



Men's
Development
Network

**MEN'S DEVELOPMENT
NETWORK SUBMISSION TO
DEPARTMENT OF JUSTICE
OPEN CONSULTATION ON
PARENTAL ALIENATION**



An Roinn Dlí agus Cirt
Department of Justice

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Section I – Introduction

As a national organisation which advocates for transforming masculinities, a feminist and intersectional approach to advance the changing of norms and behaviours and to promote equality,¹ Men's Development Network welcome the invitation to provide a written submission to Department of Justice's Open Consultation on Parental Alienation. Men's Development Network regularly encounter the term "*Parental Alienation*" through our programmes engaging with male perpetrators of domestic violence, male victims of domestic abuse and our developmental programmes supporting parents of teenagers. These programmes are:

- (1) The CHOICES Programme the national domestic violence intervention programme working with male perpetrators to end their violent or abusive behaviour and become non-violent and respectful within their intimate partner relationships.
- (2) The Male Advice Line – the national freephone advice and support service for male victims/survivors of domestic abuse.
- (3) The Good Enough Parent Support Programme – an 8-week programme working with parents of all genders with children between the ages of 9-17 years old, a former Southern Health Board Programme called "*Communications and Self-Esteem*".

This policy submission aims to support the Department of Justice in consideration of policy and law in this area, particularly given that the term being increasingly cited in Irish court cases. From the outset of this submission, it must be acknowledged that Parental Alienation is a highly contentious issue which is subject to fierce and often rancorous debate.

In light of our experience in relation to this particular topic and in this contentious context, the purpose of this submission is to:

- (1) Introduce the term Parental Alienation, based on its historical roots.
- (2) To outline Parental Alienation's application in other jurisdictions.
- (3) To provide clarification on the victims/survivors of Parental Alienation and the importance of a child rights-centred approach.
- (4) To provide recommendations to the Department of Justice on this topic.

¹ For further information, see: <<https://mensnetwork.ie/>> accessed February 24th, 2022.

Section II – Parental Alienation: The Historical & Irish Context

Parental Alienation (PA) is a highly contested notion which is subject to fierce and often rancorous debate. Proponents of PA use the term to describe instances where children of estranged couples demonstrate close affinity to one parent, while stridently rejecting a relationship with the other previously loved parent. It is described as “*an observable constellation of hateful behaviours on the part of a child who venomously rejects, and directs undeserved anger towards, a previously loved parent following a separation or divorce*”.² Such behaviours include refusal of contact with and an ‘irrational’ hatred of the alienated parent, which is disproportionate to any alleged previous negative actions or behaviours by the parent. Some PA practitioners describe reasons given by children to justify their rejection of the parent as weak, frivolous, or absurd. Similarly, public shunning of the alienated parent by the child and an overall lack of nuance or duality with how the child refers to their parents, with one being unequivocally good and the other being entirely bad, are characterised by proponents as further examples of PA as behaviours which are the outcome of a purposeful and malevolent campaign of denigration by the primary caregiver with the aim being that of fostering alienation and hostility towards the other parent. Proponents of PA thus describe an “*emotional enmeshment*”³ with the primary caregiver who is “*emotionally needy*” and “*offers the child warm and involved care in exchange for his or her allegiance*”⁴

On the other hand, opponents of PA claim it is based on pseudo-science, is not empirically proven and is a tactic which is used to silence the voices of the child and the primary care giver. The roots of Parental Alienation come from American Child Psychologist Richard Gardner who coined the term Parental Alienation Syndrome to describe “*a diagnosable disorder in the child occurring in the context of a custody dispute*”.⁵ Psychologising children’s feelings of hostility to the absent parent runs significant risks which can cause tangible harms to the child. In instances of high conflict separation, it is entirely understandable that children will bear some degree of ill will towards one or both parents. This does not mean however that it is a case of PA and many of the diagnostic features of PA could easily be attributable to more typical run of the mill hostilities or anxieties which pertain to the

² Katherine C. Andre, ‘Parent Alienation Syndrome’, *Annals of the American Psychotherapy Association*, (2004) Vol.7 Issue

<<https://go.gale.com/ps/i.do?id=GALE%7CA127934336&sid=googleScholar&v=2.1&it=r&linkaccess=abs&issn=15354075&p=AONE&sw=w&userGroupName=anon%7E46e15c95>> accessed June 15th, 2022

³ Janet Johnston & Marjorie Gans Walters, ‘The Psychological Functioning of Alienated Children in Custody Disputing Families: An Exploratory Study’ *The American Journal of Forensic Psychology* (2005) Vol.23 Issue 3

<https://www.researchgate.net/publication/290552917_The_psychological_functioning_of_alienated_children_in_custody_disputing_families_An_exploratory_study> accessed June 15th, 2022

⁴ *ibid*

⁵ Joan B. Kelly and Janet R. Johnston, ‘The Alienated Child: A Reformulation of Parental Alienation Syndrome’, *Family Court Review* (Sage Productions, 2001) at page 249 <

https://www.researchgate.net/publication/227680682_The_alienated_child_A_reformulation_of_Parental_Alienation_Syndrome> accessed June 22nd, 2022.

separation. As described by solicitor Anne O’Neill in her blog, “*when a marriage breaks down, it is seldom that there is not hurt, anger, sadness, jealousy, fear loneliness and occasionally a sense of injury. Having an understanding of these emotions and their impact on both parents and the possible consequence is key to avoiding many of the pitfalls that arise post-separation*”.⁶

Despite the fact that PAS has been used in courts in the United States for close to three decades, no entity or professional organisation has ever endorsed PAS as a syndrome or a disorder and has been continually disregarded by entities such as the American Psychological Association.⁷ Furthermore, the term PA has faced significant critique as never being validated by research data or being published in peer reviewed journals and for failing to have ever undergone scientific testing since it was asserted by Gardner.⁸ This is troubling from a legal and policy perspective given the absence of a sound evidence-base upon which to formulate public policy.

In an Irish context, increased reference to PA as a term in court proceedings has been central to the development of this Open Consultation. As noted by our partners and allies at Safe Ireland and Women’s Aid, the term is often used as a direct response to allegations of domestic abuse,⁹ has a chilling effect on women coming forward to disclose abuse¹⁰ and in such circumstances, the focus should centre on the crime of coercive control as the prevailing context.¹¹

A further feature of PA which is crucial to how it is managed in Ireland is that of the voice of expertise. Recent reports from the United Kingdom have described how supposed experts in the diagnosis and treatment of PA are not accredited or accountable. As well as this, diagnoses of PA can be followed with recommendations of lengthy and often expensive ‘treatments’ which have at best a dubious evidence-base.¹² Thus, Men’s Development Network recommend against portraying PA as a diagnostic/medical condition.

⁶ Anne O’Neill, ‘Parental Alienation’ (2020) <<http://www.familylawireland.ie/parental-alienation-2/>> accessed June 24th, 2022.

⁷ William O’Donoghue, Lorraine T. Benuto and Natalie Bennett, ‘Examining the Validity of Parental Alienation Syndrome’, *Journal of Child Custody* (2016) Vol.13 at page 114 <<https://www.tandfonline.com/doi/full/10.1080/15379418.2016.1217758>> accessed June 22nd, 2022.

⁸ *ibid* at pages 114 and 118.

⁹ ‘*No Going Back: A Sustainable Strategy and Infrastructure to Transform our Response to DSGBV in Ireland*’ (Safe Ireland, 2021) at page 7 <<https://www.safeireland.ie/wp-content/uploads/No-Going-Back-Discussion-Paper-Safe-Ireland-March-2021-single.pdf>> accessed June 23rd, 2022.

¹⁰ ‘*Annual Impact Report 2020*’ (Women’s Aid, 2021) at page 41 <https://www.womensaid.ie/assets/files/pdf/womens_aid_annual_impact_report_2020.pdf> accessed June 24th, 2022.

¹¹ *ibid* at page 43.

¹² Adrienne Barn

Section III – PA in Other Jurisdictions

UN and regional mechanisms on violence against women and women's rights have also discouraged the use of this term in custody proceedings as a mechanism to deny child custody to a mother and to grant it to a father accused of domestic abuse.¹³ UN experts have also condemned the use of PA in custody cases considered by Spanish courts¹⁴ and in a recent side event at the UN Commission on the Status of Women, the use of the term was openly denounced.¹⁵

The term PA as applied in custody cases often appears to obscure domestic abuse and/or child abuse and appears contrary to the spirit of the Istanbul Convention as applied in other Council of Europe member states. GREVIO as the independent expert body responsible for monitoring the implementation of the Istanbul Convention in their Evaluation Report of Italy have described it as “*alarming that the political agenda of Government authorities legitimises the concept of PA... and gives life to such (legislative) proposals...*”¹⁶ GREVIO have characterised PA as a term used to maintain a child-parent relationship “*at all costs, beyond violence*”,¹⁷ and when included in generic wording of legal provisions, it has been unsupportive of judicial practices in supporting the best interests of the child.¹⁸ GREVIO went as far as to recommend Italian authorities should “*prohibit use by technical consultants, social workers and the courts of concepts related to Parental Alienation*” which are used to characterise a mother who reports violence as “*uncooperative*” and “*unfit*” to act as a parent.¹⁹

Outside of a European context, in 2010, Brazil became one of the only jurisdictions in the world to adopt specific legislation outlawing Parental Alienation.²⁰ However, in February 2022 the Brazilian National Council of Health provided a recommendation to the National Congress to repeal this law as

¹³ ‘Intimate partner violence against women is an essential factor in the determination of child custody, say women’s rights experts’ (2019)

<https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/StatementVAW_Custody.pdf> accessed June 24th, 2022.

¹⁴ ‘Spanish courts must protect children from domestic violence and sexual abuse, say UN experts’ (UNOHCHR, 2021) <<https://www.ohchr.org/en/press-releases/2022/01/spanish-courts-must-protect-children-domestic-violence-and-sexual-abuse-say>> accessed June 24th, 2022.

¹⁵ Eleonora Francica, ‘UN Commission on the Status of Women Pushes Against Parental Alienation’ <<https://lavocedineyork.com/en/new-york/2022/03/18/un-commission-on-the-status-of-women-pushes-against-parental-alienation/>> accessed June 23rd, 2022. For further information see: <https://s3-eu-west-1.amazonaws.com/upload.teamup.com/2487162/ZT0BM4JISpacWclDGKhw_Concept-20note_SRVAW-20side-20event-20CSW-2066_parental-20alienation-2016-20March-202022-20public-20version.pdf> accessed June 24th, 2022.

¹⁶ Grevio (Basic) Evaluation Report (Italy) (2019) at page 67, paragraph 211 <https://www.criminaljusticenetwerk.eu/contenuti_img/Rapporto%20GREVIO.pdf> accessed June 24th, 2022.

¹⁷ *ibid* at page 62, paragraph 188(i).

¹⁸ Supranote 16 at paragraph 187.

¹⁹ Supranote 16 at page 62, paragraph 188(f).

²⁰ Brazilian Law 12.318/2010 (2010) <http://www.crpsp.org.br/interjustica/pdfs/Lei-12318_10-Alienacao-Parental.pdf> accessed June 24th, 2022.

a term lacking any evidence.²¹ This example is a further cautionary tale of adopting legislative provisions in the absence of a sound evidence-base.

Section IV – The Victims/Survivors of Parental Alienation

The key and incontrovertible fact of PA is that no matter how it is conceived of or defined, it is the child who is the real victim/survivor. The rights of the child as enshrined in the UN Convention on the Rights of the Child must be of paramount and primary concern ahead of all other interests. This is the fact that should inform all actions on PA. As such, any consideration on PA must be child rights-centred and focused. A child who is categorised as being subject to PA runs the very real risk of having their own wishes and voice discounted. This is because, according to proponents of PA, they have been subject to a campaign of denigration against the alienated parent, and they are seen as being irrational and not knowing what is best for them.

Section V – Recommendations

- (a) While changes are required in relation to the interpretation and application of Family Law to ensure it does not reinforce traditional gender norms which can prove harmful to fathers in court proceedings, PA is not the appropriate entry point to such a conversation. The introduction of a Family Law Court with appropriate mechanisms and judicial training is a best practice for future law reform.
- (b) The weight of evidence in this submission demonstrates that claims of PA can quite often be considered contrary to a human-rights based approach and child rights approach, reflected in the position of several regional and international organisations positions regarding PA.
- (c) The principle of the best interests of the child must be of primary and paramount concern in any legal matters affecting children, including in instances where the term PA is raised in judicial proceedings. Child abuse and cruelty to children already exist as offences on the Irish Statute Book, exemplified by Section 246 of the Children Act, 2001.
- (d) Empirical evidence is required in this jurisdiction to assess the frequency of PA claims in Ireland. Furthermore, a claim of PA is not in itself sufficient proof of the existence of such behaviour.
- (e) Any claims of PA must be considered against the background of domestic violence, as this potentially prejudices the voice of victims/survivors and places them at risk of loss of custody of their children.

²¹ ‘Recommendation 003’ (Brazilian National Council of Health, 2022)
<<http://conselho.saude.gov.br/recomendacoes-cns/2337-recomendacao-n-003-de-11-de-fevereiro-de-2022>>
accessed June 24th, 2022.

- (f) This Open Consultation and review process fulfils Recommendation 36 of the Houses of Oireachtas Joint Committee on Justice and Equality Report on Reform of the Family Law System by considering whether laws should be amended in relation to PA. The Report did not recommend the introduction of laws on PA as interpreted by some interested parties in relation to this submission process.
- (g) Adequate laws are already on the statute book to counteract instances of PA in legal matters in no way connected to domestic abuse, as reflected in Section 60 of the Family Relationships Act, 2015.