

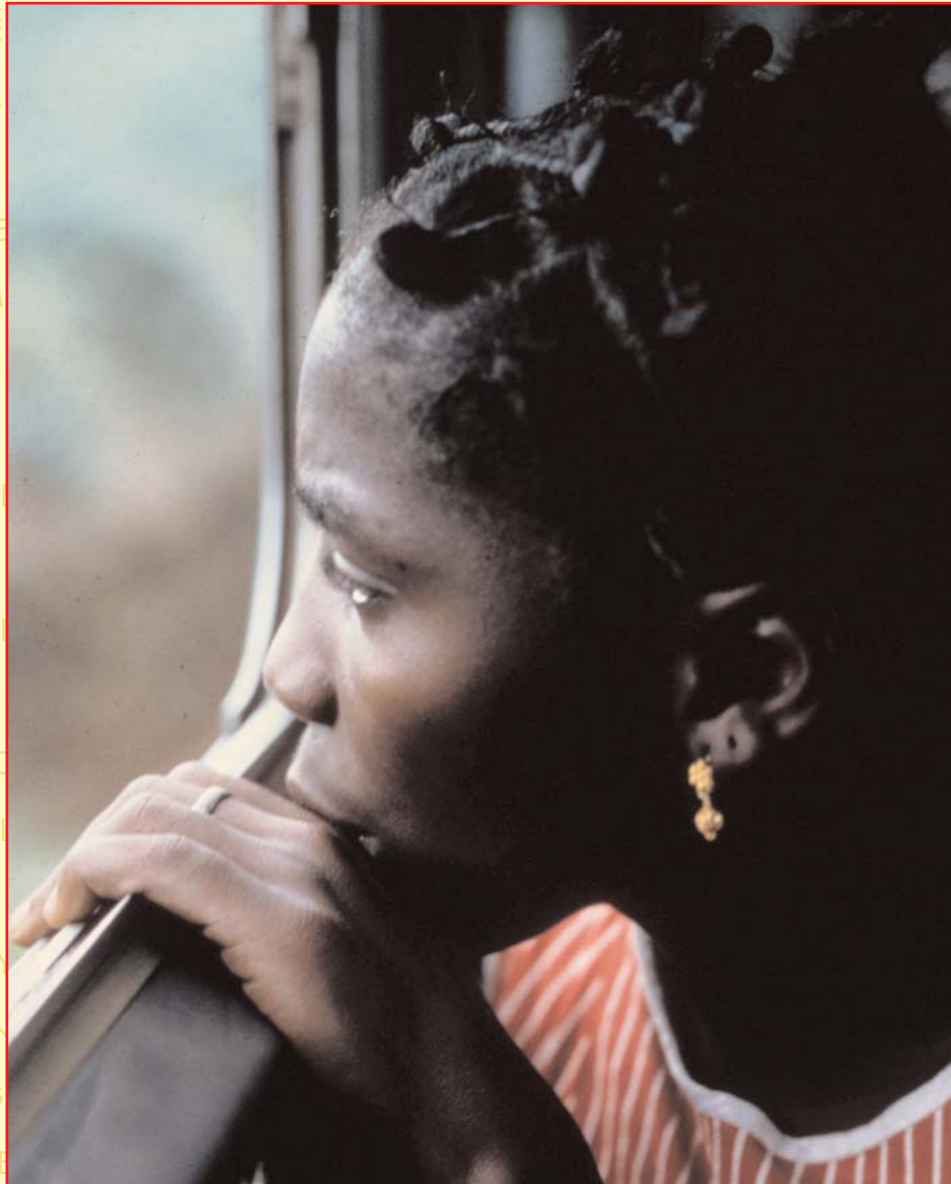
human rights

an international forum for debating human rights


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VIOLENCE AGAINST WOMEN

What women's advocates have gained from using the human rights framework—and how the rest of the human rights movement has gained from their efforts

human rights *dialogue*

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about

Human Rights Dialogue

Published semiannually, *Human Rights Dialogue* aims to promote global dialogue and learning about human rights concepts and action. By featuring essays by people with firsthand experience in implementing human rights in particular contexts, each issue of *Dialogue* maps out the claims being made within a specific domain of human rights and the strategies by which those claims are pursued. In so doing, the publication aims to clarify the significant and ongoing evolution taking place within the human rights movement to make the human rights framework more relevant and effective in addressing the social, economic, and political challenges of the twenty-first century.

Series One of *Dialogue* (1993–1998) examined the arguments on all sides of the Asian values debate. In Series Two (2000–present), *Dialogue* addresses the problem of “the human rights box”—that is, the constraints created by a set of historical and structural circumstances that have enabled the human rights framework to gain currency among elites while limiting its advance among the most vulnerable. The essays aim to locate these barriers and demonstrate how they can be overcome.

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INTRODUCTION

In the last fifteen years, the engagement of human rights activists in the problem of violence against women has increased exponentially.

The 1993 World Development Report estimated that worldwide, “violence against women is as serious a cause of death and incapacity among women of reproductive age as cancer, and a greater cause of ill-health than traffic accidents and malaria combined.” As defined in the Declaration on the Elimination of Violence against Women, violence against women is a prevalent harm to the basic rights, freedoms, health, and welfare of women. It occurs in many settings and at many hands, including those of relatives, acquaintances, employers, and the state. Yet until at least the early 1990s, most forms of violence directed specifically against women were met with silence not only by the state but also by much of the human rights community.

In the last fifteen years, however, the engagement of human rights activists in the problem of violence against women has increased exponentially. Why and how this change has occurred is an important piece of the history of the women’s and human rights movements, with major implications for both. *Dialogue* readers may recall an earlier issue on women’s rights (Summer 2000), which included articles on violence. In the current issue, activists from around the world discuss how women’s rights activists are using human rights instruments to combat violence against women and, in turn, how the human rights movement is being enlarged and enriched by their approach.

A striking theme in the testimonies gathered here is the use of classical human rights tools in activists’ work to combat violence against women. This general tendency to use human rights is significant: contributors to earlier issues of *Dialogue* frequently expressed reluctance to refer to human rights in their work, generally because of arguments that the concept of human rights is a foreign import and the belief that references to human rights would either be ineffective or lead to a backlash.

A crucial advance in the campaign against violence against women came from the insight of feminists like Australian National University legal scholar Hilary Charlesworth, who pointed out in 1984 that women’s experiences are rendered nearly invisible in international law and traditional understandings of human rights because both originally operated on the assumption that the public and private domains are sharply differentiated. Not only was the beating, rape, or mutilation of a woman in her home at the hands of relatives viewed as a private matter, but the abuses themselves were unacknowledged to the point that statistics on many forms of abuse remain difficult to collect.

The inclusion of the private sphere within the purview of

human rights is a development that underlies this issue of *Dialogue*. Six contributors challenge the public/private split as an explicit part of their strategy to combat violence against women. **Leylâ Pervizat** fights the widespread perception in Turkey that “honor killing” is not a human rights abuse like extrajudicial killing but rather a personal matter in which men have the right to defend and redeem their masculine honor. In her response to Pervizat, **Zehra F. Arat** points out the double standard that the state applies to violence when it involves women and their sexuality. Pervizat finds the relegation of honor killings to the less-urgent sphere of “women’s problems” to be common among Turkey’s mainstream human rights defenders, an obstacle also facing **Lydia Alpízar** in the struggle that she and other women’s rights activists are waging against the systematic killings of women in Ciudad Juárez, Mexico, which have continued unchecked since at least 1993. Alpízar’s struggle is to get both mainstream Mexican human rights organizations and regional human rights bodies to take violence against women at the hands of private actors as seriously as they take violence carried out by the state. **Charlotte Bunch** responds to Alpízar’s essay, pointing out how the bridging of the public/private divide in Mexico has opened doors for the human rights movement to address other important issues, such as nonstate actors and the integration of civil, political, economic, and social rights. **Christopher Harper** discusses his successes working with men to change the belief that human rights apply to everything except what they do in their own homes. And **Lisa W. Karanja** documents the deeply entrenched belief in marital privacy that has prevented the Ugandan government from taking into account domestic abuse and rape as violations that contribute to the spread of HIV/AIDS.

Cultural institutions, particularly religion, are often cited for their role in violence against women. The frequency with which women, the family, and the home are seen to overlap with culture—indeed, to be the main vessels for the maintenance and continuation of cultural and religious traditions—is striking. Activists must challenge the defense of keeping this sector separate from what many view as the encroachment of western-inspired concepts of rights.

Ayesha Imam’s description of her fight to strengthen women’s rights through the Sharia courts in northern Nigeria is a retort to those who claim that religious traditions are inevitably a source of women’s oppression. She locates the problem in Sharia’s implementation, not in Sharia itself, pointing out that Sharia court decisions have yielded improvements for women in personal and family law in Nigeria,

despite Sharia's politicization and the problematic implementation of Sharia penal codes in twelve Nigerian states. In their responses, however, **Uché U. Ewelukwa** and **Albaqir A. Mukhtar** express their reservations about reliance on Sharia, citing gender-discriminatory principles beyond the level of implementation (Mukhtar) and the greater likelihood of achieving judicial reform through recourse to Nigerian constitutional law and international human rights legal obligations (Ewelukwa). In Turkey, **Pervizat** finds that traditional conceptions of masculinity, not Islam, are used as justifications for honor killing. **Harper** and his organization counter the argument that women's rights are an imperialist concept hostile to South African culture by demonstrating that many native beliefs contain the core

concepts of equal regard for the right of all humans, men and women, to live free of violence, which underpin human rights. And **June Munala**, working to eradicate female genital mutilation (FGM) among refugees in Kenya, uses a combined approach: she finds that both appealing to a range of human rights, especially the right to health, while mobilizing a wide range of actors, including, significantly, Muslim and traditional community leaders, to oppose the practice is the most effective method to overcome it. In response, however, **Anne Gathumbi-Masheti** insists on prioritizing a legal approach that criminalizes the practice. Even **Gathumbi-Masheti**, though, acknowledges the positive potential of culture in her suggestion that implementing an alternative coming-of-age ritual for girls can help to eradicate FGM by satisfying a cultural need in a nonviolent way.

Finally, an important theme that emerges in this issue of *Dialogue* is the complexity of issues involved in violence against women and the concomitant need to draw on both first- and second-generation rights. **Alpizar** shows compellingly the relevance of economic and social factors to the Juárez murders: the victims are all young, poor, uprooted, and marginalized female maquiladora workers in a city where economic exploitation, human trafficking, and drug-related crime are rampant. Their economic deprivation makes it easier to ignore these women's deaths, just as impunity under these conditions has apparently emboldened killers. And **Carrie Cuthbert** and her colleagues in the U.S. state of Massachusetts have achieved a partial victory in their efforts to cast the situation of battered mothers in terms



Ugandan women engaged in an informal education session on HIV/AIDS.

of human rights violations: their appeal to a system based on the indivisibility of rights and government accountability won the hearts and minds of survivors, who now see themselves as bearers of human rights instead of only as victims.

Despite the slowness of the human rights movement to address violence against women, four essays report on successes in the effort to mainstream gender into the major international human rights institutions. **Rhonda Copelon** explains how women's rights activists forced a sea change in international law that resulted in the codification of rape as a war crime in the International Criminal Court. **Carin Benninger-Budel** and **Lucinda O'Hanlon** of the Geneva-based World Organization Against Torture detail their efforts to show how many types of violence against women should rightly be considered forms of torture. They argue that taking advantage of the strengths of the most developed human rights conventions can bring violence against women off the periphery and into the mainstream. In her response to their essay, **Alda Facio** describes how women living under Latin American dictatorships in the 1970s began to make connections between the state's torture of political prisoners and the domestic violence that women endured. And **LaShawn R. Jefferson** describes how women's rights activists began to use human rights tools, such as nondiscrimination, due diligence, and the rights to life and health, to push violence against women into the purview of mainstream human rights, challenging the traditional conception of human rights abuses as state-perpetrated only and thereby expanding the legitimacy of the human rights movement. [hrd](#)

Lydia Alpizar is a feminist human rights activist. She is one of the founders of Elige Youth Network for Reproductive and Sexual Rights and of the Latin American and Caribbean Youth Network for Reproductive and Sexual Rights. In addition to her involvement in the campaign "Stop Impunity: No More Murders of Women," she is also working with a newly established organization called Artemisa Interdisciplinary Group on Gender, Sexuality and Human Rights.



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Carin Benninger-Budel is a human rights lawyer from the Netherlands and has been working at the World Organisation Against Torture (OMCT), based in Geneva, Switzerland, since 1996. She has been the program

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www.carnegiecouncil.org



Charlotte Bunch is the founder and executive director of the Center for Women's Global Leadership. She has been an activist, author, and organizer in women's and human rights movements for over three decades. In

1999, she was selected by President Clinton as a recipient of the Eleanor Roosevelt Award for Human Rights, and in 2002, Women's Enews honored her as one of the "21 Leaders for the 21st Century." www.cwgl.rutgers.edu



Rhonda Copelon is a professor of law and director of the International Women's Human Rights Law Clinic of the City University of New York. The Clinic has had a profound impact on the recognition of women's

human rights in the international, regional, and U.S. contexts, particularly in establishing rape and other gender crimes as war crimes and crimes against humanity. She is also a founding board member of and legal advisor to the Women's Caucus for Gender Justice, now Women's Initiatives for Gender Justice. www.law.cuny.edu



Carrie Cuthbert is cofounder and former codirector of the Women's Rights Network and the Battered Mothers' Testimony Project. **Kim Y. Slote**, a human rights lawyer and consultant, is cofounder and former codirector of the Women's Rights Network and the Battered Mothers' Testimony Project. **Jay G. Silverman** is assistant professor of Society, Human Development and Health and director of Violence Prevention Programs at the Harvard School of Public Health. **Monica Ghosh Drig-**

gers is the policy director for the Women's Rights Network and has spent the last seven years working on efforts to reform the court system. **Lundy Bancroft** is a batterer intervention specialist and coauthor of *The Batterer as Parent*. **Cynthia J. Mesh** is a research analyst at the Office of Women, Family, and Community Programs at Brigham and Women's Hospital and an MPH student at the Harvard School of Public Health. www.wcwonline.org/wrn



Uché U. Ewelukwa teaches at the University of Arkansas School of Law and is currently a 2003-04 Carnegie Council fellow. She has received many awards for her work, including, in 1993, an Irving R. Kaufman Public Service Fellowship to establish a new human rights organization in Nigeria. More recently, she was granted a fellowship from the Albert Einstein Institution for a study of nonviolent sanctions in Nigeria, focusing on the 1994 oil workers' strike. law.uark.edu

More recently, she was granted a fellowship from the Albert Einstein Institution for a study of nonviolent sanctions in Nigeria, focusing on the 1994 oil workers' strike. law.uark.edu



Alda Facio is a feminist lawyer, scholar, and activist with decades of experience in both grassroots movements and more formal legal and UN contexts. She is a founder and first director of the Women's Caucus for Gender Justice at the International Criminal Court and is currently director of the Women, Gender and Justice Program at the United Nations Latin American Institute for Crime Prevention.

She is a founder and first director of the Women's Caucus for Gender Justice at the International Criminal Court and is currently director of the Women, Gender and Justice Program at the United Nations Latin American Institute for Crime Prevention.



Anne Gathumbi-Masheti is a women's rights activist and the coordinator of the Coalition on Violence Against Women (COVAW) in Kenya. She is a lawyer and a community development practitioner with ten years of experience in

both the development and human rights sectors

in Kenya. At COVAW, she has spearheaded outreach, advocacy, and lobbying for policy and legal reform as well as legal aid programs.



Christopher Harper, an ordained minister in the Anglican Church, is a counseling psychologist at Masi-manyane Women's Support Centre in East London, South Africa. He is also coordinator of the Masi-manyane Men's Project, which

aims at providing a space for men to unlearn patterns of gender-based violence and transform their lives. In 2001–02 he was a Carnegie Council fellow, during which time he researched perceptions of the legitimacy of women's human rights in South Africa. womensnet.org.za/pvaw/organisations/masi-manyane



Ayesha Imam, founding director of BAOBAB for Women's Human Rights in Nigeria, won the 2002 John Humphrey Human Rights Award, together with BAOBAB, for work in protecting women's

rights under the new Sharia criminal law acts in Nigeria. She is also a core group member of the international network Women Living Under Muslim Laws, for which she coordinated research in eight countries in Africa and the Middle East on the ways in which different systems of laws and social practices combine to structure women's lives in Muslim countries and communities. www.baobabwomen.org



LaShawn R. Jefferson is the executive director of the Women's Rights Division of Human Rights Watch, which she joined in 1993. In her ten years with the Women's Rights Division,

she has worked on a range of international women's human rights issues in a variety of countries. She was a Thomas J. Watson fel-

low between college and graduate school, and received her M.A. from the Johns Hopkins University School of Advanced International Studies. www.bhrw.org



Lisa W. Karanja recently completed a year as the Orville Schell fellow in the Women's Rights Division at Human Rights Watch. Prior to that, she practiced criminal litigation as a Barrister-at-Law in London and commercial litigation as an Advocate of the High Court of Kenya. She has been extensively involved with numerous women's rights groups in the East African region in the areas of violence against women, women's property rights, and girls' education.



Albaqir A. Mukhtar is the regional campaign coordinator for the Middle East & North Africa at Amnesty International's International Secretariat Office in London. His academic and teaching experience has focused on linguistics and Islamic and Middle Eastern studies, and his current research interests include education, ethical philosophy, identity, and Islam and human rights. He has published two books, both in Arabic: *Categorization of Muslims' Responses to Human Rights*, and *Betting on Knowledge: Human Rights Education in the Middle East and North Africa*. www.amnesty.org



June Munala is an assistant protection officer with the United Nations High Commissioner for Refugees, where she works primarily with the Sexual and Gender-Based Violence program. She is particularly interested in issues of gender and international law. She worked for several years with the Office of the Attorney General in Kenya. www.unhcr.ch



Lucinda O'Hanlon is a human rights lawyer from the United States. She is the program officer for the Violence Against Women Programme at the World Organisation Against Torture (OMCT), where she

has worked since November 2002. She writes urgent appeals as well as researches and writes alternative country reports on violence against women for UN treaty-monitoring bodies. www.omct.org



Leylâ Pervizat is a feminist researcher and woman's human rights defender based in Turkey. She has been working and writing on the issue of honor killings since 1996, and has lobbied on this issue before international

human rights mechanisms. She is currently writing a book on the topic, which will be released in 2004.

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Human Rights Dialogue

Rights for All in the New South Africa

An Interview with
Christopher Harper

Although the end of apartheid in South Africa was hailed as a victory for human rights, the country is home to one of the world's highest levels of violent crime. Recent reports suggest that women are disproportionately likely to bear the brunt of such violence. Human Rights Dialogue talked with Christopher Harper, a counseling psychologist at Masimanyane Women's Support Centre, a nongovernmental organization in East London, South Africa, that addresses gender-based violence against women and girls from a human rights perspective.

Dialogue: What kind of violence are women in South Africa facing today?

Harper: Violence against women has been described as the most extreme expression of the gender inequality that underscores social relations in South Africa. This violence exists in numerous forms, and it has been estimated that one in four South African women are victims of gender-based violence.

The major issues that we at Masimanyane address include domestic violence, rape, sexual abuse, HIV/AIDS, and child abuse.

Dialogue: Has apartheid played a role in this violence?

Harper: Yes, definitely. The legitimization of violence under apartheid, as a means both of enforcing apartheid and as a form of resistance, has contributed to these high levels of violence. Apartheid diminished people's perceptions both of the value of their own lives and of others' lives, and did not foster a culture of respect or human rights at all. The means for quelling conflict was violence, and that approach can be seen as almost an adopted culture in this country now. Apartheid's effects on the nature of family life and the socioeconomic conditions people live under



A women's support center in the Eastern Cape province.

clearly continue to impact individual and communal life.

But at the same time, violence against women is not merely a post-apartheid occurrence. It was always part of South Africa's social fabric in all cultures and racial groupings; it was just kept quiet. During apartheid, violence against women in the black community was often placed on the back burner as the focus was on the struggle for freedom. Violence in the white community was also silenced—especially incest and marital rape—because the white community had to have an image of “decency” and “civilization.” This has led to debate as to whether there has been an increase in violence since 1994 or whether people are just talking about it more now.

Dialogue: How is Masimanyane addressing these issues of violence?

Harper: When Masimanyane was established, the initial focus of the center was to provide support services to women and girls who are victims of domestic and sexual violence. However, we soon recognized that if we were to address the issue of violence against women in a more effective, holistic way, a political, gender, and human rights perspective needed to be used. So we extended our programs to include community outreach programs,

public education and training, advocacy and lobbying linked to research, as well as a program of working with men. Our efforts involve everything from crisis intervention and long-term counseling to human rights and democracy training for communities.

Dialogue: Tell us more about the men's program.

Harper: Our Men's Project is not just a program for perpetrators but one that encourages nonviolent men to become active in the struggle for gender equality and the eradication of violence against women and girls. The project emphasizes the need for men to work alongside women in order to change the value systems that oppress women and children and dehumanize men themselves.

So, since the start of the project, the focus has been on public education and training programs, which aim to give men an understanding of the realities of women's lives. We have conducted this training in rural and urban settings with teachers, prison officials, trade unionists, representatives from civil society and community organizations, and members of the clergy.

Recently, we have seen an exponential increase in the number of organizations running men's programs. But the

principles underlying the work with men throughout the country are not similar and at times they have been very disparate. These principles range from the pro-feminist perspective to those based on traditional patriarchal views of masculinity. The difficulty with the programs based on a traditional view of masculinity is that they fail to make the links between women's continued experience of violence and discrimination in the country and wider social, economic, and political concerns.

Dialogue: How is violence against women perceived in South African society?

Harper: While certain incidences of violence may cause the country to experience a monetary sense of outrage, women's experiences of violence are generally met with silence. Although people recognize the importance and value of human rights, cultural and religious objections are frequently raised to the question of women's rights. This clearly contributes to a public/private divide that makes it difficult to address issues believed to be personal or domestic matters only. Many people have told us, "Human rights are fine for other issues, but don't talk to me about things that happen in my own house."

Dialogue: Does the postcolonial context have anything to do with this?

Harper: Yes, without a doubt. There is a movement today to redefine what African culture and values mean and to search for an authentic, precolonial African culture. Sometimes, however, when people talk of "going back" to traditional cultural values, they fail to recognize the impact of changes in the landscape of people's lives. This also affects the meaning of cultural practices. For example, the bride price practice known as *lobola* was once about establishing kinship, but it has come to be seen by many as the act of purchasing a wife. Many men use this as a justification for their violence. So it is important to show people what the *original* meaning of a custom was and how that meaning has gotten distorted in systems that protect men's positions.

Also, some people believe that men's roles and views of themselves became

deeply distorted after years of colonialism and apartheid. Violence is seen as a way to reestablish themselves in a position of power in their homes. We have heard this often from men who have had to leave home to find work elsewhere, especially in the mines. When they have returned home they have found that their wives have taken on the primary parent role and this has been very difficult for many men to deal with.

Dialogue: What about the argument that human rights concepts interfere with culture—do you come across this?

Harper: When I was a Carnegie Council fellow three years ago, I researched the legitimacy of women's human rights in the Eastern Cape, and it struck me that the only time people brought up the problem of human rights hindering indigenous culture was when they were asked about women's rights. The men who were not supportive of women's rights viewed culture as static. They talked about women's human rights as though they were scared of losing their perceived authority. But whether or not this is an issue of cultural legitimacy is uncertain, as equal numbers of men spoke about

Many people have told us, "Human rights are fine for other issues, but don't talk to me about things that happen in my own house."

the value that their culture places on women's lives and said that traditional mechanisms were in place to ensure that sanctions were enforced against any man who was violent toward his wife. Similar sanctions were in place against rape.

Dialogue: How do you go about changing these perceptions?

Harper: At our workshops, when people bring up the idea that human rights are an imperialist and western concept, we try to discuss South Africa's history of apartheid and the importance of human rights concepts in the struggle for equality for all South Africans. We also try to relate human rights to African traditions and concepts, such as *ubuntu*, which implies the idea of respect and dignity for others. We ask people to define the core values of their culture and we use those to

say, "Well, this is exactly what the human rights framework is all about—respect and dignity for other people."

But what disturbs me is how few *other* men working in the field of addressing violence against women use the human rights discourse. We find people talking about the need to end violence, but they are not addressing it in a larger social context—they don't speak about the patriarchal system or about women's economic and social positions. They just say that we need to end the violence. I think they find using a human rights framework difficult. When male activists that are organizing to end violence against women say things like, "It's a man's place to be head of the home"—and when these activists believe this—you can see that it is difficult for them to use a human rights framework that challenges them on those sorts of issues.

Dialogue: Have you seen progress from Masimanyane's human rights work?

Harper: I think we've had a major impact on people's lives. Our work has provided the opportunity for women to improve their own lives by leaving abusive envi-

ronments, and to find support and a voice where they were denied one before. We have also played important roles in the formation of legislation to improve women's lives and hold the government accountable for their actions. And in our work with men, we've been able to witness men working alongside women in local communities to end violence against women. They are engaging with other men in their communities, challenging them to stop their violence. [hrt/](#)

For a different perspective on the efficacy of human rights language in Africa, see "Why More Africans Don't Use Human Rights Language" by Chidi Anselm Odinkalu in the human rights box issue of *Human Rights Dialogue*, available online at www.carnegiecouncil.org/viewMedia.php/prmTemplateID/8/prmID/602.

and HIV Infection in Uganda

Jacqueline is a thirty-two-year-old Ugandan woman who tested HIV-positive after her husband died of AIDS. Before he died, he routinely raped and beat her, and refused to use a condom during sex. Her four children are infected with HIV, as is her co-wife. The similar experiences of many Ugandan women illustrate the ways in which domestic violence can play a critical role in rendering women vulnerable to HIV infection. As a result of violence or a fear of violence, Ugandan women are unable to protect themselves from infection and to access HIV/AIDS services. Although Uganda has ratified international and regional human rights treaties providing for women's rights to protection against violence and women's rights to health, the unchecked domestic violence and the lack of access for women to HIV/AIDS services are clear indications that the government is failing to meet its responsibilities.

In addition to women's greater physiological susceptibility, social, cultural, and legal forms of discrimination compound their vulnerability to HIV. Domestic violence, already a leading cause of female injury, deprives women of bodily integrity by eliminating their ability to consent to sex, negotiate safer sex, and determine the number and spacing of their children. In many cases, the threat of abandonment or eviction constrains economically dependent women to remain in abusive relationships, thereby exacerbating their vulnerability to HIV infection. One HIV-positive woman said, "He used to force me to have sex with him. He would beat and slap me when I refused. . . . The very first time I asked my husband to use a condom because I didn't want to give birth he said no. He raped me and I got pregnant. I'm still with him because I don't

have a cent. He at least pays the rent."

Ugandan women confront a male-dominated power structure that upholds and entrenches male authority in the home. In 2002-03, as a researcher for a Human Rights Watch report on the correlation between domestic violence and women's vulnerability to HIV infection, I talked with many women who viewed domestic violence as a natural by-product

Social, cultural, and legal forms of discrimination compound women's vulnerability to HIV.

of marriage. Customs such as the payment of "bride price," whereby men essentially purchase their wives' sexual favors and reproductive capacity, underscore men's entitlement to dictate the terms of sex. Practices such as widow inheritance by a man of his brother's widow can expose women to unprotected and unwanted sex with HIV-positive partners. When women in polygynous marriages are coerced into unprotected sex, they are exposed to a higher risk of HIV transmission as a result of the man having unprotected sex with multiple partners.

The Ugandan government has failed to enact laws for the effective prosecution and punishment of acts of violence against women. Inequitable divorce laws make it difficult for women to terminate their marriages legally. The government has yet to criminalize marital rape. Draft legislation to regulate domestic relations and sexual offenses has been pending since at least the early 1990s, despite vigorous lobbying by many of our local NGO partners. Moreover, none of the pending legislation adequately addresses domestic violence—nor will it as long as the government upholds the notion of the inviolability of marital privacy and fails to address discriminatory marriage and property laws that impede women's

escape from abusive marriages. State prosecutors told us that few domestic violence cases are actually prosecuted. In addition, women we spoke with said government officials often address domestic violence charges by attempting to reconcile the parties and pressuring the women to return to their abusive husbands.

Human Rights Watch is working with several local women's and human

rights groups in Uganda to hold the government accountable for its failure to prevent and remedy domestic violence, establish relevant medical protocols, and modify and transform harmful traditional practices. International human rights law has been a useful advocacy tool. By systematically failing to enact and enforce criminal laws and address violence against women in the home, the government in effect condones and endorses it. When government agents such as the police pay inadequate attention to domestic violence compared to other forms of violence, we argue that this violates provisions upholding the right to equal protection under the law and provides proof of tacit state complicity.

Despite oversight by UN committees of Ugandan state implementation of international treaties such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Ugandan NGOs assert that government efforts to improve the socio-economic status of women have been minimal. They argue that despite the government's gender-progressive reputation and

a rhetorical commitment to women's rights, many changes are cosmetic and do not impact women on the ground. The abdication of state responsibility has left many of the NGOs working with Human Rights Watch in Uganda as the only providers of any recourse to battered women in the form of legal education and representation, shelters for abused women, and care and support for women living with HIV/AIDS.

Uganda is blessed with a developed and vibrant network of NGOs working on women's rights and a coherent and well-established HIV/AIDS movement. NGOs such as Raising Voices are addressing domestic violence at the community level with programs that specifically aim at male participation and include strategies such as the enhancement of the police response to domestic violence. In addition to providing us with our initial access to domestic violence survivors and women living with HIV/AIDS, Ugandan NGOs collaborate with us on advocacy through press releases and radio broadcasting. A particularly notable outcome expressed by our NGO partners has been their increased awareness of the intersection between the work of rights-based and HIV/AIDS NGOs.

Domestic violence leading to a heightened risk of HIV transmission is a widespread phenomenon, and research similar to that reported here could have been conducted in any one of a number of countries. Yet this is a critical time for Uganda: while a wide range of bilateral

and multilateral donors is contributing extensively to HIV/AIDS initiatives, our interviews with Ugandan health officials revealed that the impressive decline in overall HIV/AIDS prevalence rates in Uganda is leveling off. These health officials also acknowledged the dangers of complacency. The failure to address the very serious underlying and contributing issue of domestic violence may compromise Uganda's continued success in the fight against HIV/AIDS.

Uganda also provides an important case study for the region. The fact that domestic violence is not addressed in a country widely considered a success story in the fight against HIV/AIDS holds grim implications for African women. If women are unable to protect themselves in a country where national adult prevalence rates declined from 18.5 percent in 1995 to 8.3 percent at the end of 1999, what are the chances in countries such as Kenya, which, until recently, had no coherent government strategy to tackle HIV/AIDS, and where AIDS has reduced the average life expectancy from sixty-five to forty-six years? With Uganda included among fourteen countries slated to receive five years of AIDS program support from the United States and a grant from the Global Fund worth over U.S. \$36 million to support the ongoing fight against HIV/AIDS, this is a pivotal time for addressing the links between domestic violence and women's vulnerability to HIV—a topic unfortunately not mentioned during President Bush's recent trip

to the country.

The correlation between domestic violence and women's vulnerability to HIV infection adds considerable impetus to the need for all governments to address seriously and meaningfully domestic violence against women. Otherwise, in a continent devastated by HIV/AIDS, any strategy to combat the pandemic will be compromised. Programs that attempt to prevent the spread of HIV/AIDS by encouraging abstinence from sex, fidelity, and consistent condom use are a start, but they do not address women's unequal decision-making power and status within their intimate relationships. Human rights law, which clearly establishes state responsibility to protect women from battery, is a useful tool for holding governments accountable. The words of one victim describe it best: "After testing he would force me to have sex without a condom. I don't know why he was opposed to condoms after testing and yet he had used them for birth control [before testing]. He said, 'Why bother, we're already victims.' . . . There should be a law to stop husbands forcing wives to have sex. I would use the law." [hrtd](#)

Read how activists in South Africa are using human rights tools to address the HIV/AIDS crisis in their country, as discussed in Nathan Geffen's article, "Applying Human Rights to the HIV/AIDS Crisis," in the health issue of *Human Rights Dialogue*, available online at www.carnegiecouncil.org/viewMedia.php/prmTemplateID/8/prmID/646.

Photos courtesy of Human Rights Watch / Janet Walsh (left); Freedom from Hunger / April Watson (right)



Left: Domestic violence often impedes Ugandan women from seeking HIV/AIDS information, treatment, and counseling such as that available in this clinic in Kampala. Right: Facilitating a discussion about HIV/AIDS and dispelling myths about how it is passed.

Battered Mothers vs. U.S. Family Courts

Carrie Cuthbert, Kim Y. Slote,
Jay G. Silverman, Monica Ghosh Driggers,
Lundy Bancroft, and Cynthia J. Mesh

Many battered mothers in the U.S. state of Massachusetts have found the family court system to be an obstacle, rather than an aid, in their search for lasting safety from their abusers. One survivor noted that “unless there are major changes [in the family court process], I will never believe that a woman and [her] children will be protected.” Research has illustrated that batterers often escalate their partner abuse after their victims leave them, and custody and visitation arrangements are reported to provide a context for abusive men to continue to control and victimize women and their children. Moreover, a 1989 report on gender bias commissioned by the Massachusetts Supreme Judicial Court found that, in child custody cases, family court judges

and probation officers often consider domestic violence irrelevant to their rulings, and family courts are ordering shared legal custody even when there is a history of domestic violence.

Compounding these problems, there are few accountability mechanisms in the

and has a set of internationally agreed-upon principles and laws to back it up. A human rights approach specifically stands out because of its emphasis on government accountability; recognition of the equal importance and inextricability of economic, social, cultural, civil, and

A battered mother may choose to remain with the batterer rather than face a family court system that denies justice to her and her children.

Massachusetts family court system. Massachusetts’s family court judges are appointed for life without being subject to a meaningful review process. There are few effective and accessible complaint procedures, and appeals are costly and often decided on narrow legal grounds. As a result, many battered mothers have lost trust in the family court system. The implications are dire: a battered mother may choose to remain with the batterer rather than face a family court system that may deny justice to her and her children.

In 1995, inspired in part by the “women’s rights are human rights” vision that united women throughout the world at the UN Fourth World Conference on Women in Beijing, we founded the Women’s Rights Network at the Wellesley Centers for Women to reframe and address domestic violence (that is, partner abuse) as a human rights issue in the United States.

We chose to use a human rights framework instead of the crisis intervention, criminal justice, and civil rights strategies currently emphasized by U.S. battered women’s movements because the human rights framework, more than any other, covers a broad range of social jus-

political rights; overarching framework for addressing multiple oppressions on the basis of, for example, gender, race, ethnicity, and socioeconomic status; connection with the global women’s movement; and grounding in international law. Particularly because it identifies the government, and not just individual perpetrators, as a locus of accountability, we felt that a human rights approach to domestic violence would enable us to effect greater long-term social change. In 1999, after two years of conducting human rights training for battered women’s advocates, we launched the Battered Mothers’ Testimony Project (BMTP) in order to document and apply a human rights analysis to the Massachusetts family court system.

By using human rights, we hoped to raise awareness of the issues and help prompt reform of family court policies and practices in child custody cases involving partner and/or child abuse. Our key strategies included holding a popular human rights tribunal in which five battered mothers testified publicly about their experiences and called for family court reform; engaging in community organizing and education to build a grassroots foundation for human



In Massachusetts, an alarming trend: battered women are losing custody battles to allegedly abusive fathers.

Photo by Steven Sunshine 2003

rights-driven activism on the issues; and publishing a human rights report aimed at the public at large, the advocacy and policy communities, the family court system, and survivors.

Our human rights report, *Battered Mothers Speak Out*, used definitions of violence against women and children found in key UN instruments to show how women's reports of domestic violence, child abuse by ex-partners, and treatment by the family court system are human rights concerns. We cited, for example, the Declaration on the Elimination of Violence against Women, which defines violence against women as a human rights violation and delineates governments' obligations to end and prevent it, and the Convention on the Rights of the Child, which requires governments to protect and promote the human rights of children, including protecting them from abuse by a parent. We also used human rights standards of government accountability for interpersonal violence contained in human rights instruments—especially the “due diligence” standard—to spotlight the state's role in domestic violence and child custody cases, and to provide a basis for demanding reform.

The human rights framework proved a powerful tool for illuminating the problems battered mothers and their children face in the Massachusetts family courts. In our report, we identified six intersecting categories of violations: failure to protect battered women and children from abuse; discrimination and bias against battered women; degrading treatment of battered women; denial of due process to battered women; allowing the batterer to continue his abuse through the family courts; and failure to respect the economic human rights of battered women and children. The human rights framework helped us to demonstrate the linkages and overlap between the violations, the economic issues battered mothers face after separation, and the multiple forms of discrimination many battered women experience. For instance, we were able to use human rights laws and principles to categorize women's reports of economic hardship related to the high cost of family court litigation, child support, child care, and

other issues as violations of women's and children's economic human rights, and show how they were linked with the other violations we identified.

Human rights also played a key role in building the foundation for a grassroots movement for family court reform in Massachusetts. After reading and discussing educational materials about human rights, survivors and advocates involved in our project found that the basic concepts resonated deeply with them. One woman reflected that looking at domestic violence from a human rights perspective is important because “the loss of rights is the same as violations in other contexts, like war and racial oppression.” The human rights framework not only helped to define these women's experiences but also validated the gravity of what they and their children have endured.

Furthermore, the human rights emphasis on government accountability

rights to violence and discrimination against women, implying, among other things, that women's reported experiences do not rise to the level of human rights abuses. Finally, there appears to be a widespread belief among judges in the global superiority of the U.S. legal system as well as in the inapplicability of international law to the United States. For example, the chief justice of the Family & Probate Courts in Massachusetts was quoted in a local newspaper as saying that framing these problems as human rights violations “may work well for systems in Third World countries, but not for a court in the United States.”

Although the need for government accountability and reform could not be greater in domestic violence and child custody cases, our use of human rights as an advocacy tool has not yet produced any tangible momentum for change from *within* the family court system. Bridging the gap between using human rights to

Doing human rights work in the United States presents formidable challenges, largely because of what we see as an overall lack of human rights literacy in this country.

has offered women hope that things in Massachusetts could change: “Referring to human rights, as defined by the UN, becomes a means of identifying the responsibilities of government agencies and authorities,” said one advocate. Because of these advantages, the human rights framework has been an important catalyst for prompting women to take on leadership roles in the BMTP and speak publicly about the issues. Perhaps most importantly, survivors in our project have launched their own grassroots human rights organization to advocate for family court reform, the Massachusetts Protective Parents Association.

Despite our successes, doing human rights work in the United States presents formidable challenges, largely because of what we see as an overall lack of human rights literacy in this country. Also, court officials in Massachusetts appear to have dismissed the applicability of human

spark grassroots advocacy efforts and using it to effect policy change, then, may be our toughest long-term challenge. Despite—or perhaps because of—these obstacles, it is critical that U.S. activists continue to use human rights to organize to end violence against women. With this in mind, we plan to move ahead by assisting organizations across the United States in replicating the project and building a national response to the issues. ^{hrd}

Battered Mothers Speak Out is available at www.wcwonline.org/wrn.

For more on the ways that activists are using human rights in the United States, see Loretta Ross's article, “Beyond Civil Rights: A New Vision for Social Justice in the United States,” in the human rights box issue of *Human Rights Dialogue*, available online at www.carnegiecouncil.org/viewMedia.php/prmTemplateID/8/prmID/607.

Expanding the Definition of Torture

Carin Benninger-Budel
and Lucinda O'Hanlon

Historically, the popular understanding of torture has helped to maintain a gender-biased image of the torture victim: it is the male who pervades the political and public sphere and thus it is the male who is likely to be targeted by state violence and repression. Such an image, however, neglects women's experiences as victims and survivors of torture.

Until recently, women's human rights organizations often did not pursue women's issues within the framework of the mainstream human rights treaties but instead concentrated on CEDAW. While this tendency is logical—CEDAW is an important and effective instrument for ensuring specifically women's rights—it is equally important to draw on the strengths of other human rights tools.

By concentrating on other human rights mechanisms, the World Organisation Against Torture (OMCT), a network of worldwide human rights NGOs, hopes to take women's issues off the periphery and into the mainstream, where they may receive more attention. OMCT is committed to addressing violence against women in our struggle against torture, summary executions, forced disappearances, and other forms of ill-treatment. Our work did not specifically address gender issues until shortly after the 1993 Vienna World Conference on Human Rights and the 1995 Fourth World Conference on Women in Beijing, both of which highlighted the importance of recognizing women's rights within the ambit of human rights. Inspired by these events, we formed a program on violence against women to

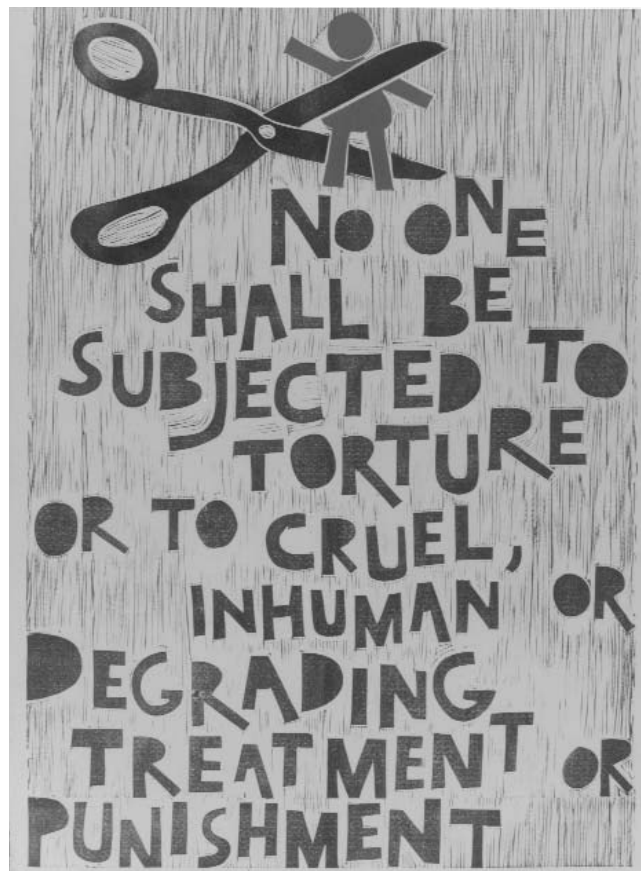
work toward integrating a gender perspective—"mainstreaming"—into the work of the United Nations human rights treaty-monitoring bodies. A special focus of our work is the Convention against Torture and its monitoring com-

mittee, and punishing violence against women. There is no international legally binding instrument specifically concerning violence against women; thus, the Convention against Torture has the possibility of filling one aspect of this gap.

Furthermore, the *jus cogens* status of the prohibition of torture—which means that all states are bound by this prohibition regardless of circumstances or the treaties they have ratified—helps to give additional merit to the concept that violence against women is a fundamental violation of human rights prohibited under international law.

Despite this potential usefulness, the Committee against Torture has adopted a "traditional" reading of torture, which is defined in Article 1 of the convention as an act of severe pain and suffering intentionally inflicted by or with the consent or acquiescence of a public official for the purpose of obtaining information, a confession, or for any other reason based on discrimination. As a result of its narrow reading of torture, the committee has made less progress on integrating a gender perspective into its work when compared with other human rights treaty-monitoring bodies.

The major obstacle to bringing violence against women within the consideration of the committee is the traditional public/private divide. Much violence against women takes place in the private sphere—domestic violence, rape, trafficking, violence in the name of honor, and female genital mutilation, for example. In the past, a strict judicial interpretation made states responsible only for



Article 5 of the Universal Declaration of Human Rights.

mittee. Our work also involves mainstreaming the gender perspective into the work of the various UN Special Rapporteurs, particularly the UN Special Rapporteur on Torture.

As a powerful, well-respected treaty-monitoring body, the Committee against Torture is an important mechanism for pressuring states to exercise due diligence in preventing, investigating, prose-

actions committed by state agents, and not those by private individuals. Today, however, a developing corpus of international law has led to the recognition of state responsibility to address the acts of private individuals. In particular, the Velásquez Rodríguez Case of the Inter-American Court of Human Rights articulated the standard of due diligence to prevent and respond to violence committed by nonstate actors (in that case, death squads). Increasingly, women's rights activists have built on the Velásquez decision to draw parallels between private violence and torture, and specifically to bring certain grave forms of violence against women within the definition of torture where the state has failed to exercise due diligence regarding such acts.

For example, recent work by women's rights activists has demonstrated how domestic violence in many cases conforms to the definition of torture in the convention. Domestic violence commonly involves severe pain or suffering, and is purposeful and intentional behavior intended to bring about a desired effect, such as punishment and/or control of a woman's sexuality. The state's unwillingness to take all possible measures to prevent domestic violence and to protect women from such violence suggests official consent or acquiescence to torture under Article 1 of the convention. In obtaining asylum status for women fleeing privately inflicted violence such as female genital mutilation, women's rights activists have also successfully used at the national level Article

A developing corpus of international law has led to the recognition of state responsibility to address the acts of private individuals.

3 of the convention, which prohibits the extradition of a person to a country where he or she will likely be subjected to torture. Thus, while not all violence against women can be qualified as torture within the meaning of the convention, the mere fact that the perpetrator is a private individual should not automatically lead to the exclusion of such vio-

lence from the scope of Article 1.

It is also problematic that the Committee against Torture seems to receive little information on violence against women. Being based in Geneva, OMCT is present at most committee sessions—and we have not observed many other organizations submitting specific information on violence against women. Lack of resources as well as the

Women's rights activists have built on the Velásquez decision to draw parallels between private violence and torture.

committee's general tendency not to address gender-specific violence may prevent or discourage some organizations from doing so.

In attempting to fill this void we have adopted the gender mainstreaming approach. Our core activities include circulating urgent appeals, lobbying at major human rights conferences, and, in collaboration with local NGOs, submitting reports to UN human rights treaty-monitoring bodies.

Our urgent appeals are based on information provided by the members of OMCT's SOS-Torture network, comprised of human rights NGOs from around the world. We send these appeals to bodies that have considerable influence in the field of protection and promotion of human rights, including Special Rapporteurs of the United Nations and of regional mechanisms.

Our lobbying efforts involve intervening before the UN Commission on Human Rights and the UN Sub-Commission on the Promotion and Protection of Human Rights, as well as major human rights conferences. With respect to OMCT's work with the treaty-monitoring bodies, we submit alternative reports with specific emphasis on the Committee against

Torture. These reports contain alternative information for each committee to consider when examining a country's official report on its implementation of the relevant treaty, and are written in consultation with members of the SOS-Torture network or other reliable national women's human rights organisations.

OMCT has played a part in the significant evolution of how the gender-neu-

tral human rights mechanisms tackle violence against women. While for years the Committee against Torture did not take gender-specific violence into consideration, in 2001 it expressed concern with respect to four countries in its Concluding Observations about violence against women committed by private individuals, specifically trafficking in women and domestic violence. OMCT had submitted alternative reports on violence against women concerning three of the four countries where these concerns were raised. Nevertheless, these positive steps are far from the regular practice of the committee and much remains to be done.

Our work has also had a positive effect on the other traditional human rights NGOs with whom we work. Typically, NGOs in the SOS-Torture network had rarely addressed the issue of gender-specific violence. Since OMCT has started to issue urgent appeals on violence against women and to remind the SOS-Torture network of this activity, there has been a perceptible increase in the gender sensitivity of the information produced by the network.

OMCT hopes to contribute to the eradication of violence against women, including torture, by promoting the optimal use of all conventional and nonconventional regional and international mechanisms for the prevention of torture. Mainstreaming gender across all UN structures is central to this goal. In our collaboration with local organizations, we highlight the gender mainstreaming approach in order to broaden the ranks of actors dedicated to this campaign. [hrt](#)

In Latin America, women began fighting for our human rights when we organized against the dictatorial regimes of the 1970s, which were characterized by widespread disappearances, torture, and extrajudicial killings of those perceived by the state to be “leftists.” Although we did not frame our struggles from a women’s human rights perspective during this stage, our

We used the same human rights approach that was helping to free our nations from formal dictatorships to free women from dictatorships in their home.

political use of motherhood initiated our questioning of the arbitrary division between private and public spheres.

For example, the Asociación Madres de Plaza de Mayo in Argentina, instead of passively accepting their tragedy as mothers of the disappeared, used the cultural reverence for motherhood and their own “mother’s love” (two things considered to be private, natural, and nonpolitical) to bring to the political arena the demand for the reappearance of their children. Later, this blurring of the two spheres led feminists to assert that violence against women in the domestic sphere should be considered a type of torture. “Madres” taught us that what happened in the private sphere was also political. This made us realize that we could use the same human rights approach that was helping to free our nations from formal dictatorships to free women from dictatorships in their homes.

But to achieve the acceptance of women’s human rights by mainstream activists, we needed to demonstrate the sexist bias in the interpretation of each human right, as well as in the methodology and principles. This proved a difficult task because we did not want to diminish civil society’s recognition of human rights as a useful framework for our people’s liberation. But we needed to demonstrate

that women’s rights were also human rights and that many of the atrocities that happened to us—though they happened in different places and were committed by different perpetrators—should also be considered human rights violations.

A very important step toward the coalescence of this concept was the creation, in 1989, of the Women’s Human Rights Project under the Commission for the Defense of Human Rights in Central America, a Central American NGO that coordinated many national human rights NGOs. This Project became involved in the defense of a Costa Rican accused of killing her Belizean husband and facing the death penalty. A delegation from this program went to Belize to defend her on the grounds that she had been a victim of domestic violence for seven years. In the words of María Suárez, the Project’s founder and director:

After talking with the groups of women, with [the accused woman’s] church, with the human rights groups, with her lawyer, with the district attorney and with her family; after studying the laws of Belize and Costa Rica, we recognized the limits of the human rights framework and of civil and criminal law, since none of them considered domestic violence a problem, much less a crime or a human rights violation.

In spite of this, the Commission’s delegation decided to pursue a strategy linking human rights with violence against women. This case never went to trial but received international attention, since the defendant faced the death penalty if convicted, and it was the beginning of our success: the prosecutor justified to the media the dismissal of the case on the grounds that the accused was a victim of human rights violations!

The success of this strategy prompted women to reconsider their opposition to linking women’s and human rights on

the grounds that human rights diluted the feminist content of women’s rights. It showed the importance of using the principles, theory, and practice of human rights to defend ourselves from abuses that in those days were not considered human rights violations per se. Although many women and feminist NGOs were linking gender violence and women’s legal rights, neither of these two subjects had been dealt with under a human rights framework.

With these successes, an important seed for international change was planted that contributed to the acceptance, at the international level, of domestic violence as a human rights violation. In December 1992, during the regional preparations for the 1993 World Conference on Human Rights in Vienna, our satellite NGO meeting, “La Nuestra,” was the first of many organized by women. With delegates from all Latin American and Caribbean Spanish-speaking countries and Haiti, the meeting approved 24 petitions linking women’s rights to human rights. These were later incorporated into the global petitions from women presented to the Vienna conference.

In the decade since the Vienna conference, it is gratifying to see that a mainstream organization like OMCT has taken up the challenge of using the Convention against Torture to combat violence against women, since this is one important strategy when dealing with issues that affect only or primarily women: the mainstreaming of gender into existing mechanisms, instruments, and programs to broaden the understanding of torture so that it can apply to acts occurring in the privacy of the home. But we also need to develop new mechanisms, instruments, and programs that include women’s needs explicitly. And we need to understand violence against women as a form of discrimination, growing from the lack of equality between men and women, and therefore as a women’s issue for which CEDAW, too, can be a useful tool.

Combating FGM in Kenya's Refugee Camps

June Munala

Female genital mutilation (FGM) is a harmful traditional practice that is prevalent in a number of African countries. Eradicating this practice in refugee camps is particularly challenging because of the diverse backgrounds and cultures represented in the camps. Kenya's Dadaab refugee camps, which house about 132,000 people, were formed in 1991 as refugees fled the civil war in Somalia. While the majority of the refugees are Somalis, the camps also house Sudanese, Ethiopians, Eritreans,

and Ugandans, Burundians, and Congolese. In our work through the Sexual and Gender-Based Violence program of the UN High Commissioner for Refugees (UNHCR) to combat FGM, we target all communities that practice female circumcision in the camps, irrespective of the form of mutilation.

People in the camps claim to practice FGM for a variety of reasons: it is a religious obligation and a tradition; it is believed to ensure virginity until marriage; it gives sexual pleasure to men and enhances their manhood; and it controls

the sexual desires of women and girls. Others feel that their daughters would not be accepted by society if they did not undergo the process. As one refugee woman told us, "The practice adds to a family's honor and prestige in the community. Who would not want to bring honor to her family?"

The Sexual and Gender-Based Violence program at the Dadaab refugee camps began its work in 1993 with an emphasis on preventing rape within the camps. By 2000 the program expanded its focus to other forms of violence, particularly harmful cultural practices such as FGM. Our program represents a collaborative effort between local and international NGOs and the host government, and is comprised of representatives from various local and international organizations who have grassroots influence and understanding of the situation.

While laws preventing FGM are valu-

able for underpinning education efforts and giving credibility to those working to eradicate a harmful practice, criminalizing those who practice FGM can inhibit discussions on the issue and lead those involved to go underground as they seek alternative means of continuing the practice. In light of this, we choose instead to focus on changing people's perceptions of the practice—particularly through emphasizing people's right to health within a larger human rights framework.

We find that using a human rights approach is helpful because most of the refugees have already been exposed to human rights messages through the UNHCR Protection Unit's mass information campaigns on human rights issues affecting the refugees. Because people are aware of their basic rights and needs, it is therefore relatively easy to address FGM in the context of human, women's, and children's rights. More significantly, a human rights perspective sets FGM in the context of women's social and economic powerlessness. Recognizing that civil, political, social, economic, and cultural rights are indivisible and interdependent is a crucial starting point for addressing the range of underlying factors behind the perpetuation of this practice.

Although Kenyan national law—which has jurisdiction over all Dadaab refugees—bans the practice of FGM under the 2002 Children's Act, we discovered that relying too much on law can backfire. For instance, when the first case against FGM was prosecuted in the camps in August 2002, the refugees and local community held demonstrations claiming that their right to practice their culture and religion was being violated. As some said, "Now the international community and the government do not have any work to do. They are too idle, that is why they want to engage in such petty activities." Not only did the legal approach cause



Girls in a Dadaab refugee camp received uniforms as an incentive to attend school.

Ugandans, Burundians, and Congolese.

The predominant type of FGM practiced among the refugees (mostly within the Somali community) is pharaonic circumcision—this involves the complete removal of the clitoris and consequent closing up of the vaginal opening, leaving a small passage for urine and menses. Most of the girls circumcised are very young, between six and twelve. Other members of the refugee community practice the sunna, which is a milder form of the practice and involves the pricking, or slight cutting off, of the tip of the cli-

Photo by Anne Costello

resentment, it also led many people to find ways simply to avoid the law. For example, during an exercise involving the resettlement of Somali Bantu refugees to the United States shortly after this case was prosecuted, many took to circumcising their daughters, some as young as one and a half, in the camps once they were informed that this is a criminal offense in the country of resettlement.

The strategy that has worked best as a primary tactic is emphasizing the right to health. When we focus on the health implications of the operation, refugees become more receptive, because they are able to relate this to the health problems that are commonly referred to at the health centers in the camps, which are run by a UNHCR partner organization. Many are aware of their right to attain the highest standards of health and recognize the health risks to which female circumcision exposes women and girls.

When we explain that the chronic infections, intermittent bleeding, and abscesses resulting from clitoridectomy and excision cause discomfort and extreme pain, residents of the camp begin to understand how this practice violates their daughters' right to health. First, sexual intercourse can take place only after gradual and painful dilation of the opening, and in some cases cutting is necessary before intercourse can take

place. This has slowly been accepted by some sections of the community, particularly those who are strong adherents to their culture.

Whether emphasizing the health or religious aspects of FGM, our philosophy has been to involve all groups in society—mothers, girls, traditional birth attendants, men, health workers, religious leaders, and, in some cases, circumcisers themselves. We lead small group meetings, which are conducive to open and frank discussions since most of the participants feel free to discuss these issues without fear of provoking the wrath of the community. This strategy builds on the presumption that by convincing a few people that this practice is harmful, it will be easier to reach out to the rest of the community. In our discussions with circumcisers, for instance, we are aware of the need to provide alternative forms of income. As one FGM practitioner told



Women sewing at one of the vocational centers run by the organization CARE in the Dadaab camps.

empowers girls and women to understand and appreciate their bodies and value themselves, enabling them to make informed decisions about their own lives. Therefore, we support all initiatives to promote girls' education.

The fight against FGM in a refugee situation is a unique aspect of UNHCR's work. Our Sexual and Gender-Based Violence program is, by its very existence, somewhat subversive in that its intent is to influence change in long-standing cultural and societal norms that perpetuate the disempowerment and oppression of females. We seek to empower women and engage men in pro-

A human rights perspective sets FGM in the context of women's social and economic powerlessness.

place. In addition, FGM increases the risk of HIV transmission during intercourse. It can also cause complications during childbirth, when existing scar tissue on excised women may tear. In many cases, infibulated women have to be cut to allow the baby to emerge; after giving birth, they are often reinfibulated to make them "tight" for their husbands.

While we emphasize that FGM violates human rights standards, our campaign recognizes that those practicing FGM believe in its importance, and that any changes in a community's culture occur over a long period of time. In this light, we have tried to engage the community to move away from the worst form of circumcision to the less severe

us, "I commanded a lot of respect, more than even the religious leaders. But now that you want me to stop this, what will happen to my status in the society? Where will I earn my little money for survival?" It is also important to work with men because they exert a lot of influence in the community. If we could change the thinking of the majority of men in the camps, this would be a crucial step toward changing attitudes toward the practice in general.

In the long run, however, we believe that the key to ending this harmful practice is to increase women's empowerment. The incidence of harmful practices such as FGM decreases with higher rates of female literacy, since education

moting gender equity to reduce some of these harmful traditional practices. This is a sensitive and complex undertaking that has to be carefully planned, especially when working with traditional cultures such as those represented in the camps, among people who are trying to retain the few cultural values they have left in a foreign land. [hrd](#)

For two different perspectives on combating FGM, see "Ending Female Genital Mutilation without Human Rights: Two Approaches" by Melron Nicol-Wilson and Nadia Wassef in the women's rights issue of *Human Rights Dialogue*, available online at www.carnegiecouncil.org/viewMedia.php/prmTemplateID/8/prmID/631.

Contrary to cultural beliefs that FGM brings honor to a woman or girl's family, FGM is one of the most dehumanizing acts of violence against women. It is often performed on young girls who lack the capacity and means to contest such a practice, which makes it even more degrading. Looking at the excuses advanced to justify its performance on innocent children, one cannot fail to notice the systematic manner in which it is used as a tool of power and control, from childhood through womanhood.

As June Munala explains, people advance various justifications to defend the practice: "It is believed to ensure virginity until marriage; it gives sexual pleasure to men and enhances their manhood; and it controls the sexual desires of women and girls." Such explanations clearly reveal FGM as a practice that benefits men while punishing women and girls.

While any effort to combat FGM is commendable, my experience working on this issue with COVAW, a Kenyan organization that works toward the elimination of all forms of violence against women through promoting women's human rights, has shown that no single strategy is successful on its own. Munala correctly argues that there has to be a multidisciplinary approach to the problem. But by focusing on the right to health as the most effective means for eradicating FGM, she underemphasizes perhaps the most crucial component of the struggle—the adoption of a strategy well grounded within a women's human rights framework. Those who choose to use the human rights framework must also be alive to the reality that the traditional human rights framework has consistently failed to incorporate women's experiences.

Despite the sensitivity of the issue of FGM, it is important that activists in this area define the principles or rules of engagement with the communities. Whereas some organizations, such as UNHCR, opt for a more subtle approach in order not to be seen as rock-

ing the boat, it is critical to be able to name the problem to the communities. Besides describing FGM as a violation of the right to health, it is important to define it as a violation of the right to be free from gender discrimination, the right to life and to freedom from torture including the inherent dignity of the person, the right to liberty and security of the person, and the right to privacy.

Laws serve as the much-needed
"shock therapy" treatment
for awakening communities.

Only by acknowledging that the subjection of women and girls to FGM is an act of control and gender discrimination that compromises the enjoyment of their fundamental rights and freedoms can communities begin to recognize and deal with FGM as a serious violation of human rights that requires redress.

This is where the law is important, both as a regulatory mechanism and a deterrent. Munala argues that emphasizing the law is not an effective strategy because it can be punitive and can drive the practice underground in the short term. In COVAW's work, however, we have found that repeated application of the law can, in the long run, gain acceptability as a method for addressing the problem. Legislating against FGM helps to communicate the unacceptability of the practice as well as to secure women's rights within a legal framework and provide an option for redress.

A case in point is that of two girls in one community in Kenya who sought legal redress against their father for attempting to subject them to FGM. They obtained a perpetual injunction that barred the father from ever subjecting them to the cut. Although the girls were initially ostracized by the community, they have since been reintegrated into the family and their community, where they have continued their crusade against FGM. While initial reactions of protest in

the community are to be expected, laws serve as the much-needed "shock therapy treatment" that can awaken communities to the reality that such practices are a violation of fundamental rights.

It is interesting to note the response of the refugee communities after the first case was prosecuted in the Dadaab camps: they accused the government and the international community of engaging in "petty activities." Their attitude is that they should be left alone to continue violating women's and girls' rights without interference from the outside. The fact that while in

the camps men expect protection from the government and the United Nations yet have a problem when that protection is extended to women and children points to a serious lack of appreciation of women's rights as human rights. Continued prosecution can therefore provide a much-needed jurisprudential basis for the development of the law in the area of FGM and can help to reinforce the message that FGM is neither trivial nor petty.

Another strategy that has proved helpful in combination with application of the law is the alternative rite of passage. It is based on the premise that one of the positive aspects of the ceremony of FGM is educating the girls about the reproductive changes occurring in their adolescence and how to cope with those changes. The alternative rite therefore seeks to carry on the educative aspects of the practice without resorting to removing a part of the reproductive organs of the girls and women. It would be interesting to see how such an approach within the refugee camps would work as one of the strategies to combat FGM.

Given the complexity of the problem of FGM, Munala is right that adopting a multidimensional strategy is key. But above all else, those working to combat the practice must emphasize—without hesitation—the fact that FGM is a violation of women's and girls' rights and that these rights must be safeguarded.

Achieving Women's Full Citizenship

Rhonda Copelon

"I would like to once again prosecute the Japanese military. They damaged my body and I cannot be productive any more and I would like to have the Japanese government apologize and also pay reparations. I am an old woman and I don't know how long I will live but I will not give up until I win my victory."

—Yuan Zhu-lin of China testifying before the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery

Less than a decade ago, it was openly questioned whether rape was a war crime. Human rights and humanitarian organizations largely ignored sexual violence and the needs of its victims. The connection between sexual conquest of women and war was considered natural and inevitable, an essential engine of war, rewarding soldiers and readying them to fight again. The rape of women in prison was not considered torture but was usually noted as a lesser abuse and even excused in law as a mere personal

indiscretion, while official toleration of privately inflicted gender violence was ignored as a human rights issue. Rape was the fault of unchaste women or brushed under the rug, and thus raped women were consigned to invisibility, isolation, and shame.

These cultural attitudes and practices were reinforced by the evolution of the classification of rape in the laws of war. In the 1907 Hague Convention, rape was delicately coded as a "violation of family honor and rights," simultaneously invoking male entitlement and female chastity. Rape was thus explicitly cast as a moral offense, not a crime of violence; the fault lay with the victims, not the perpetrators. The 1949 Geneva Conventions did not name rape, but subsumed it within other offenses. Rape was specifically mentioned, along with "enforced prostitution and indecent assault," as among the "outrages against personal dignity" in the 1977 Second Geneva Protocol relating to noninternational armed conflict. With rare exceptions, impunity for rape was the rule of the day.

Courageous and concerted actions of women around the world forced a sea change in international law, culminating in the recognition of gender violence as a human rights concern and in its codification as among the gravest international crimes in the Rome Statute of the International Criminal Court (ICC). In the early 1990s, Korean former "comfort women" broke fifty years of silence to expose Japan's systemization of military sexual slavery during the Second World War. Soon thereafter, for example, survivors, committed journalists, and feminist human rights advocates forced the story of the rape of women in the former Yugoslavia into the media and into international consciousness; and Haitian women, working underground, organized to document the rape of women under the illegal Cedras regime. A growing women's human rights movement and reports by human rights groups demanded recognition of the crime of rape and discredited the notion that women wouldn't talk about it. In a series of United Nations



The activism of former "comfort women" in the 1990s paved the way for official recognition of rape as a war crime. Left: Lola Fedencia, a survivor from the Philippines. Right: Hwang Keum Ju, a survivor from Korea.

Left: Photo courtesy of Lolal Kampanyera. Right: Daisil Kim-Gibson

conferences and other forums, survivors and activists from around the globe challenged the exclusion of gender violence and women's human rights from the human rights agenda.

The turning point was the 1993 World Conference on Human Rights in Vienna, which prioritized violence against women and gender mainstreaming throughout the human rights system. Responding to women's demands, the International Criminal Tribunal for the former Yugoslavia began to prosecute rape and sexual violence as war crimes and crimes against humanity, including as torture and enslavement, while the International Criminal Tribunal for Rwanda prosecuted rape as genocide.

These developments laid the foundation for the gender provisions of the Rome Statute of the ICC, which creates the world's first permanent criminal court with jurisdiction over genocide, war crimes, and crimes against humanity and provides for future jurisdiction over the crime of aggression. As a result of the interventions and organizing of women's human rights activists and allies, largely through the vehicle of the Women's Caucus for Gender Justice, the Rome Statute is a landmark in the struggle for gender justice, codifying a broad range of sexual and gender crimes as well as structures and procedures necessary to make gender justice a reality.

The Rome Statute names a broad range of sexual and reproductive violence crimes—rape, sexual slavery including trafficking, forced pregnancy, enforced prostitution, enforced sterilization, and other serious sexual violence—as among the gravest crimes of war. These are also “crimes against humanity” when committed as part of a widespread or systematic attack on a civilian population, in times of peace as well as war, and by nonstate actors as well as officials. In addition, crimes against humanity include persecution based on gender. The Rome Statute's overarching principle against gender discrimination also protects against the ghettoization and trivialization of sexual and gender crimes and encourages their prosecution, where appropriate, as traditional crimes such as genocide, torture, enslavement, and inhuman treatment.

The adoption of gender crimes

withstood virulent opposition from the Vatican, which has the privileges but not the responsibilities of a state in the UN, and some Arab states. Opponents correctly perceived that crimes against humanity apply not only to rape in war but also to widespread or systemic sexual and gender crimes in everyday life. Thus, eleven Arab states sought explicitly to immunize rape, sexual slavery, and other sexual violence when committed in the family or as part of religion, tradition, or culture. In addition, the United States urged that slavery be confined to commercial exchange and sought more generally to immunize tolerance of these crimes from criminal responsibility.

Furthermore, after intense negotiations, “gender” was defined to include the social construction of male and female roles and identities, in opposition to efforts to define gender biologically and thereby exclude persecution against gender nonconformists, whether they be single women or transgendered people. Though some compromises were made, the fundamentalist positions were largely rejected, leaving the final word to the ICC judges in accordance with the principle against gender discrimination.

The Rome Statute also encompasses groundbreaking structures and processes to ensure that crimes will be prosecuted in a nondiscriminatory, respectful manner that minimizes the potential for retraumatization and overcomes women's reluctance to participate. Court personnel at every level must reflect a fair or equal representation of women and include experts on violence against women. As a result, seven women were elected to the first ICC bench of eighteen judges.

Investigations and trials contain safeguards that protect the safety and privacy of victims and enhance their role in the process. Evidentiary rules minimize some of the worst traditional features of rape trials, including distrust of women's testimony and humiliation through cross-examination about consent or their sexual histories. In addition, the statute anticipates the active participation of victims before the court and responds to the disconnect between punishment of perpetrators and the needs of victims by recognizing a role for the court in ensuring reparations.

Significantly, the ICC treaty should also affect domestic laws. It is not only the blueprint for the court; it reflects accepted minimal international norms for the operation of a justice system worldwide. The principle of complementarity encourages states to adopt its provisions as local law in order to retain the right to try national offenders. The ICC thereby powerfully supports women's domestic law reform efforts.

But will the ICC help to transform the legal and cultural acceptance of sexual violence? If the ICC survives the current assault by the Bush administration and implements its gender-inclusive mandate, it is possible that it will make a global difference. If its norms become accepted as military and domestic law, sexual violence will no longer be exempt from punishment and hopefully will become less tolerated legally as well as culturally. The survival of the court and of its norms is crucial to legitimating norms of gender justice and shifting both blame and shame from victim to perpetrator. Most importantly, perhaps, the court will contribute to the process of empowering women to say “no” to the shame that society has demanded and will increase the possibility of reparations and participation in peacebuilding. All this requires committed and knowledgeable judicial personnel as well as persistent monitoring and engagement by NGOs at every level.

Women's myriad campaigns around the world, including the continuing struggle for justice by the “comfort women,” make clear that women's sexual autonomy and gender-inclusive justice are critical components of women's full citizenship. But formal justice alone will not eliminate these crimes, nor ensure women's empowerment, nor address the roots of militarism. Rape and sexual violence are products of long-standing male entitlement to control and abuse of the bodies and lives of women and perpetuate women's economic, political, cultural, sexual, and psychological subordination. Gender norms and accountability must, therefore, be part of a larger human rights mobilization for full equality, human rights, and empowerment of women as well as for peace, economic justice, and security. The Rome Statute is a watershed and the ICC a fragile, partial, yet crucial opportunity. [hrd](#)

Working within Nigeria's Sharia Courts

An Interview with Ayesha Imam

Until 1999, Muslim laws in Nigeria applied primarily to civil matters. Since the end of military rule in 1999, twelve of Nigeria's thirty-six states have extended Muslim, or Sharia, laws to criminal matters. The implementation of Sharia penal codes has raised a number of concerns among human rights and women's rights activists inside and outside Nigeria who argue that these laws adversely affect women. Human Rights Dialogue spoke with Ayesha Imam about the work of the Nigerian organization BAOBAB for Women's Human Rights in protecting women's rights in Nigeria within the context of Sharia law.

Dialogue: Could you tell us a bit about the law, especially Sharia law, in Nigeria?

Imam: Nigeria has three operating legal systems. The first is general law, a combination of British colonial law and acts or decrees that have been passed by federal government or states or military regimes since 1960. Next are customary laws, a variety of different laws of different peoples that are not in their pristine forms but were changed during the colonial process, often becoming less favorable to women's rights. The third system is Muslim laws, referred to also as Islamic laws, or Sharia laws. Until 1999, customary and Muslim laws had been restricted largely to family and personal status law—marriage, divorce, child custody, inheritance. In principle, Nigerians had the choice of abiding by general, customary, or Muslim laws. So there have always been parallel legal systems, with some confusion about which law takes precedence over what and when.

Dialogue: How does this system affect Nigerian women?

Imam: Starting in 1999, a number of states in Nigeria began passing a series



Northern Nigeria, where many states have extended the reach of religious law.

of Sharia acts, which had the objective of extending Muslim laws. In particular they passed Sharia criminal codes, which created new offenses and mandated new punishments for existing offenses. Consequently, criminal law came to include punishments like stoning or amputation, and the implementation of these laws clearly discriminates against women, although the legal texts are gender neutral.

Consider adultery: of the four Sunni schools of Muslim laws, only among Maliki adherents—but not all of them—is extramarital pregnancy in itself sufficient evidence of adultery. Hence, a minority opinion in Sharia laws is being enforced in Nigeria,¹ and women are being held to a different standard of evidence in having to prove their innocence instead of the state proving their guilt. In defense of this patent unfairness, Islamist conservatives have tried to argue

that stoning to death for adultery is divine punishment. That's not true: the Qur'an does not mention stoning for adultery. Indeed, the Qur'an has a verse that refers to adulterous women and men marrying each other—clearly impossible if they were dead!

Dialogue: How was the extension of Sharia law originally accepted in society?

Imam: The immediate context that allowed for the extension of Sharia laws came predominantly as a result of the religious and ethnic resurgences in response to the failures of the independence and nationalist promises, and from a cynical disillusionment with both the political arena and the existing judicial system as corrupt and self-serving. Nigerians also felt uncertainties and difficulties related to the poverty and social problems caused or exacerbated by World Bank structural adjustment pro-

Photo by David France

grams. Identity politics—the use of ethnicity or religion to mobilize some populations and exclude others—which was institutionalized during British colonial rule and continued to be reproduced in postindependence Nigeria, thus took on some qualitatively new features, including laws that were enacted specifically because they were religious.

Ironically, the new laws were not the result of pressure from the religious right but came from the new governor of Zamfara State, who was faced with a small and recently created state with little infrastructure, few natural resources, and few formally educated people. He needed some way to make himself popular—and that was to claim to undertake “Sharianization.” The governors of eleven other states (most but not all Muslim-majority states) either followed suit or were pushed into passing similar acts for fear of being seen as “anti-Sharia.”

Dialogue: In your work, do you have problems with vigilante groups and their influence on the Sharia courts?

Imam: Yes, the *hizbah*, vigilante groups of the religious right. These are the “muscle” elements that enforce the new laws. *Hizbah* are generally made up of young men who have no jobs, no prospects, and not very much education. Clearly they enjoy power and authority by becoming part of the *hizbah* and monitoring people and imposing their views of morality and behavior on others. Police are not by and large the ones initiating prosecutions; in many cases the *hizbah* groups are forcing the police into it, and then packing the courts in intimidating ways.

Dialogue: Have these groups particularly targeted issues that involve women?

Imam: Yes, because women are easy targets. As in most societies, the double standard makes women more responsible for morality than men, and they have not been politically organized to effectively defend their interests as women.

We worry about this increasing mobilization of identity politics and the closure of options in the legal system because the trend in Muslim family laws has been positive (although there are still too many

conservative or venal judges). The courts have increasingly recognized women’s rights in Muslim family laws over the last twenty to thirty years. We fear that this will be reversed in the current climate of religious right conservatism.

Dialogue: What are some examples of this positive trend within Sharia courts?

Imam: There has been progress in many areas of women’s rights. In inheritance, especially of land, women’s entitlements had often been ignored by their families but are upheld in Sharia courts. Sharia courts have also been upholding rights of women to choose husbands and divorce independently, of girls to refuse forced early marriages, of widows and divorcées to have custody of their children and their children’s property.

Dialogue: Why do you feel it is important to work within the Sharia courts rather than criticizing them from the outside?

Imam: If we only criticize from the outside, it doesn’t do anything for the victim of the charge. If we go to court and win an appeal, it demonstrates that the victim should never have been charged. We have to critique both externally and internally. We must establish that even when abuses are perpetrated in the name of Islam, they can and must be challenged.

However, if we simply pressure for

Patriarchal understandings have resulted in laws or practices that are biased against women, and for that matter, against the poor.

pardons, that is ineffective politically. A pardon says, “Yes, you committed the offence but we are very kindly not punishing you.” Furthermore, if a pardon seems to be the result of external pressure, it may produce a backlash against the local culture of respect for human rights.

If people don’t recognize rights at an everyday level, then international rights treaties and covenants are dead letters. People must say, “That’s our right and we are going to do something to get it.” When we win appeals, it strengthens the hands of the local women’s and human rights activists and encourages victims to

be less powerless in the face of the state and the religious right.

Dialogue: In your work with victims and their families, what discourse do you rely on? We know you draw on religion, but are you using a human rights framework as well?

Imam: Yes, we draw on religion a lot, but we refer to a point often contested by the religious right: Muslim laws are social constructions. These laws are not divinely revealed; very often, patriarchal interpretations have resulted in laws or practices that are biased against women, and for that matter, against the poor. We remind people of Qur’anic verses like “Women and men are protecting friends one of the other” (9:71). We point out that women—50 percent of the Muslim community—must also participate in the construction of Muslim laws.

We also assert the right to invoke international human rights law and national Nigerian law to protect rights. Although international human rights language grew from European intellectual history, Muslim nations and states did help to craft it. This is particularly true of international reproductive and sexual rights and women’s rights more generally. We insist on being able to reclaim and contribute to international human rights discourse rather than

allowing it to be seen as only western.

Dialogue: How are you trying to create a culture of women’s rights awareness in Nigeria?

Imam: BAOBAB trains volunteer outreach teams that jointly organize campaigns and community programs, develop legal literacy materials, and run paralegal trainings so people become aware of women’s rights, whether in Muslim, secular, or customary laws or in international human rights conventions. We focus not simply on the legal texts, but on ways in which



Nigeria's women: can Sharia law be implemented fairly?

people can actualize rights acknowledged in them.

We also focus on critiquing law, since the rights acknowledged in laws may not be sufficient to defend and promote human and women's rights. We call it legal consciousness rather than legal awareness so we can discuss how to work toward changing laws where they need to be changed.

Dialogue: Your work seems very focused on the local level. Do you see a role for international human rights organizations in this struggle?

Imam: I'm sure you are familiar with the case of Amina Lawal, who has been sentenced to stoning for adultery—her case is now under appeal.² There were, and are, numerous international protests and letter-writing campaigns on Ms. Lawal's case that have been based on the inaccurate information that her appeal failed. The senders of the petition refuse to recognize that inaccurate petitions, especially those using inflammatory language, can result in further overreaction and backlash from the religious right and vigilantes in Nigeria. They might then take direct action instead of waiting for a resolution through the legal process. This is a real and immediate physical as well as psychological threat to Ms. Lawal and to her lawyers, as well as the human and

women's rights activists supporting her.

International campaigns are often helpful tools, but there is a right place and time for them. In cases like this, where victims have chosen representation and have considerable local support, international human rights organizations need to support and strengthen the situation of the person whose rights have been abused.

It should be noted that Amnesty International's International Secretariat in London and its USA offices have been cooperating with us to stop these inaccurate petitions. They have stated publicly that they did not initiate or endorse the petitions, and they support the local groups in Nigeria working on Ms. Lawal's behalf. Yet other international groups, like Women Living Under Muslim Laws, have always worked in consultation with us. The principle has to be effectiveness, reciprocity, and respect.

Dialogue: Tell us a bit more about your legal strategy in the Amina Lawal case—have you chosen to appeal to international human rights?

Imam: Amina's appeal is couched first in terms of Muslim laws, with the argument that due process has not been followed in Muslim laws, and second, in terms of Nigerian secular law, saying, again, that constitutional rights have

not been followed in issues of evidence and representation. Currently, we are not making appeals to international human rights.

Dialogue: Why is that?

Imam: Well, at the moment there is no need. In all the cases where we have won appeals, we have not needed it. Not a single case we have brought has been lost; higher Sharia courts always quashed the conviction. We have won both on Muslim and Nigerian secular laws, but usually on Muslim laws. But if we need to use international human rights law, we will.

However, human rights are not the exclusive province of international human rights law or international human rights organizations. Human rights concepts exist in Muslim, customary, and secular laws. When we refer to human rights, we don't always have to refer specifically to international human rights conventions. We can refer to human rights found in religious or secular discourses. International human rights law is quite insufficient in many ways and still needs to be developed itself.

Developing rights discourses—from the international treaties to the local level—and ensuring their fulfillment and enforceability is an area where all organizations and activists must work together, respecting diversity while developing solidarity and common understanding of principles, not just assuming it. That would be true universalization. [hrd](#)

¹ Since this interview, the Katsina State Sharia Court of Appeal, in acquitting Amina Lawal, has held that pregnancy outside marriage is not proof of adultery.

² At the time of this interview, Lawal's case was still under appeal. On September 25, 2003, the Katsina State Sharia Court of Appeal overturned her conviction.

For further insight into the difficulties faced by human rights activists in Nigeria's fragile democracy, see Ivana Vuco's article, "Taking the Reconciliatory Route," in the peace work issue of *Human Rights Dialogue*, available online at www.carnegiecouncil.org/viewMedia.php/prmTemplateID/8/

Small Victories, but the War Rages On

Uché U. Ewelukwa Responds

I admire the work that Ayesha Imam, BAOBAB, and other local women's groups in Nigeria are doing to ensure that Amina Lawal and other women who have death sentences hanging over their heads are freed. Furthermore, I agree with Imam that local organizations must take the lead role in the struggle for women's rights, despite the fact that international human rights organizations can play a very useful role. However, the fact that local groups play a lead role does not mean that their strategies are immune to criticism. Local and international strategies should be scrutinized for their overall effectiveness in improving the lot of all women and creating a culture of respect for human rights.

Imam's comment that "not a single case we have brought has been lost; higher Sharia courts always quashed the conviction" is well taken; women's organizations at the forefront of the struggle must be congratulated. Yet the cases that have been won are by and large unhelpful to the vast majority of women who still live under imminent threat of the Sharia legal system. The fact that the cases are rarely won on their own merits and convictions are frequently overturned only on technicalities is not a cause for celebration. Although the recent decision of the Sharia Court of Appeal of Katsina State to quash Ms. Lawal's death sentence is welcome, it is important to note that the decision had no connection to any legal precedents and was limited to the specific facts of Ms. Lawal's case. The battle was won, but the real war rages on.

Imam's faith in progressive interpretation of Sharia law is admirable, but I question the basis for her belief. Imam believes that to defend the rights of women like Ms. Lawal, organizations like hers should work mainly within the Sharia framework rather than draw on international human rights instruments or the Nigerian Constitution. She believes that more progressive and liberal interpretations of Sharia law are possible and that human rights concepts exist in Muslim laws. Although BAOBAB asserts a right to call

on international human rights law to protect rights, it has chosen not to because it claims it has not needed to do so.

Experts in Sharia law readily acknowledge that there is little scope for variation of interpretation in the application of Nigeria's Sharia law. The reason is obvious: Nigerian courts follow the Maliki interpretation, notwithstanding the variety of choices of interpretation within Sharia law. The Sharia penal codes are an attempted codification of the Maliki school of thought. It is generally expected that gaps and lack of clarity will be remedied by reference only to the Maliki school. The result, as Muhammed Tabiu of the faculty of law at Bayero University, Kano, noted at a recent conference, is that in Nigeria "departures from the Maliki School to other interpretations are rare, although not totally unknown." He concludes that although the door for admitting other interpretations of Sharia law is not totally closed, "the provisions that require courts to adhere to the Maliki view are clearly a setback to any expectations for reform being achieved through judicial activism or reinterpretation."

Given the remote possibility of more progressive interpretation of the new Sharia penal codes, women's rights groups in Nigeria must consider challenging the constitutionality of some of the provisions of the Sharia penal legislation that are the root cause of the current crisis in northern Nigeria. That would be a better strategy than the current piecemeal attempt to achieve justice for a handful of women. As long as these laws are in force, all Muslim women in northern Nigeria, particularly the poor and uneducated, will continue to live under an imminent sentence of death. Women's rights advocates must therefore take up legal cases and advance legal arguments that can help establish useful precedents with much wider application than is currently the case. It is also important for them to acknowledge that some provisions of the new Sharia legislation clearly violate the Nigerian Constitution and international human rights law.

Nigeria is party to a host of international human rights instruments, including the International Covenant on Civil and Political Rights, the Convention against Torture, and CEDAW. Where the provisions of international human rights treaties are incorporated into Nigerian law, there may be no need to make arguments based specifically on international human rights norms. However, where Nigeria has ratified a given human rights instrument but these norms are not fully reflected in existing law, there may be a need to draw directly from the international human rights instruments.

In her discussion of international human rights law, Imam states that it is deficient in many ways. Indeed, it is true that it has been difficult to translate the normative prescriptions of international human rights instruments into practical realities for African women, due to institutional and enforcement problems in the human rights regime, as well as the secondary position allotted to social and economic rights in the human rights regime.

However, international human rights norms are nevertheless powerful weapons that local groups must use: they provide a sound moral and legal basis upon which the international community can pressure states; they allow transnational, transcultural, and transreligious moral judgments, especially in egregious situations where life and limb are seriously threatened; and they represent a rare positive and public expression of a state's voluntary undertaking of international responsibility binding on all state officials.

Strategies are not mutually exclusive, nor do the courts provide the only stage for the struggle for the realization of women's rights. In addition to the community enlightenment campaigns already being carried out by women's groups, social reform, training for judges, and basic education for girls to empower them and strengthen their position in Nigerian society must all be advanced parallel to the waging of courtroom battles if violence against women in Nigeria is to be diminished.

Using Sharia as the point of reference, as Ayesha Imam suggests, allows her organization to do two things: one, contest its interpretation, and, two, criticize its implementation as inadequate. This is now the general trend among intellectuals, lawyers, women's and human rights activists in northern Nigeria, and, indeed, in many other Muslim countries where Sharia law is enforced.

Indeed, this looks like the only course of action open to Imam and her colleagues, for they do not want to be seen, for understandable reasons, as challenging Sharia, despite the fact that they may recognize problems with it. There is no doubt that the implementation of Sharia law in northern Nigeria suffers from visible deficiencies, as Imam says, and that the internal debates

Sharia itself, even if perfectly implemented, discriminates against women and allows for acts of violence against them.

on Sharia between supporters and critics like BAOBAB in northern Nigeria are based on these deficiencies rather than the laws' punitive aspects. The underpinning assumption of this line of argument is that it is primarily the deficient implementation of Sharia law, and not Sharia itself, that discriminates against women.

Although Imam's argument is commonly made, it does not address the real issue of the challenges of applying Sharia in the twenty-first century, or the fact that Sharia does not guarantee democracy, freedom, and human rights. It also does not open the way for Nigerian Muslims to call for Sharia reform, despite the fact that such calls are now voiced in many parts of the Muslim world.

The real issue facing Muslims, whether in Nigeria or elsewhere, is that Sharia itself, even if perfectly implemented, discriminates against women and allows for acts of violence against them. The main rule of Sharia, which is

well formulated in legal terms by all schools of jurisprudence, is that man is guardian over woman. This is based on the Qur'anic verse

Men are guardians over women because God has preferred some of them [men] over others [women], and because men support women from their wealth, therefore the righteous of women are devout and guard in their husbands' absence what God would have them to guard, and those women whom you [men] fear to be disobedient, admonish them first, then reject them in bed, and finally beat them. But if they return to obedience do not seek to harass them more (4:34).

This general rule is translated in wholesale discriminative provisions in both the public and private spheres.

In this light, it is ineffective to work within the framework of Sharia to combat violence

against women. Instead, one has to appeal to a higher law. For some Muslim activists, this higher law must stem from the universal aspects of Islam. The Republican Brothers of Sudan, for example, hold that Sharia is the secondary—not the primary—intent of Islam. Therefore Sharia is mutable, and should be evolved within the Qur'an toward the primary intent of Islam, which is complete equality between men and women.

For other activists—in fact, the majority of local and regional human rights and women's rights organizations in the Muslim world—this higher law is international human rights law.

Although these activists are criticized by the religious establishment and conservative forces in their communities as “secular,” “westernized,” and “betrayers” of their culture and religion, they believe that a human rights framework acknowl-

edges rights that are absent in Sharia, such as universal equality between men and women and between Muslims and non-Muslims. Given that these activists' respective governments are signatories to a number of human rights instruments, appealing to international human rights law can help to hold their governments accountable for human rights violations such as discrimination against women, which they cannot do under Sharia.

Furthermore, activists' steadfastness in using human rights discourse has helped to influence the religious discourse to make accommodations for human rights. To give just one example, Sheikh Abul Al-Mawdudi, the founder of the conservative group Jama'ati Islami in Pakistan, authored a booklet titled *Human Rights in Islam* as a direct response to the criticism that Pakistani human rights activists mounted against his movement. Although such developments do not wholly embrace the ideals of the international human rights movement, they provide evidence that Islamists are beginning to heed the human rights movement in the Islamic world and the international framework upon which it is based.

By not focusing on either of these approaches—appealing to the universal aspects of Islam or to international human rights law—it appears that Imam's options are limited. Working within Sharia can be effective only in challenging a certain type of court case—those grossly mishandled by the courts, not those in which adequate procedures were followed. These latter cases

One has to appeal to a higher law. For some Muslim activists, this higher law must stem from the universal aspects of Islam.

can be challenged only by recourse to international human rights instruments and the Federal Constitution of Nigeria. Challenging such cases within the framework of Sharia is akin to institutionalizing discrimination.

Impunity and Women's Rights in Ciudad Juárez

Lydia Alpízar



Not long after 15-year-old Liliana Holguin's body was found, this is the new person to look for: María Elena Chávez Caldera, 15. She worked on the second shift of the ADC International maquiladora.

Since 1993, about 370 women have been brutally killed, and several hundreds more have disappeared, in the U.S.–Mexico border city of Ciudad Juárez, in the state of Chihuahua. To date, only one person—charged with only one of the crimes—has been sentenced. The victims are young women, generally under 29 years old. They are mostly poor, often workers in the maquiladoras (assembly factories), and live in the marginalized areas of the city.

Most of the victims suffer torture, mutilation, and sexual violence before being killed. Others are killed as a result of domestic violence or disputes with their partners. Drug trafficking and organized crime have also been related to the killings. Although different initiatives have been carried out by local, state, national, and international women's movements and families of the killed women, the murders and disappearances continue.

The women's killings in Ciudad Juárez began in the late 1980s and

increased significantly in 1993. Since then, the total number of murders has been increasing monthly. Despite the systematic nature of these killings, authorities did not begin investigating until 1995, when they captured a man whom they continue to call the “serial killer” of the women. But the killings have continued, even spreading to near-

by cities: in 1999 disappearances were reported in the state capital, Chihuahua City, four hours away from Juárez. By 2003, several women had been killed in that city, in much the same way as they had been in Juárez.

Violence against women is legitimized in Mexican society because, like other patriarchal societies, it devalues women, and the loss in particular of

marginalized women often carries no political cost. The killings in Juárez are the product of a complex set of dynamics, and a number of characteristics of the city explain why Juárez presents the perfect environment for gender-based violence. The impact of free trade policies and the ensuing population growth have weakened the city's social fabric. Jobs in the maquiladoras are characterized by poor working conditions, low salaries, and rampant labor rights violations. Juárez's geographic location as a border city makes it an important point for the trafficking of immigrants and drugs. In addition, judicial and government institutions are often corrupt and infiltrated by interests representing the drug trade. These factors add up to a city with one of the highest levels of criminality in Mexico, with little sense of local identity or community.

Also, for many years the maquiladoras employed mostly women, which meant that women occupied the traditional “masculine role” as breadwinners. The changes in gender roles prompted by women's entry into the labor market as maquiladora workers had an impact on gender relations and thus on increas-

Human rights have been central
in our efforts to highlight the
responsibility of the Mexican state.

ing gender violence. Furthermore, authorities do not demand and ensure that foreign investors respect basic labor rights—as has been documented in several cases brought to the International Labor Organization and the North American Agreement on Labor Cooperation—thus allowing violations that discriminate against workers, particularly women. In most cases, abuses

in the maquiladoras are not punished, adding another dimension to the existing culture of impunity.

Women's organizations and victims' families mobilized almost immediately following the escalation of violence in the 1990s. The organization for which I formerly worked, Elige Youth Network for Reproductive and Sexual Rights, became involved in 2000 because we were outraged by the record of impunity and also by the fact that the victims were so young. Involved organizations, together with the victims' relatives, began pressuring state-level authorities to take concrete measures to stop the killings. Yet the response of local authorities was to blame the victims' "questionable moral behavior" or dismiss them as "prostitutes."

In 2001, as the killings escalated, women's rights organizations joined with mainstream human rights organizations and unions to launch the campaign "Stop Impunity: No More Murders of Women." We wanted to unveil the existing discrimination in traditional human rights work and emphasize women's empowerment. In Mexico, where the transition to democracy is an ongoing process and the human rights debate has focused on civil and political rights, women's rights remain marginal on the national agenda, in spite of such extreme cases as the systematic murders in Juárez.

The campaign had one particular target in mind: the Inter-American Commission on Human Rights (IACHR), the regional human rights body. In the area of women's rights, the IACHR provides follow-up and advocates for the enforcement of some very progressive instruments, particularly the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (also known as the *Convención de Belem do Pará*); its track record of regional governments' fulfillment of its recommendations has been quite good. In addition, we thought that the presentation of the killings as a paradigmatic case of gender violence could help pave the way for future cases of women's rights violations within this regional Commission. Campaign strategists believed that the involvement of the Commission would pressure the Mexican

government to act effectively to stop the murders and bring justice to the pending cases, as well as hold it accountable at the regional and international levels

The Stop Impunity campaign's adoption of a human rights framework has been very useful for pressuring government authorities, raising awareness, and mobilizing support. Human rights have been central in our efforts to highlight the responsibility of the Mexican state as a whole, and to show that the state's inaction is a demonstration of sexism and discrimination. Beyond the complexity of these cases and the context itself, it is clear these people are being killed because they are women. The victims are underprivileged, they are not politically important for the

impunity becomes the rule.

One of the challenges that women's rights organizations face, however, is a lack of technical expertise in working with international human rights bodies. In Latin America, very few women's rights cases have been presented to the IACHR. As a result, only a handful of women's organizations in the region have the expertise to present a claim before the Commission effectively. Thus, working in coordination and building alliances with organizations grounded in a more traditional interpretation of human rights is necessary because they are experienced in areas in which the women's movement is a newcomer. If the IACHR would take more cases related to women's human rights, it would increase



Pink crosses mark the site where women's bodies were found in the dusty ground of a hill overlooking a shantytown in Juárez.

authorities, and their bodies are targets not only for physical violence but for sexual violence too.

Using a human rights framework and incorporating a gender perspective within our approach provides an understanding of the complexities of a social problem such as gender violence. Applying the principle of the interdependence of human rights allows the claim that not only civil rights but also the rights to work, health, development, and a life free of violence are being violated. Overall, the reality of these violations in the everyday lives of women contributes to an environment where gender violence is perpetuated and

the legitimacy and recognition of these rights within the larger mainstream human rights community and society as a whole. Likewise, if mainstream human rights organizations give greater priority to women's rights within their own agendas in collaboration with the women's movement, it will also increase the legitimacy of women's rights as human rights.

So far, we believe that, together with the actions carried out by other organizations, we have been successful in putting this issue on the agenda of both government and civil society. Public outcries over the murders have been fierce—letter-writing campaigns, marches, rallies, and the production of

plays, documentaries, and books—yet neither the federal nor state government has made serious efforts to address the violence. A new “integrated security plan” for Juárez marks a new attitude on the part of the Mexican

government. However, this plan has no assigned budget, and even though civil society would like to view this as a positive step, we are waiting to see its impact on violence against women in Chihuahua. [hrd/](#)

For more on the challenges that globalization poses for human rights advocates, see the globalization issue of *Human Rights Dialogue*, available online at www.carnegiecouncil.org/viewMedia.php/prmTemplateID/8/prmID/951.

From Ciudad Juárez to the World

Activists’ work in response to the killings of women in Ciudad Juárez illustrates both the usefulness of applying a human rights framework to violence against women and the difficulty of actually reducing the occurrence of such violence. The “Stop Impunity” campaign has helped to raise public awareness and demonstrate the failure of the authorities to exercise due diligence by not making a serious effort to protect women from these violations as well as by not effectively pursuing the violators, and thus failing to provide justice with respect to the victims and their families. A human rights approach helps to frame this as a question of impunity and accountability, and not just ineptitude.

Bringing this case before the IACHR would help women throughout the Americas who are seeking to implement the regional Convention on Violence against Women as well as to apply other human rights instruments to such crimes against women. The impact of high-level human rights attention to this issue could be similar to the breakthroughs in human rights thinking that came with the demand for government accountability for the *desaparecidos* (disappeared) during the “dirty wars” in Latin America.

Mexican activists’ efforts to direct government and mainstream human rights attention to this case are being watched by women elsewhere. Lydia Alpizar’s observation that “women’s rights remain marginal on the national agenda” of human rights is unfortunately true in most places. Further, when violence against women does get addressed, it is usually in armed conflict where the violator is from the enemy forces, or where state actors can be clearly identified as the violators, such as in the case of abuse by guards in prisons. It has been more difficult to focus human

rights attention on the most pervasive forms of violence against women—those committed in the family and the workplace, by partners or acquaintances, and violations against women involved in the sex trade. This case raises all of these issues, and more.

The Juárez killings reveal the inadequacy of distinguishing between a public and a private sphere for addressing such violence. Feminists have contended for years that the construction of the “private” sphere has often been used to mask the abuse of women, and these killings show how often the public/private line is blurred. The killings also illustrate the “intersection” of multiple oppressions—that is, the way in which the abuse of women is shaped not only by gender but also by class, race, age, and other factors. Because of their gender, class, and age, these marginalized women’s lives are seen by society as disposable, and therefore their deaths can remain invisible and unresolved.

How many more “Juarezes” around the globe have not yet been exposed? Certainly the complex conditions described here—globalization and porous national borders, poor labor standards, rapid movement of young women from “traditional” confines to “modern” exploitation that can bring sudden gender role changes, drug trafficking, a culture of impunity exacerbated by rapidly changing social conditions—can be found in many countries. We need only look at the rise of sexual exploitation and trafficking combined with unemployment, drugs, and crime in the former Soviet states to know that widespread murders and disappearances of women are not uncommon.

The connection of violence against women with other factors such as glob-

alization, economic inequality, sexuality, and culture that we see in Juárez makes finding solutions difficult. The effort to end these murders requires taking a variety of approaches to the economic, political, and social factors at work that are both empowering and disempowering women, while still not allowing governments to hide behind the complexity of the problems. While such complexities and intersections are common to issues of violence against women universally, each situation must be addressed in its distinct particularity and cultural context. Thus, issues of violence against women are both common and specific—allowing for solidarity and strategy sharing while still requiring particularized actions appropriate to the context.

The attention brought to the killings of women in Juárez is important for the human rights of women globally as well as to all human rights. This case forces advocates to address complexities that are not entirely unique to Mexico and that are often avoided by human rights advocates—from issues of sexuality and non-state actors to the intersection of economic and gender variables. The very difficulty in this case of finding ways to bring human rights accountability for violence against women illustrates one of the greatest challenges to this field. We are challenged to understand the complexity of the issues as well as to confront the depth of cultural acceptance of impunity for this violence. In addressing this issue, the human rights movement will discover that everyday impunity for violence against women feeds a culture of impunity for human rights violations in general—not only in Mexico but throughout the world. Countering this impunity can have a profoundly positive impact on the effort to build cultures of respect for human rights everywhere.

Charlotte Bunch Responds

In the Name of Honor

Leylâ Pervizat



Advocates are working to incorporate a gender perspective into human rights work in Turkey.

"You, women, stand side by side and finish this practice. This is not the first one. It will not be the last one. Allah will not forgive this; neither will the Prophet. Our hearts are aching with sadness." These words were spoken to me by a graveyard keeper as I was leaving the Diyarbakır Cemetery for the Destitute and without Family after visiting the burial site of Semse Allak last June. Semse was stoned by male family members in late November of 2002 in

Mardin, Turkey. After spending seven months in a coma, she died in June 2003. Her body was buried by a large group of women activists in an unusual religious ceremony. According to the practices of Islam in Turkey, women are not allowed to conduct the religious burial prayer—they may only stand on the sidelines and watch. However, in this case, women performed the service for Semse, a first in our memory.

Semse was a victim of so-called honor

killings. Honor killings—one of the most horrendous violations of women's human rights and a form of extrajudicial execution—target individuals who believe, or are perceived to believe, in values and standards that are at odds with the social norms of their society. Although they are a most severe form of violence, honor killings are not the only type of violence faced by women in Turkey. Women are also subject to abuses such as marital rape, female genital mutilation, nose cutting, bride price, forced marriages, polygamy, and forced virginity testing. To make matters worse, the state fails to recognize its duties and responsibilities in eradicating these forms of violence, and legitimizes them by deeming them "family problems" or "domestic situations."

Soon after Semse's burial, our project team of KA-MER, an independent women's organization in Diyarbakır, held its first open meeting, inviting representatives from the government, judiciary, media, police force, health groups, the community, and other NGOs to discuss ways of eradicating honor killings. As a women's rights activist and a feminist researcher, I am working with KA-MER to prevent honor killings in southeastern and eastern Turkey. We take a broad approach by trying to address the problem before the execution occurs, in addition to dealing with killings after they happen. We work both on the community level and with government officials to create awareness and eventually to eradicate this practice.

Unfortunately, Semse was stoned before KA-MER heard about the danger she was in and could intervene. Her case received worldwide public attention, partly because stoning—as opposed to shooting or stabbing—a woman or man in the name of honor is very rare in Turkey. Religious leaders' attitude toward honor killings is very clear: they

Photo by Rachel Wolf

denounce the practice. Similarly, activists working on the issue have never cited imams, the Qur'an, or Islam as sources of the problem in Turkey. This point was made clear to me when, during my visit in Urfa, one of the most religious and conservative cities in the country, I challenged the concept of honor killings by arguing that the Qur'an does not permit women to be treated like this. A very religious Muslim tribal leader responded, "This is honor, what has that got to do with the Qur'an? Men's honor comes before the Book." Our exchange made me realize that invoking the Qur'an is not a useful way to denounce this violence. Instead, the concepts of masculinity, culture, and tradition, which are rooted in the community, must be studied and utilized to end honor killings.

One of the obstacles that women's human rights activists face in their work is the fact that Turkey's judiciary often justifies honor killings on the grounds of tradition, culture, and assault on a family member's manhood. While the Turkish Penal Code does not have a specific clause relating to the concept of honor, courts

are the status quo. Challenging the parameters of these power dynamics is complex since they are imbedded in interpersonal relations, family, community, and culture. In short, women lack autonomy—they suffer when they assert their rights as individuals and go against established societal norms. Often women are seen as the battlegrounds for men's struggles to assert and reclaim their masculinity. Honor killings are seen as the lesser of two evils since, in some instances, they are thought to prevent feuds that could destroy the stability of the whole society. Thus, people in Semse's village claimed that her death was necessary to prevent endless violent feuding between her family and that of the man who supposedly dishonored her through extramarital sexual relations.

In order to prevent honor killings, it is crucial to redefine the concept of honor within the community. From the moment a woman or girl transgresses a norm—which she could do by losing her virginity or by calling the radio station and asking for a favorite song—until the moment she is murdered in the name of

space where their masculinity is not challenged and they do not feel forced to kill in order to cleanse their honor. To do this, and in order to help create space for long-term change, we take advantage of some of the positive aspects of Turkish culture that offer individual men an excuse to avoid violence. These include special occasions and gatherings where nonviolent negotiations are encouraged or where authority figures can act as intermediaries, in which we can make use of traditions of hospitality toward guests or respect for elderly people's recommendations as tools to prevent these crimes.

However, when we talk with government officials, we use a human rights framework because it is an effective tool for achieving official recognition that honor killings are a form of extrajudicial execution. One of our main goals is to use the UN General Assembly resolution "Working Towards the Elimination of Crimes Committed in the Name of Honor," of which Turkey is a cosponsor, within national courts to show that honor killings are not isolated incidents

People in Semse's village claimed that her death was necessary to prevent endless, violent feuding.

often cite honor as a mitigating factor in their judgments, stating that a challenge to honor causes a heavy provocation to the perpetrators of honor killings.

Another obstacle is mainstream human rights activists in Turkey who downplay the significance of the crime. For instance, a well-known human rights activist working against capital punishment once complained to me and other activists that the recent media attention devoted to honor killings was "exaggerating this women thing to the level of a human rights violation and therefore diminishing the power of human rights." For many such human rights activists, honor killings do not belong on the same level as torture, lack of freedom of expression, or extrajudicial executions.

Violence against women is legitimized by the attitudes of state actors, many mainstream human rights activists, and Turkish society at large because ultimately gender imbalances

honor, her family and the community she lives in go through a decision-making process in which they make judgments about her moral standing. When her name is out as a transgressor, her male relatives cannot walk in the village with heads high. To reclaim their manhood in the eyes of other men, they cleanse their honor by stabbing or sometimes stoning her.

Because such a concept of honor is so imbedded in Turkish culture, and cultural variables are what we try to understand, use, and hopefully transform when interfering in these cases, we do not use a human rights framework when we intervene preventively at the local level. When talking to families, a cultural discourse proves to be very effective. We believe that male family members are also victims of the concept of masculinity—they suffer throughout the decision-making process. We try to give men what I call cultural and psychological

and should be recognized as human rights violations. We also refer to the UN Commission on Human Rights resolution on extrajudicial, arbitrary, and summary executions, which Turkey has also signed. We think that using these human rights instruments offers an opportunity for women's human rights defenders to achieve official, government recognition of this issue as a human rights violation and to put violence against women on the same plane as extrajudicial executions and torture.

Semse's horrendous death brought people to their feet not only in Turkey but also around the world. In order to eradicate this atrocious crime in Turkey, activists must use all possible advocacy tools—changing society's discourse by using some of its own terms of reference, reforming the judiciary, and incorporating a gender perspective into the human rights advocacy being conducted in Turkey. [hrd](#)

Leylâ Pervizat aptly describes honor killings as a custom with no religious foundations. This ancient Mediterranean practice is wrongly associated with Islam, and consequently its persistence in a secular state like Turkey is deemed puzzling. Since the cases in Turkey are concentrated in the less-developed southeastern region, the media and urban elite consider them a symptom of residual traditionalism that resists the state's modernization efforts.

Pervasive patriarchal norms and values lie at the core of this issue. Regardless of their constitutional equality and legal position as equal citizens, culturally women are treated as dependents of, or "minors" under the custody and protection of, men. Thus, violations of women's rights by men who are responsible for them and care for them are not seen as violations or are not treated seriously.

As extrajudicial executions, honor killings undermine the rule of law, both by privatizing its legislating and enforcement and by employing a subjective, arbitrary definition of "the crime" committed by women. Thus, they constitute offenses against the state, yet the state is mute on this matter. In fact, the reduced sentences often given to perpetrators of honor killings implicitly condone the act rather than serve as deterrents.

The state also upholds the same values about the importance of "preserving honor" by introducing separate legal categories for assaults. The Turkish Penal Code defines crimes that involve sexual violence against women as "felonies against public decency and family order," while other forms of assault against the person are placed under "felonies against individuals." Within this "family-oriented" framework of the law, a rapist would be pardoned if he agreed to marry his victim. Moreover, females' virginity and the honor of married women are upheld as public values and concerns in both the penal code and the Law on Police Duty and Authority, in which minimum and

maximum sentences for sexual assaults vary according to the marital status and virginity of the victim, and the police are charged with protecting honor and chastity against "public morality and rules of modesty." (Having such a duty, however, does not prevent the police from abusing their power by sexually assaulting women in custody or threatening them with rape during interrogation sessions. At the same time, the obsession with honor and the classification of women according to their marital or virginity status allow the police to subject women in custody to the forced "virginity tests.")

Honor killings are an effort to control women's sexual behavior and restrict their sexual freedom. However, the control stemming from the desire to prevent women's immodest behavior that could bring "shame" to the family, of which killing is the most extreme example, manifests itself in many additional ways: many girls and women are subjected to confinement, intimidation, and physical abuse that force them to live in perpetual terror. Such restrictions violate a whole set of women's rights in addition to the right to life, ranging from freedom of movement to freedom from torture and the right to health.

CEDAW, ratified by Turkey in 1985, obliges states to take the necessary measures to abolish customs and practices that discriminate against women. However, the Turkish state not only fails to take measures against the custom and practice of honor killings but reinforces the same cultural norms of honor and decency that support such killings through its own legal and administrative apparatus.

Pervizat brings to our attention the unfortunate fact that some human rights activists, too, tend to ignore honor killings, or even treat the attention directed to them as a distraction from what is considered to be more serious human rights issues, such as capital punishment. Ironically, not seeing honor

killings as capital punishment stems from defining human rights narrowly as individual rights against the state and addressing human rights violations only if the perpetrator is a state official. This classical liberal understanding of human rights has been criticized by feminists for undermining women's rights, which are most likely to be violated by private citizens within the "private" domain, as well as by some human rights advocates for dismissing the interdependency of human rights.

The task ahead of women's rights advocates, in Turkey and elsewhere, seems to require a two-part struggle: first, to force the state to amend its laws and take measures to change discriminatory cultural traits, as it is obliged to do as a party to the international human rights treaties; and second, to expand human rights education and engage human rights activists in a dialogue about the interdependency and indivisibility of human rights and the counterproductive outcomes of "selective" endorsement of human rights.

Recently, efforts by feminists and human rights activists, along with the European Union's membership criteria, forced Turkey to undertake legislative reforms that address some gender discrepancies. Pursuing multiple strategies with different audiences (for example, using human rights law with state officials and a different approach with families of potential victims), KA-MER, too, seems to have achieved some results. Undeniably, fighting against discriminatory cultural norms and practices by invoking other, more egalitarian cultural traits from the same culture would be the most effective way of achieving a human rights-oriented culture. Doing so, however, calls for the utmost care, especially when hierarchical relationships are involved, because the traditional authority revived and reinforced to help women today may once again be the source of their renewed repression tomorrow.

Refusing to Go Away:

LaShawn R. Jefferson

Strategies of the Women's Rights Movement

The past decade has seen women's rights activists from every region of the world mobilize to use the international human rights system to raise awareness about and remedy the staggering levels of violence against women. Activists' most significant achievements include proving a state's failure to prevent or respond to domestic violence to be a human rights abuse; creating better fact-finding mechanisms to document violence against women; increasing the role of UN agencies in adopting and promoting strategies to combat gender-based violence; using public tribunals to create a public record of violence against women; improving state response to violence against women perpetrated by private actors; getting a range of gender-based and sexual violence in armed conflict codified as a war crime and a crime against humanity; identifying harmful traditional practices, such as female genital mutilation (FGM), as violence against girls and women; defining and criminalizing at the national level the myriad forms of violence against women; raising overall public awareness that gender-based violence is a chronic human rights abuse; and supporting the efforts of more "mainstream" human rights organizations to integrate women's human rights into their work.

One such organization is the New York-based Human Rights Watch (HRW). In 1990, HRW's first executive director, Aryeh Neier, championed the creation of a special project on women's rights and raised start-up funds for it from a group of private donors and foundations. HRW was the first mainstream human rights organization to start a special project devoted exclusively to defining and documenting women's human rights abuses. By creating the Women's Rights Project, HRW recognized the need to develop and improve its capacity and expertise on women's human rights—



The women's rights movement has come a long way.

and by so doing positioned itself to be a major leader in the field of advancing women's human rights globally.

The very first issue the newly formed Women's Rights Project tackled was violence against women in Brazil. Their report, *Criminal Injustice: Violence Against Women in Brazil*, contains the findings of their investigation into wife-murder, domestic battery, and rape—a new and highly contested area for many traditional human rights organizations. Among other issues, the report focused generally on impunity for violence against women, and in particular on the issue of the honor defense to exculpate husbands accused of killing their wives. The report was the first by a mainstream human rights organization to argue for state responsibility to combat violence against women in the home. Over the next thirteen years, the Women's Rights Project (since 1997 the Women's Rights Division) evolved into a full-fledged, integral part of HRW, undertaking path-breaking conceptualization, fact-finding,

and advocacy on a wide variety of violence and discrimination against women.

The women's rights movement put violence against women on the international human rights agenda by pushing, fighting, cajoling, stigmatizing, strategizing, coalition building, and simply being steadfast and *refusing to go away*. Women's rights activists embraced human rights instruments that had historically been used by and large to defend men's human rights and transformed them into tools to promote women's human rights.

Part of integrating violence against women into the mainstream human rights movement required the creative use of the classic human rights framework to define the violence that women were experiencing and to chart a course for government accountability. Women's rights activists interpreted existing human rights norms and laws in ways to afford women greater protection from violence. They used existing international human rights norms—on, among other things, discrimination,

torture, due diligence, equality before the law, bodily integrity, and the right to health and life—to call attention to and craft remedies to eradicate the pandemic of violence against women throughout the world. For example, women's rights activists used the Convention against Torture to define rape in armed conflict and custodial sexual violence. They used equality before the law provisions to push for more vigorous investigation and prosecution of domestic violence. They used provisions on government obligation to eliminate harmful customary practices to address FGM.

One of the most important strategies the women's human rights movement adopted was to question the legitimacy of the mainstream human rights movement if women's human rights were not fully integrated into it. Women's rights activists challenged the legitimacy and effectiveness of a conceptualization of human rights that emphasized violence by the state but overlooked violence by private actors.

Women's rights activists mobilized at important world fora, such as the 1993 Vienna World Conference on Human Rights (Vienna); the 1994 International Conference on Population and Development (ICPD) in Cairo; and the 1995 UN Fourth World Conference on Women (FWCW) in Beijing, China, to advance women's rights, to push for better and more durable protections against gender-based violence. To that end, Vienna was a watershed event. In a Global Campaign for Women's Human Rights that was coordinated by the Center for Women's Global Leadership, over 200,000 people in 120 countries signed a petition aimed at the United Nations to get women's rights on the agenda. In the initial agenda for Vienna, women appeared only when listed as a vulnerable group. Women's rights activists and NGOs transformed the conference into a staging ground for the emergence of a powerful message about the indivisibility of human rights. This message positioned women's human rights squarely at the core of the movement. Any human rights movement that did not have the struggle for women's rights at its core was considered bankrupt and ineffective. The ICPD program of action demonstrated the ways that violence against women pre-

vented women from exercising reproductive rights and health. The FWCW's platform for action identified violence against women as a pervasive threat to women's lives—at every stage of their lives, from cradle to grave. Together, these fora established recognition of gender-based violence as a chronic and debilitating plague on women's lives and committed the UN to use its broad influence to urge governments to implement sophisticated, long-term strategies to end gender-based violence.

Though attempts to eradicate violence against women have been made more effective with the use of a human rights framework, it is also the case that activism on women's human rights issues generally—and on gender-based violence in particular—has strengthened the human rights movement more broadly. First, the movement has greater legitimacy and effectiveness now that it addresses a more representative range of human rights abuses that occur throughout the world. Second, the mobilization and coordination that women's rights activism has brought to the international human rights movement (on the International Criminal Court, the Optional Protocol to CEDAW, the Protocol to the African Charter on Human and People's Rights, the creation of Special Rapporteurs, and so on) has meant improved rights education and capacity building for new and important constituencies. Third, increasing expectations for respect for women's human rights at all levels of government creates overall improved respect for many other citizens who were historically abused by the state and individuals. Last, increased government accountability for nonstate actor abuses has provided a tremendous opportunity to the human rights movement to further adapt its strategies and use the human rights framework to identify and remedy abuses perpetuated by corporate entities.

As a global human rights movement, we have made meaningful advances against gender-based violence, but, disappointingly, there are still significant hurdles ahead that risk diluting and undermining any progress. The first and perhaps greatest challenge involves the failure of the human rights movement to respond more vigorously to sex-based discrimination as a chronic and debilitating

human rights violation. Gender nondiscrimination is not a *jus cogens* norm under international human rights law.* This shortcoming virtually ensures that women will forever remain the victims of gender-based violence. To begin to remedy this failure would mean addressing more thoroughly the underlying human rights abuses that so predictably render women at risk for violence: women's legal, cultural, and social subordination to men; regulation of women's sexual activity; unequal access to educational opportunities; unequal and obstructed access to reproductive health care information and services; and discriminatory access to work.

Other challenges include making redress and accountability more accessible to women victims of violence; ensuring that more mainstream human rights organizations devote considerable resources and energies to work on a range of women's human rights issues; developing rigorous standards and recommendations for prevention of violence against women in the first instance; providing clearer guidance to governments on minimum standards to prevent violence against women and to ensure protection against violence once it occurs; improving lasting accountability; and examining ways to afford women greater protection from gender-based violence through the protection of the rights articulated in the International Covenant on Economic, Social and Cultural Rights.

The human rights framework has been a particularly effective tool to combat violence against women by defining the violence perpetuated against women as a human rights abuse. No one should underestimate the enormity of this accomplishment. Extracting violence against women from the cultural or private sphere and showing government responsibility on this issue was essential. Yet, absent a deepening of the human rights framework's response to violence against women, we may be stalled at having made significant advances in critical areas over the past decade but not creating the conditions whereby women are less at risk for gender-based violence in the first instance. [hrd](#)

*For a brief definition of the implications of the principle of *jus cogens*, see p. 14.



Restricting Abortion Abroad

In her article “Gagging Democracy,” Marianne Mollmann is right to consider the Global Gag Rule a human rights violation. As I have observed through my experience working with the feminist group Flora Tristan in Peru, the Global Gag Rule sharply impacts our societies and democracies, affecting not just the NGOs that receive financial assistance from the United States, but entire populations.

The Global Gag Rule contaminates the essence of solidarity and international assistance because it forces the receiving countries—particularly the women within them—to pay an intolerable price in terms of autonomy, freedom, and the rights to citizenship, health, life, and development.

In Peru, it profoundly affects the development of our health and legislative systems, as it impedes the very research and advocacy that could serve to modernize them. In countries like Peru the government has not traditionally been very concerned about generating the information and knowledge necessary for advocacy. Therefore, our achievements and knowledge to date about the effects and treatment of unsafe abortion and the mechanisms and resources involved in reproductive and sexual decision-making exist largely thanks to the efforts of the women’s movement, the academic and scientific community, health organizations, and international donors, rather than the state.

While we criticize our legislature for its indifference with respect to these subjects, on those occasions when the government has listened to our recommendations, we have obtained positive results in the form of reduction of death and disease, particularly among women.

But despite these occasional victories, no one in the Third World can ignore the fact that we live in weak democracies and have to continue to fight for freedom and personal autonomy. The Global Gag Rule handicaps vital actors in these societies such as NGOs by imposing disproportionate

and non-negotiable rules. Lamentably, the abuse does not stop there: among other restrictions, it prohibits organizations that adhere to the rule from criticizing its content. Thus, the Global Gag Rule also undermines the most elementary right of expression and freedom of thought and thereby contributes to an atmosphere of impunity.

*Susana Chavez
Flora Tristan Women’s Center, Peru*

The Resource Curse

Abu Brima and Corene Crossin’s insightful essays on conflict diamonds in the Spring 2003 issue of *Human Rights Dialogue* bring up, respectively, two problems at the heart of current efforts to promote pro-poor, pro-human rights globalization: the need for increased transparency and participation in minerals-based economies, and the dubious value of voluntary “regulation” mechanisms.

Like Sierra Leone, many of the world’s poorest countries depend on primary commodity exports—particularly oil, natural gas, and minerals like gold and copper—to sustain their economies. Some economists argue that globalization has in fact intensified this natural resource dependence, as poor countries have been forced to drop barriers to foreign investment in their resource sectors but rich countries have not reciprocated by reducing barriers to poor countries’ agricultural and manufactured exports. Resource dependence is problematic from a poverty-reduction standpoint as modern oil and mining operations generate little employment, thus creating few opportunities for the poor to raise their incomes. Additionally, the distribution of

oil and mining-derived revenues is frequently an unaccountable and nonparticipatory process. Thus the work of Brima and the Campaign for Just Mining in Sierra Leone to promote greater transparency, accountability, and participation in diamond revenue distribution is vitally important; similar efforts should be supported in every resource-dependent poor country. The World Bank, which has played a key role in promoting natural resource investment in developing countries, should make participation and transparency requirements of its support for these sectors.

The establishment of the Kimberly Process was an important breakthrough for addressing the link between diamond revenues and conflict. Crossin is quite right, however, to point out that Kimberly is voluntary, meaning enforcement will depend largely on the good faith of the diamond industry and the countries involved. As such, the long-term effectiveness of the scheme is questionable. Unfortunately, this situation is emblematic of the anti-regulatory ethic that currently pervades globalization, in which voluntary rather than mandatory approaches are favored. Developed country governments, however, could do much to change this by, for example, adopting enforceable regulations requiring their corporations to disclose information on revenues and on the human rights and environmental impacts of their foreign operations. Kimberly is an important step, but until there are stronger mechanisms for holding corporations and other global economic actors accountable for their actions, unaccountable corporate-driven globalization will continue to pose a significant threat to human rights.

*Keith Slack
Oxfam America*

WHAT DO YOU THINK?

Do you have a response to “Violence Against Women”? Share it with thousands of other *Human Rights Dialogue* readers. Send your comments to Morgan Stoffregen, Human Rights Initiative, Carnegie Council on Ethics and International Affairs, 170 East 64th Street, New York, NY 10021-7496, USA, fax: (212) 752-2432, e-mail: mstoffregen@ccea.org. We regret that we will not be able to print every response. Please limit your response to 300 words, and be sure to include your name and contact information. We reserve the right to edit text as necessary.

in this issue

Programs that attempt to prevent the spread of HIV/AIDS by encouraging abstinence from sex, fidelity, and consistent condom use are a start, but they do not address women's unequal decision-making power and status within their intimate relationships. **Human rights law**, which clearly establishes state responsibility to protect women from battery, **is a useful tool for holding governments accountable.**

Lisa W. Karanja, "Domestic Violence and HIV Infection in Uganda"

The key to ending [female genital mutilation] is to increase women's empowerment. The incidence of



harmful practices such as FGM decreases with higher rates of female literacy, since education empowers girls and women to understand and appreciate their bodies and value themselves.

June Munalu, "Combating FGM in Kenya's Refugee Camps"

In our work with men, **we've been able to witness men working alongside women in local communities to end violence against women.** They are engaging with other men in their communities, challenging them to stop their violence.

Christopher Harper, "Rights for All in the New South Africa"

next issue

Environmental Rights • Spring 2004

Although both human rights protection and environmental protection are relatively well-developed areas of public policy, recognition of the linkage between the two has been slow to develop. As activists, scholars, and policy practitioners have increasingly encountered situations at the intersection of these two areas, calls for international environmental rights protection have intensified.

The next issue of *Human Rights Dialogue* will explore the definition, status and relevance of the concept of "environmental rights" in law and politics around the world, and the extent to which a human rights lens is a helpful way to view environmental issues.

Visit our online version of *Human Rights Dialogue*, featuring annotated links, suggested further reading, and a continuation of the discussion of using the human rights framework to address violence against women. Online at www.carnegiecouncil.org

Photo by Anne Costello

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