# *I*
# *DOMESTIC VIOLENCE AGAINST WOMEN AS A HUMAN RIGHTS VIOLATION*

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"Murder cannot be conceived of as legitimate response to adultery and what is being 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". (Decision of the Superior Tribunal of Justice, Brazil's highest Court of Appeal, Brasilia, March 11, 1991).

## Introduction

This paper focuses on domestic violence as a human rights violation. The study of domestic violence as a human right violation means that the application of international human rights law can have the effect of reinforcing the state's obligations to respect the individual rights of each and every person and thus be held accountable for abuse of those rights by private individuals. Although the state does not actually commit the abuse, its failure to prosecute the abuse and to guarantee legal protection to women victims amounts to complicity in it. As a result, domestic violence can be a matter subject to scrutiny and review by the international community.

This subject will be explored in four parts. First, certain essential definitions will be made, for example, the definition of domestic violence. Secondly, I will focus in this article on an examination of domestic violence against women in Brazil, which I have chosen to illustrate various examples of violence.

Third, I will focus on the response of Brazil to international law. I will appraise how human rights instruments are made part of the Brazilian legal system. This will include examining the possibility of using international human rights law before national courts to combat and provide protection against domestic violence. In addition, I shall analyze whether Brazil has taken judicial, administrative and constitutional measures to eliminate discrimination against women in the field of domestic violence.

Fourth, I will discuss whether the international human rights law system can help with an adequate response in tackling domestic violence against women. In this part, I will question two concepts, which so often mask the mistreatment of women within the family. The first is the historic dichotomy between public and private sphere in international law. The second is the notion of state liability for gender-based violence by non-state actors. I shall emphasize that both the norms shielding the family from direct state interference and the norms of state responsibility have acted together to limit recognition of domestic violence as a human rights violation. In addition, I will discuss the desirable results of using human rights law within international systems to combat domestic violence.

## I. Definitions and Concepts of Domestic Violence

Men and children are victims of domestic violence as well as women[1]. However, certain types of domestic violence are directed by men against women exclusively because they are women. Therefore this kind of violence is gender-based which is distinguished from other types of violence in that it is rooted in prescribed behaviors, norms and attitudes based upon gender. It is violence that attempts to establish or enforce gender hierarchies and perpetuate gender inequalities[2]. So, for the purposes of this paper,

domestic violence shall be understood as gender-based violence encompassing but not limited to physical, sexual and psychological violence occurring against women in the family, including battery, attempted murder, wife or partner murder, marital rape, threat, calumny, defamation and injury. It is interesting to note that domestic violence itself is not classed as a crime under Brazilian law. Instead, there are articles in the Penal Code that make it legal but without taking into account the family or personal relationships when applying justice.

Here, the definition of "family" is not restricted to legally married couples but extends to cover couples who are cohabiting. Within human rights law, the "family" is always defined in the context of marriage between a man and a woman. However, there can be little doubt that the concept of "family" in its original form is changing rapidly.

# II. Types of Domestic Violence Women Experience and Examples of it in the Legal Justice System in Brazil[3]

## A. Battering

Woman battering is the most common form of domestic violence, characterized by the use of physical or psychological force, or the threat of such force, by the domestic partner. Women victims who survived battering report that such violence often includes kicking, punching, biting, slapping, burning, throwing acid, beating with fists or objects, strangling, stabbing and shooting. Perpetrators often use a debilitating combination of physical and psychological violence in a process of domination and exertion of control, meant to destabilize, victimize and render the woman powerless[4].

The statistics for physical attacks are unpleasant. As reported by United Nations statistics, one woman in Brazil is beaten every 18 seconds[5]. For example, the statistics available and records from SWPS in Goiania for a period of 14 years (1985-1999) demonstrate that there were 33.829 occurrences of violence against women registered at the Specialized Women Police Station to deal with Crimes of Domestic or Sexual Violence against Women (SWPS). And the majority of the cases referred to physical assault. 70% of the latter incidents inflicted on women and reported to the WPS happened at home and the attacker was the victim's husband or partner. The majority of the victims were aged between 18-42 years and the aggressors were between 20-45 years old at the time of the event. It was also established that domestic violence is no respecter of social boundaries.[6] Such violence is not confined to poorly educated and low-income sectors, but occurs also among university-educated and middle-income sectors[7].

According to a unique survey carried out by the Women Rights National Committee/or National Committee for the Rights of Women/or Brazilian Women Rights Committee between Sept/00-Mar/01, there is an average of one specialized Women Police Station to deal with Crimes of Domestic or Sexual Violence against Women for every 18 municipalities in Brazil. However, 61% of the 307 SWPS installed in the country are in the Southeast region and 16% in the South, although they are practically unheard of in rural areas. The result of the study shows that from 411,213 notifications registered in 1999 by the 267 SWPS who took part in this research project, 113,727 were of physical assaults[8]. In 1999 alone, the SWPS in Rio de Janeiro recorded about 11.557 allegations of physical assault committed against women by their husbands or partners[9].

The Brazilian Penal Code does not explicitly criminalize woman battering. This is included within the scope of "Physical assault" contained in Article 129. It means " any offence to someone's physical integrity or health". The penalty for the perpetrators is imprisonment from 3 to 12 months and from 4 to 12 years if it results in the victim's death. This is considered a crime of Public Penal Action, which means the victim, does not need to be directly represented, by a solicitor.

## B. Threat

Threat can also be considered an act of domestic violence against women. In line with Article 147 of the Brazilian Penal Code, threat means to intimidate a person by words, writing or gestures or by any other method to cause that person harm. The penalty is as follows: 1-6 years imprisonment. And this is considered a crime of Public Penal Action, which means the victim, does not need to be directly represented by a solicitor. Claims brought forward by women at the SWPS in Goiania from 1997 to 1999 show a sharp increase in this type of crime as the table below shows[10]:

NOTIFICATIONS OF VIOLENCE AGAINST WOMEN AT SPECIALIZED WOMEN POLICE STATIONS IN GOIANIA, 1997 - 1999

| Crime | 1997 | 1998 | 1999 |
|---|---|---|---|
| Threats | 712 | 1,753 | 1,819 |

Furthermore, as it can be seen from the table below, the notifications of threats at both district and Specialized Women Police Stations in Rio de Janeiro rose 256,6% from 1991 to 1999. This alarming rise follows an enhancement in the adoption of significant social measures to combat abuse and violence against women. It also reflects both a change in women's behavior as well as the ascent of a broad-based culture of respect for women's rights within the Brazilian society[11].

NOTIFICATIONS OF VIOLENCE AGAINST WOMEN AT DISTRICT POLICE STATIONS AND SWPS IN RJ, 1991 - 1999

| YEAR | THREATS |
|---|---|
| 1991 | 4,243 |
| 1992 | 5,581 |
| 1993 | 6,343 |
| 1994 | 5,912 |
| 1995 | 7,876 |
| 1996 | 9,085 |
| 1997 | 10,864 |
| 1998 | 12,295 |
| 1999 | 15,132 |
| % Growth | 256,6% |

# C. Attempted Murder

This crime is outlined in Article 12 of the Brazilian Penal Code. It reads, "Try to kill a person". For instance, a husband tries to kill his wife but she does not. The case of *Maria da Penha Maia Fernandes*[12] brought before the Inter-American Commission on Human Rights on 20/08/1998 illustrates this kind of crime. The petition states that on May 29, 1983, Mrs. Maria da Penha Maia Fernandes, a pharmacist, was the victim of attempted murder by her then husband, Marco Antônio Heredia Viveiros, an economist, at her home in Fortaleza, Ceará State. He shot her while she was asleep, bringing to a climax a series of acts of aggression carried out over the course of their married life. As a result of this, Mrs. Fernandes sustained serious injuries, had to undergo numerous operations, and suffered irreversible paraplegia and other physical and psychological trauma.

The penalty for attempted murder varies from 6-20 years imprisonment in the case of *Simple Attempted Murder* and from 12-30 years for *Q*ualifying *Attempted Murder*. This type of criminal injury is tried by a jury. What is more, the victim does not need the assistance of a lawyer for an effective access to court because a State Attorney must deal with the legal procedure against the accused.

# D. Murder

"To kill someone" is the definition of murder outlined in Art. 121 of the Brazilian Penal Code. Imprisonment from 6 - 20 years is the penalty for *Simple Murder* or from 12 - 30 years for *Qualified Murder*. This punishment can be reduced from 1/3 to 2/3. It is also a crime decided by the jury and it is compulsory for a State Attorney to take legal procedures against the murderer.

Punishment of a wife or partner-murder is far from being the legal norm in Brazil. In cases of murder of wives by their husbands, a certain cultural extenuating argument that justifies the acquittal and reduces the sanction applied to the defendant has been applied. It is the so-called "honour defence" which is a defence not formally recognized in law[13]. This argument is always invoked as a way of blaming the victim who is accused of betraying the honour of the husband/partner and the home. Therefore, the woman becomes the culprit and the perpetrator becomes a hero. "Honour" is broadly defined to include perceived adulterous conduct – any activity by the woman outside of the conjugal norm is deemed an attack on the man himself legitimating a violent response[14]. Although the Supreme Court abolished the concept of "defence of honour" as justification for murdering a wife, the courts are still reluctant to prosecute and convict men who claim they killed their wives for marital infidelity. This last point is particularly significant, given that, in June 1998, the National Human Rights Movement reported that female murder victims were 30 times more likely to have been killed by current or former husband or lover than by others[15]. The case below is an example[16]:

Act I. In 1990, Joao Lopes, a bricklayer, stabbed to death his wife and her lover after catching them together in a hotel room;

Act II. He is on State Jury Trial. The lower court acquitted Lopes of the double murder on the grounds of legitimate defense of honor. Under Article 483 of the Criminal Procedure Code, the lower court judge cannot interfere in the Jury's decision;

Act III. On March 11, 1991, the Superior Tribunal of Justice, Brazil's highest Court of Appeal, nullified the lower and appellate court decisions. The court found that there is no offence to the husband's honor by the wife's adultery. In addition, the highest court found that "homicide is not an appropriate response to adultery". Finally, the court proclaimed that "what is defended in

such cases is not honor but the pride of the lord who sees his wife as property"[17];

Act IV. The case returns to the State Jury Trial. The Lopes case was re-tried on August 29, 1991; the lower court ignored the High Court's ruling and again acquitted Lopes of the double homicide on the grounds of honor[18].

In wife-murder cases, Brazilian courts ignore evidence of premeditation and intent to kill, and focus instead on the behavior of the victim[19]. Hence, the accused's lawyers call attention to the behavior of the victim, who "arrived late at home", "wore sexy clothes", "travelled to work", "went to the gym", "started to drive a car"[20].

## E. Marital Rape

Like wife or partner-murder, reliable sources indicate that men who commit marital rape are rarely convicted. This is maybe because the understanding of domestic violence has pre-eminently been limited to physical violence: non-consensual sex aspects have been comparatively neglected or omitted. Rape is broadly defined as involuntary sexual intercourse through the use of physical force, threats or intimidation. Many countries do not recognize rape by a man of his wife either as a criminal offence or as a violation of human rights. In Brazil, for example, according to Article 213 of the Penal Code, the meaning of rape is restricted to "sexual intercourse with a woman involving violence or serious threat of violence". *However, t*he above provision is inadequate because only theoretically applies to sexual violence, which occurs within the family. And, under this concept of rape, marital rape does not encompass all sort of coercive and forced sexual activity. If Brazilian domestic law were to be changed to perceive all sex without a woman's approval as rape, not just beyond marriage, then the numbers of legally recognized rapes would be much higher than those of present official figures.

In this essay rape is considered a grave violation of the fundamental human right to liberty and security of person. In addition, marital rape also may be a violation of the right to life if it results in the death of the victim. For example, when rape results in infection with the AIDS virus, the ultimate consequence is also a violation of the right to life.

The Brazilian Criminal Law treats women victims of rape in a discriminatory manner because it considers rape a crime against a person. And because sexual relations are considered a marital duty and refusal to perform it, is a legal motive for separation. Thus, in Brazil, the prevalent idea is that, sexual violence against a woman by her husband is seen as defence of marital rights[21]. For example, Art 107 of the Penal Code (1940) allows rapists to go free if they marry their victims. Also, Article 1520 of the current Civil Code Draft reinforces the denial of women's sexual autonomy and bodily integrity. This article allows the marriage of a minor to avoid imposition or servicing of criminal sentence. As a result, the general idea is that marriage reinstates the honour of the victim. As stated by the Brazilian human rights lawyer Leila Linhares, the proposition is that rape affects only the honor of the victim not her body. Therefore, the State supposes that the punishment of the perpetrator is of interest only to the victim herself, not to the whole society. As a result, the majority of victims of rape do not take court action.

It appears that marriage is the only acceptable space in which women's honour can be considered to be safe. As in many other situations it is the women and girls who are deemed to be in danger who must be removed from that danger, rather than the sexually predatory men who must change or be punished. Danger is defined by being subject to this abuse outside marriage; once married the same acts are no longer considered unacceptable. Corrective action does not focus on the sexuality of the men or their behaviour. Young girls and adult women are raped and sexually abused; their abusers have the social legitimacy of marriage in which to carry out their assaults[22].

# III. The Response of International Law

## A. How Human Rights Instruments are made part of the National Legal System

The first option for those who seek to remedy breaches of women's international rights may be to petition the domestic courts. How the woman's suit will be perceived depends in part on the status of a treaty in the national law. A treaty will only be binding upon a state by accession or signature followed by ratification. Furthermore, states might adopt the provisions of human rights instruments within its national legal system either by the "transformation" approach or by the "incorporation" approach. For instance, the approach of Brazil to treaties is the "transformation

approach". It means that Brazil use the treaty provisions as the basis for enacting appropriate national legislative rules. Accordingly, Article 5, paragraph 1 of the 1988 Brazilian Constitution reads: "The provisions defining fundamental rights and guarantees are immediately applicable" and Article 5 paragraph 2 compliments as follows: " The rights and guarantees expressed in this Constitution do not exclude others deriving from the regime and from the principles adopted by it, or from the international treaties in which the Federative Republic of Brazil is a party".

So, if a woman wishes to invoke articles of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in a national court or before an administrative tribunal, the woman relies upon the corresponding national provision and not on the articles of the treaty itself. In spite of this, nothing can impede women of using, in national courts, provisions established in human rights treaties to back up what is actually made up in the Constitution but not covered extra-upon by local legislation. The aforementioned innovative advocacy strategy could be justified since ratification of treaties by a nation state without reservations is a clear testimony of the willingness by that state to be bound by the provisions of such a document.

This strategy has been used successfully in the *Unity Dow-v-Attorney General case*[23]. In this case, the applicant, Unity Dow, was a citizen of Botswana by birth and descent. On March 1984 she married Peter Nathan Dow, a citizen of the United States of America. One child was born to them on 29 October 1979 (prior to their marriage) and two children were born to them after the marriage. The first child was a citizen of Botswana under s21 of the Constitution. The Citizenship Act 1984 repealed s 21 of the Constitution and provided in s 4 is that a person born in Botswana after the Act would be a citizen if at the time of his birth his father was a citizen or, in the case of a child born out of wedlock, his mother was a citizen. Therefore, the two children born after the marriage were not citizens of Botswana.

The applicant contended that s4 of the Citizenship Act 1984 contravened rights and freedoms guaranteed by the Constitution and international human rights instruments. Botswana had not signed up to CEDAW convention and ICCPR at the time. But what is interesting is that it had signed up to the African Charter. Art. 18 of that instrument ensures the elimination of every discrimination against women and children. In addition, the African Charter makes provisions for incorporation of other Conventions and Declarations, which by definition means that in acceding to the African Charter, Botswana also had taken on board the provisions of other conventions.

In this case, the Botswana Court of Appeal, under s 24 of the Interpretation Act 1984 states that " as an aid to the construction of the enactment a court may have regard to any relevant international treaty agreement or convention". So, the Court decided that ICCPR and CEDAW convention applied. And using that construction they held that the Citizenship Act s 4 contravened the Botswana Constitution; the Anti-gender discrimination provision and it also contravened Art. 18 (3) of the African Charter and all other articles of the international conventions which do not allow gender discrimination. The decision in *Unity Dow case* is in tune with Art 27 of the Vienna Convention on the Law of Treaties 1969 which says that states parties may not invoke its provisions of internal law as a justification for not complying with an international treaty.

Similarly, in *Longwe-v-Intercontinental Hotels* ([1993] 4 LRC), the High Court of Zambia held that "the petitioner had clearly been discriminated against on the basis of gender, contrary to the Constitution of Zambia, the African Charter and the CEDAW Convention".

Again, in Ephrahim-v-Pastory and Another ([1990] LRC), the High Court of Tanzania held that the Inheritance Laws were discriminatory to females in that, unlike their male counterparts, they were barred from selling clan land. The High Court concluded that this customary law flew in the face of the CEDAW Convention, African Charter and Bill of Rights, which had been ratified by Tanzania.

## B. Legal, Judicial and Administrative Measures taken by Brazil to combat Domestic Violence

The Women's movement in Brazil helped insert a new constitutional clause in the post-dictatorship Constitution (1988) and stimulated society and state to take a new look at the problem of domestic violence. Article 226 (VIII) of Brazil's Constitution establishes that " the state shall ensure assistance to the family in the person of each of its members, creating mechanisms to suppress violence within the family". Moreover, Article 226 (V) reads: " The rights and duties of marital society shall be exercised equally by the man and the woman". Since then, the range of individuals and collective rights and duties, both from private as well as public sphere have been considerably amplified

incorporating other dimensions of life[24]. Today, for instance, the concept of human rights violations includes domestic violence as a serious crime against the individual and society, which will not be excused or tolerated. However, notwithstanding formal guarantees of equality, Brazilian women's lives continue to be characterized by pervasive discrimination and substantive inequality.

Since 1988 the above guarantees have not been as well advanced as hoped at the legal, judicial and administrative level. This is not due to any failure to address this area. The women's movement in Brazil has submitted proposals to change the Civil Code and the Penal Code, and to create other laws to guarantee women's rights. For example, as a result of their great effort, the new Civil Code Draft Project represents an undeniable advance because its provisions are designed with a view to compatibility with the Brazilian Constitutional standards. Among those the Principle of equality of rights of men and women adopted in Article 5o, I of that Bill of Rights: "Men and women have equal rights and duties under the terms of this Constitution".

In fact, the new Civil Code Draft is innovative in that it introduces legal rights so as not to discriminate on a number of specified grounds, including gender, in the protection of women's human rights. For instance, among the new innovations there has been the elimination of the notion that the man must be in charge for the introduction of the concept that man and woman shall share together administration of the matrimonial alliance. Furthermore, it also adopts as the norm the concept of adequate balancing of responsibilities of the spouses or partners as to children instead of the predominance of fatherhood. Moreover, it replaces the term "man" for "person" when used broadly to refer to a human being. Additionally, it allows the husband to adopt his wife's surname. Finally, the aforementioned draft establishes that the custody of a child will be given to the parent who is in the best position to take care of the best interests of the child[25].

The final adoption of the above measures will prove that the government of Brazil has taken reasonable steps to prevent women's human rights violations. Undoubtedly, the measures that this new law introduces will represent considerable advancement in the Brazilian legal and judicial system and consist of a meaningful achievement for the women's movement, which for decades, has claimed that there was an urgent need for legislation along the lines of the 1988 Constitution. But more can be done to ensure that any act of domestic violence against women is considered and treated as a illegal act. It is clear that these guarantees were not approved long ago due to the politico-economic difficulties, which made the legislature deal with daily crises instead of necessary structural functions. It is also due to certain incompetence of the legislative branch, and to the rigid structure of the juridical system, which discourages conditions for easy access or rapid action, innovations, which would harm the system's patriarchal logic. Nor can one deny that the majority of parliamentarians and indeed, the majority of jurists – are not well prepared and keep their distance from the juridical problems of women[26].

It is worth mentioning some achievements of Brazilian Women since the enacting of the 1988 Constitution. At state level, the State Council of the Status of Women of the State of Sao Paulo decided to undertake a creative project. Inspired by the CEDAW Convention, this governmental organization decided to open for signature a treaty between the mayors of all municipalities and the governor of the State of Sao Paulo. In September '92, they ratified the Convencao Paulista sobre an Eliminacao de todas as Formas de Discriminacao contra a Mulher. The document states that " violence against women is the most tragic manifestation of sex discrimination and it is a duty of everyone who combats or prevents violence in our society to recognize, identify, denounce, and punish physical and social aggression that harms the dignity of the body, of the feelings, and of the image of women"[27].

At the national level, in 1992 the women's movement in Brazil called the National Congress to implement a Parliamentary Commission of Inquiry (CPI) to identify violence against women. From January 1991 to August 1992 three women Federal Deputies analyzed 265,219 cases from 20 counties. The reports of the Specialized Women Police Stations constituted the main source of information. In the end, the CPI proposed a number of measures to tackle violence against women[28].

Moreover, as a result of a regional seminar on " Penal Law and Women in Latin America and the Caribbean" (Sao Paulo, April 1992), a specific draft law on domestic violence was formulated. And in 1995, the Federal Deputy Marta Suplicy proposed this draft as a Law Project No. 132/1995 to the National Congress.

It is also worth mentioning the launch of the *National Programme for Human Rights* by the Brazilian Federal Government on 14 May 1996. This program calls for an integrated set of public policies and initiatives on the part of the civil society to eliminate gender discrimination and consolidate citizenship. Violence against women is one of the critical areas of concern. Federal, State and Municipal government are

committed to the targeting of domestic and sexual violence against women providing, for example: training for lawyers and using media for raising awareness. Institutional arrangements have also been made and Women's Rights Defence bodies, different ministries and the National Council for Women's Rights are to implement and monitor human rights treaty commitments. Furthermore, the Legislative and judicial bodies are to enforce the laws on equality. For instance, it is recommended that a gender perspective be taken into account in all legislative proposals, whenever they are pertinent[29].

# V. Can the International System Help with an Adequate Response to Domestic Violence Against Women?

## A. The Distinction between Public and Private Life

After an overall analysis of domestic violence against women, it is not difficult to infer that the issue has not been taken as a human rights violation as it should be by international institutions. There are several explanations for such exclusion. The distinction between public and private life in international law as well as the concept of state responsibility for violations of rights by private persons are some of the explanations.

International law has its own public/private distinction. Formerly, international law was defined literally as the " law between and among states", and encompassed only relations between nations. After World War II, the theory of International Law expanded to include individual action within states. As a result, the public and private distinction consisted in the continued differentiation between " external" and " internal" matters (that is, between matters involving the international community ("public sphere") and those involving the exclusive domestic jurisdiction of a state ("private sphere"). For example, Article 2 (7) of the United Nations Charter provides that: [n]othing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present charter." Article 2 (7) was intended to ensure that the human rights clauses of the charter would not be construed as giving authority to the organization to intervene in the domestic affairs of member states[30].

In international law a further public/private distinction is drawn. It is almost exclusively addressed to the public, or official activities of states; states are not held responsible for "private" activities of their nationals or those within their jurisdiction[31]. For example, personal relations and family issues are consigned to the " private" sphere. Therefore, there is a general view that family should not be subjected to any interference. For example, Art 17 of the ICCPR states " 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". In addition, there is also the idea that the family is the fundamental group unit of society and is entitled to protection by society and the state in accordance to Art. 23 of the ICCPR. As a result, the family is insulated as a matter of privacy.

Obviously, both the obligations to protect the family and privacy rights restrain the direct state interference in the life of the family. This assumption has particular consequences upon women's lives within the family because for women, sometimes, the family is the basis for subordination whereas for men, the family is the basis for support. While the concept of privacy has served to protect women from state intervention into intimate relations, it has also caused damage to women through its failure to effectively protect them in those same relationships. Consequently, domestic violence against women within the family remained untouched for a long time. To summarise, domestic violence was perceived as a private rather then public issue and consequently there should be no interference by the state. For example, in Brazil, before the implementation of the SWPS, if a woman victim of domestic violence by her husband or partner went to the police claiming that she had been beaten up by her husband, the attitude of the police was one of non-interference "Sorry, that's a private matter only, we are not going to act upon that". Despite the fact that domestic violence clearly constitutes an offence in criminal law in many cultures, the effects of non-intervention in cases of domestic violence are astonishing.

Hence, there is an extent to which the notion of privacy should be looked upon with some suspicion. For example, Art 17 of the ICCPR provides protection against states and also against private individuals. The bias of protection rests on two words. One is the question of arbitrary interference and the other is the matter of unlawful interference. The former simply means interference that is not justified at all on the basis of law. The latter is interference that does not find

support on the basis of any law as such. As a result, if a state wishes to interfere with the family because there is a demonstrable objective of the state than that interference will be lawful. This was demonstrated in the case of *Airey-v-Ireland*[32]. The applicant wished to petition for a judicial separation in the Irish High Court because her husband was an alcoholic who frequently threatened her with, and occasionally subjected her (and her children) to physical violence. But she lacked the means to employ the services of a lawyer and legal aid for civil proceedings was not available. In an application to the Commission, the applicant alleged that these facts constituted violations of Art.6 European Convention on Human Rights (right to a fair hearing in the determination of civil rights) by reason of the fact that her right of access to a court was effectively denied, and Art.8 of the Convention (right to respect for private and family life) by reason of the State's failure to provide an accessible legal procedure for the determination of rights and obligations created by Irish family law. The Commission formed the view that there had been a violation of Art.6 of the Convention, which conclusion in its view rendered examination under Art.8 of the Convention unnecessary, and referred the case to the Court.

The Court took the view that "respect for family life" does not simply compel the state to abstain from such interference. In addition to this primary negative undertaking there may be positive steps to be taken by the states to ensure effective protection and respect for family life.

In *Marckx-v-Belgium*, the same approach was used to establish a positive obligation. There the Court stated, in the context of the right to *" respect for family life"*, that " it does not merely compel the state to abstain from such interference…there may be positive obligations inherent in an "effective respect" for family life"[33]. One could argue that Brazil has failed to undertake positive steps to ensure respect for private and family life because it has been very slow in providing preventive measures, including public information and education programs to change attitudes concerning stereotyped roles for men and women.

## B. State Responsibility for Violation of Women's Rights

The use of violence towards women by the State's representatives does not generate academic problems for attributing state responsibility. States are generally perceived as responsible for acts of its agents. Nevertheless, international law has not been very clear in dealing with the issue of the responsibility of the state when private individuals infringe women's rights. Not all international human rights instruments make it clear in its provisions that a state which is a party to it either acquire or do not acquire responsibility for private or non-governmental interference with various rights that are guaranteed. It has been argued that one must rely on the general principles governing state responsibility. Article 3 of the Draft Articles on State Responsibility drawn up by the International Law Commission states that

"There is an international wrongful act of a state when:

(a) Conduct consisting of an action or omission is attributable to the state under international law; and

(b) That conduct constitutes a breach of na international obligation of the state".

Whilst Article II (II) of this draft provides that states cannot be held responsible for non-state actors, Article 8 broadens the range of conduct attributable to a state, it provides that:

"The conduct of a person or a group of persons shall also be considered as an act of the state under international law if:

(a) It is established that such person or group of persons was in fact acting on behalf of that state..."

Clearly, Article 8 can be demonstrated by the Brazilian case. Magistrates, prosecutors, police and lawmakers all perform certain duties under the scope of law and on behalf of that state. However, the concept of imputability proposed by the International Law Commission does not encompass the maintenance of a legal and social system in which violence or discrimination against women is endemic and where such actions are trivialized or discounted. It could be argued that, given the extent of the evidence of violence against women, failure to improve legal protection for women and to impose effective sanctions against the perpetrators of violence against women should engage state responsibility[34].

Some provisions in international human rights documents make state liability for violation of rights very clear. For example, Article 2(e) of the CEDAW Convention stipulates that " states parties agree to pursue all appropriate measures to eliminate discrimination against women by any person, organization or enterprise"; Moreover, the CEDAW Committee, the expert body that considers the progress made in the implementation of the CEDAW Convention, in its Recommendation No 19 emphasizes "that gender discrimination is not restricted to action by or on behalf of governments...under general international law and specific human rights covenant,

states may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation".

The decision of the European Court of Human Rights in the *X and Y –v- Netherlands* and the opinion of the Inter-American Court of Human Rights in the *Velasquez Rodrigues-v-Honduras* case both define state responsibility as being centered on affirmative duties to protect against violations even if performed by private citizens.

In *X and Y v. Netherlands*[35] the court held that the positive obligation on the state extended to the circumstances of private activities. Here, there had been a sexual assault on a 16-year-old, mentally handicapped girl by an adult male of sound mind. It had not been possible to bring a criminal charge against the man because of a procedural gap in Dutch law. The Court conceded that there was a wide discretion for a state to determine what steps it should take to intervene between individuals. The government's position was that there were civil remedies available to the girl and so she was not bereft of protection. However, affirming the *Airey case,* the court found that the civil remedies were not without their practical drawbacks and that the absence of an effective criminal remedy in these circumstances constituted a failure by the Dutch authorities to respect Y's right to private life[36]. Arguably, privacy in the sense of physical integrity offers greater latitude for countering forms of domestic violence. Hence, in states that do not investigate a persistent pattern of severe forms of domestic violence and that lack adequate civil remedies and criminal prosecutions, victims of such violence might have a cause of action under human rights treaties[37].

In *Velasquez Rodriguez v Honduras case*[38] the Inter-American Court concluded that Honduras was responsible for disappearances even if they were not carried out by agents who acted under cover of public authority, because the state's apparatus failed to act to prevent the disappearances or to punish those responsible. This case concerned Velasquez Rodriguez, a student at the National Autonomous University of Honduras who disappeared on September 12, 1981. He was allegedly kidnapped and detained without a warrant for his arrest, by members of the National Office of Investigations and of the Armed Forces of Honduras. During his detention he was taken to various locations where he was interrogated and tortured. Therefore, because Honduran officials either carried out or acquiesced in the kidnappings, the court concluded that the government failed to guarantee his human rights[39]. The Inter-American Court essentially said that the state was responsible for failing to take necessary diligence to provide an environment in which human rights could be enjoyed. Therefore, this focus undertaken in *Velasquez Rodrigues case* offers a framework for holding states like Brazil liable for domestic violence against women by non-state actors, i.e., their husbands or partners.

In *Velasquez Rodrigues-v-Honduras* the Inter-American Court criticized disappearances because they were " a means of creating a general state of anguish, insecurity and fear..." Women victims of intrafamilial violence testify that they experience similar feelings. Such feelings are contrary to the right to a sense of physical privacy as protected by international human rights law. Thus, states parties to treaties that enshrine the protection of privacy have an emerging duty to prevent intrafamilial violence where there is an established pattern of domestic violence. Furthermore, party states are obliged to investigate and punish those violations that do occur[40].

Regarding the obligation to investigate the Inter-American system has been categorical. In Mejia Egocheaga-v-Peru the Inter-American Commission on Human Rights explicitly stated that " investigation must be for a purpose and be assumed by the state as a specific duty and not as a simple matter of management of private interests that depends on the initiative of the victim or his family in bringing suit or on the provision of evidence by private sources, without the public authority effectively seeking to establish the truth..."[41]. Moreover, in its recent decision on reparation in the cases of El Amparo-v-Venezuela and Neira Alegria-v-Peru (both in September 1996) the Inter-American Court reaffirmed the duty of the State to effectively investigate the facts and punish the authors of every human rights violation[42].

Therefore, the reasoning used in the aforementioned cases offers a framework for holding states liable for domestic violence against women by their husbands or partners. For instance, Brazil can be held responsible since it has failed to prevent domestic violence or to respond to it as required by the American Convention on Human Rights. Article 1 (1) of the convention says: "The State Parties to this convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms".

## C. Individual Petition and Reporting Mechanism

The International Covenant on Civil and Political Rights-ICCPR, American Convention on Human Rights-ACHR, Convention on the Elimination of All Forms of Discrimination against Women-CEDAW Convention, OAS Convention on the Prevention, Punishment and Eradication of Violence against Women and the Special Rapporteur mandate offer a wide variety of legal measures and mechanisms that if used in conjunction with national effort can help to tackle domestic violence against women in Brazil and elsewhere. The following section will begin by analyzing the significant role that the reporting and individual mechanisms provided in human rights instruments can play in that.

The Human Rights Committee established under the ICCPR has both a reporting and individual complaint procedure. The latter is only available to women from countries that have ratified the First Optional Protocol to the ICCPR. A mechanism is therefore established for women victims of domestic violence to bring complaints before the Human Rights Committee against their countries. The function of the committee is to gather all necessary information, by means of written exchanges with the parties (the State and the Complainant), to consider the admissibility and merits of complaints and to issue its "views". It should be noted that the Committee is not a court, does not issue " judgments" and has no means to enforce any views, which it might adopt[43]. *Avellana-v-Peru*[44] is an example of a case where a woman used the Optional Protocol to the ICCPR to challenge sex discrimination. Ms Avellana claimed that the Government of Peru has violated, articles 2, paragraphs 1 and 3, 16, 23, paragraphs 4 and 26, of the Covenant, because she has been allegedly discriminated against simply because she is a woman. The author is the owner of two apartment buildings in Lima, which she acquired in 1974. It appears that a number of tenants took advantage of the change in ownership to cease paying rent for their apartments. After unsuccessful attempts to collect the overdue rent the author sued the tenants. The court of first instance found in her favour and ordered the tenants to pay her the rent. The Superior Court reversed the judgment on the procedural ground that the author was not entitled to sue because, according to article 168 of the Peruvian Civil Code, when a woman is married only the husband is entitled to represent matrimonial property before the Court. The author appealed to the Peruvian Supreme Court submitting_that the Peruvian Constitution abolished discrimination against women. However, the Supreme Court upheld the decision of the Superior Court.

Having thus exhausted domestic remedies in Peru, and pursuant to article 39 of the Peruvian Law No. 23506, which specifically provides that a Peruvian citizen who considers that his or her constitutional rights have been violated may appeal to the Human Rights Committee of the United Nations, the author seeks United Nations assistance in vindicating her right to equality before the Peruvian courts. The Committee is of the view that Peru is under an obligation, in accordance with the provisions of article 2 of the Covenant, to take effective measures to remedy the violations suffered by the victim. In this respect the Committee welcomes the State party's commitment, expressed in articles 39 and 40 of Law No. 23506, to co-operate with the Human Rights Committee, and to implement its recommendations.

Brazil ratified the ICCPR in 24.04.92 but did not ratify the First Optional Protocol. Thus, currently Brazilian women cannot complain before the Committee that Brazil's failure to prosecute domestic violence infringes, for instance, their right to equality before the law guaranteed in Article 26 of the ICCPR.

The American Convention on Human Rights establishes the reporting and individual petition system for the protection of women's rights. The Inter-American Human Rights Commission and the Inter-American Court of Human Rights are the organizations which promote respect for and defence of human rights in the states parties to the convention. Both are judicial bodies. The American Court has the power, for instance, to take action on women's petition containing denunciations of domestic violence as a violation of human rights guaranteed in the convention. It is important to note that, according to Article 61(1) of the ACHR, " *only States parties and the Commission shall have the right to submit a case to the court"*. Thus, so far, under the American Convention individuals do not have automatic and direct access to the American Courts of Human Rights as an international tribunal. Accordingly, the main function of the American Commission is not to be a party of the legal procedures but to play the role of legal assistant of the American Court to safeguard the applicability of the American Convention. The claims of female victims of marital battering, rape and murder should contain facts demonstrating that the general failure of the state to prosecute domestic violence led to their physical and mental suffering. And, according to Article 48 ACHR, when the Commission considers the women's petition admissible, it shall request information from the government of the state indicated as being responsible for the alleged violations.

The Commission will then examine the matter in order to verify the facts. If necessary, the Commission will carry out an investigation and, if requested, receive

oral or written statements. Moreover, the Commission places itself at the disposal of parties concerned with a view to reaching a friendly settlement. According to Article 50, if a settlement is not reached, the Commission transmits a report stating its conclusions and recommendations to the parties concerned. Article 61(2) states that the Commission is free to submit a case to the Court after issuing its report.

However, Article 62(I) reads that the Court has only jurisdiction upon party states who have recognized that in their instrument of ratification to the convention. Finally, according to Article 63(I), if the Court has jurisdiction over a case and finds that there has been a violation of a right, it will specify the measures necessary to remedy the violation. It can also rule that fair compensation be paid to the victim.

Brazil deposited its instrument of ratification to the ACHR on 25 September 1992 but without accepting the jurisdiction of the Inter-American Court of Human Rights. This meant Brazilian women could lodge a petition with the Commission but could not have their case heard by the Inter-American Court, under the individual petition mechanism, although individual cases might be cited as examples by NGO's presenting evidence and observations under the reporting mechanism. Fortunately, all this changed on 10 December 1998 when the State of Brazil deposited, in accordance with Article 62 of the ACHR, its instrument of recognition of the compulsory contentious jurisdiction of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of the convention for events that occur as from that date[45].

The *Maria da Penha Maia Fernandes-v-Brazil* case is an example of petition lodged with the Inter-American Commission on Human Rights (hereinafter "the IACHR"). On August 20, 1998 the IACHR received a petition filed by Mrs. Maria da Penha Maia Fernandes, the Center for Justice and International Law (CEJIL), and the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM) (hereinafter "the petitioners"). The IACHR analyzes admissibility requirements and considers the petition admissible pursuant to Articles 44, 46(2)(c) and 47 of the ACHR, and 12 of the Convention of Belém do Pará. With respect to the merits of the case, the IACHR concludes that the State violated the right of Mrs. Fernandes to a fair trial, equal protection and judicial protection, guaranteed in Articles 8, 24 and 25 of the ACHR, in relation to the general obligation to respect and guarantee rights set forth in Article 1(1) of that instrument because of the unwarranted delay and negligent processing of this case of domestic violence in Brazil. In addition, Articles II and XVIII of the American Declaration of the Rights and Duties of Man, as well as Article 7 of the Convention of Belém do Pará. It also concludes that this violation forms a pattern of discrimination evidenced by the condoning of domestic violence against women in Brazil through ineffective judicial action. The IACHR recommends that the State conduct a serious, impartial and exhaustive investigation in order to establish the criminal liability of the perpetrator for the attempted murder of Mrs. Fernandes and to determine whether there are any other events or actions of State agents that have prevented the rapid and effective prosecution of the perpetrator. It also recommends prompt and effective compensation for the victim, and the adoption of measures at the national level to eliminate tolerance by Brazil of domestic violence against women.

The most extensive instrument dealing with the protection and promotion of women's rights as human rights is the United Nations CEDAW Convention. It was adopted in 1979 by the United Nations General Assembly and entered into force on 03 September 1981. It explains what constitutes discrimination against women and determines an agenda for national action plans to terminate discrimination against women in all spheres of life such as: politics, education, employment, health care, economics, marriage, family, law and the application of the law. However, although CEDAW establishes rights for women in areas not previously subject to international standards, it does not contain explicit provisions for confronting violence against women. To compensate for this *lacuna*, the CEDAW Committee in its General Recommendation No. 19 specifically addressed gender-based violence. It includes gender-based violence as " a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men"[46].

Until the entry into force of the Optional Protocol to the CEDAW Convention on 22 December 2000, there were only two ways for women to tell the government and the international community *if* and *how* they were discriminated against: by the *Reporting Procedure* (Art.18) and by the *Inter-state Procedure* (Art.29). The latter is susceptible to an extensive number of reservations and has never been enforced. The aforementioned protocol incorporated a third option, the *Communication Procedure*.

Party States are required to submit reports within one year of the Convention coming into effect for the state concerned and thereafter every four years and whenever the committee so requests. Articles 2 and 18 stipulate that reports should indicate the legislative,

judicial, administrative or other measures to eliminate all forms of discrimination against women, including discriminatory treatment of women victims of domestic violence. Moreover, Recommendation No. 19 requires states to take into consideration gender-based violence when reporting under the CEDAW Convention.

Prior to the Optional Protocol the only power the CEDAW Committee had was the moral pressure it could exert based on general awareness about domestic violence in a population, and the accompanying public international debate. This is because the *reporting method* of promoting and protecting human rights is often seen as one of the powerless forms of enforcement. Also, because a self-reporting system tends to produce reports which describe only the bare legal provisions. In general, states do not provide critical information on targets to be achieved, but monitoring committees may refer to data received from NGO's and others in their " comments" or their alternate reports.

Norma Forde, a member of CEDAW Committee, noted that the work of CEDAW is far more effective when its members have recourse to sources of information in addition to data contained in reports of states parties. Accordingly, she explained, CEDAW has requested the Division for the Advancement of Women (DAW) at the UN Secretariat in New York to compile statistics garnered from official UN sources relevant to member's reports. CEDAW has also requested UN specialized agencies to provide it with relevant information and encourages NGOs to send them information particularly on major problems facing women in the reporting countries[47]

According to DAW, as of May 2001, 168 countries are party and four have signed the CEDAW Convention. Brazil ratified this treaty on 01 February 1984 with a number of reservations regarding domestic life and it entered into force on 21 March 1984. The Initial Report by Brazil was due on 02 March 1985; and afterwards the periodic reports were due on 02 March 1989, on 02 March 1993; 02 March 1997 and finally 0 March 2001. So far Brazil has no reports submitted to the CEDAW Committee, despite the fact that one year prior to the due date, the UN General Secretary invites the state party to submit its reports. Consequently, the CEDAW committee has been unable to verify the progress Brazil has made to comply with its treaty obligations. Although Brazil promised to use the convention as a basis for reforms that would improve its legal system's treatment of violence against women, it has yet to take concrete steps to comply with it. At least, in Brazil, women used CEDAW to ensure that women's human rights protections were included in the process of redrafting the 1988 national constitution.

The Communication Procedure introduced by the Optional Protocol to CEDAW is the first international individual complaint procedure specifically directed to gender issues. Article 2 allows either individuals or groups of individuals to submit individual complaints to the CEDAW monitoring Committee. Communications may also be submitted on behalf of individuals, with their consent, unless it can be shown why that consent was not received. Under this communication mechanism, the CEDAW Committee is equipped to express its views on what is required from States in individual circumstances. This enables Party States to better understand the significance of the duties they have agreed by assenting to CEDAW. The Committee findings would result in jurisprudence providing both understanding about specific issues and direction about state's commitments under CEDAW. In accordance with DAW until 22 September 2001, 27 countries are party to the Optional Protocol and 68 signatories have signed it. Brazil signed the protocol on 13 March 2001 but it has not ratified it yet despite the pressure of women's human rights activists.

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women was adopted by countries of the Latin American Region on 9 June 1994 in Belem do Para, Brazil. Brazil ratified this landmark document on 27 November 1995. Article 10 sets out the mechanism of protection available for women. It includes a reporting system similar to that under the CEDAW Convention but also provides an individual right of petition and a right for non-governmental organizations to lodge complaints with the Inter-American Commission of Human Rights.

On 4 March 1994 the United Nations Commission on Human Rights appointed Radhika Coomaraswamy as the first person to hold the position of Special Rapporteur on Violence against Women. Dr. Coomaraswamy explains that special rapporteurs are independent fact-finders whose mandate contains three main components. The first is to set out the pervasive and grievous nature of violence against women. The second involves identifying and investigating factual situations, as well as allegations, which may be put before her by governments and non-governmental organizations (NGOs). The third component is to recommend measures aimed at preventing women's rights violations. The Special Rapporteur visited Brazil in May 1996 to investigate and identify more precisely the issue of domestic violence. One of her tasks was to establish dialogue with the government of Brazil to find

solutions for the elimination of domestic violence. She looked at the criminal justice system and spoke to individual victims, often brought by NGOs. The reports of Special Rapporteurs have been regarded as one of the most authoritative mechanisms in the UN's monitoring and reporting system. The Special Rapporteur on women also can play a very important role in cases of domestic violence. In the case of individual complaints, if the Special Rapporteur is satisfied that it is a genuine case falling within her mandate, she can submit it to the relevant government for their comments.

# Conclusion

The right to be free from domestic violence is not directly stated in international human treaties. Because domestic violence often results in battery, rape and murder, it is implied in the " right to life" (Article 4 ACHR), " to physical, mental and moral integrity" (Article 5 ACHR) and "security of person" (Article 7). Including " freedom from slavery or servitude" (Article 6 ACHR), "equality before the law" (Article 24 ACHR), " equal rights of men and women" (Article 1 ACHR), " right to privacy"(Article 11 ACHR) and "right of the family" (Article 17 ACHR). These norms are cited as a basis for arguing that domestic violence constitutes a human rights violation meaning, ultimately, that all human rights have a gender amplitude that ought to be understood in order for women's human rights to be realized, safeguarded and enjoyed.

Analysis of domestic violence as an abuse of human rights can be addressed in national courts with the view to improve protection available to women. Cases such as *Unity Dow*, *Longwe* and *Ephrahim* have resulted in rulings that are favorable to this advocacy strategy. However, when domestic courts fail to protect women against that violence, international litigation represents a positive mechanism. Women's right to state protection from domestic violence can be achieved. Victims have to prove a pattern of violence and a systematic failure by the state to act with due diligence to prevent violations of rights and to investigate and punish acts of domestic violence. Cases like *Maria da Penha Maia Fernandes-v-Brazil* illustrate that the law can be changed. The Inter-American Commission on Human Rights thus recommends that the Brazilian State continues to expand the reform process that will put an end to the condoning of domestic violence against women in Brazil and discrimination in handling it. In particular, the Commission recommends:

a. Measures to train and raise the awareness of officials of the judiciary and specialized police so that they may understand the importance of not condoning domestic violence.

b. The simplification of criminal judicial proceedings so that the time taken for proceedings can be reduced, without affecting the rights and guarantees related to due process.

c. The establishment of procedures that serve as alternatives to judicial mechanisms, to resolve domestic conflict in a prompt and effective manner and create awareness regarding its serious nature and associated criminal consequences.

d. An increase in the number of special police stations to address the rights of women and to provide them with the special resources needed for the effective processing and investigation of all complaints related to domestic violence, as well as resources and assistance from the Office of the Public Prosecutor in preparing their judicial reports.

e. The inclusion in teaching curriculums of units aimed at providing an understanding of the importance of respecting women and their rights recognized in the Convention of Belém do Pará, as well as the handling of domestic conflict.

There are many problems in approaching human rights with reference to domestic violence: firstly, the distinction between public and private life in international law. It means that states are almost exclusively responsible for acts of its officials. Secondly, there is a limited concept of state responsibility for violations of rights by private individuals. Thirdly, human rights practice does not tend to focus on the causes of domestic violence, which are rooted in economic, legal and social factors. These factors do not work to women's advantage.

Nevertheless, such problems should not obscure the advantages in using human rights system. It employs the reporting and individual petition mechanism to bring pressure on states that fail to prosecute domestic violence. The former should produce positive results by embarrassing offending governments in the international arena. The latter provides the possibility for specific redress and opportunity for development of a detailed jurisprudence. Thus, it aims to bring changes to law and practice, which presently discriminate against women. Both these mechanisms depend on international as well as national political will to protect women in domestic violence.

# Notas

1. Children's exposure to domestic violence and sex-based stereotypes socializes them to accept such violence as a legitimate response to stress. Studies of battered spouses consistently reflect that men who grow up in abusive home environments are far more likely to become abusive as adults. See Rhode, D.L., Justice and Gender: Sex discrimination and the law, Harvard University Press, Cambridge, Massachusetts, London, (1989) 244.

2. http://www.uninstraw.org/mensroles/background.html

3. Calumny, defamation and injure should be perceived as forms of psychological gender-based violence when committed by men against their wives or partners. See Articles 138, 139 and 140 of the Brazilian Penal Code.

4. U.N. Doc. Op. cit., p.15.

5. Herman, J. and Barsted, L., O Judiciário e a Violência contra a Mulher: A Ordem Legal e a (Des) Ordem Familiar, Cadernos Cepia, RJ, (1995) 79.

6. http://www.redesaude.org.br/jornal/html/body_vi-vdomest.html.

7. 1999Ann.Rpt. Inter-Am. C.H.R. 1443, OEA/ser. L/V/II.106 doc. 3 rev., p. 14.

8. http://www.ccr.org.br (Brazilian Newspaper: Folha de São Paulo, p. 10, 1-15/06/01)

9. Brazilian Newspaper: "O Globo", 24/11/00.

10. See footnote 5.

11. http://www.iser.org.br/portug/indicador_mulher.html

12. Inter-American Commission on Human Rights, Organization of American States, Report N. 54/01, Case 12.051, Maria da Penha Maia Fernandes, Brazil, April 16, 2001.

13. CEDAW Committee General Recommendation N. 19, in its Art 16 (r), (ii) recommends that states should include legislation to remove the defense of honor in regard to the assault or murder of a female family member. See International Human Rights Report Vol. 1, n. 1 (1994).

14. Romany, C, " State Responsibility Goes Private: A Feminist Critic of the Public/Private Distinction in International Human Rights Law", in Coo, R. (ed.) Human Rights of Women: National and International Perspectives, (1994) 326.

15. 1999 IACHR 1443, p.14.

16. Human Rights Watch, Criminal Injustice: Violence Against Women in Brazil, Washington DC, (1991) 25 – 26.

17. Before Brazil became independent from Portugal in 1822 the colonial laws permitted the murder of a woman and her lover by her husband. Nevertheless, the opposite was not allowed. Until as recently as 1962 women had to have their husbands authorization to work outside the home or to travel nearby.

18. Human Rights Watch, op. cit., pp. 25 – 28.

19. Thomas, D & Beasley, M., " Domestic Violence as a Human Rights Issue" 15 Human Rights Quarterly (1993) 53.

20. Herman, J. and Barsted, L., " O Judiciário e a Violência…" note 9 at 59.

21. Barsted, L., Violêcia contra a Mulher e Cidadania: uma Avaliação das Políticas Públicas, Cadernos Cepia, Rio de Janeiro, (1994) 21.

22. Sen, P., LSE, for CHANGE, Change Programme on Non-Consensual Sex in Marriage, Pilot Phase Country Report: India, 1991.

23. Unity Dow-v-Attorney General [1991] LRC (Const) 575.

24. Pimentel, S., "O novo Codigo Civil representa um avanço significativo na legislação?" In Folha de São Paulo, Brazilian Newspaper, 18/08/2001, p. 2 – Tendências/Debates.

25. Ibid., p. 2.

26. Pimentel, S., *"Special Challenges Confronting Latin American Women" in* Kerr, J. (Ed.) *Ours by Right: Women's Rights as Human Rights,* Zed books, (1993) 30.

27. Ibid., p. 31

28. Soares, L.E., Violência Contra a Mulher: Levantamento e Análise de dados sobre o Rio de Janeiro em Contraste com Informações Nacionais, ISER, Rio de Janeiro (1993) 17.

29. Summary of the national action plans and strategies for implementation of the platform for action; document prepared by DAW as an informal paper for the 42nd session of the Commission on the Status of Women (March 1998).

30. Kim, N., " Toward a Feminist Theory of Human Rights: Straddling the Fence between Western Imperialism and Uncritical Absolutism", 25 Columbia Human Rights Law Review (1993) 68/69.

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33. Harris, D.J., O'Boyle, M. and Warbrick, C., Law of the European Convention on Human Rights, Butterworths, London (1995) 19.

34. Charlesworth, H., and Chinkin, C., " The Gender of Jus Cogens" 15 Human Rights Quarterly (1993) 73.

35. *X and Y v. Netherlands*. 91 Eur. Ct. H. R. (Ser A), (1985).

36. Harris, D.J., O'Boyle, M., and Warbrick, C., " Law of the European Convention on Human Rights", Butterworths (1995), 323.

37. -Van Bueren, G., " The International Protection of Family Member's Rights as the 21st Century Approaches", *17Human Rights Quarterly (1995)0 752;*

38. *Velasquez Rodrigues v. Honduras*, *Human Rights Law Journal, Vol.: 9: 212*.

39. See Shelton, D., " Private Violence, Public Wrongs and the Responsibility of States" Fordhamm Int'l L. J., 13 (1990) 5, 10.

40. Van Bueren, G., *loc. cit*.

41. *Mejia Egocheaga and another v. Peru,* "Butterworths Human Rights Cases", Butterworths, London (1996) 256.

42. 10 *Interights Bulletin* (1996) 94.

43. O'Flaherty, M., *Human Rights and the UN Practice Before the Treaty Bodies*, Sweet & Maxwell, London (1996) 47.

44. Graciela A. del Avellana-v-Peru, Communication N.202/1986 (28 October 1988), U.N. Doc. Supp. n. 40 (A/44/40) at 196 (1988).

45. 1999 IACHR1443.

46. International Human Rights Report, Vol. 1, n. 1 (1994).

47. Cook, R.. (ed.) " Women's International Human Rights Law: The Way Forward". *In Human Rights of Women: National and International Perspectives,* Routledge, (1995) 24.