties among countries.

However, the lack of standardization in judicial procedures for search and seizure warrants and the return of children leads to diverse approaches adopted by judges, which vary depending on the State where the return application is being processed. In many instances, this disparity is justified by the argument that cases must be resolved in a timely manner, as stipulated in Article 11 of the Convention, which mandates a decision on the return of the child within six weeks.

This temporal constraint often imposes limitations on the mothers' defense, including preventing the submission of expert evidence, which is crucial in such cases to assess the most appropriate solution for the best interests of the child and also from a gender perspective, particularly in situations involving domestic violence. Such circumstances can turn the proceeding into a form of abusive litigation, which not only impacts the mothers but also undermines the very purpose of the application.

Indeed, in recent years, numerous cases have involved blatant institutional violence and abusive litigation, in which mothers are treated as though they were criminals. To illustrate, there was a case in which a mother had taken her children to spend the Carnival holiday in a city different from their usual residence. After being located, she was prevented from returning home with her children and was monitored with an electronic tag to ensure she would not leave the location where she had been served. In another case, a mother was arrested for failing to comply with the father's "visitation" rights, at the same time the warrant for the child's search, seizure, and return was issued, even though the deadline for filing an appeal was still pending. The arrest was lifted by the Federal Regional Court (TRF) through a writ of *habeas corpus*.

For all these reasons—the need to investigate the factors that led these mothers to remove their children from the State of their habitual residence; the necessity of conducting a thorough assessment of the children's best interests, including careful expert examination; the importance of determining whether domestic violence or abuse occurred in the countries of residence, in order to apply a gender-sensitive perspective to the case; and the need to assess the applicability of any exceptions outlined in the 1980 Hague Convention—it is crucial to establish a special procedure protocol concerning the issuance of *Child Search, Seizure, and Return Warrants* under

the Hague Convention on the Civil Aspects of International Child Abduction, in order to standardize legal proceedings. This proposal of a new special procedure, demonstrated through its application to the case of prosecuted mothers, can be summarized in the following steps:

1. initial petition filed by the AGU and/or the parent—who assists the Union in the case—in which the evidence to be presented should already be identified;
2. the inclusion of the child as a party to the lawsuit, represented by the Federal Public Defender's Office (DPU), as a subject of rights rather than an object of dispute, thus ensuring their protection by the State, while the left-behind parent is represented by the AGU;
3. in-person and unequivocal serving of the summons to the mother and child;
4. receiving the defense presented by the mother and the DPU on behalf of the child, within a legal deadline of at least 15 (fifteen) business days, due to the complexity of the matter and the need to gather evidence. The defense should also include requests concerning the evidence to be presented;
5. court-ordered conciliation or mediation hearing, which may make use of the currently available Restorative Practices Center;
6. after the attempt at conciliation, if it is unsuccessful, the judge must issue a procedural order, scheduling a hearing for the presentation of evidence and judgment, reviewing and analyzing the evidence presented as requested by the parties, and, most importantly, ordering a psychosocial examination of the parents and the child(ren) subject to the request for search and seizure for the return of the child(ren). Finally, it should be established that the psychosocial examination report must be issued at least 5 (five) days prior to the hearing;
7. after the conduct of the evidentiary and judgment hearing, the parties may then make submissions regarding the evidence presented, including the expert report, thereby allowing for the issuance of a judgment;
8. eventually, the judge issues their ruling, which is subject to appeal in both directions, as the determination of the child's best interest will depend on a thorough evaluation by the appellate court.

As per Articles 25 and 26 of the Hague Convention, the so-called left-behind parent is not required to pay court fees or legal expenses. Therefore, to ensure equality in the treatment of the parties, mothers (or,

where applicable, fathers) who are defendants in these cases should also be exempt from such payments, with explicit legal provisions establishing an exceptional legal procedure for these cases.

Experience shows the need for better alignment of these proceedings to ensure that no fundamental rights of the parties, especially the children involved, are overlooked.

On this matter, a recent administrative order was established by the Minister of Justice and Public Security, Ricardo Lewandowski, through MJSP Directive No. 688, dated May 24, 2024, which sets forth administrative procedures to be followed by the Department of Asset Recovery and International Legal Cooperation of the National Secretariat of Justice. The aim of this administrative order is to guide the procedures for the immediate and voluntary return of children and adolescents under the age of 16 who have been wrongfully removed from their country of habitual residence, as well as to ensure the visitation rights of parents or legal guardians who are not with them.

Its main purpose is to more clearly define the role of the Central Authority and the steps to be followed in administrative proceedings concerning requests for the return of children to their alleged country of habitual residence. Additionally, this order includes a special chapter (CHAPTER IV) concerning "non-conventional" return requests, specifically cases of search and seizure of a child who has been wrongfully removed from Brazil to a country that is not a signatory to the Conventions (the Hague Convention on the Civil Aspects of International Child Abduction, adopted in The Hague, Netherlands, and the Inter-American Convention on the International Return of Children, adopted in Montevideo, Uruguay). This is a positive development, as there is a growing number of return requests involving non-signatory countries, particularly in the Middle East. The order also outlines how the administrative procedure should be concluded.

Regarding the calculation of deadlines in administrative proceedings, the order mandates that the rules outlined in Article 66 of Law No. 9,784, dated January 29, 1999 (which governs administrative procedures in Public Administration), be followed. This article specifies: "Deadlines begin from the date of official notification, excluding the start date and including the due date".

This does not mean that, through this order from the Ministry of Justice, there will be significant progress in the protection of the fundamental rights of children and, especially, of mothers who are victims of domestic violence. This will only outline how the administrative procedures will be handled. However, it represents a small step forward, perhaps to prevent

excesses that may be committed against the families involved, particularly against women who are victims of domestic violence and their children. In this regard, the Protocol for Judging with a Gender Perspective, issued by the National Council of Justice (CNJ), instructs that legal proceedings be conducted with consideration of potential violence against women, a point emphasized by Honorable Justice Gilmar Mendes in the judgment of *Habeas Corpus* No. 224.484.4, where he reconsidered the conviction of a mother to pre-trial detention and granted her house arrest to ensure the care of her daughters.

PROTECTIVE MOTHERS' FIGHT FOR JUSTICE

Declaration of a protective and non-alienating mother

Gabriela Menniti Smith[1]

I'm a lawyer who graduated in 2005. During my training, I had the opportunity to do internships not only at law firms, but also at the São Paulo State Criminal Court, as a judge's assistant. I worked as a trainee in the same court at the Public Defender's Office and at the Public Prosecutor's Office. I was also an intern for a very dear professor, who was a judge at the now dissolved Civil Court of Appeal of São Paulo. Despite my education and extensive experience, I had never been aware of the theory of parental alienation syndrome (PAS), which is now regarded as pseudoscience and, in the 2000s, was unknown not only to me but also to the Brazilian legal system.

Likewise, I was unaware of the Parental Alienation Law (PA Law), Law No. 12,318, of August 26, 2010. I only learned about the existence of this law in 2012, when I requested an injunction to suspend the visitation rights of my daughters' father during the custody and visitation proceedings.

I have had the opportunity to witness numerous cases involving victims of this harmful PA Law within the Brazilian legal system and have met some mothers from other countries where the pseudo PAS is used in cases of child custody, sexual abuse, domestic violence, and Hague Convention proceedings as a defense strategy of fathers accused of perpetrating crimes against protective mothers and their children. With great sadness, I acknowledge that there are cases far more severe than what we experienced, but this does not diminish the pain and suffering endured by my family. There are certain episodes that I will recount, which I unfortunately wish I could erase not only from my memory but, above all, from my daughters' memories. However, I understand the importance of sharing them.

1 Gabriela Menniti Smith is a 48-year-old lawyer and member of the NGO VOZES DE ANJOS (Brazil). Mother of two beautiful girls, twins who turned 17 in January 2024. She was convicted under the Parental Alienation Law and is awaiting the reversal of this situation through an appeal.

Even though I carry an indelible tattoo on my soul, not only because of the physical, psychological, and sexual abuse my daughters suffered at the hands of their father, I share a scarlet letter with other protective mothers: **the letter A!** This same letter "A" that the justice system brands onto the flesh of women who are condemned and labeled as Alienators.

Unfortunately, I can't find any other ironic way to express my outrage upon witnessing the institutional abuses stemming from the application of the pseudo PAS and other related concepts within the legal system. I often say that I am fortunate to have custody of my daughters, despite all the challenges. However, I cannot begin to imagine the pain of a child being torn from their mother's life and handed over to an abusive father, with the approval of the judiciary.

The day my daughter told me about the abuses

In December 2010, I was putting my daughters to bed, as I always did in our daily routine. One of my daughters got up to use the bathroom, as she was already independent, despite being only 3 years and 11 months old. While walking towards my bedroom, I passed in front of the bathroom - the door was open for she was afraid of being alone - and I came across my daughter looking at her private parts in a peculiar way. I had never seen her in that position, trying to see her private parts by placing her head between her legs. I was surprised and curious at the same time, and asked her if she was feeling well.

Her answer left me confused at first. My daughter calmly said that there was blood coming out, while pointing to her genitals. I thought she might believe she could "have a period like Mommy," so I explained that she would only bleed like that when she became a young woman. To my astonishment, she raised her voice and told me it wasn't that, and that her "*pipinha*" was hurting (she used to call her genitals "*pipinha*" when she was a little child). I naively asked her if she wanted me to examine her because, in my mind, she might have hurt herself while cleaning up after peeing. I checked and, seeing nothing that could be blood or a wound, I suggested washing her in the bidet, to which she shook her head and said the following:

> – It is hurting mommy. Daddy gave a pee-pee kiss into my pipinha.

Then, I believe noticing the strange look on my face, my daughter asked me if she was going to be away from her daddy. I replied that what he had done was wrong and very serious, and that he couldn't do that to her or any-

one else. Finally, I told her that I loved her. In a state of complete shock, I put her to bed, kissed her, covered her, and wished my daughters good night.

My legs went weak, and I sat down in a chair in the kitchen, in the dark, in complete silence. I think my mind and body froze for a few minutes, and I only snapped out of it when I heard my mother asking what was going on (I was living with my parents at the time). She was in my daughters' bedroom, sitting on my other daughter's bed, when I came in, and I hadn't even noticed it. I told my mother what had happened and she became very nervous and distressed. A few minutes later, she called me to go tell my father, who was obviously incredulous at first.

I called a friend who worked with me at the office, told her what had happened, and asked for help in reaching out to other colleagues, who later became my attorneys when I requested custody and child support in court. I then called a Brazilian government helpline to find out how to proceed in cases of sexual abuse. They gave me the phone number for the nearest women's police station, and I called right away.

I nervously explained the entire situation to them, and they asked me to bring my daughter there the following morning since she was already asleep. I was advised not to ask her any questions about what her father had done until we went to the police station the following day. The following morning, my mother and I got ready, called the girls' nanny to stay with them at home, explained what had happened, and asked her not to mention it to my other daughter.

When we arrived at the police station, we were called in by the Chief of Police. I told her what had happened, and, to my shock, I received a lecture from her, saying that my statements were very serious accusations, asking if I was sure, and so on. I explained that I was there to find out what really happened and that my daughter would never make up something so horrible because she loved her father. I was once again surprised by the police chief's harsh words, asking if it was possible that my daughter had seen a soap opera or movie and might be imagining things. I answered no, that my daughter did not watch any adult content, only Disney movies; that no one in my house watched soap operas because it wasn't a family habit; that we did not even have a TV in the living room, no matter how strange that might seem to her; and that, if she wanted, she could come to my house to check, as I was starting to get nervous with her suggestions that my daughter might have made something up.

What shocked me about the police chief's behavior was that she asked all these questions in front of my daughter, who was sitting on my lap coloring a picture of a Disney princess, provided by a staff member at the police

station, with a set of colored pencils. At a certain point, my daughter asked me to use the toilet, and when we were both there, she told me:

> – Mom, Dad did kiss my "pipinha" with his pee-pee! I'm not lying.

I hugged her and told her that I believed her, and that she shouldn't worry because we would sort everything out. Back in the police chief's office, I said that I would like to file a report, to which she informed me that, since the psychologists at the station had not yet arrived to speak with my daughter, she would ask an officer to take us to the Pérola Byington Hospital[2], where a forensic medical examination would be conducted to determine if sexual abuse had occurred.

We went together with a police officer in an ambulance, and my mother followed us in her car. Upon arriving at the hospital, we were directed to a waiting room after the officer completed the necessary paperwork and I filled out a form as requested.

The examination was conducted by a forensic doctor and her assistant. My daughter was calm but very shy, and remained silent when the doctor, who was very kind, asked her age and what had happened to her to bring her to the hospital. Noticing her discomfort, the medical examiner told her that she did not need to be afraid and that I was right there next to her. It was then that my daughter reported what her father had done to her, and a tear slowly rolled down my cheek. It felt as though my body had frozen in that moment. I remember the doctor asking me to stop crying and pull myself together, as it could interfere with my daughter's testimony. Despite understanding what was happening to me, my daughter answered every question asked. Next, we went to the examination room, where there was a gynecological table and a hospital gown for my daughter to wear. I lifted her and placed her on the table, as instructed, trying to stay composed despite the overwhelming nerves. They asked me to sit down on a chair near the table and started talking to her, explaining what they were going to do. When they asked her for permission to take off her underwear (panties), she became nervous, looked at me with great fear and, almost crying, said:

> – I don't want to, Mom, they'll hurt me again!!! I don't want them to touch my "pipinha", they'll hurt me.

2 Reference hospital in Brazil for victims of sexual violence.

I didn't know what to do, whether to get her out of there or cry, it was an endless agony. But they managed to calm my daughter down after I told her that the doctor would only look at her and no one would ever hurt her again (my promise calmed her down).

After the examination, I took all necessary steps to have their father's biweekly visits suspended through a court order, so that the proper police investigations could proceed. Regarding the police investigation, it was a disappointment: it was poorly handled, and the criminal judge, although believing something had occurred, stated in his ruling that there was insufficient evidence to convict their father.

Psychosocial assessment and visiting center[3]

Imagine having to negotiate the unnegotiable with your children, or else you might wake up one beautiful morning to the police banging on your door, tearing your children from their beds while they scream, and forcibly handing them over to fathers who have sexually, psychologically, or physically abused them. Could you imagine such a horror movie? Unfortunately, it happens, and it happens a lot. I was so afraid of this nightmare becoming a reality in my daughters' lives that, even though it went against my maternal instincts to protect them from any suffering, I had to consider what would be less damaging for them: taking them to the visitation center for supervised visits with their father, or respecting their wishes not to see him and risking losing my daughters' custody.

I took them several times to the visitation center, where, at the time, the waiting room was in the parking lot of the courthouse. A place where there were only three old wooden benches, no drinking fountain and no toilets. Each time, there was a different team, made up of psychologists and social workers who were not necessarily there to ensure the well-being of babies, children, and adolescents who were scared, anxious, and refusing to enter. My daughters never wanted to enter the visitation center, and when the staff on duty was understanding and respected their wishes, we had to stay in the parking lot until the visitation time was over.

As there was no toilet, the staff on duty, with rare exceptions, would let me take the girls to a toilet across the street at a public school that held community events on weekends. When we weren't allowed to use that bathroom, we had to hold our needs as much as possible because, if the children decided to use the bathroom inside the visitation center, they could not leave the center until the time of the supervised visitation was over, meaning they would have to stay in the same room as their father.

3 A place where visits are monitored by public agents, psychologists and social workers on duty.

I have witnessed horrible things in that place. I was accused of being an alienating parent by the on-duty staff, which, on several occasions, tried to force my daughters to get into the center by using vile tricks, such as saying that their father was inside with gifts and candy, waiting for them, and that he was a good man. Other times they would ask what daddy had done to them, or why they were afraid of him. When they mentioned something he had done, they were called liars. They would also tell me that I would lose custody of the children because I was coaching them. The mothers who were there were condemned, the children and teenagers were disrespected, many were forced to go into the center, while crying and screaming, which only made my daughters even more fearful and anxious.

Once, my daughters made friends with two other children who were also there for supervised visitation. After the staff insisted, my daughters decided to go in with one of their new friends, a little girl who was also there to see her father. At that time, my daughters would bring their handheld consoles (Nintendo DS) to keep themselves entertained until we could leave. After that supervised visitation, I noticed they no longer had their consoles with them. We waited for their new friend to come out of the visitation center and she told us that she had given them to the girls' father.

After a month without visitations due to a recess, I experienced my worst moment at that place. My daughters didn't want to get inside the center, as usual, and the social worker told them that their father was inside, and that he had their game consoles with him. Obviously, they refused to go inside and asked the on-duty social worker to bring them their consoles. To my surprise, the social worker refused to do it as she decided to propose a deal to my daughters, claiming that all they had to do was to say hello to their father, get the consoles, and than they could leave and stay with me. However, it never happened that way. When they tried to leave with the consoles, as agreed, they were grabbed by security guards as if they were sacks of potatoes. They screamed and cried in terror. I tried to argue, but it was in vain. They slammed the gate in my face and all I could hear was my daughters screaming and crying, which tore me up inside. Soon afterwards, the team asked me to leave and come back at the agreed time to pick them up, as they had both decided to stay with their father.

When we got home, the girls, still crying, said that they had been told that I had gone away and left them there, which was not true. I never took my daughters there again. I contacted my lawyer at the time and asked her to file a report on the violation of rights that was taking place there. I never took my daughters there again, even though I knew I could be punished.

I've experienced a lot of abuse and disrespect during the court hearings I've attended, and I unequivocally state that the treatment I received was terrible. I've been called a liar, a manipulator, a vindictive and unscrupulous mother, and I know that all mothers who have experienced domestic violence or whose children have been sexually abused by their fathers are treated this way by the Brazilian judiciary in family courts. Unfortunately, the judicial system is contaminated when it comes to PAS. Children and adolescents are subjugated to abusive parents with the endorsement of the judiciary.

Once, I had to pay for my daughters to attend court-ordered counseling follow-up, so they could be gradually introduced to spending time with their father. Worst of all, the court-appointed psychologist was the wife of the judge who brought this evil law to Brazil.

What was already absurd turned into chaos. The psychologist, during her sessions with my daughters, would threaten them, saying that if they weren't nice to their father, they would never see me again. She told them she would tell the judge that their father was a good man and I was a crazy woman, and that they would have to live with him.

One can only imagine the emotional harm this psychologist caused to my daughters, who were 8 years old at the time. They were terrified, they would cry when they left the sessions, they would be forced to talk to their father on video calls in her office, under the threat of losing me as their mother. I certainly reported what was happening and changed lawyers for the third time, as the way my previous lawyers feared upsetting the judiciary was unbelievable, especially due to the fact that the expert psychologist was married to a judge.

I went to great lengths to defend my daughters, and once again, "in absentia", I stopped taking them to those so-called therapy sessions, which were nothing but torture sessions. I reported the case to the Child Maltreatment Parliamentary Commission of Inquiry ("CPI dos Maus-Tratos"), held in Brasília, led by Senator Magno Malta, who called this expert psychologist, as well as the psychologist responsible for the psychosocial follow-up, to testify, as they were involved in several other cases presented to the Commission. The CPI report called for the repeal of the PA Law, which has not yet happened in Brazil.

Since I took my daughters' case, through my current lawyer, to this CPI, to the Ministry of Women's Affairs and to the Ministry of Justice in 2018, I faced even more obstacles. I was summoned to appear before the Department of Internal Affairs of the Civil Police of the State of São Paulo due to complaints about the mishandling of investigation proceedings. They

came to my house with two police cars, sirens blaring, as if I were a criminal, just to personally serve me the summons (clearly meant to intimidate me and embarrass me in front of my neighbors). I was also taken aback by a visit from a social worker and a psychologist from the Specialized Reference Center for Social Assistance (CREAS), a public unit providing services to families and individuals at social risk or whose rights have been violated, to investigate a report filed with the Child and Youth Court. My daughters were heard at my home, in the presence of my lawyer. To this day, we have received no further updates on this investigation.

How do I keep fighting?

Currently, my case is under review by the São Paulo State Court of Justice following an appeal filed by my lawyer, as I did not accept the first-instance decision that resulted in my conviction. According to the court, I have been deemed an alienating parent and sentenced to pay for family therapy to facilitate the father's interaction with my daughters, in addition to covering fines and legal fees, including those of the father's lawyers. What's more, in the decision I am warned that if I keep alienating the children, there is a risk of the custody being reversed, meaning that they will be forced to live with their father.

The most recent procedural step required me to decide whether to proceed with my appeal, as my daughters were nearing the age of 17. The judiciary's assumption that they are no longer at risk due to their age is, to say the least, absurd.

Today I have two sick daughters as a result of more than 14 years of proceedings. Honestly, I live with the pain of seeing my two 17-year-old daughters dead inside, with no sparkle in their eyes and afraid of everything! And I am sure that this is all due to the violence perpetrated by their father, combined with the institutional violence perpetrated by the Brazilian judicial system. Even though I suffer with my daughters' pain, I am grateful! As absurd as it may seem, I am grateful every day that I did not lose custody of them, knowing that there are cases far worse than the one I am sharing.

There are mothers who have been prevented from living with their children because they reported intrafamilial sexual abuse or suffered domestic violence. The state punishes the victims, handing them over to their abusers, through a law that bypasses international human rights treaties and conventions to which Brazil is a signatory.

As difficult as it may be, I am grateful to have my daughters by my side, even though they are on psychiatric medication and suffer from panic disorder, anxiety, and depression. Both have attempted suicide, bear scars

from self-harm on their arms and legs, one struggles with anorexia, and the other experiences nervous tics and tremors. I can't imagine how they would be today if I had lost custody. The traumas they bear are comparable to those of people who have been through a war. I will never accept nonsense decisions that put my daughters at risk.

Unfortunately, many protective mothers bear a burden that devastates their souls, their mental health, and their professional careers, leading many to financial bankruptcy, all without the support of the State to protect their children.

I hope that one day I will receive the news that this false PAS has been eradicated from legal systems, academia, and everywhere else in the world. And may no child or mother go through what my daughters and I went through. Finally, I hope that my testimony will contribute to the fight against the PA Law in my country.

Intrafamilial child sexual abuse. What's happening in Argentina?

Daniela Dosso[1]

In Argentina, it is estimated that for every 1000 sexual abuses committed against children and adolescents, only 100 are reported, and of those 100 that enter the judicial system, only one leads to a conviction (Rozansky, 2003).

What happens to the 99% that goes unpunished?

When intrafamilial child sexual abuse is perpetrated by the child's father, victims may once again be at the mercy of their abuser. And most disturbingly, this time with the complicity of the rule of law.

Below, I present three key reasons that illustrate the severity of the situation in Argentina.

1. **The scale of the issue**. In Argentina, one in ten adult women (ages 18 to 49) reports having experienced sexual violence as a child (MICS, 2019-2020). Additionally, data from the "Victims Against Violence" program (Line 137)[2] of the Ministry of Justice and Human Rights of the Nation shows that between 2020 and 2021, 57.8% of the registered victims of sexual violence were children or adolescents, with a higher prevalence among girls across all age groups. 81.1% of the perpetrators were male, and in 74.2% of cases, the abuser was either a family member or a close family friend

1 Daniela Dosso holds a bachelor's degree in social work from the University of Buenos Aires and a postgraduate diploma in Health, Sexual and Reproductive Rights, and Comprehensive Management of Policies, Programs, and Services from ISALUD. She has worked as a lecturer and researcher in the fields of mental health and access to safe abortion in Argentina. She is part of the ASIAJ team (Sexual Abuse Against Children, Adolescents, and Youth) at FUSA A.C. She is the protective mother of Martín and Brisa, victims of paternal intrafamilial sexual violence (@alerta_pormartin).

2 https://www.argentina.gob.ar/justicia/violencia-familiar-sexual

(UNICEF, 2023). These data provide an overview of the problem of sexual violence against children, yet they do not capture its full extent.

2. **The very State responsible for upholding the law is the one operating "unlawfully".** This occurs when judges, prosecutors, experts, and psychologists apply, endorse, and fail to sanction or eliminate the use of Parental Alienation Syndrome (PAS)[3] and related concepts during criminal investigations. It is an exercise of de facto authority, as criminal lawyers and experts may refer to mothers as "controlling, alienating, and manipulative" parents who interfere with the child's sexual abuse testimony. As a result, the primary evidence—the victim's direct testimony—is dismissed as "coached", "manipulated", "implanted", or ultimately false. This violates the constitutional and conventional right of children and adolescents to be heard, as well as the legal principle of equality before the law for both them and their mothers. Unlike any other testimony given before the court, the child's testimony is presumed false, despite the mother being under oath to tell the truth. These are discriminatory concepts rooted in gender biases against women, which are incorporated into criminal investigations, often by psychologists who, in doing so, violate their own ethical code. This code is intended to prevent them from conducting assessments based on scientifically unfounded theoretical

3 This so-called syndrome was coined by U.S psychiatrist Richard Gardner in 1985 to describe the alleged alienation, subjugation, or "brainwashing" of children by a significant adult in their lives, typically the mother (Gardner, as cited by Dallam, 1999; Blanco, 2007; Pauluzzi, 2007; Claramunt, 2009). More specifically, he defined it as a childhood disorder that emerges almost exclusively in the context of child custody disputes. Its primary manifestation is a child's campaign of denigration against a supposedly good and loving parent — an unjustified campaign that, according to Gardner, results from a combination of parental indoctrination (brainwashing) and the child's own participation in vilifying the targeted parent (Escudero, Aguilar & De la Cruz, 2008: 283-284).
According to Gardner (as cited by Pauluzzi, 2007), this so-called "disorder" primarily arises in divorce proceedings, as it is during custody battles that mothers allegedly employ a wide range of tactics to discredit good fathers. Furthermore, based on Gardner's premises, this condition can manifest at three levels: mild (where alienation is superficial), moderate (where children exhibit hostility as a result of a continuous denigration campaign led by a close adult), or severe (where children become so aggressive that they refuse to see their father) (Claramunt, 2007; Pauluzzi, 2007). However, PAS is not recognized as a legitimate syndrome by international organizations such as the American Psychological Association (APA, 2008) or the American Psychiatric Association (Asociación Española de Neuropsiquiatría, 2010), as it lacks systematic studies validated by the scientific community to support its use (Dallam, 1999; Bruch, 2002; Rivera & Fields, 2003; Paz, 2008; Claramunt, 2009; Asociación Española de Neuropsiquiatría, 2010). Its popularity stems largely from the fact that its author published more than 30 books based on his personal experiences and observations. These impressions, however, were reproduced and disseminated through a press Gardner himself established for this purpose (Dallam, 1999; Paz, 2008), following multiple rejections from established publishers unwilling to publish his writings (Claramunt, 2007).

frameworks like the false PAS. Moreover, it is unethical for them to perform expert evaluations on children and women they have never interviewed or interacted with. It is common for psychologists who have never worked as forensic experts, as well as clinical psychologists who have never conducted an assessment or follow-up of the child or mother — either in person or online — to issue expert reports dismissing the child's symptoms of sexual violence, asserting that the abuse testimony has been "contaminated" or "implanted" by others, and accusing the mother who reported the abuse of "coaching" the child. The judicial system systematically enforces PAS, implicitly endorses its use, and fails to impose sanctions against it, thereby unjustly "casting doubt" on the testimonies of children and adolescents, the reports of professionals assisting them, and the statements of their mothers. In this way, judges "cast doubt" on the testimonies of victims, family members, and professionals who assisted them, then use the legal principle of *in dubio pro reo*[4] to allow the sexual abuse crime to remain unpunished by absolving the perpetrators due to "reasonable doubt".

3. **Psychic suffering**.[5] Children, adolescents, and their protective mothers may experience psychic suffering when abusive fathers are acquitted, and the State forces the victimized children to live again with the abusive parent. According to Ulloa (2000), this creates a "tragic trap" situation, which, in social terms, resembles scenes of torture and state terrorism. That is, children and adolescents,

> para deixar de sofrer ou cobrir suas necessidades básicas dependem de uma pessoa que os maltrata, sem que haja um terceiro imposto por lei para mediar a situação. Do ponto de vista da psicanálise, predomina algo ainda mais terrível do que a angústia: a dor psíquica, aquilo que não tem saída. A saída parece ser identificada com a morte. (Ulloa, 2000).

in order to stop suffering or meet their basic needs, are dependent on the very person who abuses them, with no third party present to mediate the situation. From a psychoanalytic perspective, what pre-

4 The expression *In dubio pro reo* means "In case of doubt, in favor of the accused". It is a legal principle that establishes that if there are reasonable doubts about a person's guilt, the accused must be favored and considered innocent until proven otherwise.

5 Regarding the concept of "psychic suffering," several authors point out that it differs from mental pathology, as it refers to distress experienced by the individual, caused by conflicts arising from daily life and social interactions, and experienced both unconsciously and consciously (Galende, 1997; Burín, 1990).

dominates is something even more terrifying than anxiety: psychic pain, pain with no escape. The only apparent escape seems to be death (Ulloa, 2000).

In cases of paternal intrafamilial filial sexual abuse where perpetrators are acquitted by the justice system, the harm to the child's psyche is even more severe. These children endure a double tragic trap, compounded by the "lesson" that speaking out or trying to seek an escape only returns them to the same tragic trap from which they tried to escape by speaking out. The first tragic trap occurs when those who should care for, love, and protect children instead become their betrayers—inflicting harm and exploiting them through emotional and sexual abuse. The second trap arises when, after speaking out despite emotional confusion and threats, the final authority to whom they can appeal—the legal system—doubts their testimony due to the influence of PAS and related concepts. They are neither fully believed nor outright disbelieved, and the perpetrators are acquitted due to claims of "insufficient evidence" or "reasonable doubt," both enabled by the infiltration of the PAS narrative. The same State, represented here by the judicial system, is the entity responsible for enforcing the law to end the psychic suffering caused by parental abuse. However, it fails in this duty, leaving the child trapped in a reality where the law exists in theory but not in practice—an absence of legal protection. The subjective interpretation that each child may make of this reality depends on many factors (personal, relational, familial, community), but it is a configuration of madness, where without the law, there is chaos, meaninglessness, physical and symbolic abandonment, and the diminishing of the law's boundary, which allows for the creation of an ethical social subject. When a judicial process fails to ensure accountability, it generates new concrete and symbolic oppressive conditions that can profoundly harm a victim's mental health. These conditions may lead to severe psychological disorders, including dissociation, depression, emotional numbness, and, in extreme cases, suicide. This unacceptable reality in the country is driven by judicial operators who occupy key positions within the legal system and act as an "anti-rights technical staff". These individuals coordinate their interventions with groups that advocate for the defense of incestuous sexual offenders, including the Association of Fathers Removed from Their Children (APADESHI, in Spanish) and

Infancias Compartidas[6]. These organizations present themselves to society as defenders of children's rights, portraying them as victims of family conflict resulting from the divorce or separation of parents. They claim to defend fathers who are victims of "contact obstruction" perpetrated by their ex-partners against them and their children, relying on the pseudotheory of Richard Gardner, although these groups deny it[7]. In practice, they defend in court fathers accused of incestuous sexual abuse, using a defense methodology that is identical across all cases they handle, where all protective actions taken by the mothers who report abuse are falsely reinterpreted as actions meant to "erase the father" in order to obstruct his contact with the child.

In this context, the fact that only one of the reported cases that reached the courts has led to a conviction in the Argentine justice system represents a major success for these anti-rights groups, as it reflects the systemic impunity they seek to uphold. It is the success of impunity, denial, and torture—achieved through the complicity, cover-up, and lack of training within much of the Justice Administration System.

To summarize, I provide a brief overview of the systemic and systematic actions and omissions observed in judicial processes that contribute to the cover-up of paternal intrafamilial sexual abuse.

6 https://www.bing.com/search?q=apadeshi&qs=UT&pq=apadeshi&sc=10-8&cvid=02A11F1925DD43BA82B997663EA73834&FORM=CHRDEF&sp=1&lq=0#; https://infanciacompartida.org/

7 In the magazine Topía (August 2012), Jorge Horacio Raíces Montero provides the following synthesis: In 1985, Richard Gardner, a U.S. clinical doctor, as a forensic expert and within the framework of a divorce dispute, first names a series of behaviors that the children of that marriage would present, which he calls the "Parental Alienation Syndrome". In 1987, he publishes *The Parental Alienation Syndrome and the Differentiation Between Fabricated and Genuine Child Sexual Abuse*, through his own publishing house, Creative Therapeutics, directly associating it with judicial accusations of incest towards one of the parents, stating that: "almost always, the accuser is the mother, and the accused is the father". From that moment on, Gardner associated this supposed syndrome to custody disputes, particularly when the father was accused of sexual abuse. According to Gardner, it is a "brainwashing" process in which one of the parents, usually the mother, subjects the child against the other parent, "alienating" or removing that father to the point of making him "disappear," sometimes leading the child to invent stories about sexual abuse by the father. The origins of the invention of this syndrome lie in Gardner's theory of human sexuality, according to which adult-child sexual contact is benign and beneficial for the reproduction of species. This theory interprets incest and pedophilia as benign, non-abusive behaviors and reflects the views of activists who defend pedophilia as a possible "sexual orientation". He mentions that older children can be helped to realize that sexual encounters between adults and children are not always considered a reprehensible act. That children could be told about other societies in which such behavior was and is considered to be normal, and that a child must be helped to understand that our society reacts in a exaggeratedly punitive and moralistic way towards sexual encounters between adults and children.

- The non-existent or false PAS is invoked, without being **explicitly named**, through its related concepts. The mothers are stigmatized and labeled as "obstructors of the paternal-filial bond," "vindictive," and "liars," thereby discrediting and invalidating their testimony as evidence.
- The non-existent False Memory Syndrome (FMS) **is invoked, without being explicitly named**, in cases involving children and young people. When children disclose abuse during forensic interviews (such as the Cámara Gesell in Argentina), court-appointed experts claim their testimony is "contaminated", "implanted", or "coached" by third parties—such as their mother or a clinical psychologist who first heard their account. This results in the systematic dismissal and doubt of all child sexual abuse testimonies, regardless of how they were conducted.
- The justice system fails to sanction **backlash**[8]—meaning the threats, harassment, and false accusations these anti-rights groups direct at professionals who assist victims and diagnose or certify sexual abuse.
- Gender-based violence **denial**. This strategy allows court-appointed and private forensic experts to reframe documented history of abuse, including prior complaints against the perpetrator, as "family conflict", "relationship disputes", or "parental disagreements". This narrative falsely constructs an illusion of equality between the victim and the abuser.
- **Concealment** of physical injuries and abuse indicators or the distortion of their causes in official forensic reports. Chronic or acute injuries, along with clear physical signs of sexual abuse, are either outright denied or attributed to unrelated causes such as constipation, congenital issues, routine accidents, or poor hygiene.

8 According to Faludi (1991), *Backlash* is a term used to describe a political movement that arises in response to the achievements made by feminism in the recognition of women's rights and the visibility and public sanctioning of gender-based violence. In other words, it emerges as a reaction aimed at maintaining the *status quo* promoted by patriarchal ideology, using the questioning of the rights granted to women.
Following Claramunt (2009), this term was coined by Susan Faludi, who was the first feminist woman to use it in one of her books. The term emerged as a result of the political advances of women's struggles, giving rise to a counter-movement or extreme reaction led by a group of men who claimed that women should not have the right to vote, that they should remain within the domestic sphere, and that reports of physical and sexual violence were a form of battle and discredit against men, among other premises.
According to Faludi (1991), Backlash constitutes an extreme reaction, a counter-movement that emerged around the 1980s, driven by the discontent of certain groups of men in response to the changes brought about by feminism. [...] According to the author, this reaction is primarily represented by an organized group of men, including family lawyers, associations of separated fathers, and professionals in medical and social sciences, who consider the literature produced by the Backlash as scientific, despite it not being recognized as such by international organizations and well-established associations. [...] Regarding the impact of these *Backlash* positions, Claramunt (2009) states that "in Latin America, the most affected country is Argentina".

With these mechanisms in place, all evidence is systematically obstructed: the key witness—the mother—is discredited through PAS accusations; the child's testimony is dismissed as "contaminated", "implanted", or "manipulated" through FMS-related concepts; the testimonies of professionals who certified abuse indicators are undermined, as they themselves face legal retaliation; physical evidence is openly denied or misinterpreted. As a result, the reconstruction of events is obstructed, as is the possibility of justice, reparations, and the restoration of rights. This systemic failure severely harms the mental health of countless children in Argentina.

It is important to note that this multi-layered strategy of evidence obstruction varies in its effects. In some cases, the evidence is considered but dismissed due to "reasonable doubt". In others, it is outright denied, and the focus of the case shifts to investigating whether the woman/mother is making a false abuse claim, placing her under suspicion of being a manipulative or abusive parent, as well as under accusations of false statement and obstruction of contact.

Meanwhile, state institutions responsible for protecting children's rights remain silent, passively witnessing this sequence of injustices as if watching a horror film that no longer affects them. There is no effective follow-up or enforcement of the UN Convention on the Rights of the Child in Argentina. Government ministries tasked with combating gender-based violence remain silent. Motherhood seems to strip women of their full recognition as women.

The outcome is as obvious as it is chilling: in 99% of cases of paternal intrafamilial sexual abuse, the courts conclude that "nothing has ever happened". These cases typically end in their closure before criminal charges are presented[9], dismissal, or acquittal. Anti-rights groups then manipulate these outcomes, reframing them as proof of "false accusations" simply because they did not result in convictions. They exploit these results to *lobby* for legislative and media influence, shaping public opinion through deceit.

9 Translation note: TheSpanish original text uses the term "sobreseimentos". The criminal justice process in Argentina consists of two stages. The first is the Instruction Stage, during which the prosecutor conducts the initial investigation and gathers evidence. At this stage, the prosecutor may choose to "close" the case, meaning it is dismissed without charges against the accused. If new evidence emerges later, the case can be reopened, and the investigation resumed. Alternatively, the prosecutor may request the judge to issue a "**sobreseimiento**", which results in the case being permanently and definitively closed in favor of the accused during the instruction stage. The third possibility, if the evidence suggests a reasonable likelihood that the crime occurred, is for the prosecutor to request that the case proceed to trial. The second stage is the Oral Trial. At this stage, the court may convict the defendant if it determines beyond a reasonable doubt that the crime took place and was committed by the accused. Conversely, the court may acquit the defendant, which also leads to the total and final closure of the case in favor of the accused, but this time at the trial stage.

Publicly, they present themselves as defenders of the "right to shared parenting". In practice, however, they are organizations that protect fathers who sexually abuse their own children. In Argentina, they have recently established the "Observatory of False Accusations," coordinated by attorney Patricia Anzoátegui[10], and have proposed multiple bills to create a "Registry of Obstructing Mothers". This label is applied to mothers who have listened to their children and acted accordingly — filing criminal complaints, as has been a legal obligation in Argentina since 2018.

Consequences of Judicial Cover-Ups Through PAS and Related Concepts

Here lies the final product — one that no one wants to acknowledge in a so-called progressive country: children turned into objects, forced into reunifications with their abusers. These children are then referred to state and private institutions for so-called co-parenting therapy, which are programs that function as mechanisms of coercion and intimidation to force them to engage with their abusers.

At the same time, there is a ruthless judicial persecution of protective mothers. These women undergo forensic assessments that deem them "unfit" to care for their children. They are fined, criminally charged with obstruction of parental contact, perjury, and conspiracy alongside the professionals who diagnosed the abuse. In Argentina, there are mothers who have been criminalized and arrested, and children who have been institutionally abducted. The psychological suffering inflicted on these mothers has effects on their mental and physical health equivalent to state-sanctioned torture. Some emblematic cases in Argentina can be found on Instagram: @Justiciaxlila, @gildaconsuhijoya, @justiciaparaflaviasaganias, @justiciaporarcoiris, @justiciapormishijos, @justiciaparaluna_, @alerta_pormartin, @escuchenamilagros, @nicolascristalpresente.

The false PAS: the more hidden, the more successful

It is not possible to claim that there is a systematic plan to cover up sexual abuse against children and adolescents within the judiciary. However, we can say that there is a systematic practice within the judicial system that is replicated almost identically across the country. In other words, even though

10 A successful defense attorney representing the father accused of paternal intrafamilial sexual abuse against his daughter Luna (@justiciaparaluna), based on the use of the PAS strategy and related concepts. She also implements Richard Gardner's "threat therapy". In other words, she not only defends fathers accused of incestuous sexual abuse but also files cross-claims against protective mothers and professionals assisting child victims. She is publicly known for her efforts to promote the notion of "false allegations" of sexual abuse in public opinion.

there seem to be many different people involved, various courthouses, legal practices, and individual cases, the way these cases are handled follows a consistent pattern. There is a shared underlying logic in how criminal investigations unfold, which becomes evident when looking at the outcomes. This pattern is most effective when it operates discreetly — meaning, the less it openly reveals its intent, the more successful it is in achieving its goal.

Why is judicial cover-up of sexual abuse observed only in its effects and not in its intentions? Because, in order to ensure lack of accountability, it cannot reveal its prior intention of concealing it. This occurs for two reasons. First, if the intent were exposed in advance, those reporting the abuse and seeking justice could anticipate and resist the strategy, preventing the lack of accountability. Second, legal authorities must uphold their legitimacy by maintaining an appearance of impartiality—if their intent to cover up were revealed, it would undermine their credibility and their very role as public officials.

Why do we say that the practice of judicial cover-up seeks, strives, and fights for its invisibility? Because what is not seen is not named, and what is not named does not exist. If cover-up is rendered invisible, then the narrative and symbolic weight shifts towards the existence of false allegations. In this battle over meaning, reality is distorted, and lies triumph over truth.

In conclusion, this is a systematic practice where the more concealed the intentions, the more effective the outcomes. Those involved do not declare their actions—they simply carry them out. The use of PAS and related concepts, with its tangible ability to cast doubt and obstruct evidence, is not just a tactic but a highly effective exercise of power.

The concealment of cover-ups also functions as a form of pseudo-statistics that reinforces the judiciary's ideological framework. This leads to a perverse distortion: the lack of convictions is presented as evidence that no crimes took place, which in turn legitimizes the false narrative that women/mothers are increasingly making false allegations.

The National Committee Against CAYSA (Children, Adolescents and Youth Sexual Abuse): a collective and urgent response

In response to this grave situation, in February 2021, we created the National Committee Against CAYSA in Argentina (Instagram profile: @mesanac.contraelabusosexual). A diverse space bringing together survivors, protective mothers, legislators, professionals, and activists to develop a common agenda and push for public policies that address sexual abuse as a human rights and public health issue.

We face major challenges and an enormous task ahead in four key areas: legislative changes, technical-professional training, research and knowledge development, advocacy, and social communication.

As part of our efforts, we have introduced three legislative proposals:

- Repeal of Law No. 24,270/1993, on Contact Obstruction. Although the law officially penalizes both parents for obstructing contact with their child, in practice, it is only used to criminalize mothers who try to protect their children from paternal violence. It has become the primary legal tool used by defenders of abusive fathers to file cross-claims against mothers. Moreover, it was originally created and promoted by anti-rights groups with this hidden agenda.
- Incorporation of the concept of Vicarious Violence into Law No. 26,485/2009[11] – the Comprehensive Protection Law for Preventing, Punishing, and Eradicating Violence Against Women in the Contexts of their Interpersonal Relationships – with the aim of making visible the link between gender-based violence against mothers and violence against children, as well as providing legal tools to address these situations as an interconnected whole.
- Elimination of the Statute of Limitations for Sexual Abuse Against Children. In Argentina, there is a time limit for reporting these crimes, but this does not align with the reality that many survivors need years or even decades to be able to speak out and seek justice.

Several declaration proposals aiming to acknowledge and shed light on the abuses and the growing influence of anti-rights groups in these cases were also presented.

Additionally, we have collaborated with professionals from across the country to draft Guidelines for the Creation of a National Program for the Care of Child and Adolescent Victims of Sexual Abuse. One of the major obstacles we face is the lack of a standardized model within the healthcare system for identifying and assessing these cases. Unfortunately, with the recent change in government, the implementation of this program has been set back. We have also established social media platforms (@mesanac.contraelabusosexual) to raise public awareness, share updates on landmark cases, and produce advocacy materials to help people better understand the issue. The Committee has convened and participated in the first assembly of protective mothers within the framework of the 35th Plurinational Meeting of Women, Lesbians, Trans, Travestis, Bisexuals, In-

11 https://www.argentina.gob.ar/sites/default/files/ley_26485_violencia_familiar.pdf

tersex, and Non-Binary People (MLTTBINB) held in San Juan (@mesanac.contraelabusosexual). During the assembly, we documented that this issue cuts across all social classes throughout the country.

We hope more organizations will join this agenda to strengthen and advance these efforts. Finally, in Argentina, we raise our voices loud and clear:

Child sexual abuse is torture.
These are NOT false allegations — it is JUDICIAL COVER-UP.
Acquitted does NOT mean innocent.
We are NOT obstructors — we are protective mothers
I do believe you! (Yo Sí Te Creo!)

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Mapping impunity and strategies of resistance

Andrea Karina Vázquez[1]

Introduction

Over 200 years ago, torture was abolished in the Territory of the Viceroyalty of the Río de la Plata and—officially, in 1853 by the Assembly of the Year XIII. However, protective mothers continue to suffer psychological and emotional torture from the same institutions that should protect us.

This brief essay highlights the urgent need to reform judicial practices and recognize the voices and experiences of protective mothers as embodied, valuable, and fundamental knowledge for change in public policies and judicial systems. I aim to analyze the impact of judicial decisions that invoke the concept of parental alienation and related terms on the physical and mental health of protective mothers, using a critical, situated[2] approach from the perspective of this group, which serves as the unit of analysis. There can be no health without access to justice.

I'll start by defining who we are, the Protective Mothers, those who seek to protect our children from violent fathers, including those who perpetrate incestuous sexual violence. When we go to the Judiciary seeking the grant of a restraining order, we are often accused of parental alienation and its pseudo-concepts; in order to delegitimize us, the courts criminalize and pathologize us.

1 Andrea Karina Vázquez is a protective mother from Argentina. She is a gynecologist at the Ramón Carrillo Provincial Hospital. She is the co-director of Access to Justice at the Secretariat for Women, Gender Policies, and Diversities (La Matanza, Buenos Aires Province). She holds a postgraduate diploma in Gender Equity and Health from the University of La Plata and a postgraduate diploma in International Health from the National University of Clemente Paz. She is currently working on her Master's thesis in Public Health at the National University of Córdoba, focusing on "The impact of parental alienation counterclaims on the health of protective mothers reporting incest".

2 Feminist theory provides an important framework for understanding the experiences of protective mothers. Donna Haraway (1988), with her concept of "situated knowledges", argues that all knowledge is partial and situated in a specific context. This is relevant for understanding how the experiences of protective mothers must be recognized and valued as valid and crucial knowledge to reform judicial practices.

This reflects a reactive and disciplinary strategy of a patriarchal judicial system that does not recognize the rights and complaints of mothers, who are often the first to detect signs of violence and receive testimonies from children and adolescents, as their figures of protection and care.

As the personal is political, quoting Carol Hanish (1969), who offers her brilliant insight into how knowledge is created through experiences, connections, synthesis, and combinations made in horizontal conversations between women, I bring into the conversation the experiences of mothers who, like me, report incest. Yes, like them, I'm a protective mother.

My story

I am an Argentine doctor and feminist, mother of three children, who in 2009 decided to separate from my husband at the time, Pablo Ghisoni, a well-known doctor and businessman from Lomas de Zamora. Since then, I have reported him more than 40 times for violence against me, and especially against our children, but we were systematically ignored:

> He broke a bottle in my eldest son's mouth because the noise he made bothered him. I remember I was breastfeeding. That was the first complaint I made in 2009. **The 40 complaints that followed were not taken into account at any time**. That was the first report I made in 2009. The 40 reports that followed were never taken into account. On the contrary, we were placed in the defendant's seat. My children were completely ignored. When they were summoned to testify, they were asked, "But what are you afraid of? Are you afraid we'll come get you and make you live with your father?" They made it clear to them in every possible way that this was their intention". [...] It wasn't a question, it was a threat (Baéz, 2023).

Despite my children's responses, who refused to visit their father saying that their father "neither cared for nor protected them" (*sic*) with clear and compelling arguments, that is what the Family Court decided. With a large contingent of armed and uniformed police, they raided our home—the most sacred space for any person—to take my children. For the next four agonizing years, I saw them only on rare occasions, each marked by unlawful interference.

In 2015, my son Tomas, now an adult, managed to escape from his father's home and revealed the torture they had endured during the years they were court-ordered to live under his exclusive care. The event led me

to regain custody of two of my children. Victims have their own pace, and my eldest son has still not been able to speak about it.

More than a decade later, on August 3, 2023, the trial against my children's father finally took place at Criminal Court No. 3 in Lomas de Zamora, following strong evidence that he had subjected them to incestuous sexual violence.

During this trial, and after more than a month of public hearings, I was supported by prominent representatives of the feminist movement and the human rights cause, as well as other protective mothers—women who, like me, are fighting for justice for their children. And it could not have been otherwise. Over the years, I have become an emblematic and tireless fighter against the institutional violence that I, along with so many other mothers, endure in a similar manner:

> One mother once told me: "we are like pill bugs: you lift a tile, and a lot of them come out. It's terrible, but it's true. It's like a plague of similar cases, but we don't know it, we don't know each other", Andrea smiles (Baéz, 2023).

From analyzing the horizontal conversations among protective mothers, emerges what I call the **mapping of impunity** (Vázquez, Tuana 2024). The reading of judicial rulings filled with stereotypes, in which parental alienation is used to discredit the complainants and victims, reveals that the most disgusting, repulsive and ingrained forms of patriarchy are deeply rooted within a significant portion of the Judiciary.

Protective mothers endure a double tragic trap, as described by Ulloa[3]: the first, which keeps us dependent on the perpetrator through a mediator—our children, all of whom are victims; and the second, which forces us to rely on the decisions of the Judiciary, where fundamental issues such as child custody, visitation rights, the conviction or acquittal of perpetrators, division of assets, child support, and any matter related to shared parental responsibility are, in practice, stripped from the protective mothers who seek justice.

These prolonged court proceedings subjugate them, forcing them to rely on those who discriminate against them for much of their lives. In other words, they are compelled to endure the violence perpetrated by "those

3 Expression coined by Fernando Ulloa (2005): "This tragic entrapment occurs whenever someone, in order to stop suffering or to meet their basic needs, such as food, healthcare, or work, depends on someone or something that abuses them, without the intervention of a third party enforcing the law. What predominates in the tragic entrapment is not anguish, no matter how terrible it may be; but something even worse: psychic pain, the kind that leaves no way out, no light at the end of the tunnel."

entrusted with upholding justice", with the complicity of the State, which has a duty to punish, prevent, and eradicate all forms of violence.

The foundational institutions of society include the Judiciary, but in our experience, judicial decisions perpetuate inequities. Judges embody the Law and have the power to subject protective mothers and their children to the arbitrariness of their decisions, which "are not always" framed within the current normative framework, as evidenced by the report from rapporteur Reem Alsalem[4], who states that parental alienation and its pseudo-concepts are used to resolve custody issues of children and adolescents to the detriment of protective mothers and victim children, in order to undermine their credibility and divert attention from genuine accusations and reports of domestic violence and the safety of victims.

These prejudices lead courts to ignore or dismiss credible reports of violence, coercive control, incest, and sexual violence, and to make decisions that place children in dangerous situations, favoring the father who claims alienation, granting him sole custody, without adequately considering the perspective or well-being of the children.

Since the lies of patriarchy appear flawless (Hendel, 2017), we are inclined to believe that judges will be impartial, that equality before the law is a fundamental human right we can access, and that there will be a straightforward remedy to obtain effective judicial relief that puts an end to the violation of our rights and the violence we endure.[5] However, after hearing the protective mothers, I raise the following questions:

- What happens when it's judges who exercise violence?
- To which "authority" can we report that the behavior of a judge or court official constitutes a violation of their duties as a public official?
- What are the consequences of reporting a perpetrator? And, even worse, what happens if the perpetrator is a judge?
- What will be the consequences of reporting them?

As privileged epistemic subjects (Harding, 1986), protective mothers, by virtue of our oppressed condition, know the labyrinths we must navigate to protect our children from the vicarious violence perpetrated by our ex-partners, and the most severe and perverse form of institutional vio-

4 Alsalem, R. (2023): https://www.ohchr.org/en/documents/thematic-reports/ahrc5336-custody-violence-against-women-and-violence-against-children

5 International Covenant on Civil and Political Rights, Article 2. United Nations, 1966: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

lence, which is carried out by the institutions we turn to for protection, assistance, support, advice, and justice. As Baéz (2023) notes:

> **Standing together is one of the strategies that can help reduce inequity**, the unjust disparities we face within a judicial system that is misogynistic, patriarchal, and, when in doubt, consistently favors the word of the male perpetrator. As primary caregivers and the ones who witness or receive disclosures of abuse, we are the ones most often met with suspicion.

My personal story serves as an example of how the burden of proof was unjustly reversed in court. Despite being the perpetrator of severe sexual violence, the father of my children was tried and ultimately acquitted. Meanwhile, we—the victims and complainants—were placed in the position of the accused. Prejudices and stereotypes were used to discredit me, alleging that I had manipulated my children into fabricating claims of incest.

This essay draws on nearly a decade of horizontal conversations among protective mothers, in which I have actively participated both as an observer and as an engaged member (Harding, 1986). It also builds on the research I have been conducting for my thesis, mapping the systemic impunity surrounding these cases. The interviews reveal common patterns of institutional responses, where mothers are accused of disobedience, face legal fines, threats of reversal of custody to the accused parent, and in many cases, children are forced to re-establish contact with the accused parent.

Protective mothers in the context of laws and judicial practices in Argentina: key analytical concepts

The theoretical framework of this essay relies on several key analytical concepts. First, it is essential to consider the impact of Argentina's Law 26.485 (2009) for Comprehensive Protection to Prevent, Punish, and Eradicate Violence against Women[6], and its implementation (or lack thereof) in cases involving protective mothers. This law aims to guarantee equality and non-discrimination, but it is often ignored in family court proceedings, as can be seen in my story and in the stories of many other women.

Secondly, it is important to highlight the controversial Law No. 24.270/1993 on contact obstruction[7], which, in practice, has been used

6 https://www.argentina.gob.ar/normativa/nacional/ley-26485-152155

7 This law has been criticized both in legal doctrine and case law, according to María Beatriz Girardi (2021). Since 2009, several legislative proposals have been introduced to repeal the offense of contact obstruction, all of which, according to Girardi, share a common rationale: the inadequacy of this legal mechanism in safeguarding the best interests of the child. Furthermore, Girardi argues that resorting to this law can

by violent fathers to criminalize protective mothers, based on the Parental Alienation Syndrome (PAS).[8]

Furthermore, it is crucial to understand and incorporate the concept of vicarious violence, coined by Sonia Vaccaro (2012), which describes the violence inflicted upon children as a means to perpetuate violence against women after separation or divorce. Vicarious violence is a form of gender-based violence where children are used as tools to harm the mother, and the judicial system often facilitates this kind of violence.

Additionally, Marcela Lagarde (1990), in her analysis of women's captivities, offers a deep understanding of how women are socially conditioned to accept their subordination. Protective mothers, by challenging these roles, face severe practices of cruelty from the judicial system, aimed at restoring the patriarchal order and keeping us captive.

The alleged Parental Alienation Syndrome and its impact on health

The concept of parental alienation, promoted by Richard Gardner, has been debunked and criticized by multiple experts, including Sonia Vaccaro and Consuelo Barea (2009) in their book "*The Alleged Parental Alienation Syndrome*". This syndrome has been used to discredit reports of violence and abuse, blaming protective mothers and questioning their mental health, while accused fathers are rarely subjected to psychological or psychiatric assessments.

The criminalization and pathologization of protective mothers have severe consequences for their physical and mental health. These mothers face constant stress and anxiety due to legal threats and the possibility of losing custody of their children. The revictimization within fragmented judicial proceedings, where they must repeat their stories multiple times, worsens their situation.

In most cases, the only evidence is the testimony of children and adolescents, which is discredited through the inexistent PAS. In the few cases where physical injuries are found, excuses such as constipation have been

only escalate the conflict, further delaying its resolution—especially considering the numerous rulings that demonstrate how one parent uses this legal norm as a means of revenge or intimidation against the other parent.

8 See also: "'Impedimento de contacto': buscan derogar una ley porque dicen que favorece a padres denunciados por abuso", by Mariana Iglesias, published in Clarín on September 14, 2022 . https://www.clarin.com/sociedad/-impedimento-contacto-buscan-derogar-ley-dicen-favorece-padres-denunciados-abuso_0_RQo6bl4Kk4.html?srsltid=AfmBOooliP6NsZrN93UUc0NPN93LGAOq8ShgLmjQJlwPv-X1TNg2VHsv;"Utilizan esta ley para encarcelar a las madres protectoras", by Roxana Sandá, page 12, September 23, 2022 https://www.pagina12.com.ar/484145-basta-de-criminalizar.

used to benefit the accused, discrediting scientific evidence that differentiates injuries caused by external object penetration from those occurring internally—an evident patriarchal bias within the judicial system. Furthermore, criminal prosecutions can extend for up to a decade, often resulting in premature dismissals[9] or acquittals, ultimately denying mothers and their children access to justice.

Conclusion

The analysis of my personal history, along with the experiences of other protective mothers, reveals a judicial system that not only fails to protect victims of violence but also perpetuates violence through the criminalization and pathologization of protective mothers. It is crucial to recognize the importance of situated knowledge and feminist perspectives in reforming judicial practices to guarantee access to justice and the well-being of protective mothers and their children. Achieving the highest possible level of health is impossible without access to justice, and gender plays a crucial role in shaping social health outcomes.

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9Translation note: TheSpanish original text uses the term "sobreseimentos". The criminal justice process in Argentina consists of two stages. The first is the Instruction Stage, during which the prosecutor conducts the initial investigation and gathers evidence. At this stage, the prosecutor may choose to "close" the case, meaning it is dismissed without charges against the accused. If new evidence emerges later, the case can be reopened, and the investigation resumed. Alternatively, the prosecutor may request the judge to issue a "sobreseimiento", which results in the case being permanently and definitively closed in favor of the accused during the instruction stage. The third possibility, if the evidence suggests a reasonable likelihood that the crime occurred, is for the prosecutor to request that the case proceed to trial. The second stage is the Oral Trial. At this stage, the court may convict the defendant if it determines beyond a reasonable doubt that the crime took place and was committed by the accused. Conversely, the court may acquit the defendant, which also leads to the total and final closure of the case in favor of the accused, but this time at the trial stage.

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Between utopia and reality: The Hague Convention and violence against women and children

Stella Furquim[1] and the GAMBE team

Despite the effects of globalization on human mobility in the 21st century and the advancements in society, the families shaped by this process are still governed by outdated norms that don't align with today's reality. Particularly, the 1980 Hague Convention 2on the Civil Aspects of International Child Abduction (which is incorrectly translated in Brazil as *Aspectos Civis do Sequestro Internacional de Crianças*) has become counterproductive and inconsistent with the best interests of the child in today's global context.

A priori, the treaty, drafted in The Hague over 44 years ago by Canada, France, Greece, and Switzerland, aimed to protect their citizens who had children with foreign fathers, since, until then, a father could take the child with him and cross borders without authorization and without leaving traces. This practice against women and children was on the rise in those countries in the 1970s, which prompted a rapid response from international authorities. Therefore, the 1980 Hague Convention was created to facilitate communication between the country of the child's habitual residence and the destination country in cases of child *abduction*.

1 Stella Furquim is a passionate human rights defender, with a focus on fighting gender-based violence. For the past nine years, she has been active in GAMBE - the organization she co-founded - collaborating with public policies and leading campaigns to raise awareness about women's rights and the need for protection against domestic violence and other forms of oppression. In addition, Stella organizes lectures, *workshops* and empowerment initiatives to support victims and raise awareness about gender equality, especially among Brazilian women living abroad. Her dedication to the issue has turned her work into a symbol of resistance and hope for many victims around the world, earning her the title of 2024 #1 Activist Against DomesticViolence at the Woman Awards London.

2 https://www.hcch.net/en/instruments/conventions/full-text/?cid=24

However, by the mid-1970s, it was not anticipated that the situation would reverse decades later: in 2015, more than 7 out of 10 abduction accusations were directed at foreign mothers, according to official statistics.[3] More than 73% of the cases recorded worldwide that year involved complaints against mothers, nearly triple the number of fathers, and this trend has been growing, with over 15,000 migrant women accused of abducting their own children under the 1980 Hague Convention in the past decade. The Convention is currently in force in more than 100 countries, including Brazil and the other Mercosur member states.

In theory, the 1980 Hague Convention calls for the immediate return of children to their country of habitual residence in the best interest of the child, as it considers their unilateral relocation to be a violation of their human rights. In practice, applying the Hague Convention without a gender perspective means that children will be returned to their country of habitual residence without considering the possibility that their family may represent an unsafe environment, including with domestic violence and violence against children and adolescents. At least 2,000 children a year are living in environments where domestic violence is present, and their countries of habitual residence are not fulfilling their roles in protecting them. In this context, when mothers flee these countries with their children and end up being "Hagued", they are separated from their children, even though they are their primary caregivers. Once the child is returned to the requesting country, these mothers are prosecuted as "kidnappers" in costly and hostile legal systems, leading to a consistent outcome worldwide: the loss of custody of their children. In theory, the Hague Convention does not interfere in custody disputes. In practice, the Hague Convention justifies separating mothers from their children abroad, relocating them to unsafe environments.

Given this scenario, two Brazilian initiatives were chosen as examples of best practices. In addition, it should be noted that the UN Special Rapporteur on Violence against Women and Girls, Reem Alsalem,[4] whose visit to Brazil in 2023 was postponed indefinitely by the government at the time,[5] called for official responses to the global issue previously addressed[6] in earlier reports[7].

3 https://assets.hcch.net/docs/6ca61ff3-5ca6-4fbe-a79a-cb6e7485f4b0.pdf

4 https://www.ohchr.org/en/special-procedures/sr-violence-against-women/reem-alsalem

5 https://noticias.uol.com.br/colunas/jamil-chade/2023/10/04/governo-adia-visita-de-relatora-da-onu-sobre-mulher-acertada-por-bolsonaro.htm

6 https://www.ohchr.org/sites/default/files/documents/issues/women/sr/activities/2023-01-31/20230124-SR-VAWG-Statement-European-Parliament.pdf

7 https://www.ohchr.org/en/documents/thematic-reports/ahrc5336-custody-violence-against-women-and-violence-against-children

Mission in context

A law to protect vulnerable Brazilian children and mothers living abroad

In December 2022, the Chamber of Deputies passed Bill[8] (PL) 565/2022 to regulate the use of Article 13(*b*) of the 1980 Hague Convention concerning international child abduction proceedings. Article 13(*b*) provides for an exception to the "prompt return to the State of their habitual residence" rule in case "there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation".

Abduction, snatching or kidnapping? Suggestive Terms and Translations

Both terms, *kidnapping* and *snatching*, are synonyms that refer to crimes with distinct legislation, both domestic and international. They do not, therefore, reflect the content of the Hague Convention, which is not criminalized in Brazil, and which proceedings take place in the civil sphere. In Spanish, the word *sustracción* (abduction) has been used in order to avoid the suggestion of a criminal or condemnatory intent. Abduction of minors, in international private law, refers to a child being taken or relocated to another country by a parent or close relative without consent.

Abduction to escape violence

For these specific cases, the 1980 Hague Convention established the cross-border protocol with the aim of locating and returning the child to the country of habitual residence within 6 weeks. The agreement, which already covers more than half the world, provides for limited exceptions so that children are not forced to return. It is at this point that the significance of Bill No. 565/2022, currently under discussion in the Brazilian Congress, stands out.

What exactly justifies an exception to the immediate return rule in Hague Convention cases? Risk to the child in the "State of their habitual residence" is the condition outlined in Article 13 (*b*) that allows the requested State to deny to order the return of the child to the requesting State. However, it is not specified in the text what is considered to be "an intolerable situation". As a result, and due to the urgency imposed by the protocol, few court decisions admit cases of exception.

Controversies intensified following the release of the sixth Guide to Good Practice under the HCCH 1980 Child Abduction Convention,[9] in 2020, on

8 https://www.camara.leg.br/noticias/931490-camara-aprova-projeto-de-protecao-a-crianca-exposta-a-violencia-domestica-no-exterior

9 https://assets.hcch.net/docs/225b44d3-5c6b-4a14-8f5b-57cb370c497f.pdf

the occasion of the 40th anniversary of the conclusion of the Convention. In direct opposition to fundamental human rights, the handbook issued by the Hague Conference on Private International Law (HCCH) - as the HCCH is the intergovernmental organization overseeing the treaty - normalizes domestic violence and instructs judges to disregard evidence unless the abuse is directed at the child.

> The specific focus of the grave risk analysis in these instances is the effect of domestic violence on the child upon his or her return to the State of habitual residence of the child, and whether such effect meets the high threshold of the grave risk exception, in light of such considerations as the nature, frequency and intensity of the violence, as well as the circumstances in which it is likely to be exhibited **Evidence of the existence of a situation of domestic violence, in and of itself, is therefore not sufficient to establish the existence of a grave risk to the child [emphasis added]** (HCCH, 2020, p. 38).

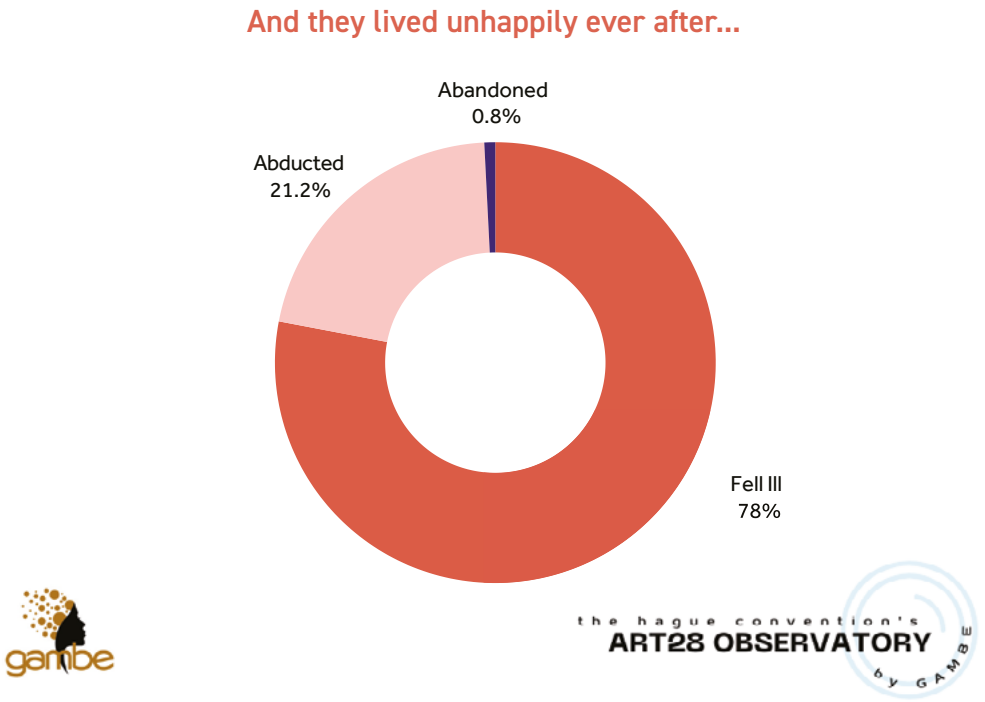
By acknowledging the "existence of a domestic violence situation" without addressing its implications, the HCCH proposed practices contradict the commitment of States to ensuring a life free from violence. This approach undermines the best interests of the child by prioritizing contact with the abusive parent over legitimate concerns about the violence perpetrated.

In this context, Bill No. 565/2022, which was passed by the House of Representatives in December 2022, regulates the application of Article *13b* in Brazil and includes domestic violence as a grave risk factor for the children of Brazilian mothers who are victims of abuse in other countries. As numerous studies have shown, the proposal explains[10] that the development of children exposed to any kind of violence is at grave risk of irreparable harm.

Alternatives and initiatives of extensive impact

Bill No. 565/2022 also has the potential to reach not only Brazilian mothers wrongfully accused of *abduction*, but also to prevent new similar cases. This is due to the fact that the Hague Convention subjects abused mothers living abroad to a dead end, leaving them hostage to their children's father and to judicial systems that, besides being unfit to protect migrant women, do not accept that a child moves from its "country of habitual residence".

10 https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=2147690&filename=PL%20565/2022



Source: Gambe, 2023.

In international private law today, there are only three options for these women: *abduct* their children, become ill with them, or abandon them. None of them have a positive outcome. In such cases, acknowledging the dangers of domestic violence and its impact on children favors mother's legal requests for relocation, protecting vulnerable parties rather than sentencing them to live in intolerable conditions. If this were the case, countless Brazilian families would be saved.

Up to now, the 1980 Hague Convention has 103 Contracting Parties and is advocating for the accession of the rest of the world. In 2016, India definitively rejected the mechanism promoted as the most effective international cross-border protocol. In December 2022, an Australian government decree,[11] on family security, came into force recognizing domestic violence as a "grave risk" to child under Hague proceedings.

Four months later, the Mexican Supreme Court of Justice issued a decision establishing similar jurisprudence. More specifically, the highest judicial authorities in Mexico[12] explained that this "grave risk" is not limited to the direct victims of violence, but also extends to children who are witnesses. In Brazil, Bill 565/2022 is progressing slowly in the Federal Senate. After being approved with an amendment by the Human Rights Commission in

11 https://ministers.ag.gov.au/media-centre/ensuring-family-safety-australian-hague-convention-cases-12-12-2022

12 https://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=7325

May 2024, the bill is now in the Foreign Relations Commission and will still proceed to the Constitution, Justice, and Citizenship Commission[13].

In this context, the Support Group for Brazilian Women Abroad (GAMBE) urges both the Legislative and Executive branches of the Brazilian government to accelerate the process for the final approval of the law in the Senate, followed by the presidential enactment, since this law has the potential to save thousands of Brazilian families trapped in this painful global paradox.

Gender-based procedural guidelines and protocols must move beyond being mere friendly recommendations and become mandatory. Uruguay has an important handbook addressed to its judiciary, developed in partnership with UN Women in 2020. Mexico has several intersectional guidelines concerning migration, gender and childhood, all of which are highly relevant for the courts. Brazil adopted the Mexican model for the design of its Protocol for Judging with a Gender Perspective, which became mandatory in 2023. These are not a solution for today's generations of adults and children. However, if such knowledge begins to be required in job applications for positions related to access to justice—from police officers to social workers, healthcare professionals, foreign affairs personnel, and future judges—and if it is expanded to international organizations that implement binding agreements, such as Mercosur, the OAS, the UN Assembly, etc., it could promote justice for the adults and children of future generations.

Focus in practice: the work of GAMBE.

GAMBE[14] is a network of volunteers who assist and support migrant women abroad, according to their particular needs and adversities. From the perspective of human rights, gender and interculturality, lawyers, psychologists and professionals from various fields, who are proficient in several languages, advise the population on opportunities, integration, education, the job market, administrative procedures, laws, access to justice and social services in the countries where they live.

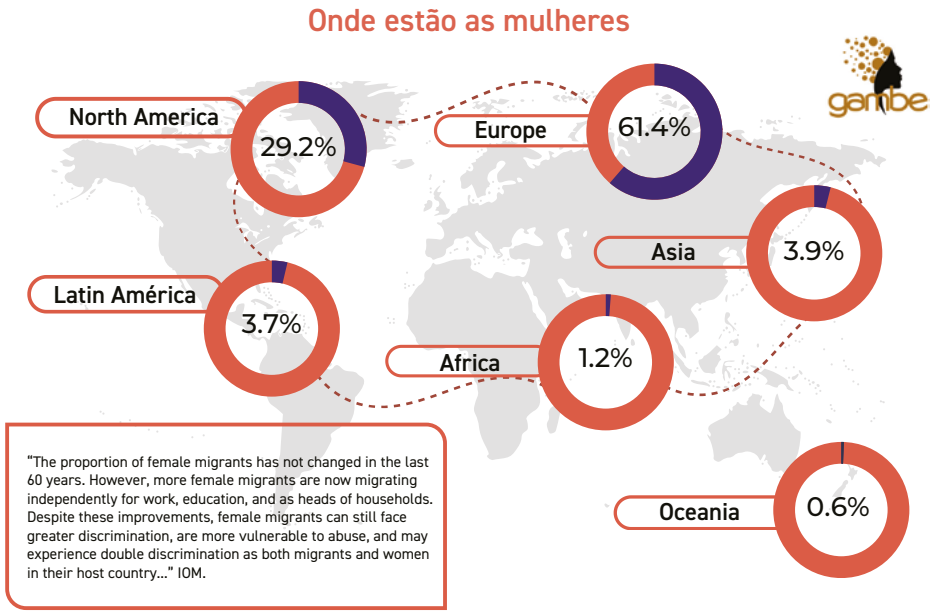
Our experience reveals the absence of the State and the lack of attention to basic issues concerning human mobility, particularly with regard to the vulnerabilities specific to female and child migration. For instance, most of the women who approach GAMBE seek information about their rights and responsibilities concerning divorce and custody of children with dual nationality.

Between 2020 and 2022, 155 Brazilian women received assistance amid family conflicts. All the cases are strikingly similar, allowing us to identify a

13 https://www25.senado.leg.br/web/atividade/materias/-/materia/155624

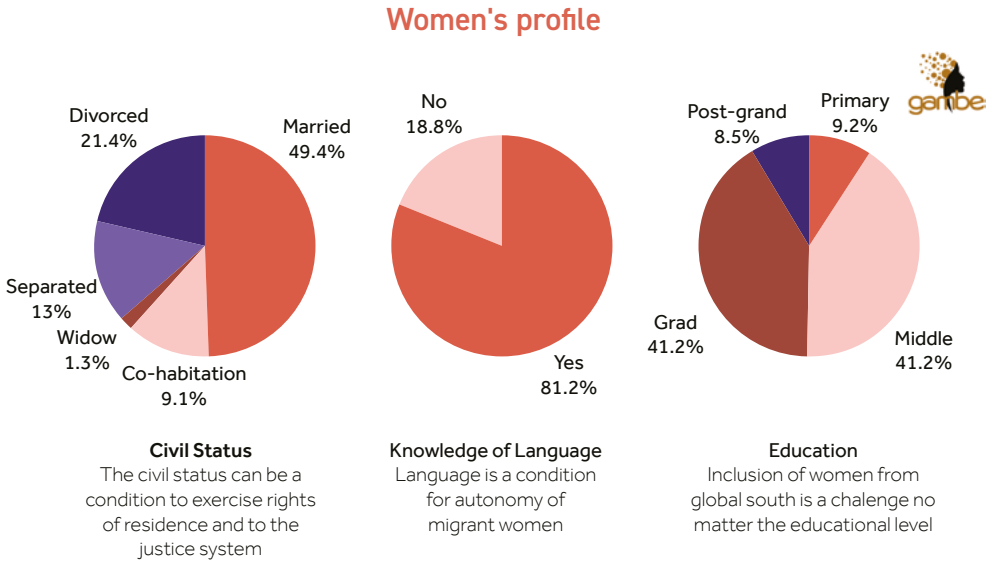
14 http://www.gambe.org

consistent pattern. In this regard, GAMBE organizes activities and provides informational materials to raise awareness about the discrimination and abuse commonly experienced in the migration context. Some data on the reality of these women's daily lives, which is closely monitored by the group, is presented below:



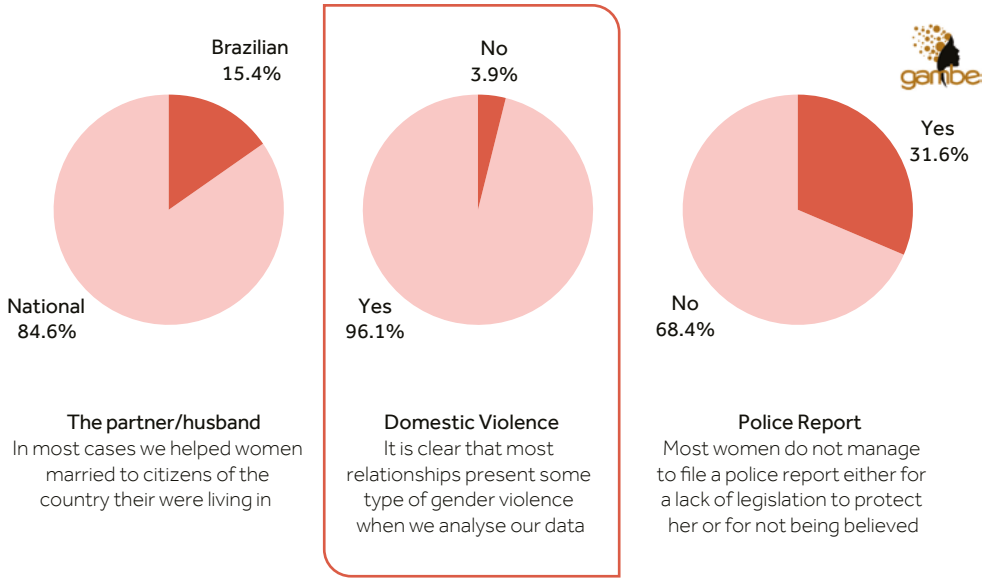
Source: Gambe, 2023.

These women come from various Brazilian states, with migration reasons typically including studies, work, or reuniting with partners from other countries.



Source: Gambe, 2023.

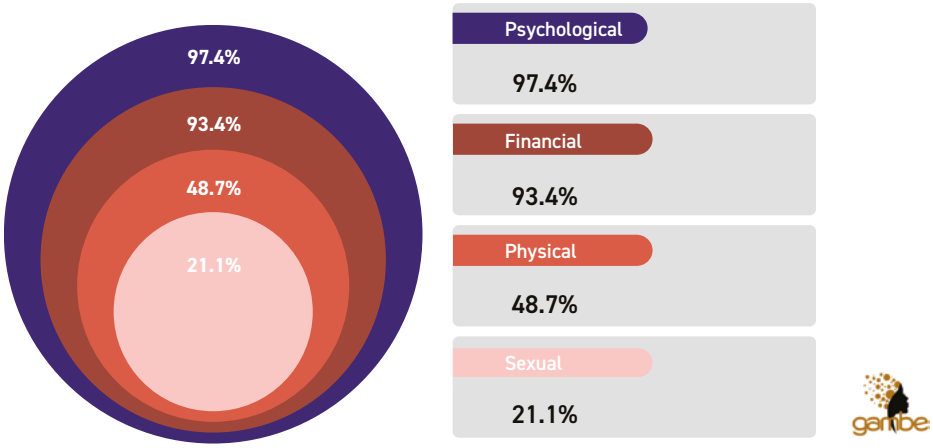
Relationship X-Ray



Source: Gambe, 2023.

There is a pattern, regardless of any other markers, which is that violence permeates the experience of all these women.

Types of Violence



Source: Gambe, 2023.

In the words of Nils Melzer, former UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,

> Domestic violence is perpetrated every day against millions of children, women and men worldwide. [...] On the basis of that generic understanding, domestic violence includes a wide range of abusive conduct, from culpable neglect and abusive or coercive or excessively controlling behavior that aims to isolate, humiliate, intimidate or subordinate a person, to various forms of physical violence, sexual abuse and even murder. In terms of the intentionality, purposefulness and severity of the inflicted pain and suffering, domestic violence often falls nothing short of torture and other cruel, inhuman or degrading treatment or punishment (also referred to as "torture and ill-treatment"). [...] In the light of these observations, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment is of the view that domestic violence cannot be regarded as a private matter, but constitutes a major human rights issue of inherently public concern that requires examination, inter alia, from the perspective of the prohibition of torture and ill-treatment (UNGA, 2019, p. 3).

Accounts of some true stories concerning the protection of the abuser's best interest

As previously mentioned, the stories of the Brazilian women who sought GAMBE's help between 2020 and 2022 share similar patterns. In most of them, there is strong evidence of various types of violence, including coercive control. Below are some of these stories, with the victims' names omitted to protect their identities.

The Brazilian woman who was held in conditions resembling forced confinement on a yacht.

This Brazilian woman, the mother of two young children, could no longer cope with her ex-husband's constant abuse. She comes from a modest family, whereas he comes from a wealthy background. The father's dream was to turn his yacht into the family home. His ex-wife didn't agree, but that didn't matter. The father then, after a fight, relocated the children inside the same country, Brazil, from one state to another, and told the mother that he would only give her access to her own children, aged 1 and 2 at the time, if she signed the divorce and custody agreement. Under this agreement, the father had the right to make all decisions regarding the children, and the mother was expected to comply. The agreement also provided that if the mother moved back in with her ex-husband, they would not be considered a couple, nor would there be any employment relationship with the mother.

Less than a week after signing the agreement, the four of them were in Morocco boarding the father's yacht. What followed were two years—during a pandemic, no less—of severe physical, psychological, and sexual violence against the woman while aboard the vessel.

In order to stay with her young children, the mother agreed to be responsible for cleaning the boat, cooking, and taking care of them full-time. And whenever it was her ex-husband's wish, she was also expected to satisfy his sexual demands.

She was visibly wasting away, practically waiting for the moment she would die. It was only when a couple of acquaintances noticed that something was wrong that she decided to reach out to GAMBE.

The organization monitored the yacht's movements around Europe for nearly a year. Finally, when the vessel entered Portuguese waters, with the help of the Portuguese Association for Victim Support (APAV) and the local maritime police, in less than a month mother and children were rescued and taken to a shelter for domestic violence survivors. The children had fungal infections in their mouths and on their scalps and had partially lost their vision, apparently due to prolonged time at sea without proper nutrition. One of the children also suffered from severe leg pain.

Once safe in the shelter, the children started attending a local school and were very happy and at ease. They did not want to speak to their father, not even via video call. However, the Portuguese court forced these young victims into supervised visits with their abusive father. Over time, these visits gradually became unsupervised and lasted a few hours, then completely unsupervised, and eventually included overnight stays.

At this point, GAMBE representatives recommended that the court confiscate both the children's and the father's passports as a safeguard against potential abduction. Unfortunately, the request was ignored. The father eventually abducted the children, who have had extremely limited contact with their mother for over two years. The Hague proceedings are being held by Brazilian courts without an official return request so far.

The "hagued" Brazilian woman subjected to domestic violence during her pregnancy.

She went to Canada to study, where she met a Lebanese citizen who, like her, was not a permanent resident[15] in that country. They quickly fell in love and got married. Shortly after their marriage, she found out she was pregnant.

15 The permanent resident visa grants various citizenship rights to residents in Canada and requires a specific immigration process. One of the main differences between Canadian citizenship and the permanent resident visa is that visa holders cannot vote in Canadian elections. However, other rights, such as access to healthcare, education, and employment, are granted to permanent residents as if they were citizens.

Over time, the relationship became increasingly toxic. At 20 weeks pregnant, she was physically assaulted by her husband. On this occasion, as well as several others that followed, neighbors called the police to the couple's home, leading to the arrest of the abuser. The father pleaded guilty in court and then served his sentence: a few hours of community service and an anger management course. Eventually, because she was alone and pregnant in a country where she had no support network, she got back together with her then-husband.

By the onset of the harsh Canadian winter, the woman had to undergo an emergency C-section. Soon after, when the child was two months old, the couple separated. The mother found herself alone with her baby on the fifth floor of an apartment building with no elevator, without money, and without any help. Thus, both the mother and her baby were emotionally and financially abandoned.

Due to her father's illness in Brazil, she requested the baby's father permission to travel with the baby, who was 4 months old at the time. A one-year travel authorization was granted through a bilingual form—Portuguese/English—at the Brazilian Consulate in Vancouver.

Upon arriving in Brazil, she kept in touch so the father could follow the baby's growth, but during video calls, the man focused more on commenting on the woman's clothes and body than on engaging with the child. Moreover, with the support of her family and the ease of finding a job and providing her child with a better quality of life, she decided to stay in Brazil. The family lawyer she consulted only instructed her to seek custody of the child in Brazil.

Thus, she was "hagued". The Brazilian state did not take into consideration the history of domestic violence or the father's negligence as risk factors for the return of the child. Despite the baby having no cultural ties to Canada and both parents holding temporary visas in that country, Canada was considered to be the child's country of habitual residence. After three years of legal proceedings, a huge debt, and physical and emotional exhaustion, the mother wasn't granted child custody, and the child was returned to the father and the stepmother, both of whom the child barely knew. The child and the two adults did not even share a common language.

Immediately after the return, the father cut off all communication with the mother, preventing her from keeping in touch with the child, violating the protective measures outlined in the judicial decision. The three-and-a-half-year-old suddenly lost contact with the mother, went back to wearing diapers, was placed on a different diet—previously vegetarian—and began living in an environment where they could not communicate because no one spoke their mother tongue. This was August 2021.

Without offering any evidence or sign of violence to the Canadian court, the father, stepmother and child were granted a protective order against the mother. In November 2021, the mother was granted the right to contact her child via video call. However, during these calls, she was not allowed to speak in Portuguese or mention Brazil or the family with whom the child had lived daily from the age of 4 months until 3 years and 8 months old. The first online supervised visitation took place almost a year after the child's return. Only two calls, each lasting 1 hour. The child no longer spoke Portuguese, the child's mother tongue.

In Canadian court, the mother lost her right to make decisions for her child and was only granted supervised in-person visitation. These visits were limited to 10 days, with 1 hour of visitation per day over a 15-day period during the Canadian summer. The mother was responsible for paying the supervision fees, which amounted to $140 per hour in 2023.

In the summer of 2023, the father prevented the mother from having the granted in-person supervised visitations by legally challenging the supervision services hired by the mother. He also managed to obtain a Canadian passport for the child without the mother's consent and travelled to Lebanon.

The father also kept the child out of school, in violation of Canadian laws, without any consequence to his parental rights and custody. Although the court in the province where they lived issued a return order, the RCMP - the Canadian Mounted Police - was slow to act and failed to properly circulate the order. Months after relocating to Lebanon, the father was able to re-enter Canada with the child without any interference from the authorities and freely chose a new province to reside in.

As of early 2024, the mother's parental rights remained severely restricted. The child no longer clearly recognizes who their mother is — whether it is their biological mother or the former stepmother, who is now separated from the father. Additionally, the former stepmother has filed a lawsuit against the mother, seeking to be legally recognized as the parent sharing custody with the father. Three years after the child's repatriation, the mother has only been allowed a total of five hours of visitation, all under strict supervision.

The Brazilian woman living in rural China whose name does not appear as the mother of her children.

A Brazilian woman became pregnant by her Chinese boyfriend, who, after marrying her in Brazil, convinced her to move to China. In love and expecting a child, she agreed.

They went to live in a rural area of the country, in a multi-generational household with the husband's parents. Currently, they have two children, both under the age of three. Neither of the children carries the mother's name on their birth certificate. It is as if the mother does not exist.

The Brazilian woman sought help from the local embassy because she constantly suffers physical violence, has no access to money, and does not speak the local language. She simply lives trapped in this house, with no prospects for the future. The embassy only contacted the local police, that visited the couple's home. However, they did not interview the victim; they only talked to the husband outside their house. After the police visit, the Brazilian mother was severely beaten for "exposing" and "embarrassing" her husband in front of the Chinese authorities.

A logical challenge: the conviction of a Brazilian in Switzerland.

Sentencing a mother to prison on charges of kidnapping her own daughter is an act that defies not only legal logic, but also human sensibility. In situations like this, the emotional and psychological complexity involved needs to be treated with empathy and discernment, considering that the bond between mother and child is one of the deepest and most natural in human experience. In addition, it is part of fundamental human rights that children have the right not to be separated from their parents against their will, except when it is necessary for the child's well-being, such as in cases of abuse or neglect.

When a mother is accused of kidnapping her own child, the context often involves issues regarding custody, protection and fear. It is not uncommon for mothers, fearing for their children's safety or believing that the legal system has failed to protect them, to take desperate measures in order to ensure the children's well-being. In these circumstances, the cold and mechanical enforcement of the law can become inhumane, ignoring the legitimate motivations of protection and maternal love.

The inhumanity lies in the failure to consider the suffering and anguish that lead a mother to make this extreme decision. By sentencing her to prison, the system not only punishes the mother, but also the child, who is separated from the mother figure in an already unstable and traumatic moment. The imposed punishment ends up being twofold: for the mother, the loss of freedom; for the child, the loss of contact with the person to whom they are most affectively attached.

Furthermore, this situation reveals a flaw in the way society and the legal system deal with family disputes. Instead of seeking solutions that prioritize the child's well-being and conflict mediation, the response is often to crimi-

nalize and punish, further aggravating an already sensitive situation. Instead of reconciliation and support, what we see is the use of punitive force, which is unlikely to bring long-term benefits to any of the parties involved.

Mother and daughter found peace and freedom when they went on vacation in Brazil. They saw the possibility of living in an environment free from various forms of violence. The girl, who was 8 years old at the time, did not want to return to Switzerland or to spend time with her father. Due to her lack of knowledge of the 1980 Hague Convention, the mother complied with her daughter's wishes. Little did she know what lay ahead.

After four years in Brazil, the Brazilian judiciary ruled that the 12-year-old girl must be returned, contradicting the convention itself, which, in its few exceptions, states in Article 13:

> The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

The pre-teen had to be doped in order to be put on the plane to return to Switzerland. The young girl herself recounts: "They gave me a sleeping pill, and when I realized it, I was already in Portugal."

For two years, she has been living in a situation akin to imprisonment. She has no freedom to maintain contact with her friends and family in Brazil, not even with her mother and stepfather. She is also not allowed to cry over missing her mother or her pet bird, Farofa, which stayed in Brazil.

Upon returning to Switzerland, the mother received a list of demands and conditions for maintaining contact with her daughter via video calls. Phrases like "love will win" or even crying during calls were reasons for the call to be cut off, in violation of the protective measures outlined in the Brazilian court ruling.

The organization GAMBE quickly reached out to the local social services and child protection council after the girl managed to send drawings, letters, or secret messages to her mother or friends in Brazil, which often contained expressions of distress and suicidal ideation.

The girl pleaded for help and to be removed from her father and stepmother's house. Her requests were never granted. She reports being monitored and living in fear.

The mother was then granted supervised visitation which took place in an atmosphere of deep emotion. The visitation supervisor suggested progressing it to overnight visits.

Spending weekends together became moments of happiness for the small family. However, after an unsubstantiated report from the father to the court, claiming that the mother planned to kidnap the daughter, all contact was immediately suspended. In despair, the girl ran away from her father's house, but she was eventually retrieved by the police.

Now, in September 2024, the mother has been sentenced to 34 months in prison, besides paying compensation to the father. For context, Cuca, a Brazilian soccer player who raped a minor in Switzerland in 1989, was sentenced to 15 months in prison and ordered to pay compensation. However, he never served the sentence or paid the fine, as he had already returned to Brazil by the time of his conviction. In January 2024, the case was reopened and annulled. Cuca received compensation not because he was found innocent, but because the case was dismissed due to the statute of limitations expiring.

The hearing to decide on the custody of the girl has finally been scheduled for December 10, 2024. Obviously, people in prison don't share custody.

Judging with a gender perspective is mandatory in Brazil

"Does a certain rule have a disproportionate impact on a certain group? If so, is this impact a result of or a contributor to structural inequalities?" This question appears on page 57 of the Protocol for Judging with a Gender Perspective,[16] issued by the National Council of Justice (CNJ), as the final key question in this step-by-step handbook for guiding judges in legal interpretation. Launched in 2021, the 132-page document became mandatory for the Brazilian Judiciary[17] in March 2023. The initiative aligns not only with the fifth goal of the UN 2030 Agenda, which focuses on gender equality, but also with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which Brazil is a signatory.

This means that all courts in the country must incorporate these guidelines into their daily work. However, this does not mean that all courts will implement them immediately. Given its recent mandatory status, it is understandable that the topic is still in its early stages among judicial operators, as well as legal professionals and institutions. Nonetheless, citizens can and should demand its application in judicial proceedings. In this regard, GAMBE closely monitors the implementation of this protocol in Hague Convention cases in Brazil.

16 https://www.cnj.jus.br/wp-content/uploads/2021/10/protocolo-para-julgamento-com-perspectiva-de-genero-cnj-24-03-2022.pdf

17 https://www.cnj.jus.br/diretrizes-do-protocolo-para-julgamento-com-perspectiva-de-genero-do-cnj-passam-a-ser-obrigatorias-no-judiciario/

So far, reactions from lawyers and social workers consulted on the CNJ's gender protocol during specific hearings have not been receptive to the women being assisted. Therefore, since system training takes time, establishing an anonymous consultation channel is urgently needed to prevent direct conflicts with judicial authorities.

The CNJ Protocol highlights a fundamental issue related to international human rights treaties ratified by Brazil:

> For judgments incorporating a gender perspective, it is crucial that magistrates understand the "control of conventionality doctrine" and recognize its essential role in the decision-making process. This mechanism ensures that judicial decisions align with international human rights standards, ultimately promoting the effective protection of human rights and human dignity.
>
> The control of conventionality carried out by judges consists of verifying and assessing whether domestic legal norms comply with the norms, principles, and decisions established within international human rights protection systems, given their binding and normative status. (CNJ, 2021, p. 57-58).

Therefore, based on the discussion in the first section of this text regarding aspects of the 1980 Hague Convention, conventionality control would enable the identification of incompatibilities between Hague Convention 28 and international mechanisms for the protection of human rights.

However, regarding Hague Convention 28, Resolution No. 449/2022,[18] issued by the same Council that had published the Protocol for Judging with a Gender Perspective, ignored its own recommendations, which had previously been optional. Resolution No. 449/2022, which is mandatory, urges courts to resolve cases without considering domestic violence claims under Article 13(b) of the 1980 Hague Convention.

Among several procedural adjustments that restrict and shorten women's defense, the resolution also allows a child's testimony to be dismissed solely based on the judge's subjective opinion if they believe the child's statement was influenced by the mother. Although it does not explicitly mention parental alienation, this mechanism follows the same strategy described by Mrs. Alsalem in her report, cited in the first section of this document.

As a result, Brazilian mothers are having even less access to justice, both in their own country and in the hostile foreign jurisdictions to which they

18 https://atos.cnj.jus.br/atos/detalhar/4458

are sent back to—only to then lose custody and contact with their children. Due to the lack of a gender perspective, judges misinterpret mothers' attempts to escape and protect their children from coercive control and other forms of violence as evidence of malicious behavior. This misjudgment stems from a systemic bias that discredits women's testimonies.

Conclusion

While the 1980 Hague Convention was being drafted,[19] CEDAW was barely taking its first steps. At that time, domestic violence was not a widely discussed term among citizens and policymakers, while the rights of children and adolescents were only beginning to be addressed, with their own convention not being established until 1996. Similarly, child well-being was shaped by the social norms of that time, before globalization, the internet, diversity, equity, inclusion, resilience, and everything that now defines our reality and, consequently, our vocabulary.

International child abduction came to be seen as traumatic not only due to the alleged wrongful removal or retention of a child from their habitual residence. At that time, common sense did not view human mobility, languages, and cultures as assets to be nurtured. On the contrary, they were often viewed as unnecessary burdens, obstacles, or disruptive changes that heightened suffering and should be avoided unless no other option remained.

The same framework applied to the international relocation of children in custody disputes between transnational or binational parents. Moving abroad and leaving one's comfort zone is considered to be highly traumatic for children. This explains why courts almost never allow international relocations, leaving migrant mothers trapped with their children after separation. Unless, of course, the mother is wealthy enough to afford lawyers who can spend countless hours negotiating an agreement.

Children who grow up navigating different cultures and value systems develop diverse understandings of their own experiences. Adapting to different cultures, tastes, languages, friendships, and farewells can indeed be stressful. Not actually traumatic, but complicated. In fact, children who experience international relocations are commonly recognized as being more resilient, independent, flexible, tolerant, open-minded, creative—and the list goes on.

In international relations, they are seen as "natural diplomats" and "peacekeepers," possessing skills developed through unique life experiences that cannot be learned through formal education or training. They have also become known as "third-culture kids", capable of mediating conflicts

19 https://assets.hcch.net/docs/a5fb103c-2ceb-4d17-87e3-a7528a0d368c.pdf

between different cultural norms due to the daily cross-cultural adaptations they undergo.

Putting technicalities aside, the question remains: what truly serves the best interests of children caught in parental disputes? Is it more beneficial to keep a child in a country where their mother lives as a second-class citizen, or to separate the child from their primary caregiver? And what about the children of diplomats, who—by the very nature of their parents' jobs—move from country to country throughout their lives?

The utopia of the perfect life abroad: when the prince turns into a frog

Carla Amaral de Andrade Junqueira[1]
Deborah Silva de Oliveira[2]

Introduction

Traditional fairy tales—mostly originating from countries in the Global North[3]—portray a romanticized idea of perfect love, fantasy, and above all, the "Prince Charming", a savior of women's lives. From a young age, thousands of girls around the world grow up believing that it really exists, and many of them - especially from the Global South - end up projecting this into their adult lives, in search of *their* "perfect *gringo* prince" who will

1 Carla Amaral de Andrade Junqueira is a lawyer with a Ph.D. in International Law and over two decades of experience handling complex cases in this field. Her work covers a wide range of issues, including cases related to sexual abuse, gender-based violence, and international divorce litigation, which often involve the application of the Hague Convention. Throughout her career as a lawyer, she has dedicated herself to defending the rights of women, children, adolescents, and youth in Brazil. Her commitments extend to serving as legal advisor to the NGO "Grupo Mulheres do Brasil", where she exercises her *expertise* in human rights. She has written, edited and participated as an expert in the drafting of several articles and reports on women's rights and discrimination and violence against women in Brazil.

2 Deborah Silva de Oliveira is a law student and intern at the law firm Carla Junqueira e Advogadas Associadas, where they share the same principles regarding women's rights and the fight against all forms of gender-based violence. She founded and led for six years the Mães de Haia collective, which provided guidance and assistance to Brazilian mothers in relation to the 1980 Hague Convention. She was also a volunteer with the Support Network for Brazilian Victims of Domestic Violence (Revibra), which offers legal, social, and psychological support to Brazilian women victims of domestic violence abroad.

3 The concepts of Global North and Global South is generally used to refer to a group of countries according to their socio-economic and political characteristics. In this sense, the Global North is contrasted with the Global South in discussions concerning inequality, development, and international relations. Thus, the Global North is often associated with Western Europe and North America, as well as with Australia, Israel, Japan, and New Zealand, while the Global South mainly corresponds to developing countries (previously known as the "Third World") in Asia, Africa, Latin America, and the Caribbean, among others. References and further reading: https://www.cafehistoria.com.br/glossary/norte-global/ e https://relacoesexteriores.com.br/glossario/sul-global/

save them from a harsh life in their home country and give them a wonderful life abroad.

Based on these stereotypes and taking into consideration the legal challenges of an intimate relationship abroad, two fictional stories, based on real cases, will be presented below.

> **First story:** Maria is Brazilian and has a dream, the dream of meeting a foreigner, living abroad, having a nice house, children and a comfortable life in the United States. One day, Maria meets John, a U.S. citizen, on a dating website. He seems perfect: romantic, polite, with a great job. He comes to Brazil to meet her, and they have a wonderful time together, traveling and dining at restaurants. Maria immediately falls in love, and after a few months, John proposes to her: her dream is coming true, and she is finally going to live in another country!
>
> Shortly after, she moves to the United States, and at first, life seems a bit dull. She has no friends, no relatives, and John's family doesn't treat her well, thinking she only wants the Green Card[4]. But that's fine, Maria believes that things will get better. She can't work yet because she doesn't have a visa, and she is completely financially dependent on John, and especially for communication since she doesn't speak English.
>
> A few months later, Maria finds out she is pregnant—what a joy! However, after the baby is born, things start to change between her and John. He becomes aggressive, throwing in her face that he supports her, and the situation worsens with insults, psychological violence, and occasional physical abuse. Maria is desperate, she doesn't know what to do, she's afraid to leave the house, she has nowhere to go, no money, no job. She asks John's permission to take her baby to Brazil to visit her family, thinking it might be her salvation. Maria returns to Brazil with the baby, having promised to return to the United States in 15 days. She is warmly received by her family and, afraid to return due to the abuse she endured, decides to stay in Brazil with her son and not go back to the United States. It was a terrible decision. Maria will be accused of abducting her own child, prosecuted under Hague 28[5], and eventually have to decide between returning with her child to

4 A *Green Card* is the permanent residence card of the United States, which allows an immigrant to live and work legally in the country on a continuous basis. The marriage of a foreigner to a U.S. citizen – as in the case of Maria and John – is one of the categories that, as a spouse, makes her eligible to obtain the *Green Card*, provided she fulfills specific steps and requirements in the rigorous, bureaucratic, and lengthy consular procedures for visa application or *status* adjustment.

5 By not returning to the United States within the agreed time, Maria retained her son with her in Brazil, unaware that she was violating the 1980 Hague Convention on the

the United States under a court order—where she could be arrested upon arrival for parental abduction, *or* allowing her 2-year-old child to return to the United States alone, possibly never to see him again.

Second story: Paula is married to João, they are Brazilian and have two children: Pedro, 2, and Ana, 4. João is an engineer and is offered a job in Germany. It seems like a dream come true. They will finally have a better life and raise their children in a better country! Paula is a teacher but decides to leave her job and follow her husband. After a few months of preparation, they all move to Germany.

At first, everything goes well: João excels at work, the children attend school, and Paula takes care of them and the house. She can't work because she doesn't speak German and wouldn't be able to practice her profession, but she doesn't mind, she's happy for her family. However, as time goes by, things become more complicated. João reveals his true nature, starts becoming aggressive, frequently comes home drunk, and assaults Paula.

Paula doesn't know what to do, she's alone in another country, she doesn't know the local culture, she has no friends or family, she doesn't know where to go, João even says that if she reports him to the police, he'll take the children away from her. Paula then decides to flee with her children and return to Brazil. She thinks that since her children were born in Brazil, nothing will happen, but unfortunately, Paula is wrong. Soon after her return, she will be surprised by a lawsuit in federal court requesting the search and seizure of her children and their return to Germany, based on the 1980 Hague Convention.[6] It will be a long and difficult battle... Nobody told Paula that the Hague

Civil Aspects of International Child Abduction, to which the United States and Brazil are parties. Without any evidence of the violence she had suffered, and with only a temporary travel permit, she had no authority to unilaterally change her child's residence, nor to do so against John's will.

6 According to the 1980 Hague Convention, to which Germany and Brazil are parties, international child *abduction* (also referred to as *kidnapping*) is the act committed by a parent (father or mother) of wrongfully removing a child from his or her country of habitual residence to another country, without the consent of the other parent. The act of a parent retaining their child in a country other than their country of habitual residence without the consent of the other parent is also considered abduction (for example, after a vacation, even if the other parent has authorized the trip, as in Maria's case). Under the terms of the Convention, "habitual residence" is the country where the child has the strongest and most important ties, not only with his or her parents, but also with the school, the language, the community, extended family members and other things; it is the country where the child resides, the one from which the child was removed from and to which he or she must be returned. In Paula's case, the obligation to return the child to the country of habitual residence is not waived by Brazilian nationality, even when the child is brought to Brazil.

Convention concerns the child's country of habitual residence, not the country of birth.

These stories may seem surreal, but they are based on true cases, and every day there are more cases like these: they are not isolated incidents.

About the 1980 Hague Convention[7]

In recent years, there has been a proliferation of cases in which the 1980 Hague Convention on the Civil Aspects of International Child Abduction has been used by foreign fathers and Brazilian fathers living abroad as a weapon of coercion and even revenge against countless Brazilian mothers.[8] In these cases, institutional violence is even more aggressive and re-victimizing than the abuse itself, as will be shown below.

According to the Ministry of Women, Brazil has 376 cases related to international disputes over the custody of children of Brazilians with foreigners or separated Brazilians living abroad (Ministério das Mulheres, n.d.).[9]

Furthermore, data provided by the Hague Conference on Private International Law (HCCH, n.d.) indicates that, out of every ten cases of international child abduction, at least seven are against migrant mothers who were the primary carers of their children. This means that more than 2,000 expatriate women have been accused of kidnapping their own children every year for the past decade.[10] This data points to the profound gender inequality that can, in fact, signal the real situation of so many women who are forced to flee with their children due to domestic violence.

In the same vein, the NGO REVIBRA - Support Network for Brazilian Women Victims of Domestic Violence Abroad (REVIBRA, 2023) - compiled a report analyzing 278 cases handled by the organization between November 2019 and December 2022, with the data outlined below.[11]

Of these 278 cases, 249 included reports of domestic violence. The most frequent type of violence was *psychological violence*, particularly insults, manipulation, and constant threats of permanently preventing

7 The Hague Convention on the Civil Aspects of International Child Abduction (here also referred as the1980 Hague Convention or Hague 28).

8 See also: *O Globo*(June 6, 2023). 'Mães de Haia': convenção internacional é usada para separar brasileiras de seus filhos no exterior. https://oglobo.globo.com/brasil/noticia/2023/08/06/maes-de-haia-convencao-internacional-e-usada-para-separar-brasileiras-de-seus-filhos-no-exterior.ghtml

9 *Ibid.*

10 *Ibid*

11 See the full document "Considerações sobre violência doméstica em casos de subtração internacional (Haia 28). Dados 2022", por Baratto, M., Araújo, I., & Wahlgren, J. S. (June 30, 2023). *Revibra Europa*. https://www.revibra.eu/publicacoes/consideraes-sobre-violncia-domstica-em-casos-de-subtrao-internacional-haia-28

contact between mothers and children. *Administrative violence*—such as denying access to resident visas and hiding documents related to mothers or children—ranks second, followed by *physical* violence (threats and attempts of femicide and infanticide were present in 11 cases, out of 72 cases with physical domestic violence), and, lastly, *financial* and *sexual violence*.[12]

However, according to the analysis of these cases, the crucial aspect to be addressed concerns the impact of these violence reports on the return requests under the Hague Convention. The invisibility of migration makes it harder to report, especially violence against children. And "the impact of these complaints on Hague 28 proceedings" is, unfortunately, *minimal*. According to Revibra's report: "Of the 52 cases filed under Hague 28, 33 involved reports of violence against children. The majority of children, even in cases of reported violence (including physical, sexual, and psychological), were returned (27 cases of returned children by December 2022)".[13]

The profile of the people assisted by Revibra is mostly of Brazilian migrant mothers who, after leaving Brazil and moving to Europe or the United States, are considering returning to their home country with their children (78%), or women already facing return requests under the Hague Convention in Brazil. In 233 cases, or 83.8%, the decision to return to Brazil or relocate to another country was driven by domestic violence. In 36.5% of cases involving domestic violence, "children and adolescents are also direct victims, suffering from psychological, administrative, physical, and sexual violence". "In cases in which the return was enforced, the vast majority of these children are living with their abuser, many of them being denied any contact with their mother" — who, after the Hague 28 proceedings, is considered a kidnapper of her own children.[14]

How can we support and help these women?

As illustrated by the stories of Maria and Paula, along with the data presented, women in vulnerable situations who experience gender-based violence—particularly domestic and family violence—while abroad, face significant challenges that demand special attention. Gender-based violence knows no borders and can affect women anywhere in the world.

Some of the *problems* these women face abroad are:

12 *Cf.* previous note, Baratto, Araújo, & Wahlgren, 2023, p. 10 and 12.

13 *Ibid.*

14 *Ibid.*

1. **Isolation and dependency:** Many women migrating abroad are in situations of deep social and economic isolation. This makes them more dependent on their partners or employers, putting them at greater risk of abuse.
2. **Language and cultural barriers:** The lack of knowledge of the local language and culture can make it difficult for women to seek help or access the available resources for victims of gender-based violence.
3. **Fear of deportation:** In some cases, women may have an unstable immigration status or be in the country without legal authorization, which can make them hesitant to seek help due to the fear that reporting the violence could lead to deportation and separation from their children. In addition, abusers may use their partner's lack of knowledge about local laws and rights to manipulate and control them, including threats of reporting them to immigration authorities or withholding important documents like passports or visas. This creates a cycle of stress and abuse that is extremely damaging to the mental and emotional health of migrant women and their children.
4. **Lack of awareness of their rights:** These women may not be aware of their rights in the country to which they have migrated or the resources available to victims of domestic violence.
5. **Family isolation:** The distance from family and friends in Brazil makes these women feel even more isolated and helpless in abusive situations. Many suffer in silence because they feel ashamed or afraid to tell their family members about the violence they are experiencing.

Given the importance of supporting and guiding these women appropriately, in order to address these issues and provide assistance to these Brazilian victims of gender-based violence in vulnerable situation abroad — especially domestic violence — it is essential that the Brazilian state and/or other involved countries, as applicable, adopt the following *specific measures* , among others.

1. **Access to resources:** It is essential to establish programs and services that offer legal assistance, psychological support, and shelter for these women, regardless of their immigration status.[15] Many seek help at the Brazilian consulate in their country of residence but often receive little to no guidance. Consular officials frequently lack accurate information on the appropriate steps these women should take, failing to provide them with a sense of support and of being heard. Frequently, they end up searching for legal assistance on their

15 Whether through national public policy programs or international cooperation.

own, finding themselves in a dead-end situation with no legal support and nowhere to turn.

2. **Awareness and Education:** Awareness campaigns should be conducted within Brazilian communities abroad to inform them about available resources and victims' rights regarding gender-based violence. This includes, as previously mentioned, ensuring that consulates and embassies provide precise guidance on how these women should proceed, where to seek help, how to obtain legal support, how to report violence, where to find shelter, and, crucially, informing them about the existence of the 1980 Hague Convention. Many women return to Brazil after seeking help at consulates without receiving accurate information about their rights and, more importantly in this case, their legal obligations.
3. **Support networks:** Encouraging the creation of projects or programs (through funding and partnerships) with community-based support networks and peer support groups among Brazilian women abroad can be an invaluable tool. Some international groups have been assisting many Brazilian women in these difficult situations, and it is often these non-governmental organizations (NGOs)[16] that have filled the gap left by the lack of support from Brazilian authorities abroad.
4. **Training for professionals:** It is essential to train healthcare, legal, and social service professionals to properly recognize and address cases of gender-based violence against migrant women. This includes humanized training for consular and embassy staff, equipping them to handle reports of violence appropriately. Sensitivity training, along with education on aspects related to the 1980 Hague Convention, are extremely necessary.
5. **Access to information before immigration:** One of the most effective preventive measures against Hague Convention cases would be pre-migration guidance. When applying for a passport or visa, women should be required to receive an informational booklet containing relevant details about life abroad, including their rights and obligations, the importance of knowing where to seek help, as well as the significance of economic independence (if possible), learning the local language, etc. [17]

16 Among others, for example: Support Network for Brazilian Victims of Domestic Violence (REVIBRA) https://www.revibra.eu; Support Group for Brazilian Women Abroad (GAMBE) https://www.gambe.org.

17 Despite the highlighted need for providing information to women and training to staff at all Brazilian consulates and embassies abroad, it is important to note that the

Conclusion

The protection of vulnerable Brazilian women abroad who are victims of gender-based violence is essential to ensure their safety and well-being, regardless of where they are in the world. In this sense, the adoption of public policies and/or international cooperation, with an approach that encompasses the various dimensions of life in a new country, can provide a more favorable environment for migrant women to adapt and thrive in their new reality.

However, we must address the root cause of the problem. From a young age, girls need to be guided to grow psychologically strong, aware of their rights, and independent, so they can pursue their own dreams, on their own, without the need to rely on a "Prince Charming" or to believe that life, to be complete, depends on a man to save them and bring them happiness.

It is necessary to de-romanticize life abroad. Highlighting stories like those of Maria and Paula, as well as cases of women who have endured so much, is crucial to preventing these situations from repeating. But not only that. It is extremely important to show the stories of women who have thrived, of those who succeeded on their own, to encourage autonomy and independence among women.

Another crucial factor is helping them recognize the early signs of domestic violence and understanding that changing an abusive and oppressive man is often difficult, in many cases, impossible.

We believe we are on the right path, especially by bringing these issues into debate, publicizing them through the media, and organizing lectures and *workshops*. In fact, taking these topics to schools and universities is an excellent way of educating and raising awareness.

Brazilian government, through its various agencies and fields of action, has produced some materials on the topic, including: *Combate à Subtração Internacional de Crianças* https://www.gov.br/mj/pt-br/assuntos/sua-protecao/cooperacao-internacional/subtracao-internacional/arquivos/cartilha-agu.pdf; *Manual de Aplicação da Convenção da Haia de 1980* https://www.cjf.jus.br/cjf/corregedoria-da-justica-federal/centro-de-estudos-judiciarios-1/publicacoes-1/outras-publicacoes/manual-haia; *Disputa de Guarda e Subtração de Menores* https://assets-compromissoeatitude-ipg.sfo2.digitaloceanspaces.com/2016/05/Cartilha_Disputa-de-Guarda-e-Subtracao-de-Menores_versao-Multiplicadores.pdf; *Subtração Internacional de Crianças* https://direitoshumanos.dpu.def.br/wp-content/uploads/2023/02/subtracao-internacional-criancas-1.pdf. In the process of creating this publication, the Brazilian government launched, in January 2024, the booklet "Prevenção de Violências contra Mulheres brasileiras no exterior" https://www.gov.br/mre/pt-br/assuntos/portal-consular/cartilhas/cartilha-mulheres-2024.pdf, which received criticism and revision proposals from Revibra https://www.revibra.eu/publicacoes/proposta-de-reviso-cartilha-preveno-de-violncias-contra-mulheres-brasileiras-no-exterior-janeiro-2024 and Gambe https://www.gambe.org/cartilhas. In June 2024, the State launched another booklet on "International Child Abduction", with the collaboration of Revibra https://www.gov.br/mre/pt-br/assuntos/portal-consular/cartilhas/cartilha-subtracao-internacional-de-criancas.pdf.

All women have the right to pursue their dreams, wherever they may be, but it is essential to understand that pursuing that dream in another country also brings greater responsibilities and obstacles. Being far from home is not easy; living in another country is not a bed of roses. In addition to all the guidance mentioned here, psychological preparation and inner strength are necessary.

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The Wolf's Mouth[1]

Andrea Tuana[2]

- On the *return to Spain of a 4-year-old girl who was a victim of violence* -

The Girl arrived in Uruguay at the age of four, coming from Spain - where she was born - accompanied by her Uruguayan mother. They came in search of affection, shelter, a warm embrace, safety, and lots of love.

The wolf was left behind in Spain, alone and calm, knowing that his prey would soon return.

Already on the plane, the Girl, feeling safe, began to spontaneously tell her mother about the sexual violence she had suffered at the hands of the wolf; her father.

It was a great shock and deep pain for the mother to hear these accounts, but she believed her little daughter's words. She knew very well who the wolf was and what he was capable of, but she had never imagined that he could hurt her daughter like this.

The Girl's mother did what needed to be done: she sought professional help, provided specialized care for her daughter, sought legal advice, and placed an ocean of distance between her daughter and the wolf.

At first, the wolf agreed for them to stay in Uruguay for a while, but then he suspected that something was wrong and demanded his daughter's return. Such reaction was expected, as a wolf rarely lets its prey escape.

Another wolf's mouth awaited the Girl and her mother, this time as the Uruguayan justice system.

The Uruguayan justice system handles sexual abuse cases very badly. The justice system re-victimizes, lacks specialized personnel capable of addressing these issues, operates based on prejudice and preconceived ideas, the system isn't friendly to boys, girls and adolescents, and the protective measures do not guarantee an end to the violence.

1 Text originally published on the *El Paso* NGO website https://ongelpaso.org.uy/wp-content/uploads/2020/10/La-boca-del-lobo-Andrea-Tuana.pdf

2 Andrea Tuana has a degree in Social Work from UDELAR, an MPhil degree in Public Policy and Gender from FLACSO Uruguay. She is the director of the NGO *EL Paso*. Academic Coordinator of the Post-Graduation Program in Gender-based Violence and Violence against Boys, Girls and Adolescents at FLACSO Uruguay.

The testimony of boys, girls, and adolescents, as well as the interpretation of their behavior, symptoms, and expressions (many children communicate through their drawings, creations, movements, and play), is the central and almost sole evidence in these cases. For there are no witnesses, it is the word of the perpetrator against the word of the victim, who is bound to him by ties of love, affection, kinship, dependence, and loyalty. If the justice system cannot interpret or listen to these testimonies and their different forms of expression, these children and adolescents will be swallowed by the wolf's mouth. Unfortunately, this is a recurring response from the justice system. It swallows children and adolescents, swallows their testimonies, and swallows their voices, sentencing them to silence, forced reunification, and continued abuse, labeling them as deceitful, gullible, and delusional.

This wolf is also misogynistic, convinced that many mothers falsely accuse their former partners of sexual abuse. Just like that. They argue that the mothers seek revenge, driven by malice, perversity, madness, or an excess of empowerment. This wolf believes it is quite easy to manipulate a child into believing they were sexually abused by their father. Even more, it claims that putting the child in front of unfamiliar faces, as a "skilled witness", is the easiest way to extract a fabricated story. In those rare instances when a mother, father, close relative, and/or parental figure attempts to manipulate and implant a false narrative into the mind of a child or adolescent, any trained, experienced professional, familiar with cases of child abuse and child sexual abuse, will easily identify such situation.

The problem is that the role of this wolf is played by many uninformed professionals who are neither properly prepared nor trained; who have never studied the specificities of sexual violence and the various types of abuse to which children and adolescents are subjected. They lack knowledge about the factors that contribute to abuse, the dynamics of violence, the way in which retraction operates, the child sexual abuse accommodation syndrome (Summit, 1983), the warning signs and effects of abuse, as well as the symptoms and ways in which the harm manifests. They do not know how to recognize or anticipate the escalation of violence; they fail to approach the issue from central perspectives necessary to interpret violence; they are unfamiliar with high-specificity indicators, risk assessment scales, and lack the knowledge to conduct a thorough and in-depth evaluation of the situation.

Some professionals believe that their title is enough to intervene in cases of violence; this belief is highly dangerous and causes harmful practices. Many lawyers, prosecutors, judges and defenders state that mothers lie and that children fabricate sexual abuse claims, shaping their work around this belief. These professionals should have no place in the justice system and should be kept miles away from any boy, girl or adolescent who has suffered

violence. Such beliefs reflect a lack of knowledge, preparation, and proper training in these issues, ultimately sentencing children and adolescents to the perpetuation of violence and abuse.

Thus, our integrity compels us to acknowledge the work of professionals—judges, prosecutors, defenders, court officers, and experts—across the country who have been trained and who, every day, dedicate themselves to delivering justice and protecting boys, girls, and adolescents. They are the hope that one day the system can change and serve the cause of justice and the protection of children and adolescents who are victims of violence.

Back to the Girl, she too was swallowed by this wolf. Through an appeal, the court of justice ruled to return her to her country of origin, Spain, with certain protective measures, instructing Spanish authorities to investigate the allegations of sexual abuse. The Uruguayan Law No. 18.895 on restitution is very strict and mandates the return of children to their country of origin, except in cases where such a return would pose a serious risk of exposing the child to physical or psychological harm.

The forensic examinations conducted by the Uruguayan judiciary were clear. They found that the Girl and her mother had been subjected to domestic violence perpetrated by the wolf and recommended that the Girl should not be returned to Spain.

How could the court officials who decided to return the Girl to her abuser fail to recognize domestic violence as exposure to physical and psychological harm? Such reasoning is extremely dangerous for our children and adolescents.

Do these officials believe that the protective measures outlined in their court decision will guarantee the protection of the Girl in Spain? That seems like a fantastical way of thinking, almost childlike.

Perhaps the Uruguayan justice system wanted to "take this burden off its shoulders" by letting Spain take care of it. The problem is that this burden is a little 4-year-old Uruguayan girl, a victim of sexual violence perpetrated by her own father, and now she will have to endure it in a country where she and her mother will be on their own. They will have to confront a Spanish citizen who is surely already preparing every possible strategy to discredit them, likely claiming that the mother is lying, manipulating, and trying to harm him.

A 4-year-old little girl who carries, as a protective shield, a piece of paper that says the wolf can't come near her.

The wolf sleeps restfully and soundly on this side of the Atlantic Ocean. On the other shore, the Spanish wolf sharpens its claws. Soon, the Girl and her mother will cross the Atlantic Ocean heading to a forest full of wolves.