Campaigning for an End to Domestic Violence: 
The need for multilateral approaches

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Abstract
The family is the most dangerous place for women around the world. Campaigners for women’s rights must confront the prevalence of domestic violence to ensure that women are able to enjoy their fundamental human rights. In order to establish practical programmes of action to address domestic violence, campaigners will encounter problems on four levels -- local, social, national, and international. This paper explores the intimate nature of domestic violence and identifies some of the problems this intimacy poses at these levels, as well as noting recent campaigning successes. It argues for the need for wide-ranging strategies on each of these levels, so that domestic violence is no longer considered a ‘private’ problem.

To punish disobedience and discipline liberty, family tradition perpetuates a culture of terror that humiliates women, teaches children to lie, and spreads the plague of fear.
Human rights should begin at home.

-Eduardo Galeano, The Book of Embraces

1. Introduction
Around the world the most dangerous place for women is the family. According to the Council of Europe (CoE), the leading cause of death and disability for women aged between sixteen and forty-four is violence at the hand of a domestic partner. The CoE has also found that 12 to 15 per cent of European women over the age of sixteen have experienced domestic abuse, with many continuing to suffer physical and sexual violence from former partners even after breaking-up. However, even these shocking statistics do not begin to give voice to the fear and betrayal experienced by victims of domestic violence. Furthermore, experiencing violence of this kind can greatly hinder victims from enjoying a full range of their human rights, particularly the right to bodily integrity.

Any campaign for women’s rights and an end to violence against women must confront the prevalence of violence within intimate relationships. The special circumstances of this violence have implications on four levels which must be addressed

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3 Council of Europe, ‘Campaign to Combat Violence against Women, including Domestic Violence,’ viewed 03 June 2007, http://www.coe.int/t/dg2/equality/DEOMICVIOLENCECAMPAIGN/default_EN.asp
in order to set up practical programmes of action aimed at empowering victims to embrace and enjoy the full range of their human rights. First, on the local level, the intimate nature of domestic partnerships will change the way victims respond to being assaulted; thus, campaigners must not overlook the victim's unique perspective when establishing initiatives to provide direct aid to victims. Second, the society the victim is part of has incredible influence on whether domestic violence is tolerated; so campaigners need to work towards changing attitudes that foster and condone such violence. Third, although the State is often the level at which campaigners against gender-based violence work, many States retain separate laws to govern home life which, instead of protecting the family as intended, can actually serve to make it more difficult for individuals within the family to escape violence; thus, campaigners should lobby to improve these policies. Fourth, human rights discourse at the international level has traditionally neglected to confront domestic violence, and campaigners need to be catalysts towards ensuring that international human rights systems are flexible and effective enough to address domestic violence as a human rights abuse.

This paper will identify some of the problems that campaigners—particularly those in the United Kingdom (UK) and Europe—face at each of these levels, and, although this paper cannot produce a magic solution to such complex issues, it will note some recent successes and attempt to further the debate on how campaigners can help victims to confront the injustices that they face and be able to take any steps necessary to enjoy the right to live free from violence.

2. Conceptual clarifications

Before getting started, however, it will be useful to clarify the geographical limitations that the author has placed on this paper, as well as the intended connotations of the terms the author has chosen. First, domestic violence is a problem in all parts of the globe. The United Nations Population Fund (UNFPA) calls domestic violence the most common form of gender-based violence, adding that 'in every country where reliable, large-scale studies have been conducted, between 10 and 69 per cent of women report they have been physically abused by an intimate partner in their lifetime.' Similarly, campaigners are doing excellent work in all parts of the globe with a view toward making domestic violence a thing of the past. However, due to the constraints of time and resources, it would not be possible to do justice to the victims and campaigners all over the world, so the author has chosen to focus in particular on the United Kingdom and in general on Europe. This decision in no way implies that Europe is leading the way in the fight against domestic violence; instead, it is simply the area the author is most familiar with and feels most confident speaking about.

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5 For example, the We Can Campaign is a coalition of over 600 organisations, collectives, and individuals working to change attitudes toward violence against women in Bangladesh, Sri Lanka, India, Nepal and Pakistan (Meta, Mona and Chitra Gopalakrishnan, '"We Can": Transforming Power in Relationships in South Asia' (2007) 15 Gender and Development 1 41-50). In Uganda, the NGO Raising Voices focuses on changing attitudes and behaviours as a method of preventing violence against women (Lori Michau, 'Approaching Old Problems in New Ways: Community Mobilisation as a Primary Prevention Strategy to Combat Violence against Women' (2007) 15 Gender and Development 1 95-110). In El Salvador, the Centro Bartolomé de las Casas and Oxfam America have been focusing on constructing alternative masculine identities which do not associate control, physical force, and rational intelligence with masculinity (Susan Bird, Rulilio Delgado, Larry Madrigal, John Bayron Ochoa, and Walberto Tejeda, 'Constructing an Alternative Masculine Identity: The Experience of the Centro Bartolomé de las Casas and Oxfam America in El Salvador,' (2007) 15 Gender and Development 1, 111-122).
Second, there are two terms—‘campaigner’ and ‘domestic violence’—which will be used repeatedly throughout the paper. The focus of the paper is on helping campaigners identify problems associated with setting up practical programmes of action against domestic violence. But who is a ‘campaigner’? To many people, the term implies a person who is employed by—or volunteers for—an organisation which works to influence decision-makers. However, in this paper the term will have a much wider meaning. A campaigner is intended to refer to any person working to eradicate domestic violence. Under this definition, a campaigner can include a victim (or former victim) who wants to help others in similar situations free themselves from their abusers, a police officer, a social worker, a voluntary activist, or a paid lobbyist.

What, then, is ‘domestic violence’? In some ways, the concept may be more subjective than it first seems. Two people could experience the same act and one might feel victimised by it while the other might not. However, certain actions, such as physical abuse and rape, are illegal for good reason, which makes the definition of domestic violence seem more objective. The CoE states that domestic violence is usually committed by men against women; therefore, it understands domestic violence to be a form of gender-based violence. In its definition of violence against women (VAW), the CoE includes violence in the family or domestic unit and notes some of the forms that violence takes:

The term ‘violence against women’ is to be understood as any act of gender-based violence, which results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life. This includes, but is not limited to, the following: … violence occurring in the family or domestic unit, including, inter alia, physical and mental aggression, emotional and psychological abuse, rape and sexual abuse, incest, rape between spouses, regular or occasional partners and cohabitants.

In common usage the term ‘domestic violence’ often connotes spousal abuse or violence between domestic partners. However, it is obvious from the partial list of acts which the CoE believes are included in ‘violence occurring in the family or domestic unit’ that domestic violence can be much wider than its common connotation. This paper will settle for a wide definition to take into account the variety of forms violence takes and the many relationships affected. Therefore, domestic violence is understood to mean violence against women in the home.

3. On the Local Level: The intimate nature of domestic violence

This section will address how and why victims’ responses to abuse by intimates are different from those of victims abused by strangers and will examine how campaigners can respond appropriately.

First and foremost, victims of domestic violence live with or know their abuser. Not only does this destroy the home as the place of safe haven where most victims of public violence would be able to find sanctuary, but it also gives the abuser unfettered access to his or her victim. Studies of domestic abuse have noted trends in the development of abusive relationships. Unlike public attacks, which tend to happen swiftly as the perpetrator is conscious of the need to escape after the attack, domestic violence develops over time. Copelon notes that it often begins with ‘limited physical violence followed by remorse and intensive caretaking,’ which serve to lull the victim into

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6 The CoE, and the author, acknowledge that men can be victims of domestic violence, and that domestic violence occurs in same-sex relationships. However, the focus of this paper will be on domestic violence committed by men against women partners.

forgiving and, sometimes, feeling sympathy for the attacker.\textsuperscript{8} Gradually the violence escalates and the displays of remorse subside. This cycle plays havoc with the victim’s emotional state, as she is constantly fearful of an explosion of violence.\textsuperscript{9}

The cycle also reveals intentionality. Copelon states that:

[T]he claim that domestic violence is the product of loss of impulse control has been severely criticized in light of the dynamics of battering. ‘Battering, whether or not it is premeditated, is purposeful behavior’ and ‘should be seen as an attempt to bring about a desired state of affairs.’ Battered women report that men often plan their attack. Men who beat women partners commonly exhibit excellent impulse control in other contexts; their major or only targets are woman partners or children, pets, and inanimate objects.\textsuperscript{10}

The ‘desired state of affairs’ Copelon mentions is a home environment where the abuser is dominant and the victim loses her autonomy, finding her own personality submerged beneath that of the perpetrator. As the victim loses her sense of self-worth, she tends to feel more dependent upon her abuser. This emotional dependence decreases the likelihood of the victim seeking help, particularly if it is accompanied by financial or other forms of dependence. Furthermore, the goal of domestic violence is the ‘domestication’ of the victim, cutting off social ties—for example, by alienating the victim from friends and family members who live outside the home—and thereby reducing possible avenues of help.\textsuperscript{11}

Therefore, the lives of victims of domestic violence are socially constructed by their abusers in ways that the lives of people victimized by strangers are not; programmes of action must acknowledge this fact and make victims’ special needs and desires paramount. As an illustration of the way changing the understanding of the nature of domestic violence has led to evolving policies, this paper will briefly consider how police policy on domestic violence has been modified in the UK over the past two decades.

Prior to 1990 police services were accused of treating domestic violence lightly. It was seen to be primarily a private, family issue; therefore, police response was based entirely on the victim’s choice.\textsuperscript{12} Many victims refused to make statements or withdrew their statements before their partner was charged, and it was informal police policy to drop the case when this happened. Hoyle and Sanders note that the ‘victim choice’ approach has been criticized for numerous reasons, including the fact that it assumes that women in violent relationships are free agents, that it presupposes that women could make the ‘right’ decision without being informed of all their options, and that it exposes victims to the manipulation of others, including the perpetrator and other family members.\textsuperscript{13}

In 1990 the Home Office issued Circular 60, urging police to treat domestic violence as seriously as other violent crimes and to follow a pro-arrest and pro-charge policy, even if it was against the wishes of the victim.\textsuperscript{14} This was based on the questionable assumptions that women would not become further victims of retaliatory violence as the choice to prosecute was out of their hands, that such policies would deter crime, and that victims who dropped their charges did so for invalid reasons.\textsuperscript{15} Hoyle and Sanders particularly take issue with the last assumption, stating that people who work

\textsuperscript{8} Copelon, n.1 above at 125.
\textsuperscript{9} Ibid., at 124.
\textsuperscript{10} Ibid., at 128.
\textsuperscript{11} Ibid., at 133.
\textsuperscript{13} Ibid., at 17.
\textsuperscript{14} Ibid., at 16.
\textsuperscript{15} Ibid., at 19.
with victims of domestic violence 'have to understand that their choices are formed within relationships where controlling behaviours are prevalent. . . . [T]he pattern of victim preferences is neither inevitable nor natural— it is socially constructed by the structural and interpersonal features of these women's lives.' Although victims' decisions often do not make sense to people outside their situation, their decisions are rational within the context of the life they have.

This realization has led Hoyle and Sanders to advocate a third type of policy which focuses on rebuilding support for victims outside the family. The creation of Domestic Violence Officers (DVOs) actively supports and reassures victims by helping them see their various options, aiming to change the pattern of victim preferences so that choices are still rationally made but the context within which they are made is widened. Such a policy takes into consideration the implications of the intimate nature of domestic violence as it addresses: a.) that victims have been conditioned to be completely dependent upon their abusers over a long period of time; and b.) that not all victims see the criminal justice system as the answer to their marital problems, particularly if they desire to remain in a relationship with a healthier version of their partner. It also gives a woman the opportunity to be empowered by giving her a voice and a choice in deciding her fate, an opportunity which threatens the status quo of her relationship with her abuser.

4. On the Social Level: Battling negative influences

Since families do not exist in a vacuum, it follows that domestic violence must be placed within a wider societal context. Societies have a dual function, defining what a 'good' family should look like and determining to what extent violence within families is tolerated. Smeenk and Malsch emphasise this fact when they state that,

Being less visible than street crime, the degree to which domestic violence becomes known to the police is dependent on citizens' requests for police intervention. Victims' reporting behaviour is considered to be sensitive to the degree that society and police consider domestic violence as a crime.

In particular, three facets of societal make-up influence domestic violence: patriarchal structures, some religious beliefs, and stereotypes based on race, ethnicity, class, or other status.

Societies contain a socially constructed hierarchy of power. In most, if not all, societies men are placed at the top of the hierarchy while women and children are scattered somewhere below, often depending on the intersection of their other characteristics (ethnicity, class, etc), as will be discussed below. Feminist scholars working in the area of domestic violence, such as Kersti Yllö and Susan Rose, see this patriarchal power structure as the key cause of domestic violence. Yllö states that 'when a man rapes his wife because he feels that it is her “wifely duty” to submit, this is not just a conflict of individual interests. . . .This conflict is deeply gendered, and the husband’s perceived entitlement has strong institutional support.' This institutional support can be formalized, such as in national laws or policies which protect the family above the individual (discussed in the next section); however, it can also exist in the form of embedded societal expectations, such as gendered notions of work outside the home, disproportionate emphasis on the

16 Ibid., at 21.
17 Ibid., at 28.
worth of women's virginity, and expectations on which parent is primarily responsible for children's welfare and upbringing. Such expectations have been criticized by Stanley, who notes with alarm that British social work practice has focused on children's welfare (which is perceived to be living in an 'intact' family consisting of co-habiting parents) to the exclusion of their mothers' welfare. Social workers have encouraged women to 'work out' their problems with their abusive husbands, threatening them with the loss of their children if they do not placate them. In addition, there is little, if any, interaction between the father and social workers, which confines women to their traditional role as carers and casts men as distant from the family unit. Stanley notes that the social work response to domestic violence 'constitutes a working patriarchy.'

As stated above, domestic violence is purposeful, and it is most often used as a form of control, the assertion of one member above the others. Yllö notes that '[domestic] violence grows out of inequality within marriage . . . and reinforces male dominance and female subordination within the home and outside it.' This 'control theory' of domestic violence is often used by feminist scholars to explain how the patriarchal structure of society leads men to abuse their female intimate partner. Some religious beliefs can be seen as a particularly dangerous form of patriarchy since they have the weight of a divine being behind them. Rose notes that the reinforcement of patriarchy is a common trait shared between the Abrahamic religious traditions as well as in fundamentalist Buddhist and Hindu movements. They accomplish this by stressing that men and women are created to be different, thus preserving the distinction between the private, 'female', domestic space and the public 'male' sphere. However, even though the private space is feminized, the man is still the ultimate ruler of the house and discipliner of children. Bunch notes that 'the distinction between private and public is a dichotomy largely used to justify female subordination and to exclude human rights abuses in the home from public scrutiny.'

A major goal of fundamentalist strands of these religions is social cohesion under a common belief in a divine being and adherence to strict social rules. This affects the family because non-traditional families are considered a threat to social cohesion. Fagan, writing on behalf of the Protestant fundamentalist Heritage Foundation, displays this belief by stating:

In the social science research, all family forms other than the natural family in which children are raised by a married mother and father are associated with higher rates of crime, illegitimacy, dependence on welfare, and drug and alcohol addiction, as well as lower levels of education, less income, poorer health, and lower life expectancy.

He considers that women's and children's rights movements directly threaten the 'natural' family, and thus the health of society. Such attitudes can dissuade women from

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21 Yllö, n.19 above at 23.

22 Susan D. Rose, 'Christian Fundamentalism: Patriarchy, Sexuality, and Human Rights,' in Courtney W. Howland (ed.) Religious Fundamentalisms and the Human Rights of Women, (New York: Palgrave, 1999) at 9. Hereinafter Rose. Due to space constraints it is not possible to fully explore the definition or history of religious fundamentalism, and only its primary effects on family violence will be mentioned; however, for an interesting discussion of the origins of the term 'fundamentalism,' see John Stratton Hawley, 'Fundamentalism' in Courtney W. Howland (ed.) Religious Fundamentalisms and the Human Rights of Women, (New York: Palgrave, 1999).


24 Rose, n.22 above at 10.

seeking help outside their family and encourage male policy-makers to conform to societal and religious expectations by privileging husbands over their wives.

Finally, in addition to being particularly vulnerable because of their gender, women can be victims of multiple forms of discrimination based on their race, religion, class, age, or any other aspect of their identity. The Survivor’s Handbook, published by Women’s Aid in the UK, highlights the myriad issues that some women from ethnic minority groups face when deciding whether to seek help:

If you are a Black or minority ethnic woman trying to escape from domestic violence, your experiences may be compounded by racism, which is pervasive in the UK. You may be unwilling to seek help from statutory agencies (such as the police, social services, or housing authorities) because you are afraid of a racist response. You may be disadvantaged because you are Black; or you may find that service providers are basing their responses on particular cultural, ethnic or religious stereotypes. In some cases, they may avoid intervening for fear of being perceived as racist. If your partner and abuser is Black, you may wish to protect him or her (and the Black community) from police intervention due to your experiences of institutional racism.26

Furthermore, women from minority groups may experience pressures not easily understood by people from the ‘majority’ group. This can be particularly difficult if agencies such as the police force and social services do not have employees who are aware of the additional pressures women from minority groups may feel. Gilbert et al explores how shame and honour affect the feelings of entrapment and subordination that some South Asian women living in Britain feel, as well as how this affects their mental health and whether women seek help outside their families. Women in focus groups in Derby were presented with a scenario describing ‘Fatima, a Muslim woman aged thirty-four with three children aged five, ten and eleven [who] has been married for thirteen years and lives in the heart of the community. Over the last ten years she has suffered physical and emotional abuse from her partner and his family, especially her mother-in-law. She feels trapped and unable to get away.’27 The women were then asked questions about why Fatima was unable to get away from her family. Some of the participants noted a perceived difference between Fatima and ‘European’ women, stating: ‘the point is that when an Asian woman gets married, I am not really sure if it’s the same for European people . . . you don’t marry the man, you marry the family, the house, the dog, everything.’28 Some of the women believed it would be better to commit suicide than leave an abusive relationship, to protect the family honour.29 When asked about seeking help from a GP, the participants were of two minds. On the one hand, they feared being judged by Asian male doctors, but on the other hand, ‘European’ doctors would view their problems through a different cultural lens and therefore would be less likely to understand them.

This section has examined three structural problems within society that have detrimental effects on how domestic abuse is responded to and the likelihood of victims being able to seek protection outside the family. Campaigners must stress attitudinal change and attempt to alter deeply ingrained attitudes that see women as inferior to men and certain women as inferior to other women because of aspects of their identity. Furthermore, campaigners need to identify whether women from minority groups feel that they can access services and trust service providers or whether those services are culturally inappropriate. It is only when these societal structures have been identified and

28 Ibid., at 120.
29 Ibid., at 123.
steps taken to deal with the obstacles associated with them that domestic violence will cease to be seen as a private, family matter and victims will feel empowered to take steps to ensure their own safety.

5. On the State Level: Formal equality vs. ‘personal laws’

In many countries campaigners have seen some success at the national level in securing equal rights for women. Examples of such laws are ones which make it illegal to discriminate against women in the workplace and allow women an equal vote. However, some European countries—particularly post-communist countries—have only recently begun to address domestic violence as a legal issue which should be legislated against at the national level.

Furthermore, because the family is seen to be a unique unit deserving special protection, many European countries retain special policies which privilege the (male-headed) family unit above its most vulnerable individual members. Such policies include the retention of divisions in their court systems, and immigration policies which make it particularly difficult for abused women to access help. Campaigners must assess the extent to which formal protection exists for women in all spheres of life, or whether national laws and policies serve to conceal or even encourage domestic violence. This section will first examine what campaigners can do if formal protection from domestic violence is not enshrined in national laws. Then it will analyse how some national policies which seek the ‘best interests’ of the family disproportionately affect women in Europe and the UK, with reference to immigration.

5.1 Formal protection through national laws

Although some States do not have laws which specifically mention domestic violence, most States have laws that criminalise acts which can constitute domestic violence, such as assault and battery, rape, and harassment. The Stop Violence Against Women project, which is supported by the United Nations Development Fund for Women (UNIFEM) and the Minnesota Advocates for Human Rights, encourages campaigners to determine whether their country needs a separate law criminalising domestic violence. It argues that such a law could force law enforcement officials to treat domestic violence as a serious crime instead of a personal matter. On the other hand, a law specifically addressing domestic violence could give the impression that it is less serious a crime than others, such as assault; therefore, campaigners may want to focus their resources on strengthening existing laws and ensuring that they are enforced in domestic violence cases.

In 1996 Radhika Coomaraswamy, then United Nations Special Rapporteur on Violence Against Women, issued a report including a framework for model legislation on domestic violence. She noted that ‘the objective of this model legislation is to serve as a drafting guide to legislatures and organizations committed to lobbying their legislatures for comprehensive

legislation on domestic violence. The model legislation broadly defines domestic violence and the relationships in which it occurs, stating: 'Legislation shall clearly state that violence against women in the family and violence against women within interpersonal relationships constitute domestic violence' and

The relationships which come within the purview of legislation on domestic violence must include: wives, live-in partners, former wives or partners, girl-friends (including girl-friends not living in the same house), female relatives (including but not restricted to sisters, daughters, mothers) and female household workers.

The model legislation focuses great attention on ensuring the protection of victims of domestic violence. Its Declaration of Purpose states that its purpose is to 'assure victims of domestic violence the maximum protection in cases ranging from physical and sexual to psychological violence.' In order to ensure this protection, the legislation sets out guidelines of actions which police officers should undertake when they have received a domestic violence complaint. Among other things, police are instructed to:

- provide or arrange transport for the victim to the nearest hospital or medical facility for treatment, if it is required;
- provide or arrange transport for the victim and the victim's children or dependents to a safe place or shelter, if it is required;
- provide protection to the reporter of violence;
- arrange for the removal of the offender from the home and, if that is not possible and if the victim is in continuing danger, arrest the offender.

Furthermore, police officers are instructed to explain to the victim, in a language she can understand, a statement of her rights and the duties that the police and judiciary have to protect her.

The model legislation, as Radhika Coomaraswamy notes, is intended to assist people dedicated to influencing the drafting of legislation in their own countries. This can be a remarkable tool for campaigners who lack legal experience, as the model legislation is comprehensive and fully in-line with international standards. However, simply because a State recognizes domestic violence as a criminal act and establishes legal protection for victims does not mean that legislation is effective or enforced. Once a law has been passed, campaigners need to be vigilant in putting pressure on governments to ensure that they allocate necessary training to people who work with domestic violence victims and offenders, and funding for programmes to assist victims. Campaigners must also assess to what extent legislation provides protection for all victims, irrespective of factors such as their immigration status, religion, or ethnicity.

### 5.2 Policies for particular groups

The CoE states that

[it] is the responsibility and in the interest of states as well as a priority of national policies to safeguard the right of women not to be subjected to violence of any kind or by any person. To this end, states may not invoke custom, religion or tradition as a means of evading this obligation.

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35 Ibid., paras. 5 and 7 respectively.
36 Ibid., para. 2(f).
37 Ibid., para. 17 (e-h).
38 Ibid., para. 21. The duties, of course, are provided for in detail in the model legislation.
Unfortunately, some national policies make it more difficult for victims of domestic violence to seek protection. Sometimes this is an inadvertent result of policies that are intended to protect the family as a unit. For example, in the UK the separation of civil and family courts can cause severe problems. Aitkenhead recently reported a case where a woman, 'Jane,' was beaten by her husband, and her oldest daughter accused Jane's husband of sexual abuse. Jane got a restraining order from the civil court, but the family court privileges parental contact and ordered her to make the child available for visitation. She was threatened with jail and the loss of custody of her children for non-compliance.40

On the other hand, policies which target specific groups of people based on factors such as their immigration status, religion, or ethnicity can make it especially difficult for women who belong to those groups to seek protection. A particular problem in the UK is that many refugee women and children are dependents on their husband's or father's asylum claim. Therefore, if a woman decides to leave her abusive husband, she may fear being returned to her country of origin or losing contact with her children. The Home Office dealt with this issue in 2004, stating that the accommodation provider (if the asylum applicant receives accommodation from National Asylum Support Services) is required to take the lead when domestic violence is suspected. However, the accommodation provider is a business person, and it is clear that the asylum applicants will be separated, removed from the accommodation and relocated. This policy may actually discourage accommodation providers from getting involved in a domestic violence situation.41

Immigration can pose a huge problem for victims of domestic violence. Not only can it mean that women are isolated from their friends and family, but they may also be unfamiliar with the laws of their host country and sources of help. They could find that their religious beliefs, ethnicity, or language makes them a minority, which could lead them to be marginalised or unable to access services. The legality of their immigration status may be questionable, which would make them very unlikely to go to the police for help.42 They may be unable to access public funds, making them financially dependent on their abuser.43

Furthermore, if they end up in a family court, they may be surprised to find that their dispute with their husband is not resolved based on the laws of their host country. In Europe, family court judges deciding a case for an immigrant (generally non-European) family are often obliged to consider the family laws which that family would be subject to in their country of origin, even if those laws clash with more liberal national laws.44 That is not to say that European judges base their decisions on foreign laws;

http://www.stopvaw.org/sites/3f6d15f4-c12d-4515-8544-26b7a3a5a41e/uploads/POLAND_VAW_FACT_SHEET_2006_2.pdf
43 For this very reason Women's Aid has launched a campaign in the UK calling for an exemption to the rule that women subject to immigration controls have 'no recourse to public funds.' Last viewed 1 July 2007. http://www.womensaid.org.uk/page.asp?section=000100010008000100350002.
however, in order to resolve family disputes involving immigrant families and to help them make a fair decision, European judges often use techniques called 'choice-of-law' rules.

Marie-Claire S.F.G. Foblets, who was commissioned by the Belgian Minister of Justice to collect data on family disputes affecting Moroccan women living in Belgium, states that there are four competing choice-of-law models: nationality, domicile, the choice of the 'better law', and party autonomy. According to nationality choice-of-law, disputes should be settled based on the laws governing the family members' national origin (if they have kept their nationality), no matter how long they have lived in Europe, whether their dispute arose in the host country or whether their conduct is contrary to the principles of the host country's laws. This has led some European judges to legitimise polygamy and divorce practices which leave little, if any, protection for women.

Domicile choice-of-law, which is usually applied in England, the United States, and Canada, only considers laws of the country where the family is living. This can have problems as well; for example, what protection is there for a woman who is the second or third wife of a man who moves his family to England? Her polygamous marriage may be legally recognised in her country of origin, thus giving her some rights as a wife which may be dissolved on her entry to her new home country.

The choice of the 'better law' allows judges to decide whether the parties involved have a deeper connection to their country of nationality or country of domicile. Foblets notes two problems with this approach: first, judges are given broad powers without being given guidance on how to use them correctly; and second, decisions are so individualised that they are unable to set precedents for subsequent cases.

Finally, party autonomy choice-of-law, or optio iuris, allows the parties to choose the law which best applies to their legal relationships, with the proviso that the choice 'does not prejudice the weaker party.' However, this technique may not be useful if a husband and wife would like to choose different legal systems.

Foblets' study of Moroccan women in Belgium found they were experiencing three particular problems: older women were suffering from husbands who wanted a polygamous marriage, younger and middle-aged women who had been raised and educated in Belgium found themselves committed to arranged marriages to husbands in Morocco, and women of all ages had been brought to Belgium by their fiancé or husband, even though they had no desire to live in Europe or adopt a Western lifestyle. Foblets found that 'the vast majority of the Muslim women interviewed are unequivocally claiming protection under Belgian law.' As a result, she advocates that the law of the domicile be used to settle family disputes, with the exception of couples who together choose to be bound by Moroccan law when they get married.

It is clear from the discussion above that campaigners working at the national level cannot assume that laws prohibiting domestic violence are enough to protect women. It is essential to evaluate a wide-range of policies which may inadvertently make it significantly more difficult for victims to escape.

45 Ibid., at 169.
46 Ibid.
47 Ibid.
48 Ibid., at 170.
49 Ibid., at 171.
50 Ibid., at 172.
51 Ibid., at 173.
6. On the International Level: Reclaiming human rights discourse

Finally, campaigners must work in the international sphere to ensure that human rights discourse is no longer used to veil domestic violence. Romany states that ‘women are everyday subjects of a system of familial terror that includes diverse modalities of violence. Yet the human rights discourse of protection has not been available to women.’ That is because the human rights discourse has traditionally protected the civil and political rights of individuals in the public sphere (i.e. protecting the rights to freedom of expression, to be free from torture, etc) while failing to make the State responsible for the violations of the same or similar rights within the family.

Historically this has not been purely a failing of international mechanisms—such as the Human Rights Committee or the Convention on the Elimination of all forms of Discrimination against Women (CEDAW)—but has also been a failing on the part of advocacy organisations. Ken Roth, executive director of Human Rights Watch, notes that until the 1990s, Human Rights Watch and Amnesty International shied away from addressing domestic violence as a human rights violation. He gives two reasons: first, limited resources and public awareness of human rights meant that organisations needed to focus attention on acts which were clearly violations of international law, particularly the International Convention on Civil and Political Rights; and second, campaigning organisations believed that human rights violations were largely politically-motivated.

Romany criticizes the belief that ‘real’ human rights violations are politically-motivated acts occurring in the ‘public sphere’, stating that such a division of spheres, by ignoring the political character of power unequally distributed in family life, does not recognize the political nature of the so-called private life. Such a division of spheres clouds the fact that the domestic arena is itself created by the political realm where the state reserves the right to choose intervention.

She attempts to reconcile the dichotomy by showing that ‘private’ violence inhibits people from being able to exercise their ‘public’ rights. Therefore she advocates the expansion of the concept of State responsibility to include protection of all individuals from a violation of their right to be free from violence, even if the perpetrator is the family. She contends that ‘when women’s human rights are infringed by private actors in the context of male violence against women, such acts are attributable to the state,’ because the State has allowed a parallel government (the family) to systematically deny her rights, and then has failed to punish such violence in a non-discriminatory manner.

The line of thinking that States could be held legally accountable for not showing ‘due diligence’ in punishing acts committed by private actors was first established in the Inter-American Court of Human Rights case of V dáñez Rodríguez v. Honduras; however, States still argue that a ‘clash of rights’ allows them a margin of discretion. This has led to the insistence that the right to a family life, cultural rights, and freedom of religion prohibit the State from interfering in ‘private’ matters, such as domestic violence. Any campaign to combat domestic violence must attack the notion that some

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54 Romany, n.52 above at 94.
55 Ibid., at 98-99.
rights can excuse the violation of such a fundamental right as the right to be free from abuse.

Copelon launches such an attack by comparing domestic violence with torture, the prohibition of which is generally recognized as jus cogens, or a peremptory norm which is universally binding. She begins by acknowledging that intimate violence is often treated as if it is not really violence. It is downplayed as 'personal,' or a 'private family matter.'\(^58\) In comparing it to torture, she does not wish to equate the two but to recognize that "the process, purposes, and consequences are startlingly similar and that the fact that domestic violence is privately, as opposed to officially, inflicted does not diminish its atrociousness nor the need for international sanction."\(^59\) In this way she advocates for intimate violence to be treated as seriously as other forms of violence which cannot be excused under a veil of the right to a family life, culture, or religion.

Perhaps because of arguments put forth by Romany and Copelon, in the past fifteen years campaigners have begun to see considerable success in shaping the international understanding of domestic violence as a human rights violation. In 1993, the UN Declaration on the Elimination of Violence against Women became the first international document to offer a definition of gender-based violence, which included 'acts of physical, sexual, and psychological violence in the family.'\(^60\) Only a year later, the Commission on Human Rights appointed the first Special Rapporteur on Violence Against Women, Including Its Causes and Consequences, whose mandate is to:

- see and receive information on violence against women, its causes and consequences, from Governments, treaty bodies, specialized agencies and other special rapporteurs . . . [and] recommend measures, ways and means, at the national, regional and international level to eliminate violence against women and its causes, and to remedy its consequences.\(^61\)

Radhika Coomaraswamy has written specifically about domestic violence in Brazil\(^62\) and has systematically collected information on violence against women in the family from States across the world, including national plans of action, statistics, training given to law enforcement officials, and remedies available to victims.\(^63\) As mentioned previously, she has developed model legislation which campaigners can use to lobby their governments, ensuring formal protection in line with international standards. By consistently addressing violence against women in the family in her country visits, she has helped crystallize domestic violence as a human rights violation which concerns the international community and for which States have responsibility.

Interestingly, even international bodies have begun to launch campaigns against domestic violence. In November 2006, the CoE launched its Campaign to Combat Violence Against Women, Including Domestic Violence. It is working across the levels discussed in this paper and is encouraging campaigners from all sectors to get involved.\(^64\)

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\(^{58}\) Copelon, n.1 above at 116.

\(^{59}\) Copelon, n.1 above at 117.


\(^{61}\) UNCHR. Res. 1994/ 45 (ESCOR 1994), paras. 6 and 7. Radhika Coomaraswamy of Sri Lanka was the Special Rapporteur from 1994 to July 2003; Dr. Yakin Ertürk from Turkey took on the position in August 2003.


\(^{63}\) Coomaraswamy, Violence against women in the family, 10 Mar. 1999, E/ CN.4/ 1999/ 68.

7. Conclusion

The prevalence of violence against women and children within the family is a global problem. If human rights are to make a real difference to individual lives, they must be strengthened in the realm where they are most violated. One of the early catalysts of the human rights movement, Eleanor Roosevelt, recognized the fundamental importance of this intersection, declaring:

Where after all, do universal human rights begin? In small places, close to home—so close and so small that they cannot be seen on any map of the world. Yet they are the world of the individual person: the neighborhood he lives in; the school or college he attends; the factory, farms or office where he works. Such are the places where every man, woman or child seeks equal justice, equal opportunity, equal dignity, without discrimination. Unless these rights have meaning there, they have little meaning anywhere.\(^{65}\)

This paper has examined the smallest place where human rights should begin—the home—and has discussed how violations in this place are different than other human rights violations. In particular, the intimacy of domestic violence will change the way victims respond to being violated, and campaigners must recognize that victims make decisions within a narrow context and decisions are informed by emotional and financial dependence. In addition, several facets of societal structure—including patriarchy, religious fundamentalism, and the intersection of multiple discriminations—play a major role in determining how seriously domestic violence is taken, thus affecting victim reporting; campaigns must therefore address attitudinal change. Plus, campaigns need to determine the extent to which victims have formal rights on the national level, or whether policies encourage or veil domestic violence. Finally, campaigners have made great strides in ensuring that the international human rights discourse encompasses domestic violence as a human rights abuse; they must continue to monitor the various levels highlighted in this article so that the right to be free from abuse is not sacrificed to other concerns. The myriad implications of domestic violence call for wide-ranging strategies so that the challenging and complex struggle against domestic violence makes human rights pertinent to individuals who need them most.

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\(^{65}\) Remarks made at a ceremony at the United Nations, New York, 27 Mar. 1958. Quoted from Romany, n.52 above at 90.
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