

Evidence to the UN Special Rapporteur on Violence Against Women and Girls: Custody cases, violence against women and violence against children

From: Disabled Mothers' Rights Campaign
Legal Action for Women/Support Not Separation
Women Against Rape

We are very glad that the Special Rapporteur is carrying out this consultation. We have worked for many decades with mothers fighting to keep their children (Legal Action for Women was founded in 1982). In the last 10 years a growing movement of mothers, especially single mothers, struggling to protect our children from abusive fathers has exposed a family court system which backs abusers rather than victims. Male supremacist groups of fathers who deny domestic violence have become embedded in the family court system, using allegations of “parental alienation” to continue their control over women and children. Outrageously, they have had the support of CAFCASS and the president of the family court.

In 2017, when we started Support Not Separation, what happened in the family courts was completely hidden from public view – no one knew about it except those directly involved. There was practically no scrutiny of the decisions made behind their closed doors. The mothers-led movement, including our monthly picket outside the central family court in London (now in its fifth year), has significantly changed this. Women speak out in public about their determination to keep their children safe, and against the sexism, racism, disability discrimination and class bias they face in the family courts.

We look forward to the report by the Special Rapporteur. We warmly invite her to our Women's Centre so that she can hear directly from the mothers in our national and international network.

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

Domestic violence: an incident or pattern of incidents, by a partner or ex, or family member. Examples: rape/sexual abuse; physical violence, including murder/manslaughter; controlling or coercive behaviour including verbal abuse, bullying, gaslighting, psychological or emotional abuse, threats to kill or injure, or to take a child away; economic abuse; harassment/stalking; online abuse.

Domestic violence is a gendered crime (as defined by CEDAW)ⁱ. Two to three women every week are murdered by a partner or ex, often despite police involvement. April 2019-March 2020, 1.6 million women aged 16-74 experienced domestic violenceⁱⁱ. In the year to September 2021, police recorded 67,675 sex offences against children.ⁱⁱⁱ

During the pandemic,^{iv} Black women were more likely to have experienced physical abuse (+3%) and sexual abuse (+4%) than white survivors, while also suffering police racism and being less likely to get protection or justice.

[Disabled mothers](#) are more than twice as likely to suffer domestic abuse than non-disabled mothers,^v and more likely to stay with abusive partners as it is more difficult to leave. They are twice as likely to attempt suicide as their abuse is more severe and frequent.

“Parental alienation” – accusing the mother of alienating the children by lying about domestic abuse or child abuse – is most commonly used by violent fathers who claim their right to child contact in order to maintain their control over women and children. Disabled mothers face allegations of “parental alienation” as well as allegations of Fabricated and Induced Illness (FII)^{vi} where their own disability is used to remove their children.

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

In 2014, following strong lobbying by fathers’ organisations which deny domestic violence, the “presumption of contact” (that children need a relationship with both parents) became law. This encouraged fathers to use the family courts to insist on contact with children, regardless of how much time/caring they had spent with the children previously, and whether or not they had been violent to the mother and/or the children.

Uncaring and violent men are most likely to pursue women through court as their priority is not the welfare of children but their fury at ex-partners having left them. They use the family courts to continue their abuse, and to evade criminal prosecution.

Research by Dr Adrienne Barnett^{vii} shows a resurgence of “parental alienation” allegations after 2016, and a resurgence of misogynist fathers’ groups which deny domestic violence, especially Families Need Fathers (FNF). FNF are now embedded in the court system through a close relationship with the current and previous presidents of the family court, and with CAFCASS (the body supposed to protect children’s interests has three fathers’ organisations on its board!)^{viii}.

This pervading “pro-contact” culture was highlighted in the Ministry of Justice’s [Harm Report](#) (2020) which found that:

- an allegation of “parental alienation” meant that the parent who is the subject of the allegation is treated as an “alienator”, rather than as a protective parent with well-founded fears of abduction or violence.
- court professionals gave weight to the views of any child who wanted contact with a father, but dismissed the views of those who did not.
- allegations of “parental alienation” are taken more seriously than allegations of domestic abuse and other forms of harm.

Children who do not want to see their fathers are being forced to see them, live with them, or put into foster care, separated from siblings and/or given to other family members to force them into contact. As the [London Victims Commissioner](#) said: this is “state sanctioned child abuse”.

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

Our most recent survey of 248 mothers with 446 children found 94% were single mothers (mostly on low incomes), 83% had suffered domestic violence, nearly all were fighting over contact with their children, over 50% had had their children removed, 40% were women of colour and/or immigrant, 42% had mental health issues, 17% had a physical disability (which was used against them).

The [Harm Report](#) noted that: “when women do attempt to report the abuse suffered in court there are a number of barriers to credibility including: fear, intimidation, retraumatisation in court room; sexism, racism, classism; pro-contact culture, minimisation of abuse; lack of understanding of coercive control and trauma ...”

In our recent self-help meeting, of eight mothers, five were women of colour, one was an immigrant from Eastern Europe. In every case the father had a history of violence against the mother, even rape, and some had also been abusive to the children.

All the mothers had been accused of “parental alienation” by fathers after raising concerns about violence and the impact of forcing children into unsupervised contact with a father they feared or hardly knew.

In two cases, the children were fostered after they refused to see their fathers; 12-year-old twins were separated and put in foster care in order to “persuade” them to see their father.

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

Court appointed psychiatrists, CAFCASS officers and social workers prioritise fathers’ “right” to contact over children’s safety and welfare. Consequently, once an allegation of “parental alienation” is made, mothers face an uphill battle disproving it and challenging the professionals who defend it.

CAFCASS, social workers, psychologists and psychiatrists routinely dismiss the protective bond between mother and child, remove children, split up siblings and put them into foster care to force them into contact with fathers.

Judges do not hear expert evidence on the devastating impact and lifelong trauma caused to children by being taken from their mother – their primary carer – or from their siblings and put into the “care” of strangers.

Neither the Ministry of Justice nor CAFCASS provide figures on “outcomes”, but in the US, Prof Joan Meier studied a decade of published judgements and found that mothers’ claims of abuse, especially child physical or sexual abuse, increased their risk of losing custody, and fathers’ cross-claims of “alienation” virtually doubled that risk.

An industry of unregulated unscrupulous “experts” has developed, elevated by CAFCASS, social workers and judges. These “experts” recommend therapy for “parental alienation” as if it is an illness, usually for the mother, then offer to provide that therapy, often for an unaffordable price. These same “experts” sit on regulatory or consultative boards reviewing family court procedures, leading to judgements biased against mothers.^{ix}

Fostering and adoption “services” are largely privatised and make millions of pounds in profit, charging local authorities hundreds of thousands of pounds to look after children in residential homes.^x

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

Criminal law was updated in recent decades (Sexual Offences Act 2003, Domestic Abuse Act 2021), but family courts remain archaic, with procedures and judgements which amount to turning the clock back to a time when wife and children were a man’s property, and the law upheld his right to sex enforced by violence.

Women and children reporting violence are routinely disbelieved. Or, if believed, the victim-mother is blamed because the child witnessed the violence, or accused of “possible future emotional harm”. Either way, the “presumption of contact” results in violent men being considered “good enough fathers”. The removal of children from mothers is so common that lawyers often advise them to say nothing about violence.

Mothers face a catch 22, ordered by criminal justice authorities (and often social workers) to avoid all contact with violent men, then ordered by the family court and the same social workers to enforce child contact!

If mother or child refuses to cooperate, the child can be permanently removed from her care and the mother jailed – grievous punishments which inflict lifelong trauma to children and mothers.

Contact with violent men endangers children and mothers, causing physical and psychological harm, even death. The Sunday Mirror^{xi} documented 69 children killed (2004-2020), 78% by fathers with a history of violence (domestic and sexual) which had been known to police, children’s services, family courts.

Despite 70-90% of family court cases involving domestic abuse, only 1% of court orders result in no contact.^{xii}

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

It is difficult to get any data on custody cases, even harder to get disaggregated data. With the exception of files made available to academics and hand-picked journalists, the only information publicly available is through the limited number of judgements (10%), which are published on [Bailli](#). Consequently, there is almost no record of or accountability for judgements which are sexist, racist and/or prejudiced on disability, age, income, class, immigration status, etc. – all of which single mothers are most likely to experience.

Mothers are not allowed to speak about family court decisions, nor to share court documents, limiting advice and support they can seek, especially if not legally represented (many are not).

All judgements should be anonymised and made public. Anonymity for rape victims in criminal court has largely proved successful, and public pressure has improved justice. The same should apply to family courts, which otherwise evade public scrutiny and change.

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

In 2017 [Practice Direction 12J: Child Arrangements & Contact Orders: Domestic Abuse & Harm](#) was issued. It defines domestic violence as domestic abuse, abandonment, coercive control and controlling behaviour, and implements “special measures” to protect victims in court such as separate waiting areas, screen or video link, and not allowing alleged abusers to directly question victims. Fact-finding hearings should be mandatory if the allegations make a difference to the court’s final decision.

[Practice Direction 3AA: Vulnerable Persons: Participation in Proceedings & Giving Evidence](#) is intended to improve the treatment of “vulnerable” witnesses in family court. It is the duty of the court to identify any party or witness who is “vulnerable” at the earliest possible stage of family proceedings and have a “participation direction” hearing.

Findings in four linked appeals in 2021 [Re H-N and Others \(children\) \(domestic abuse: finding of fact hearings\)](#) highlighted how PD12J is frequently not implemented.^{xiii} It is “guidance”, not mandatory, so its implementation is discretionary. We have seen how even before evidence is heard judges downplay rape allegations as [unwanted and distasteful sexual intercourse](#).

Lawyers do not always tell women that these two Practice Directions exist or insist on implementation. Women representing themselves are in a weaker position to insist when faced with court’s refusal to implement.

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

- Abolish “presumption of contact” and prohibit unsupervised contact when there has been domestic abuse.
- End all reference to “parental alienation” or “alienating behaviours” and ban PA “experts”, regulated or not.
- Family courts must be open just like criminal courts which protect rape victims’ anonymity.
- Remove family court judges’ power to rule on the veracity of rape allegations.
- Abolish No Recourse to Public Funds which forces immigrant women to stay in violent relationships or face destitution.
- Take account of the protective bond between mothers and children, and of the actual harm caused by breaking that bond.
- Abolish “possible future harm” which enables social workers and courts to inflict actual harm in the name of a speculative future.
- Reinstate legal aid for all court proceedings.
- Ensure that mothers who ask for support receive it under Section 17 of the Children Act (including financial support) or under the Care Act 2014, rather than being pushed into “child protection”. Mothers must be entitled to a Care Income for the work of caring for children.

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

10. We’re aware from our international network, especially Give Us Back Our Children in the US which is part of Support Not Separation, that “parental alienation” is causing appalling injustices as part of a resurgence of male supremacists fuelled by reactionary courts and states/regimes incompatible with the fundamental human rights of women and children.

ⁱ The Ministry of Justice [review](#) 2020 confirmed that it is overwhelmingly women who are the victims of violence and men the perpetrators, and that the courts are biased against women and children. (According to ONS figures, in the year ending March 2018, 92% of defendants in domestic abuse-related prosecutions were men; 83% of victims were female and around 95% of calls to domestic abuse helplines in the same year were made by women.)

ⁱⁱ Office for National Statistics (ONS) Crime Survey for England & Wales

ⁱⁱⁱ Report of the Independent Inquiry Into Child Sexual Abuse, 2022.

^{iv} <https://refuge.org.uk/news/refuge-better-protection-of-black-women-domestic-abuse/>

^v <https://safelives.org.uk/knowledge-hub/spotlights/spotlight-2-disabled-people-and-domestic-abuse>

^{vi} https://www.basw.co.uk/system/files/resources/fabricated_or_induced_illness_-_a_practice_guide_for_social_workers.pdf

^{vii} Dr Adrienne Barnet [How claims of parental alienation are being used as a means to silence victims of domestic abuse](#) published 28 April 2020 by Rights of Women

^{viii} Families Need Fathers have repeatedly attacked mothers by accusing them of making ‘false accusations’ of domestic abuse, claiming that it is a ‘motorway to legal aid’ and, against all the evidence, that ‘there is widespread abuse of men and boys in the context of the family courts.’ Despite their blatant misogyny, Families Need Fathers and other similar father organisations have become embedded in the family court process: they are “stakeholders” of CAFCASS and on the Advisory Board of a new [Review of the Presumption of Parental Involvement](#)

^{ix} For example, Dr Eia Asen who regularly provides “expert” testimony on “parental alienation” on fathers’ behalf, sits on the [Family Division’s Transparency Review](#), commissioned to look into media/public access and reporting in the family courts.

^x <https://supportnotseparation.blog/2022/04/20/obscene-profits-being-made-from-childrens-and-mothers-misery/>

^{xi} [Children killed rises to 69](#), Geraldine McKelvie, Sunday Mirror, 20 February 2021

^{xii} Domestic Abuse, Child Contact and the family courts, All-Party Parliamentary Group on Domestic Violence Parliamentary Briefing, April 2016

^{xiii} The High Court also found that the “Scott Schedule” on which allegations of domestic violence are documented, is not fit for purpose because it does not allow for descriptions of coercive control.