Domestic Violence as a Human Rights Issue

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Maria was brutally assaulted in her own kitchen in England by a man wielding two knives. He held one of the weapons at her throat, while raping her with the other. After he finished, the man doused her with alcohol and set her alight with a blow torch. Maria lived through the assault to prosecute the man, although 70 percent of her body is now covered with scars. But because they were married, he could not be charged with rape. He received a ten year sentence for bodily injury, of which he will serve only five years.1

Between 1988 and 1990 in the Brazilian state of Maranhão, women registered at the main police station over 4,000 complaints of battery and sexual abuse in the home. Of those complaints, only 300—less than 8 percent—were forwarded to the court for processing, and only two men were ever convicted and sent to prison.2

In Pakistan, Muhammad Younis killed his wife, claiming that he found her in the act of adultery. The court found his defense untrue, in part because the woman was fully dressed when she was killed, and sentenced him to life imprisonment. However, on appeal the Lahore High Court reduced his sentence.

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to ten years at hard labor stating that the “accused had two children from his deceased wife and when accused took the extreme step of taking her life by giving her repeated knife blows on different parts of her body, she must have done something unusual to enrage him to that extent.”

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It has been observed that “The concept of human rights is one of the few moral visions ascribed to internationally.”4 Domestic violence5 violates the principles that lie at the heart of this moral vision: the inherent dignity and worth of all members of the human family, the inalienable right to freedom from fear and want, and the equal rights of men and women.6 Yet until recently, it has been difficult to conceive of domestic violence as a human rights issue under international law. We would like to explore some of the reasons why such a conceptualization has been so problematic, and how these difficulties are beginning to be resolved through a combination of theory and practice. We stress that the methods of combatting domestic violence under international law are still emerging and that the strategies set forth in this paper mark only one step in this process.

Part I of this paper examines why domestic violence was not analyzed traditionally as a human rights issue. It discusses the three independent, though interrelated, changes that occurred to begin to make such an analysis possible: the expansion of the application of state responsibility; the recognition of domestic violence as widespread and largely unprosecuted (brought about by greater public and international recognition of the daily violence experienced by women); and, the understanding that the systematic, discriminatory non-prosecution of domestic violence constitutes a violation of the right to equal protection under international law. Part II describes the first practical application of this evolving approach, in Brazil, where the presence of a broad-based women’s movement made it possible to collect the data necessary to support an analysis of the government’s responsibility for domestic violence. Finally, Part III explores the value and limitations of

5. Domestic violence has been generally defined as “the infliction of any bodily injury or harmful physical contact or the destruction of property or threat thereof as a method of coercion, control, revenge or punishment upon a person with whom the actor is involved in an ongoing intimate relationship.” Women’s And Children’s Treatment Committee, Standards for Services to Battered Women and Their Children (Colorado: 1990), 5. Under this definition, marital rape and murder, as well as assault and battery, constitute forms of domestic violence. We have examined all three forms of domestic violence in this paper.
the human rights approach to combatting domestic violence. We conclude that the human rights approach can be a powerful tool to combat domestic violence, but that there are currently both practical and methodological limitations—in part related to the use of the equal protection framework to assign state responsibility for domestic violence—that are problematic and require further analysis to make the approach more effective.

I. PROBLEMS WITH UNDERSTANDING DOMESTIC VIOLENCE AS A HUMAN RIGHTS ISSUE

A. The Scope of International Human Rights Law

The concept of human rights developed largely from Western political theory of the rights of the individual to autonomy and freedom. International human rights law evolved in order to protect those individual rights from limitations that might be imposed on them by states. States are bound by international law to respect the individual rights of each and every person and are thus accountable for abuses of those rights. The aim of the human rights movement is to enforce states’ obligations in this regard by denouncing violations of their duties under international law. The exclusive focus on the behavior of states confines the operation of international human rights law entirely within the public sphere.

B. Gender-Neutral Law, Gender-Biased Application

International human rights law is facially gender-neutral. The rights embodied in the Universal Declaration of Human Rights are defined as belonging to “all human beings,” not just to men. All the major human rights

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11. Universal Declaration of Human Rights, art. 1, note 6 above. It should be noted that the Declaration was originally drafted in terms of the eighteenth century concept of “the rights of man.” The language was only expanded at the insistence of Eleanor Roosevelt
instruments include sex as one of the grounds upon which states may not discriminate in enforcing the rights set forth.\textsuperscript{12}

Although international law is gender neutral in theory, in practice it interacts with gender-biased domestic laws and social structures that relegate women and men to separate spheres of existence: private and public.\textsuperscript{13} Men exist as public, legal entities in all countries, and, barring an overt abuse by the state, participate in public life and enjoy the full extent of whatever civil and political rights exist. Women, however, are in every country socially and economically disadvantaged in practice and in fact and in many places by law. Therefore, their capacity to participate in public life is routinely circumscribed.\textsuperscript{14} This gender bias, if unchallenged, becomes so embedded in the social structure that it often assumes the form of a social or cultural norm seemingly beyond the purview of the state’s responsibility, rather than a violation of women’s human rights for which the state is accountable. In some cases, even civil and political rights violations committed directly by state actors have been shrugged off as acceptable. For example, in 1986 a Peruvian prosecutor told an Amnesty International delegation visiting the state of Ayacucho that rape of civilian women by soldiers “was to be ex-
mented” when troops were conducting counter-insurgency operations.15

When gender-neutral international human rights law is applied in these gender-biased social contexts, those making the application—both governments and nongovernmental organizations—do not necessarily challenge the gender bias embedded in the social structure or in the state’s determination of its responsibilities. In past human rights practice, organizations often have not challenged the relegation of women and what happens to them to the private sphere, whether in law or in practice, and have allowed social or cultural justifications to deter them from denouncing restrictions on women’s capacity to participate in public life. Even where abuses against women have occurred in realms they traditionally monitor, such as police custody, they have not consistently reported them. For example, only very recently have human rights organizations begun to report on rape of women prisoners as a form of torture.16 Thus, in the absence of a challenge to states’ consistent relegation of women to the private sphere, application of international law can have the effect of reinforcing, and to some extent replicating, the exclusion of women’s rights abuses from the public sphere and therefore from the state’s international obligations.17 In a very real sense, gender-specific abuses—even those directly attributable to states—have until recently been “privatized” internationally and either go unchallenged or are left out of human rights practice altogether.

Nowhere is the effect on international human rights practice of the public/private split more evident than in the case of domestic violence—which literally happens “in private.” States dismiss blatant and frequent crimes, including murder, rape, and physical abuse of women in the home, as private, family matters, upon which they routinely take no action.18 Moreover, the state’s failure to prosecute violence against women equally with other similar crimes or to guarantee women the fundamental civil and political right to equal protection of the law without regard to sex have largely escaped international condemnation.

At least four interrelated factors have caused the exclusion of domestic violence in particular from international human rights practice: (1) traditional concepts of state responsibility under international law and practice; (2) misconceptions about the nature and extent of domestic violence and states’

17. Some notable exceptions to this general practice are detailed in the section below that discusses equal protection.
18. The authors wish to thank Jane Connors for her generosity in sharing a recent unpublished paper on this subject with us.
responses to it; (3) the neglect of equality before and equal protection of the law without regard to sex as a governing human rights principle; and (4) the failure of states to recognize their affirmative obligation to provide remedies for domestic violence crimes. These factors, independently and in relationship to one another, are beginning to change and, with them, so is the treatment of domestic violence under international law. The following sections attempt to trace the course and direction of this emerging change.

C. The Concept of State Responsibility

The concept of state responsibility defines the limits of a government’s accountability for human rights abuses under international law. Of course, all acts are done by real people, individually or with others, and not by the fictive “person” of the state. Therefore, responsibility is generally understood to arise only when an act by a real person or persons can be imputed to the state. Traditionally, the idea of vicarious responsibility for acts is a perfectly acceptable one: such responsibility flows from the authorized acts of agents of the state, or persons acting with the apparent authority or condonation of the state. In traditional human rights practice states are held accountable only for what they do directly or through an agent, rendering acts of purely private individuals—such as domestic violence crimes—outside the scope of state responsibility.

More recently, however, the concept of state responsibility has expanded to include not only actions directly committed by states, but also states’ systematic failure to prosecute acts committed either by low-level or para-state agents or by private actors. In these situations, although the state does not actually commit the primary abuse, its failure to prosecute the abuse amounts to complicity in it. For instance, in three significant cases, Velásquez, Godínez and Fairén, and Solís, decided by the Inter-American Court on Human Rights in 1988–1989, the tribunal found that the government of Honduras was responsible for a series of forced disappearances carried out

22. Andrew Byrnes, Women, Feminism and International Human Rights Law—Methodological Myopia, Fundamental Flaws or Meaningful Marginalisation?, at 23 (unpublished manuscript) (“our present system of international law is still fundamentally a State-centered one of reciprocal rights and obligations enjoyed and borne by States among themselves.”); see also Draft Articles on State Responsibility, art. 10, “Conduct of Private Individuals,” Yearbook of the International Law Commission II (1972): 95–125.
between 1981 and 1984 by members of the Honduran military who were acting as private individuals.24

The test of the state’s responsibility for an act differs depending upon whether the actor is the state or a private individual. To hold a state accountable for the actions of state actors, one of two things must be shown: (1) the state explicitly authorized the act (i.e., a senior official committed or authorized it); or (2) the state systematically failed to prosecute abuses committed by its agents, whether or not these acts were ordered by senior officials. In the latter case, one must usually show a pattern of nonprosecution of acts that violate human rights, and that the state has agreed to enforce those human rights.25 For example, the state is responsible if it fails systematically to prohibit or prosecute torture, because the right to be free from torture is guaranteed under international law. Governments have agreed not to torture people themselves, and have undertaken to ensure that no one else in the state tortures.26 If the state failed to prosecute torturers, it would violate its international obligations.

The test is different when the actors are private. For example, systematic nonenforcement of laws against armed robbery by private actors alone is not a human rights problem; it merely indicates a serious common crime problem. Nonprosecution of the crimes of private individuals becomes a human rights issue (assuming no state action or direct complicity) only if the reason for the state’s failure to prosecute can be shown to be rooted in discrimination along prohibited lines, such as those set forth in Article 26 of the Covenant on Civil and Political Rights.27

There are rights to bodily integrity in international human rights law which armed robbery appears to violate.28 However, these are rights against
the state, not rights that states must enforce against all other persons. States cannot be held directly accountable for violent acts of all private individuals because all violent crime would then constitute a human rights abuse for which states could be held directly accountable under international law. The state’s international obligation with regard to the acts of private individuals is to ensure that where it does protect people’s lives, liberty, and security against private depredations, it must do so without discrimination on prohibited grounds. Therefore, there would have to be systematic, discriminatory nonenforcement of the domestic criminal law against murder or assault for domestic violence to constitute a human rights issue, not merely a showing that the victims’ lives ended or their bodies were harmed.

The expansion of state responsibility to include accountability for some acts of private individuals as described above is one of the factors necessary to permit analysis of domestic violence as a human rights violation. However, in many cases it is also necessary to show a pattern of discriminatory non-prosecution which amounts to a failure to guarantee equal protection of the law to women victims. The following section is an overview of new information about the vast extent of violence experienced by women and the frequency of its non- or discriminatory prosecution, which was revealed as a general characteristic, not merely a rare anomaly of domestic criminal law.

D. Widespread Violence and a Pattern of Non-Prosecution

As noted, domestic violence generally has been understood as a “private” matter in which governments should not interfere and for which they are not accountable. Traditionally the home has been idealized as a place of safety and security, a sanctuary from duty, responsibility, and work. The relationships between members of the family were also idealized as respectful and supportive. The reality is quite different, “modern studies suggest ... that far from being a place of safety, the family can be [a] ‘cradle of violence’

30. Such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Ibid. Note that under this discrimination approach, it is irrelevant whether the harm to the victim implicates some other right guaranteed by international human rights law because ICCPR Article 26 prohibits discrimination in the enforcement of any law, not just in the enforcement of the other rights guaranteed by the Covenant itself.
and that much of this violence is directed at the female members of the family.”

New information on domestic violence has surfaced as a result of a long international campaign by women’s rights groups to raise consciousness about women’s issues. After successfully pushing for the inclusion of a commitment to equal rights for women in the UN Charter and Universal Declaration of Human Rights, women’s organizations worked for the establishment of the UN Commission on the Status of Women and other formal mechanisms for the advancement of women’s status. The Commission and affiliated nongovernmental organizations (NGOs) drafted a variety of conventions to combat discrimination against women internationally and pressed for the General Assembly to declare a Decade for Women program. It was the international resurgence of women’s activism in the 1960s and 1970s, and the pressure generated by women’s organizations internationally, that made the UN Decade for Women (1975–1985) a reality. As the Decade unfolded, women’s rights activists coordinated international efforts to study the position of women in all societies and the reasons for their subordinate status. In 1985, the participants at the Final Conference of the Decade for Women in Nairobi, Kenya, reached a consensus, that violence against women

exists in various forms in everyday life in all societies. Women are beaten, mutilated, burned, sexually abused and raped. Such violence is a major obstacle to the achievement of peace and other objectives of the Decade and should be given special attention. . . . National machinery should be established in order to deal with the question of violence against women within the family and society.

In 1989, the UN Commission on the Status of Women in Vienna compiled a mass of domestic violence statistics and analyses by women’s rights activists and academics, and published its report, Violence Against Women in the Family. The report’s author reviewed over 250 articles, books, and studies of various aspects of domestic violence, of which only ten had been published earlier than 1971. Furthermore, the report is only a small sample

34. Ibid., v.
36. See note 32 above.
of the huge amount of new material being published about this old problem.\textsuperscript{38} The report concluded:

Women . . . have been revealed as seriously deprived of basic human rights. Not only are women denied equality with the balance of the world's population, men, but also they are often denied liberty and dignity, and in many situations suffer direct violations of their physical and mental autonomy.\textsuperscript{39}

Domestic violence has been revealed as widespread and gender-specific. For example, in the United States a 1984 National Crime Survey found that women were victims of family violence at a rate three times that of men, and that of all spousal violence crimes, 91 percent were victimizations of women by their husbands or ex-husbands.\textsuperscript{40} In Colombia during 1982 and 1983, the Forensic Institute of Bogota found that out of 1,170 cases of bodily injury, 20 percent were due to marital violence against women. The Forensic Institute also determined that 94 percent of persons hospitalized in bodily injury cases were battered women.\textsuperscript{41} In Thailand, a study in Bangkok revealed that more than 50 percent of married women were beaten regularly by their husbands.\textsuperscript{42} And the reported number of women killed in dowry disputes in India almost doubled between 1985 and 1987, rising from 999 reports to 1,786 reports per year.\textsuperscript{43}

This is only a small sampling of the information emerging on domestic violence. Certain characteristics of the problem become clear from the overall research: domestic violence is not unusual or an exception to normal private family life; the vast majority of crimes against women occur in the home and are usually committed by a spouse or relative in the form of murder, battery, or rape; and, domestic violence is endemic to all societies.\textsuperscript{44} The immensity of the problem has led researchers to conclude:

If you are one of only 500 women in a population of 50 million then you have certainly been more than unlucky and there may perhaps be something very peculiar about your husband, or unusual about your circumstances, or about you; on the other hand, if you are one of 500,000 women then that suggests something very different—that there is something wrong not with a few individual men, or women, or marriages, but with the situation. . . .\textsuperscript{45}

\begin{thebibliography}{45}
\bibitem{38} Margaret Schuler, ed., \textit{Freedom from Violence: Women's Strategies from Around the World} (1992), 1.
\bibitem{39} U.N. Report, note 32 above, 3.
\bibitem{40} Patsy Klaus et al., \textit{Family Violence, Bureau of Justice Statistics Special Report} (April 1984), 4.
\bibitem{42} Ibid.
\bibitem{43} Ibid.
\bibitem{44} See generally Schuler, note 38 above.
\bibitem{45} Elizabeth Wilson, \textit{The Existing Research into Battered Women} (London: National Women's Aid Federation, 1976), 5–6.
\end{thebibliography}
If violence against women in the home is inherent in all societies, then it can no longer be dismissed as something private and beyond the scope of state responsibility. Although information about government response to this problem is still minimal, the research suggests that investigation, prosecution, and sentencing of domestic violence crimes occurs with much less frequency than other, similar crimes. As the examples at the beginning of this paper indicate, wife-murderers receive greatly reduced sentences, domestic battery is rarely investigated, and rape frequently goes unpunished. Marital rape is often not seen as a crime. These examples stand in contrast to the treatment of violent crimes against male victims (a comparison now made possible by the new data on violence against women). The widespread absence of state intervention in crimes against women is not merely the result of governments’ failure to criminalize a class of behavior (since the violent acts themselves usually are crimes), but rather is the result of governments’ failure to enforce laws equitably across gender lines. The next section explains how gender discrimination in enforcement of criminal law constitutes a human rights issue and applies that analysis to domestic violence.

E. The Underlying Right to Equal Protection of the Law

As indicated above, the inclusion within the limits of state responsibility of failure to prosecute human rights abusers, whether by state agents or private individuals, is not—in and of itself—enough to position domestic violence within the human rights framework. Evidence of a state’s failure to prosecute is not sufficient unless a pattern can be shown that reveals the failure to be gender discriminatory and thereby a violation of the internationally guaranteed right to equal protection of the law. However, even though increased research into and understanding of domestic violence indicated that states were discriminating against women in the enforcement of criminal laws, gender-discrimination under international law was not a central human rights concern.

46. The authors wish to thank Jane Connors for her generosity in sharing with us a recent unpublished paper in which she notes that “In most jurisdictions, non-consensual sexual activity which takes place in marriage is not subject to legal sanction.”

47. “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as . . . sex . . .” ICCPR, note 12 above, art. 26.

The principle of equal protection is included in the states’ promise of enforcement in ICCPR Article 2: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as . . . sex . . .” Ibid., art. 2.
Until recently, sex discrimination has been visibly absent from the agendas of most governmental and nongovernmental bodies concerned with human rights,48 with the exception of the Committee on the Elimination of All Forms of Discrimination Against Women, the UN body which monitors state conduct under the Convention on the Elimination of All Forms of Discrimination Against Women.49 The Committee and the other women’s rights bodies located in Vienna have undertaken landmark work in holding governments accountable for discrimination on the basis of sex, whether by commission or omission. These organizations have made notable progress despite insufficient resources50 and limited enforcement mechanisms in the instruments they oversee.51

However, and more importantly for the purposes of this paper, the mainstream Geneva-based human rights bodies, which oversee instruments that have stronger protective mechanisms,52 have used the existence of this separate women’s human rights regime as an excuse to marginalize sex discrimination and most other women’s human rights violations, which nonetheless fall clearly within their own mandates.53 Within the cumulative human rights practice of governments and governmental bodies, sex discrimination has been de-emphasized and placed outside the rubric of central human rights concerns. International nongovernmental human rights organizations, including the two largest groups, Amnesty International and Human Rights Watch, have until recently reflected and perpetuated this trend.54


[A]mong the treaty bodies, CEDAW enjoys a particularly disadvantaged position with such a low level of secretariat support that it can function at little more than a subsistence level as its workload has increased.

Ibid., 58.
51. See ibid., 42–45.
54. Amnesty International (AI) is an international human rights organization with a research staff based in London, many national sections, and a large grass-roots membership. AI
By failing to focus on the sex-discriminatory practices of governments, human rights organizations have neither challenged the broadest form of sex discrimination that relegates women and what happens to them to the "private" sphere, nor denounced one of its immediate effects: governments' devaluation of women and their resulting failure to prosecute violence against women equally with other similar crimes. Instead, human rights organizations have allowed a pattern of discriminatory non-prosecution of such violence to flourish unchecked. This is uncharacteristic because in other areas where governments discriminate on a prohibited basis, such as race or ethnicity, NGO interventions have been effective in exposing and reversing these violations. However, in the case of domestic violence, the widespread failure by states to prosecute such violence and to fulfill their international obligations to guarantee women equal protection of the law has gone largely undenounced.

Ultimately, women's rights activists internationally condemned many of the international governmental and nongovernmental human rights bodies for gender bias and, among other things, for their failure to adequately promote and protect women's rights to nondiscrimination and equal protection of the law. Largely as a result of this increasing pressure from women's rights activists internationally, and heightened awareness of the extent of violence against women and government tolerance of it, the non-

works to free political prisoners and focuses on specific issues affecting prisoners such as torture, executions, and disappearances. It also reports on violations of the laws of war by both sides, monitors violence against lesbians and gays and HIV+ persons, and works to abolish the death penalty.

Human Rights Watch (HRW) is a US-based international human rights organization. It is composed of five regional divisions—Africa Watch, Americas Watch, Asia Watch, Helsinki Watch, and Middle East Watch—and three thematic projects: The Fund for Free Expression, the Prison Project, and the Women's Rights Project. HRW monitors the human rights practices of governments, focusing mainly on politically motivated abuses of human rights, but also monitoring such abuses as summary executions, torture, and cruel conditions of imprisonment regardless of the victim. In situations of sustained armed conflict, HRW monitors violations of the laws of war not only by governments but also by rebel groups.


56. See, e.g., Charlesworth et al., note 10 above; K. Jayawardena, *Feminism and Nationalism in the Third World* (London: Zed, 1986); Bunch, note 12 above.
governmental human rights organizations began to highlight these issues within their overall human rights practice.57

These separate but interrelated developments have allowed domestic violence to be placed within the context of international human rights law and practice. Developments in the concept of state responsibility, new information about the gender-specific nature of domestic violence, its pervasiveness and frequent non- or discriminatory prosecution by governments, and a new emphasis on equal protection of the law as a central human rights concern have made it possible to conceptualize domestic violence as a human rights issue and to hold governments accountable for the pervasive abuse of women worldwide. In addition, there is a nascent movement to interpret international human rights law to assign accountability directly to governments for their failure to protect women from what has been revealed to be the leading form of violence experienced by women everywhere.

Although not all states have acknowledged that they have an underlying obligation to provide substantive protection to women from domestic violence, there is support in international human rights jurisprudence for the idea that states have an affirmative obligation to criminalize domestic violence.58 For example, in the case of X and Y v. The Netherlands,59 Y, a mentally handicapped girl, was allegedly sexually assaulted by someone at the private facility where she lived. Her father, Mr. X, attempted to file a claim on her behalf with the local police, but they rejected it because the girl did not file it herself.60 Mr. X brought suit under the European Convention on Human Rights. The European Court on Human Rights found that “although article 861 [of the European Convention] is primarily concerned with

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57. Although, as always, within the necessary confines of a focus on the responsibility—broadly defined—of the state. This application takes different forms for different organizations, depending upon the scope of each organization's mandate.
58. Some states’ constitutions even contain provisions providing substantive protection to women from domestic violence. See, e.g., Constitution of the Federative Republic of Brazil, art. 226, sec. 8 (1988) (“the state should assist the family, in the person of each of its members, and should create mechanisms so as to impede violence in the sphere of its relationships”); Colombian Constitution of 1989, art. 42 (“Family relations are based on the equality of rights and duties of the couple and on the reciprocal rights of all its members. Any form of violence in the family is considered destructive of its harmony and unity and will be sanctioned according to law.”).
60. There was a gap in the Netherlands Criminal Code that made it impossible to prosecute under these circumstances. For more information on the procedural posture of the case, see Rebecca J. Cook, “International Human Rights Law Concerning Women: Case Notes and Comments,” Vanderbilt J. Transnat'l L. 23 (1990): 779, 799–800. The authors are grateful to Rebecca Cook for bringing this case to our attention.
61. “Everyone has the right to respect for his private and family life, his home and his correspondence.” European Convention for the Protection of Human Rights and Fundamental Freedoms (1953), art. 8(1).
protecting individuals from arbitrary interference by public authorities, it also may impose positive obligations on contracting states to insure effective respect for private and family life.”62 Article 8 of the European Convention is equivalent to Article 1763 of the Covenant on Civil and Political Rights and Article 12 of the Universal Declaration of Human Rights, which both contain the further guarantee of the protection of law against such interference or attacks. These provisions, if interpreted as was their sister provision by the European Court, would seem to provide direct shelter from domestic violence crimes, in addition to the indirect shelter already provided by the equal protection provisions contained in every human rights instrument.

This language would seem to indicate that there is some obligation under international human rights law to at least provide a real remedy for private violence that extends beyond the duty to provide equal protection. The European Court described the general parameters of that duty in the X and Y case, finding that while recourse to criminal law might not always be required to “ensure effective respect for private and family life,”64 sexual assault “involved [such] fundamental values and essential aspects of private life”65 that effective deterrence was particularly crucial. Domestic violence might similarly be said to violate fundamental values of personal safety in one’s private life, and thus similarly require that states provide recourse to victims through provisions of criminal law.

While states may not always bear responsibility for the violent acts of private individuals, this case implies that the rights contained in the major human rights documents do establish state responsibility for more than just equal protection with regard to abuse committed by private actors. This interpretation is borne out by Article 2 of the Covenant on Civil and Political Rights that requires each state party “to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present covenant . . .” and provides that the state “adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.”66

However, although approaches to combatting domestic violence through the application of human rights law are still evolving, this point of view is far from universally held. So far, application of human rights law to domestic violence has used an equal protection framework. One practical application of this equal protection methodology, as explained above, is

62. Cook, note 60 above, 800.
63. “1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.” ICCPR, note 12 above, art. 17.
65. Cook, note 60 above, 800.
66. ICCPR, note 12 above, art. 2.
examined in the following section. It describes the first time an international human rights organization used human rights law to condemn a state’s systematic nonprosecution of domestic violence crimes by analyzing that nonprosecution as a violation of the fundamental right to equal protection without regard to sex.

II. APPLYING THE HUMAN RIGHTS METHODOLOGY TO DOMESTIC VIOLENCE: A CASE STUDY

In April 1991, a delegation from Americas Watch and the Women’s Rights Project of Human Rights Watch67 travelled to Brazil to assess the government’s response to domestic violence. The Watch groups chose Brazil because it has a serious and mounting problem of domestic violence, publicized through the efforts of a vigorous national women’s movement. Also, such violence to a great degree received the explicit and implicit sanction of the state. The delegation investigated the problem of discriminatory prosecution of violence against women in Brazil, reflected primarily in the use of the honor defense, which has been used to exculpate men accused of killing their wives. It also looked at the failure of the Brazilian criminal justice system to investigate and prosecute domestic violence generally, with particular regard to wife-murder, battery, and rape.

A. Domestic Violence and State Responsibility: Non-Prosecution and Equal Protection

Information indicates that wife-murder is a common crime in Brazil, and reveals a pattern of impunity or undue mitigation of sentence in homicides where the victim is a woman.68 In cases of spousal murder, men are able to obtain an acquittal based on the theory that the killing was justified to defend the man’s “honor” after the wife’s alleged adultery. The reverse is

67. Americas Watch is one of the regional committees of Human Rights Watch. It monitors human rights in Latin America and the Caribbean. The Women’s Rights Project is a division of Human Rights Watch. This mission was the first undertaken by the Women’s Rights Project, which was formed in 1990 to monitor violence against women and discrimination on the basis of sex throughout the world. For other reports by the Women’s Rights Project and various regional Watch Committees, see WRP/Asia Watch, Double Jeopardy: Police Abuse of Women in Pakistan (New York, 1992); WRP/Helsinki Watch, Hidden Victims: Women in Post-Communist Poland, 14 News From Helsinki Watch No. 5 (12 Mar. 1992); WRP/Middle East Watch, Punishing the Victim: Rape and Mistreatment of Asian Maids in Kuwait, 4 News From Middle East Watch No. 8 (August 1992).

68. This is particularly true in Brazil’s interior, where one state prosecutor told Americas Watch that the honor defense is successful in 80 percent of the cases in which it is invoked. Americas Watch, note 2 above, 4.
rarely true. The honor defense is rooted in proprietary attitudes towards women; many Brazilians believe that any action by a woman has the potential to so mortally offend her husband that he is within his rights to execute her, in what is interpreted by the courts as an act of self-defense. And, in general, a defendant will not be held accountable for a homicide if, among other things, it was committed in legitimate self-defense.

In a 1990 spousal-murder case in the Brazilian city of Apucarana, in which a man murdered his wife and her lover after stalking them for two days, the defendant was unanimously acquitted on the grounds of honor. The acquittal was upheld on appeal. Brazil’s highest court overturned the lower courts’ decisions on the grounds that murder is not a legitimate response to adultery, and that what is defended in this type of crime is not honor, but “self-esteem, vanity and the pride of the Lord who sees his wife as property.” Despite the court’s clear denunciation of the honor defense, when the case was re-tried, the defendant was again acquitted on the grounds of the “legitimate defense of honor.” This demonstrates in its most extreme form the grip on Brazil’s criminal justice system of discriminatory attitudes towards women.

Even when the honor defense is not invoked, ample evidence indicates that Brazilian courts treat defendants in wife-murder cases more leniently than others tried for murder, largely through misuse of a “violent emotion” defense which allows sentence mitigation. In wife-murder cases, Brazilian

69. Ibid., 35.
70. In wife-murder cases, defense attorneys usually characterize the killing as an unintentional or “privileged homicide.” In these honor defense cases, the idea is that the man acted in legitimate self-defense of his honor in killing his wife. This concept effectively collapses the honor defense into the realm of legitimate self-defense by equating the wife’s adulterous (or allegedly adulterous) act with a physical act of aggression towards the accused against which he is permitted to respond with violence.

Although the theory of legitimate defense of honor existed in Portuguese colonial law, it was abolished in 1830 with the enactment of Brazil’s first post-independence Penal Code. Americas Watch, note 2 above, 20. A subsequent similar theory that a man could be acquitted of killing his adulterous wife if he murdered her in the “heat of passion” was similarly done away with by Brazil’s Third Penal Code in 1940. Today, strong emotion or passion no longer excuses criminal responsibility for murder, although it can be used to mitigate sentence. Ibid., 21. The delegation found that despite a history of Brazilian jurisprudence that has unequivocally declared that the honor defense has no basis in law, men such as Joo Lopes are still regularly acquitted under this defense. Ibid., 26–28.
71. Ibid., 18.
72. These attitudes are deeply rooted in Brazilian society and law. Brazil’s first Civil Code (1914) treated women like minors. Women did not achieve the vote until 1932 and could not work outside the home without her husband’s permission until 1962. Although the country’s 1988 constitution granted full equality to men, the civil code still deems the husband to be the head of the family and therefore the only one authorized to represented the family legally and administer family finances. Ibid., 16–17.
73. Ibid., 19.
74. Ibid., 29. There is evidence that similar patterns of using violent emotion defenses to privilege male defendants over female defendants in spousal murder cases exist in other
courts ignored evidence of premeditation and intent to kill, and focused instead on the behavior of the victim.\textsuperscript{75} The same was not true where a wife murdered her husband.\textsuperscript{76} Evidence also indicated that men who murdered their wives were often arraigned on reduced charges, although information about this problem was scarce.\textsuperscript{77} Even when the murderer is not exculpated, the notion that the victim “provoked” the murder frequently results in unduly short prison terms for wife-murderers, irrespective of the degree of premeditation involved. In cases where wife-murders are prosecuted their crime is often reclassified as a less serious charge, and defendants, who are usually first time offenders, receive preferential treatment from the courts despite the extreme gravity of their crimes.\textsuperscript{78}

Like spousal murder, punishment of domestic abuse of women that falls short of death is also the exception rather than the rule in Brazil. Brazil’s 1988 census, the first to collect data by gender on incidents of physical abuse, found that between October 1987 and September 1988, over 1.1 million people declared that they had been victims of physical abuse.\textsuperscript{79} Of that number, 40 percent were women\textsuperscript{80} and the violence they experienced was markedly different from that suffered by men. Available statistics show that over 70 percent of all reported incidents of violence against women in Brazil take place in the home,\textsuperscript{81} versus 10 percent for men.\textsuperscript{82}

Despite the prevalence of violence in the home, police rarely investigated such crimes prior to 1985.\textsuperscript{83} Studies from 1981 and 1983 show that “when [women] tried to report aggressions” to the police, the police often turned them away on the grounds that domestic violence was “a private problem.”\textsuperscript{84} When the police did register domestic abuse crimes they frequently failed to follow standard procedures, leaving out pertinent information about the circumstances of the abuse or subjecting the victim to abusive treatment aimed at implicating her in the crime.\textsuperscript{85} These biased police attitudes greatly deterred women from seeking the government’s protection.

countries such as Pakistan and Canada. See Double Jeopardy, note 67 above, 46; Andrée Cote, La rage au coeur: Rapport de recherche sur le traitement judiciaire de l’homicide conjugal au Québec (Feb. 1991).
75. Courts have considered the victim’s clothing, her level of independence or her initiative in separating from her husband, treating these factors as if they justified her death. Americas Watch, note 2 above, 23, 30.
76. Ibid., 35.
77. Ibid., 36–39.
78. Ibid.
79. Ibid., 14.
80. Ibid.
81. Ibid., 4.
82. Ibid., 14.
83. Ibid., 43.
84. Ibid.
85. Ibid., 43–44.
Some positive steps were taken to address the issue in 1985. After a nationwide campaign by the women's rights movement, the government instituted women's police stations—delegacias—to deal exclusively with crimes of violence against women. Reports of violence against women immediately increased and police treatment of female victims markedly improved. However, although the delegacias have been successful in raising social consciousness of domestic abuse as a crime, they have been less successful in changing institutional attitudes necessary to criminalize the abuse, even in police stations run by women.

The work of the delegacias is further inhibited by the fact that abuse of women, even if investigated, is rarely prosecuted. The chief of the women's police station in Rio de Janeiro stated that of the more than 2,000 battery cases she investigated in 1990, none resulted in punishment of the accused. In the main delegacia in So Luis, Maranhao, of over 4,000 battery complaints registered by women from 1988 to 1990, only 300 were forwarded for processing by the court and only two men were convicted and sent to prison. These figures indicate the persistent failure by the judiciary to see violence against women in the home as a crime, rather than as a mere "domestic dispute" in which the government should not interfere.

The government of Brazil also treats victims of rape in a discriminatory manner, both by making it difficult to prove rape and by encouraging intrusive inquiries into the victim's life, which are not made when men have experienced physical violence. For example, the definition of rape in Brazil is

86. Ibid., 43.
87. The women's movement in Brazil emerged in the context of the gradual liberalization of Brazil's polity and the country's shift towards democracy in the late 1970s and early 1980s. Reports on sexual abuse, torture, and murder of political prisoners during the previous military dictatorship led to national debate about violence and the proliferation of women's organizations during that same period. See Alfred Stepan, ed., Democratizing Brazil (London: Oxford Press, 1989). During the first sets of direct elections in 1982, gender-specific issues were incorporated into the platforms of various political parties and in 1983, the first state council on the condition of women (Conselho Estadual da Condicao Feminina) was formed in Sao Paulo. Its primary goal was to increase women's access to the policy-making process and to promote women's interests within state administration. By 1985, a national women's council (CDNM) was formed that made domestic violence its number one priority. Women's increased power during this period enabled the women's movement to press for the establishment of women's police stations in a few states, staffed entirely by women and dedicated solely to crimes of violence against women, excluding homicide (which was not then viewed as a gender-specific crime). See ibid.; Romy Medeiros de Fonseca, "Law and the Condition of Women in Brazil," in Law and the Status of Women, 1977 Col. Hum. Rts. Rev., 14.
88. Americas Watch, note 2 above, 43. These are often staffed by women police officers.
89. Ibid., 45.
90. Ibid., 48.
92. Americas Watch, note 3 above, 48.
confined to sexual intercourse with a woman involving violence or serious threat of violence.93 Proof of rape requires a showing of penetration and serious bodily injury or a serious threat.94 While rape has always been viewed as a grave crime in Brazil, the penalties have in the past varied according to the “honesty” of the victim95 because most sexual assault crimes are deemed crimes only if the victim is a “virgin” or “honest” woman.96 Although explicit requirements that the victim be an honest (or virgin) woman have been removed from the penal law regarding rape, if the rape survivor does not fit this stereotype, she is likely to be accused of having consented to the crime and the rape is unlikely to be investigated and prosecuted. There is strong evidence that the distinction between honest and dishonest women continues to influence the way rape is treated by the Brazilian criminal justice system.97

It is also important that rape is legally defined as a crime against custom, rather than as a crime against an individual, signifying that the victim is society, not the woman.98 Under the law, the woman’s individual rights are less important than the social order which her abuse violates. This conception of rape lends legitimacy to the “honest” woman distinction and makes it more difficult for a woman who does not fit the stereotype to prove that she was raped.99 It also dramatically highlights the discriminatory attitude towards women that permeates this system.

B. Conclusions and Recommendations of the Brazil Report

Because of the Brazilian government’s discrimination against women victims of domestic violence, as displayed in these substantial barriers to investigation and prosecution100 of wife-murder, battery, and rape, impunity and

93. Ibid., 53.
94. Ibid., 53, 61 (“in the absence of physical injury . . . she’s going to have to prove that a rape took place”).
95. Ibid., 54.
96. Ibid., 5.
97. Ibid., 54–55.
98. As noted in a 1987 study of rape,
   Custom is the juridical object protected in the case. The law punishes the rapist, but is inefficient to recognize the woman’s right to her own body and to the free employment of her sexuality. On the contrary, what is defended is a certain kind of morality and a concept of good customs.
99. Ibid., 55.
100. There is a larger problem of non-reported cases of domestic abuse, which in part reflect the state’s failure to make reporting possible. This is especially a problem as regards battery and rape. Rape and battery victims in general often lack any confidence that they will receive justice, either because they view the violence they experience as “normal”
undue mitigation of sentence for these crimes is commonplace in Brazil.\textsuperscript{101} The study of domestic violence in Brazil demonstrates that the non-prosecution of the crimes studied is directly related to the gender of the victims. The state's refusal to prosecute or its more lenient treatment of gender-specific violence denies women the equal protection of criminal law in violation of Brazil's international obligations.\textsuperscript{102} This denial is evident both in Brazil's failure to prosecute—or even investigate—most reported complaints of domestic violence crimes against women, and in its legitimation of discriminatory legal concepts, such as the honor defense, which deny female crime victims the same protection afforded to male victims, and further institutionalize gender bias in Brazilian law.

By denouncing the Brazilian government's failure to meet its obligations in this regard, the report lends the persuasive force of public embarrassment—the major tool of nongovernmental human rights organizations—to the dual tasks of ensuring the application of international human rights guarantees and addressing the problem of domestic violence as a worldwide human rights issue. Additionally, this application of international human rights law to the problem of domestic violence in Brazil highlighted some of the practical problems and limitations of the human rights approach as a tool for social change regarding domestic violence, as well as the enormous power of utilizing this framework. Part III discusses these more general questions raised by the Brazil report about the limits and overall usefulness of the human rights approach.

**III. CONCLUSIONS: THE LIMITS AND VALUE OF THE EQUAL PROTECTION HUMAN RIGHTS APPROACH TO COMBATTING DOMESTIC VIOLENCE**

**A. Practical Problems**

Human rights practice is a method of reporting facts to promote change. The influence of nongovernmental human rights organizations is intimately linked to the rigor of their research methodology.\textsuperscript{103} One typical method of

\textsuperscript{101} This paper does not mean to suggest that Brazil is unique in this regard. Discrimination in the state’s treatment of violence against women in the home is also prevalent in the United States, among others.

\textsuperscript{102} Brazil has ratified the International Covenant on Civil and Political Rights and the Convention to End All Forms of Discrimination Against Women, both of which guarantee the right to equal protection of the law without regard to sex.

reporting human rights violations in specific countries is to investigate individual cases of human rights violations through interviews with victims and witnesses, supported by information about the abuse from other credible sources.

Analysis of domestic violence as a human rights abuse depends not only on proving a pattern of violence, but also on demonstrating a systematic failure by the state to afford women equal protection of the law against that violence. Without detailed statistical information concerning both the incidence of wife-murder, battery, and rape, and the criminal justice system’s response to those crimes, it can be difficult to make a solid case against a government for its failure to guarantee equal protection of the law. And inadequate documentation of human rights abuses against women is common to countries throughout the world.

As noted earlier, information about the nature and extent of domestic violence has only been available for a short time. For example, in Brazil, although anecdotal evidence of an overwhelming incidence of domestic violence exists, hard facts or large scale surveys of specific aspects of spousal murder, battery, or rape have often been hard to obtain, or altogether unavailable. At present, national homicide data by gender has not been collected, and statistics regarding battery and rape, where available, are usually compiled by hand and rarely in a systematic way. In addition, individual cases have not always been well-documented or pursued beyond the original report that the abuse occurred—there is often no information about how the government responded, particularly as regards prosecution and sentencing.

Inadequate documentation is a function of another practical problem which is equally common internationally: the lack of cooperation between women’s rights and human rights groups on both national and international levels. In Brazil, for example, the human rights and women’s rights groups had no history at all of working together and, in fact, often saw their aims as antagonistic. For example, efforts to emphasize the equal rights of women in the context of the struggle against military dictatorship were often perceived by the human rights community as divisive and marginal to the central issue of creating a non-oppressive (and in this case, democratic) form of government. As a result of this split, human rights organizations lack information pertaining to violations of women’s rights, and women’s rights organizations often have neither the training nor the resources to document abuses as required to make a case under international law.

One of the important practical advances resulting from field work on women’s human rights was the realization that to address abuses against women adequately in the context of international human rights practice,

104. Americas Watch, note 2 above, 67–68.
women’s rights organizations and human rights organizations at national and international levels need to work together to locate and develop the data and methods necessary for the rigorous fact-finding and analysis on which human rights reporting is based.106

Given attention and concerted effort, these and other emerging practical problems can be overcome. However, some profound methodological limits to the human rights approach must also be examined and addressed.

B. Methodological Limitations

In addition to the quality of its facts, the efficacy of the human rights method depends on the solidity of the legal principles on which arguments are made that governments are in violation of their international obligations and should change their practices. Consequently, changes in methodology must be developed from those legal principles or they will be ineffective to condemn states.

The most general methodological problem with applying human rights to domestic violence is not specific to domestic violence per se, but is a function of the general focus of human rights law: international human rights law is law that binds states, not law that binds individuals. As was discussed at length in Part I, the focus of human rights law on states and the fact that domestic violence, and other abuses of women’s human rights, are often committed by private individuals at present necessitates a complicated analysis to demonstrate state accountability. The requirements of building a case for state responsibility can appear daunting, particularly when coupled with the documentary problems detailed above.

Another limitation is that human rights practice tends to focus on individual acts (whether by state or non-state actors) and not on the causes of those acts. Documentation of a government’s failure to prosecute domestic violence does not directly address the causes of that violence, which are rooted in social, economic, and legal structures that discriminate against women, and in widely-held attitudes about women’s lesser status. The inability, in current human rights practice, to hold governments accountable for the broad economic and social inequities that underlie domestic violence has at least two consequences. First, it may lead governments to the false conclusion that all they need to do to eliminate domestic violence is prosecute aggressors equally with other violent criminals. Second, it largely limits human rights organizations to denouncing abuses after they have already occurred, when the victim is hurt or dead.107

106. See ibid.
107. It is also important to note that just as the human rights approach does not focus on the social causes of domestic violence, it does little to directly address the needs of women
Put another way, it is very difficult to use the human rights approach to prevent domestic violence. Positive state responsibilities such as education or economic support programs, which might help eliminate the causes of domestic violence, are less clearly prescribed by international law than prohibitions against certain abuses, even where the state may be domestically obligated to undertake certain functions. It is one thing for a human rights organization to address the state’s discriminatory application of law; it is quite another to direct a state to adopt a particular social program to change discriminatory attitudes. The first instance is, in a sense, a “negative” injunction, stop violating international human rights law; the second is a “positive” exhortation to adopt a particular policy. The latter statement has a more amorphous basis in international legal principles and requires a less straightforward remedy. It is more difficult for an international human rights organization to be persuasive positively than negatively.\textsuperscript{108}

Increasingly, the positive responsibilities of states are being incorporated into international human rights law and practice. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), for example, requires governments to take positive measures to end legal, social, and economic gender inequality.\textsuperscript{109} The international human rights community has not yet reached a consensus about the ability of human rights organizations to advocate positive measures, or about states’ responsibility under international law to take such actions. However, as the concept of state responsibility in international law evolves further, human rights organizations may more easily hold governments accountable for failing actively to counter the social, economic, and attitudinal biases which underpin and perpetuate domestic violence.

Finally, and perhaps most importantly, the current human rights approach to domestic violence and state responsibility only addresses the problem of equal protection; it usually cannot hold governments accountable for the domestic violence itself, just as it could not hold governments accountable internationally for other violent crimes committed by private in-

\textsuperscript{108} That is in large part because positive exhortations usually imply that a state ought to spend its money in a particular way. Human rights practice loses its moral force when it attempts to direct spending policies; the practice is then attempting to insert itself into what is purely an internal state matter of distributive justice.

\textsuperscript{109} “States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.” CEDAW, note 49 above, art. 3.
individuals. Given the current state of international human rights jurisprudence, the nondiscrimination approach most closely resembles current thinking as regards state responsibility for private actions. However, it is possible to derive concepts of direct state accountability for private acts from human rights law, as we discussed above, and it might be preferable to undertake such an analytic endeavor.

Addressing the state’s responsibility for domestic violence per se would entail investigating in more detail the particular characteristics of domestic violence, as distinguished from other violent crime. To some extent domestic violence is not random, i.e., it is directed at women because they are women and is committed to impede women from exercising their rights. As such, it is an essential factor in maintaining women’s subordinate status, as well as in the resulting domestic and international privatization of gender-specific abuse, the problem with which this paper began and which the integration of women’s rights into human rights practice seeks to counter. In this sense, domestic violence is different from other violent crimes. Treating domestic violence as merely an issue of equal protection, and by inference therefore, setting up the treatment of men as the standard by which we ought to measure the treatment of women in our societies, may in fact disserve women and mask the ways in which domestic violence is not just another common crime. The norm of gender neutrality itself, embodied in the human rights treaties and international customary law, may unintentionally reinforce gender bias in the law’s application and obscure the fact that human rights laws ought to deal directly with gender-specific abuse, and not just gender-specific failures to provide equal protection. The gender-neutral norm may appear to require only identical treatment of men and women, when in fact, equal treatment in many cases is not adequate.

These limitations to the approach used in the Brazil case study are grave. However, they should not obscure the viability of the equal protection approach and the important step that was taken in using human rights law in any capacity to address domestic violence. Nor should they detract from the real value to using human rights law in general as a tool to combatting violence against women in the home.

C. Value of the Human Rights Approach

The practical and methodological problems outlined above are not an inherent deterrent to integrating domestic violence into human rights practice.

110. The Committee on Elimination of All Forms of Discrimination Against Women adopted a general recommendation on violence against women that stated: “gender-based violence is a form of discrimination which seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.” See General Recommendation No. 19
To identify practical obstacles and understand the methodological limits of the current human rights approach is to expand human rights practice, which is far from static, that much further. Moreover, to understand the limits of the human rights approach is also to clarify the particular contributions it can make as part of broader local and international efforts to combat domestic violence.

"Human rights is a prominent subject of international diplomacy," and nongovernmental international human rights organizations have great prestige and influence. Heads of state pay significant attention to the findings and recommendations of such NGOs, even if only to deny their validity, and states regularly monitor whether other states have successfully met their international obligations to uphold their citizens' human rights. Human rights activists have shown the effectiveness of prompting governments to curb human rights violations by aiming the spotlight of public scrutiny on the depredations. Therefore, the potential power of the human rights machinery to combat domestic violence is a strong incentive to use this approach.

The human rights approach employs a pre-existing international system to bring pressure to bear on governments that routinely fail to prosecute domestic violence equally with other similar crimes. This provides an opportunity for local institutions and activists to supplement their efforts with support from the international community. The effect is twofold: local struggles are enhanced and domestic protections available to women may improve. For example, following the publication of the Brazil report discussed above, and the surrounding activism by local women's and human rights groups, the state of Rio initiated training programs in domestic violence with women's rights activists and local police. In addition, the report's release

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111. Orentlicher, note 103 above, 83.
112. For example, Peruvian President Alberto Fujimori strongly criticized Amnesty International and Americas Watch for damaging Peru's international reputation by issuing reports describing his government's abuses of Peruvians' human rights. Lokken, Peru's President Defends Record on Human Rights, 1991 Reuters Information Services-AM (1991). The severity of his criticism indicates how seriously such denunciations are taken by world leaders.
113. For instance, the United States in many cases ties its provision of foreign aid to the recipient country's human rights record and publishes a yearly country-by-country report detailing and analyzing the status of internationally recognized human rights in countries that receive such assistance. See The Foreign Assistance Act, sections 116(d)(1) and 502(B)(b).
114. Orentlicher, note 103 above, 84.
115. A more recent Women's Rights Project of Human Rights Watch report on discrimination against women in post-communist Poland has similarly received local and international attention and affords local women's activists another tool for compelling the government
encouraged efforts in So Paulo to draft a state convention to eliminate discrimination against women. It also served as a catalyst to further research in Brazil on the “legitimate defense of honor” and on the criminal justice system’s failure to punish domestic violence crimes. Finally, it provided an opportunity for local women’s rights and human rights organizations to cooperate in these efforts.

The human rights approach to domestic violence may also have the effect of improving international protections for women. Although, until recently, “women’s issues” have been seen as marginal to the “real” issues of human rights, placing domestic violence within the mainstream of the theory and practice of international human rights draws attention to the extent and seriousness of the problem. This not only points out the past failure of the human rights community adequately to counter the problem, but brings to light the urgent need for the international human rights system to function more effectively on behalf of women.

The most compelling advantage to utilizing a human rights approach to oppose domestic violence may be that it simultaneously raises women’s issues in the mainstream of human rights practice, while it broadens the mainstream’s perceived scope. Applying this approach to domestic violence produces the insight that the incorporation of women’s rights issues into human rights practice is a revolutionary and evolutionary process, and that the process itself will provide new ideas and identify unsuspected obstacles at each step along the way. Together with developments in other areas of law and activism, this dynamic ultimately may help transform the international human rights system so that it honors the Universal Declaration of Human Rights and protects more than just the rights of man.