



**Exmo. Sr. Senador RODRIGO OTAVIO SOARES PACHECO –
Presidente do Senado Federal, Brasília – DF.**

São Paulo, 26 de maio de 2023.

Ofício Nº 06/23

Pedido de Encaminhamento de Recomendações ao **Projeto de Lei do Senado nº 1372 de 2023.**

Prezado Senhor Presidente,

Pelo presente, em nome de mulheres e crianças de todo o Brasil, a **Associação Mães na Luta** vem mui respeitosamente solicitar a **anexação da carta da ONU direcionada ao Presidente da República Luís Inácio Lula da Silva e o Relatório da ONU submetido ao Conselho de Direitos Humanos em que “aborda a ligação entre casos de custódia, violência contra a mulher e violência contra a criança, com foco no uso abusivo do termo ‘alienação parental’ e pseudoconceitos semelhantes”**, contendo as recomendações para abolir do Estado Brasileiro e demais países as leis e ideologias que versam sobre alienação parental e demais notas técnicas de conselhos nacionais de interesse voltado ao tema do referido Projeto de Lei neste país.


Nesta oportunidade, encaminhamos a Vossa Excelência as recomendações das Nações Unidas, do Conselho Nacional de Saúde e do Conselho Nacional de Direitos Humanos, as quais reportam diretamente ao congresso nacional pela revogação da Lei de Alienação Parental e banimento do termo e seus derivados do ordenamento jurídico, sendo assim, favoráveis ao Projeto de Lei do Senado Federal nº 1372/2023, atualmente em tramitação na Comissão de Direitos Humanos (CDH), que revoga a Lei nº 12.318, de 26 de agosto de 2010 que trata sobre a alienação parental.

Solicitamos que este ofício, bem como as recomendações anexadas, sejam apensadas à página oficial de tramitação do Projeto de Lei 1372/2023 para que passem a constar na ficha de tramitação e possam ser levadas em consideração para definitivamente revogar a Lei nº 12.318/10. Solicitamos também que seja feita e apensada a tradução juramentada da carta da ONU.

Destacamos que as instituições supracitadas recomendam, além da revogação da referida norma, o **banimento do termo "alienação parental" e seus derivados do ordenamento jurídico brasileiro**, assim como em outros países, uma vez que argumentos de base pseudocientífica e misógina são utilizados para desacreditar relatos das vítimas, ocasionando violência institucional.

Aproveitamos a oportunidade para renovar nossos protestos de elevada estima e distinta consideração.

Atenciosamente,

 Documento assinado digitalmente
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Elisa Tauácure da Silva Ferreira

Representante da Associação Mães na Luta perante o Conselho Nacional dos Direitos da Criança e do Adolescente (CONANDA)

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Mandates of the Special Rapporteur on violence against women and girls, its causes and consequences; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Working Group on discrimination against women and girls

Ref.: AL BRA 10/2022
(Please use this reference in your reply)

27 October 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on violence against women and girls, its causes and consequences; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 50/7, 51/21 and 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **continued legal use of the concept of parental alienation and similar variations through Law No. 12,318 and its regular application to cases of domestic violence and abuse in a way that penalizes the mother of the child.** The instrumentalization of parental alienation and related or similar concepts increasingly interferes with judicial decisions about guardianship while infringing mothers' and children's right to safety and protection.

On 26 August 2010, Brazil adopted Law No. 12,318, which defines and punishes parental alienation as a form of child abuse. According to article 2 of the afore-mentioned law, parental alienation is defined as "the interference in the psychological development of the child or adolescent promoted or induced by one of the parents, by the grandparents or by those who have the child or adolescent under their authority, custody or supervision in order to refute a parent or harm the establishment or maintenance of links with the parent."

The concept of parental alienation, while lacking a universal clinical or scientific definition, generally refers to the presumption that a child's fear or rejection of one parent, typically the noncustodial parent, stems from the malevolent influence of the preferred, typically custodial parent. Parental alienation and related or similar concepts have no scientific validity and go against international standards. On 15 February 2020, the World Health Organization removed the concept of "parental alienation" from its classification index ICD 11, because there were no evidence-based healthcare interventions specifically for parental alienation, and because of persisting concerns about the misuse of the term to undermine the credibility of one parent, alleging abuse as a reason for contact refusal and to criminalize their behavior. Data from around the world has demonstrated that, where used, this concept has been mainly and predominantly used against the mothers, who have been the ones to be mostly accused of alienating their children from their fathers.

According to the information received from 30 mothers in Brazil:

Instrumentalization of the concept of parental alienation in cases of domestic violence and abuse

Since the adoption of Law No. 12,318, the concept of parental alienation is increasingly being referred to and used by fathers in Brazil, who allegedly perpetrate domestic violence and abuse, to the detriment of mothers who need to benefit from protection measures. Article 6 of the law states that once an act of parental alienation is established, a judge may declare that it has occurred, hence granting the judge the authority to subsequently warn the alienator, expand the regime of family life in favor of the “alienated” parent, fine the “alienator”, order counseling, change the custody to and from joint custody and determine the setting of an interim residence for the child.

The legal acceptance and frequent reference to the concept of parental alienation as a crime has reportedly enabled fathers to levy false allegations against the mothers with whom they are in custody battles or disputes, as a tool to continue to perpetrate domestic violence and abuse against them.

In cases where the concept of parental alienation has been used, it appears that the concerned courts do not sufficiently take into consideration previous history of domestic abuse by the father or stepfather against the mother, either in assessing the credibility of the threats against the child, or in making further decisions regarding visitation or custody rights. Even where there are indications of physical, sexual, or psychological abuse of the child by the father or stepfather, including through medical records and testimonies collected from the allegedly abused children, Brazilian courts would refuse to issue timely protection orders for the children or their mothers, such as denying the father visitation rights and/or custody.

Biased legal process for the amendment of Law 12,318

On 18 May 2022, the President of Brazil amended Law No. 12,318 of 26 August 2010 on parental alienation and Law No. 8,069 of 13 July 1990 on the protection of the child and the adolescent through Law No. 14,340. The law No. 12,318 was reportedly drafted and adopted based on unproven and questionable data that were presented in the public hearing that the senate held on 1 October 2010. During that hearing, the then judge of the tribunal of Justice of Rio Grande do Sul, Ms. Maria Berenice Dias, reportedly made reference to the claims of abuse of children by their fathers brought forward by their mothers, alleging that: “In 30% of the cases, it is detected that, in fact there was no abuse, in 30% eventually there was even abuse, in 40% it is not known whether there was or not.” No proof or sources of these allegations were provided by the speaker. These claims, despite their apparent lack of foundation, were repeated and recalled by the Senate ever since 2010.

Despite its far-reaching implications, Law No. 12,318 was adopted in haste, after only one public hearing. Reportedly, only five participants were invited, including four expressing themselves in favor of the law, and only one against it. Following its adoption, psycho-judicial articles started proliferating; the majority of which were of poor scientific quality and arguing for the existence

of parental alienation. These articles were regularly resorted to by academics, judicial actors and institutions, including the Brazilian Family Law Institute (Instituto Brasileiro de Direito de Família, IBDFAM), to support the course of action in favor of the application of the concept of parental alienation. According to the information received, the course of action consisted of regularly dismissing allegations of sexual abuse of the children brought forward by the mothers against their fathers or stepfathers, claiming that these were false allegations of parental alienation that had no foundation, even where there were medical records, supportive statements by social workers or statements by the child. Furthermore, it is concerning that the National Council of Justice of Brazil is said to run courses on the use of parental alienation for members of the judiciary and others, that women and mothers are also at times forced to attend through court orders, demonstrating a firm belief in the concept and its application.

Flawed accreditation process by experts for parental alienation

According to information received, it would appear that a wide margin of power and authority is granted to professionals that claim to be experts on the matter of parental alienation, and which includes psychologists and social workers – amongst others. These so-called experts on parental alienation are regularly invited by family courts to determine whether parental alienation has occurred or not. In ruling on custody cases, judges, ex officio and prosecutors appear to frequently request the opinion of a professional or interdisciplinary team that often consists of psychologists, social workers, or both. Their reports would be given primacy over other professional psychologists' reports that are more familiar with the case and history of the mother or the child or the statements by the mother and/or the child themselves. The professionalism of these so-called experts as well as the seriousness of the training on parental alienation and accreditation process for these experts is widely contested among victims and feminist organisations.

Pseudo-forms of conflict resolution, including the use of 'family constellations,' are reportedly also frequently used with the objective of fostering forgiveness among victims and maintaining the unity of the family at the cost of women's and children's safety. This allegedly occurred although the Brazilian Family Law forbids the use of conflict resolution in cases of domestic violence, mandating that they should be treated as criminal cases.

Furthermore, the guidelines governing the work of these alleged experts and their reports varies widely. Article 5 of the Law 12,318 stipulates that these reports must be based on a number of elements, including a demonstrated aptitude to diagnose acts of parental alienation for the qualified professional or multidisciplinary team responsible for carrying the expertise, based on professional or academic history. However, according to the information received, article 5 fails to spell out specifically the need to refer to and consider the history of domestic or intimate partner violence against women. These experts do not usually take them into consideration either.

Children increasingly put at risk

The collective application of these measures has led to the large scale and frequent criminalisation of women for reporting incidents of abuse and violence against their children by their fathers or stepfathers and to women being disbelieved and punished, including through the loss of custody rights to their children. It has also led to the continued exposure of their children to violence and to abuse, including sexual abuse. In one instance, a pregnant woman was accused of carrying out parental alienation of her child in her womb.

Anecdotal evidence obtained from research conducted on second instance court orders, which were handed down by the Court of Justice of Rio Grande do Sul, shows that in 2019, 75 out of the 82 sentences were handed down against women. In 2020, 32 out of 36 decisions were delivered against women. The information received reflects similar cases received by the Inter-American Commission on Human Rights (IACHR) from Brazil. Its 2019 report states that: “The Commission received information about cases of reversal of custody of children and adolescents under Law No. 12,318, the Law of Parental Alienation. According to the information received, there has allegedly been a pattern in reported cases, where the mother, who reported cases of violence, often sexual violence, loses the custody of her child or children to the alleged assailant parent. This measure would be in line with subsection V of article 6 of the afore-mentioned law, which allows the judge to reverse the custody as a form of redressing the claimed acts of parental alienation. In this regard, in 2018, the Commission received 11 requests for precautionary measures on behalf of women who lost custody of their child or children under operation of the law of parental alienation. In 2019, three additional requests for precautionary measures were received, which represents half of all requests for the protection of the rights of children and adolescents in Brazil.”

These threats were not limited to the family court room proceedings but also outside the court. Several women highlighted an increased feeling of threat for women due to the personal connections between their former partners and the judiciary, politicians and other powerful representatives. Beyond the continuation of the abuse, children who underwent abuse by their fathers were also threatened by the latter that they would hurt their mothers if the child were to come forward and report the abuse. As a result, children who suffered abuse were more inclined to endure the abuse rather than put their mother at risk. They therefore allegedly endured terrible psychological pain, physical and emotional violence.

Given the consequences for mothers, many have chosen to remain silent regarding the abuse of their children by their partner or former partner, out of fear of being accused of parental alienation and losing custody rights.

While we do not wish to prejudge the accuracy of these allegations, we express serious concerns about the factors contributing to the growing instrumentalization by the Brazilian court of the concept of parental alienation against women who claim to be victims of domestic violence and abuse.

We would like to remind the Brazilian State of its obligations to consider previous antecedents of gender-based violence against women as important factors of risks for children, as indicated by the Committee on the Elimination of Discrimination Against Women in the case *Angela Gonzalez Carreño versus Spain* in 2014. In such cases, children are harmed not only because they witness the coercive control and violence that their father directed at their mother, rather, the coercive control and violence also harms children's own lives. For the perpetrator, the objective to control the target takes precedence over their children's safety, well-being and health. Furthermore, it is regrettable that while domestic and sexual violence lawsuits are handled by the criminal justice branch in Brazil, parental alienation lawsuits are handled by the civil justice branch; hence making it very difficult to connect the two issues together.

We are gravely concerned by the underlying gendered stereotypes that contribute to the legitimization of the concept of parental alienation and its resort against women when the court decision regards the right to custody or guardianship. The afore-mentioned legislation and practice by the courts demonstrate a structural discriminatory approach by the judiciary and the wider State institutions as the testimonies of women who claim their children are abused are being dismissed or considered of inferior value and credibility. We are particularly concerned at this discriminatory interpretation, which underpins not only the analyses of justice operators but also of the accredited psychologists and is reflected in attributing a lower value to the testimony or arguments of women as parties or witnesses, the lack of credibility of mothers when reporting abuse against their children and the reference to or establishment of gender stereotypes that lead to a misinterpretation or flawed implementation of the law. Additionally, in cases where women and children are directly subjected to violence, such violence occurs because the male perpetrator views himself as the superior, masculine, head of the household. The recent consolidation of a group of supporters of the concept within the IBDFAM, with the aim of starting a working group to settle the rules for investigating parental alienation cases, further increases the risk of legitimating the pseudo-concept of parental alienation, which we find concerning as well.

We are alarmed by the promulgation of Law No. 13,058/14 modifying article 1,583 of the Brazilian Civil Code of 2002 to provide parents with the same rights on the legal decisions about their child, irrespective of any other consideration. This approach was confirmed by the decision of the Brazilian Superior Court of Justice in Special Appeal No. 1,251,00 (2011/0084897-5). It is clear from these legal frameworks and from their application that the Brazilian State has prioritized family unity over any other consideration, notably the duty to protect women and children against violence and abuse, including sexual abuse. While the afore-mentioned Law modifying article 1,584 the Brazilian Civil Code specifically states that sole custody can be decreed by the judge "according to the child's specific needs or due to the need to balance the child's continued contact with the father and the mother". The reference to the child's specific needs does not explicitly include their right to live free from abuse and violence, including sexual abuse, and therefore does not adopt the child's best interest perspective, which should prevail in family courts. Even if a reading of this phrase can be inferred to include the child's protection and wellbeing needs, judges have given weight predominantly to the second need, which is to maintain contact with the father and the mother. We express our concerns about the routinely dismissal of women attempting to challenge the inclinations of family court that post-separation contact must take place between children and perpetrators, with

whom they must then co-parent.

We are further concerned about the role played by the legal use of parent alienation and similar concepts in the banalisation of violence against women and girls in Brazil. We would like to emphasize that the high level of domestic violence against children, in particular girls, takes place against the backdrop of a continued high level of femicide in Brazil for the past decade. In 2016, estimates indicate that over 12 women were killed per day in Brazil – an average female homicide rate of 4.43, which ranked 13th among global annual rates.

It is worth mentioning that fathers' ability to win their case using the strategy of accusing mothers of parental alienation is often effective, even when the court believes that the father has been domestically violent, in other countries. We are severely concerned that this fast-growing trend of using parental alienation, similar or related concepts in legal affairs globally further intimidates and discourages women from pressing charges against perpetrators when they are victims of domestic violence and co-parent of a child, which in turns reinforces the sense of impunity among violent and abusive fathers.

Amendments further made to Law No. 12,318 since its adoption have progressively granted more privileges to the noncustodial parent at the expense of women's and children's protection. Law No. 14,340 aims to ensure to the child or adolescent and to the parent a minimum guarantee of assisted visitation in a specified and agreed-on location, except in cases in which a professional appointed by the judge to monitor the visits certifies that there is an imminent risk of harm to the physical or psychological integrity of the child or the adolescent. Before the amendment, the location for the visitation was not specified. Law No. 14,340 also added paragraphs 3 and 4 to article 157 of the Child and Adolescent Statute. Article 157 states that for a serious reason, the judicial authority may, after hearing the Public Prosecutor's Office, decree the suspension of the parental family power, preliminarily or incidentally, until the final judgment of the case, with the child or adolescent being entrusted to a suitable person by means of a statement of responsibility.

We note with grave concern that the Brazilian State has not yet implemented the recommendations of the National Council on Health (Conselho Nacional de Saúde) and the National Council on Human Rights (Conselho Nacional dos Direitos Humanos) to "reject Law Bill No. 7,352/2017, which amended Law No. 12,318/2010 and Law No. 13,105/2015, to determine priority in the processing of proceedings relating to acts of parental alienation." We also regret that your Excellency Government, after acknowledging to the CEDAW Committee that "concrete unfair situations were observed" regarding Law No. 12,318/2010 and committing to revise this regulation "by assessing the protection of the minor involved as the greatest good to be protected," did not take any action.

We are also deeply concerned about the impact on children when calling one parent alienated and granting custody to the other violent parent. Children who voice their fears about maintaining contact with the perpetrator of domestic violence, child abuse or neglect, may be told by family courts that their mother is manipulating them to make false accusations. When children do not feel listened or believed when making accusations against the violent parent, they are not trusted as messengers of their own experience and follows a risk that claims of abuse can be chalked up as a product of "alienating" behaviour. We deem it central to analyse the psychological

pain, physical and emotional violence experienced by children and to protect them from any acts of violence against them by State or non-State actors, including family members in line with international human rights treaties and obligations, most notably the Convention on the Rights of the Child,

While we acknowledge that the Child and Adolescent Statute from 1990 aimed to improve the protection of children, we are alarmed by the preventive and protective clauses of the Statute, which are now submerged under the objective of identifying and preventing parental alienation. The general practice by the courts is to consider that it is always in the best interest of the child to be in full and equal contact with both parents irrespective of any other considerations. Therefore any allegations made against any parent by another, even if credible, are considered to go against the child. Such practice is in contravention to articles 3.2 of the Convention on the Rights of the Child that requires States to ensure that the child receives protection and care that are necessary for the child's well-being and 9 of the afore-mentioned Convention, which foresees the possibility of separating the child from his parent(s) or to break contact if that is in the best interest of that child. Accordingly, we would like to emphasize that Brazil has the obligation to respect children's right not to be separated from their parents against their will if they are not being abused or mistreated.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain the measures that the Government of Brazil will undertake to stop the abuse of the pseudo concept of acts of parental alienation and prevent its continued use to inflict or allow violence against women and children, including measures taken to ensure the highest attainable level of physical and mental health of the children and women affected by such type of abuses.
3. Please indicate what specific measures have been taken by the State to ensure that justice operators, including judges and lawyers, implement legislation in a non-discriminatory manner and without resorting to gender biases and stereotypes that in practice prevent women from accessing and obtaining justice.
4. Please explain what actions the Government of Brazil has taken to ensure that judicial processes involving children are child- and gender-sensitive and that they uphold the principle of the best interest of the child.
5. Please provide information on the measures taken by the Government of Brazil to ensure that experts providing opinion to judges, as certified

professionals, receive appropriate training on gender-based violence and have the appropriate credentials and expertise on child protection, gender equality and prevention and elimination of violence against women.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Reem Alsalem

Special Rapporteur on violence against women and girls, its causes and consequences

Tlaleng Mofokeng

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Dorothy Estrada-Tanck

Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to remind the Government of Brazil of the international standards and norms it has committed to uphold and respect, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) ratified by Brazil in 1984, the International Covenant on Civil and Political Rights ratified by Brazil in 1992, the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Brazil on 24 January 1992 and the Convention on the Rights of the Child ratified by Brazil in 1990. The State has the duty to exercise due diligence to prevent, investigate and punish acts of violence that are perpetrated by the agents of the State or by private individuals. These obligations enshrined in articles 1, 2c), d) f) g) 3, 5 a) and 15 of the CEDAW, article 4 of the Declaration on the Elimination of Violence Against Women, article 26 of the International Covenant on Civil and Political Rights ratified by Brazil in 2009, articles 3(1), 9(3), 12(2), and 19 of the Convention on the Rights of the Child. We would like to draw the attention of the Government of Brazil to its specific obligation to eliminate discrimination against women, especially gender-based discrimination, and to ensure that all its organs and officials, including State officials, to abstain from incurring or contributing to discriminatory practices on the ground of gender, race, colour, sex, language, religion or social origin. Such obligation includes the duty to ensure that women have equal protection in front of the law as well as guaranteeing women access to justice, restitution and non-repetition.

Under article 2 (a) of CEDAW, States parties have the obligation to ensure by law or other appropriate means the realization and practice of the principle of equality of men and women, and that pursuant to articles 2 (f) and 5 (a), States parties have the obligation to adopt appropriate measures to amend or abolish not only existing laws and regulations but also customs and practices that constitute discrimination against women. Article 2 c) in particular protects women from discrimination by the justice system and article 2 d) guarantees the right of women to be treated equally and not to be discriminated against by authorities and institutions. States parties also have the obligation, in accordance with article 16 (1), to adopt all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relationships.

We would like to refer to article 12 of the Convention on the Rights of the Child, which recognizes the right of the child to be heard and that its opinion be taken into consideration; the right to protection and care (article 3), the right to development (article 6) and the right to be arbitrarily separated from its mother (article 9) as well as the right to be protected against all forms of abuse, including sexual and domestic violence (article 19).

We also take the opportunity to remind the Government of Brazil of the CEDAW Committee's General Recommendation 35 of 2017, which updates its General Recommendation No. 19 of 1992 on the right to a life free from violence. General Recommendation No. 35 on gender-based violence against women refers to the obligation of State institutions, agents and organs and their duty to refrain from incurring discriminatory practice, whether direct or indirect, against women, and ensure that all its authorities, institutions and public officials act in conformity with