

University of Miami International and Comparative Law Review

Volume 6
Issue 1 *THE UNIVERSITY OF MIAMI YEARBOOK
OF INTERNATIONAL LAW, VOLUME 6*

Article 5

1-1-1998

The Economics Of Violence: Why Freedom From Domestic Violence Must Be Treated As A Developmental Right In International Law

Kelsey S. Barnes

Follow this and additional works at: <https://repository.law.miami.edu/umiclr>



Part of the [Comparative and Foreign Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Kelsey S. Barnes, *The Economics Of Violence: Why Freedom From Domestic Violence Must Be Treated As A Developmental Right In International Law*, 6 U. Miami Int'l & Comp. L. Rev. 97 (1998)
Available at: <https://repository.law.miami.edu/umiclr/vol6/iss1/5>

This Article is brought to you for free and open access by the Journals at University of Miami School of Law Institutional Repository. It has been accepted for inclusion in University of Miami International and Comparative Law Review by an authorized editor of University of Miami School of Law Institutional Repository. For more information, please contact library@law.miami.edu.

THE ECONOMICS OF VIOLENCE: WHY FREEDOM FROM DOMESTIC VIOLENCE MUST BE TREATED AS A DEVELOPMENTAL RIGHT IN INTERNATIONAL LAW

KELSEY S. BARNES*

- I. INTRODUCTION
- II. THE LIMITS OF THE LAW AND THE HUMAN RIGHTS APPROACH
- III. USING AN ECONOMIC ARGUMENT
 - A. *The Contribution of Women to Global Economies*
 - B. *The Cost of Domestic Violence*
 - Health-Care Costs*
 - Total Crime Costs*
 - Employment Costs*
 - Domestic Violence Impact on New York City's Economy – One Case Study*
- IV. HOW AND WHY AN ECONOMIC ARGUMENT MUST BE MADE
- V. CONCLUSION

Kelsey S. Barnes is an employee for the Colorado Bar Association Family Anti-Violence Project, Licensed Clinical Social Worker in both Colorado and Washington state, graduate from Denver University School of Law May, 1999 where she was awarded the Outstanding Woman Law Graduate for Denver University by the National Association of Women Lawyers.

“He is a good husband; he only hits me once a week.”

- Wife of a Nobel Peace Prize winner¹

I. INTRODUCTION²

Without minimizing the need to address domestic violence as an international civil rights issue, we must acknowledge that such rights-oriented arguments have been limited in their effectiveness. This limitation has resulted in a continued problem of violence against women, despite increased public knowledge and awareness of the issue. However, domestic violence is also a public health concern that imposes a great economic burden on communities. This paper argues that, to truly affect policy and gain governmental support, activists must show the enormous economic and business loss that domestic abuse engenders. Only then can the human rights argument be argued successfully.

1 Family Violence Prevention Fund, *The Impact of Domestic Violence on the Workplace Fact Sheet* (visited March 4, 1998) <http://www.fvpf.org/the_facts/factsht.html>, (quoting NATIONAL INSTITUTE OF JUSTICE, U.S. DEP'T OF JUSTICE, VICTIM COSTS AND CONSEQUENCES: A NEW LOOK 19 (1996)).

2 WOMEN: LOOKING BEYOND 2000 at 20, U.N. Sales No. E.95.I.40 (1995).

Historically, however, arguments to end domestic violence internationally have focused on individual human rights.³ While no treaty — the foundation of international law — specifically singles out freedom from domestic violence as a right, many scholars make cogent arguments that existing treaty language implicitly includes such a right.⁴ In addition, mainstream discussions occurring in organizations around the globe acknowledge the horrors of domestic violence. For example, a 1995 United Nations publication noted that, contrary to previous reviews, most countries now include reports about violence against women in their communications with the United Nations.⁵ As a result, many countries view this problem as having been “largely recognized.”⁶ Even the World Bank, for the first time ever in 1993, assessed the health consequences of gender-based violence.⁷

Although some scholars voice cautioned optimism that countries and non-governmental organizations are recognizing and dealing more effectively with domestic violence as a human rights issue than in the past, statistics continue to paint a bleak picture. Despite the seeming increased awareness, statistics continue to

3 While the author has worked in the field of domestic violence for many years and knows that male partners are also the victims of domestic violence by their partners, this paper specifically deals with violence against women, statistically still the much larger problem when discussing domestic abuse.

4 See especially, HUMAN RIGHTS OF WOMEN NATIONAL AND INTERNATIONAL PERSPECTIVES (Rebecca J. Cook ed., 1994).

5 *Id.* See especially, Kenneth Roth, Domestic Violence as an International Human Rights Issue, in HUMAN RIGHTS OF WOMEN, NATIONAL AND INTERNATIONAL PERSPECTIVES 326 (Rebecca J. Cook ed., 1994).

6 FROM NAIROBI TO BEIJING, SECOND REVIEW AND APPRAISAL OF THE IMPLEMENTATION OF THE NAIROBI FORWARD-LOOKING STRATEGIES FOR THE ADVANCEMENT OF WOMEN, REPORT OF THE SECRETARY-GENERAL, at 126, U.N. Sales No. 3.95.IV.5 (1995).

7 *Id.*

document the prevalence of abuse in all parts of the world and the real harm it causes women.

Before noting statistics regarding this harm, however, we must understand that the process of collecting data in this area remains extremely limited. Still, based on the limited data available, the World Bank estimates that rape and domestic violence destroys almost one in every five healthy years of life for women ages fifteen to forty-four in industrialized countries.⁸ Isolated statistics, such as those collected at one police station in Sao Paulo, Brazil, show that as much as seventy percent of all reported cases involving violence against women take place in the home.⁹ Furthermore, in Santiago, Chile, almost three-quarters of all assault-related injuries to women were found to be caused by family members.¹⁰ Sixty-two percent of women murdered in Canada in 1987 died at the hands of their spouses.¹¹

Most striking of all the statistics, however, is the World Health Organization's indication that women, ages fifteen to forty-four lose more "Discounted Health Years of Life" to domestic violence and rape than they do to breast cancer, cervical cancer, obstructed labor, heart disease, AIDS, respiratory infections, motor vehicle accidents, and war.¹² What does the World Health Organization mean by the term, "Discounted Health Years"? They mean that women's lives are made unnecessarily shorter more often by domestic violence and rape than by the above named diseases, accidents, and war.

Violence against women also affects the next generation, that is, a woman's offspring. In many parts of the world, a major

8 WOMEN LOOKING BEYOND 2000, *supra* note 1, at 21.

9 *Id.*

10 *Id.* at 19.

11 *Id.*

12 *Id.*

reason for miscarriages and low birth-weight children stems from violence during pregnancy. A survey in Mexico City, Mexico of 342 randomly selected women found that twenty percent of those battered reported blows to the stomach.¹³ In Costa Rica, forty-nine percent of a group of eighty battered women reported having been beaten during pregnancy.¹⁴ Of those women, 7.5 percent reported miscarriages.¹⁵ While such statistics reflect only a small part of women's experiences with domestic violence in general, these figures nonetheless show the harm that domestic violence causes, not only to women but also to children.

This harm that domestic violence causes is at the heart of the civil rights argument. This civil rights argument normally (and logically) asserts that a woman's freedom from such violence should be a basic human right. Unfortunately, arguing simply from a human rights perspective often engenders a counter-argument invoking culture and history. Simply put, in certain parts of the world, a husband's beating of his wife continues to be seen as a basic "right." Thus, any discussion concerning domestic violence collapses into an argument between a woman's right to be free from abuse in general and the cultural or historical "right" of a man to control his unruly woman. Further, many governments sanction a husband's historical "right" to control his wife, even if only tacitly, perhaps either seeing such violence as not a problem or viewing the problem as a private matter which bears little impact on the state.

13 Adrienne Germain *et al.*, *Setting a New Agenda: Sexual and Reproductive Health and Rights*, in POPULATION POLICIES RECONSIDERED: HEALTH, EMPOWERMENT, AND RIGHTS, 26, 41 (Gita Sen *et al.* eds., 1994), cited in Jill Bracken, *Respecting Human Rights in Population Policies: An International Customary Right to Reproductive Choice*, 6 IND. INT'L & COMP. L. REV. 197, 222 (1995).

14 WOMEN: LOOKING BEYOND 2000, *supra* note 1, at 19.

15 *Id.*

Because violence against women is so widespread and so deeply ingrained in the societal fabric, a more effective argument must be made to achieve any real change for the victims of this violence. In the end, an economic argument may procure more tangible rights for women than any legal or social appeal. This paper argues that until freedom from domestic violence is treated as an economic and developmental issue, little progress will be made in securing women's safety within the home. As long as women are viewed as dispensable to their families and governments, they will have few civil rights. Until women are acknowledged as a strong political and economic force in the world – a force which, if harmed, will slow development, reduce capital, and increase debt – governments will continue to view domestic violence as a private matter rather than a concern of the state.

This paper consists of three main parts. First, a brief review describes the legal progress made and the limitations encountered when arguing in favor of domestic violence as a human rights issue. Second, an argument is made for the high economic costs of violence against women, which are inflicted upon communities, governments and individual families. Third, the paper concludes with a discussion of how and why such economic arguments must be made to move the issue of violence against women forward in the international arena.

As a long-time activist in this field, the author of this paper knows that viewing violence against women primarily as an economic and developmental issue, may appear philosophically and aesthetically offensive to many. After all, human rights advocates aspire to achieve their goal of having recognition of the inherent dignity of all peoples, regardless of their economic output. However, while the present human rights argument makes slow, systematic changes and holds governments more accountable, its effectiveness has limitations by its very nature. A rights argument simply has not and cannot change the actual status of women. And the status of women must be changed. All women, not simply those living with violence, must be acknowledged for their contribution to the global market in order for women to ever be

able to gain sufficient political force. This political viability is essential in making rapid and significant progress in the quality of life for women, especially for abused women.

II. THE LIMITS OF THE LAW AND THE HUMAN RIGHTS APPROACH

When grounding legal arguments, concerning domestic violence, in the international arena, scholars often begin by examining current treaties. Although present treaties do not specifically address domestic violence, many scholars have used creative interpretations of existing documents to argue that basic human rights include freedom from domestic abuse. One of the most basic documents — The Universal Declaration of Human Rights — states in Article 3 that, “[e]veryone has the right to life, liberty, and security of person.”¹⁶ Obviously, someone living in a domestic abusive situation lacks security, has limited liberty, and unfortunately, all too often, has their right to life taken away by the violent partner. Violence against an intimate partner clearly violates the spirit of this article.

Likewise, Article 5 of the Declaration recognizes that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹⁷ Article 7 of the International Covenant on Civil and Political Rights reiterates this freedom.¹⁸ While it is beyond the scope of this paper to analyze why domestic violence, under these Articles, should be viewed as a type of torture and thus an international human rights issue, Rhonda Copelon argues that “when stripped of privatization, sexism and sentimentality, private gender-based violence is no less grave than other forms of inhumane and subordinating official violence that

16 *Id.*

17 *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948).

18 *Id.* art. 5.

have been prohibited by treaty and customary law and recognized by the international community as *jus cogens*, or peremptory norms."¹⁹

Scholars who argue that freedom from domestic violence must be considered a basic, fundamental human right, covered under treaty, face a considerable amount of opposition. Traditionally, these scholars' arguments meet counter-arguments stating that such violence takes place in the "private" sphere, seemingly unrelated to state actions.²⁰ Under such a dichotomous system, domestic violence, if acknowledged at all, is relegated to the private, criminal realm rather than viewed as a problem of the state.²¹ This point deserves significant attention because by allowing domestic abuse — a wide-ranging, complex issue endemic to the whole of society — to be classified as individual acts of violence, governments can eschew most, if not all, responsibility. As Kenneth Roth states the problem:

Anyone can commit a common crime, but only a state and its agents can commit a human rights violation under international law. Since the perpetrators of domestic violence are by definition

19 *International Covenant on Civil and Political Rights*, G.A. Res. 2200, U.N. GAOR 21st Sess., Supp. No. 16, at 53, U.N. Doc. A/6316 (1966).

20 Rhonda Copelon, *Recognizing the Egregious in the Everyday: Domestic Violence as Torture*, 25 COLUM. HUM. RTS. L. REV. 291, 296 (1994).

21 However, see Elizabeth M. Schneider, *The Violence of Privacy*, 23 CONN. L. REV. 973, 976-77 (1991), arguing that the public and the private cannot be so cleanly separated. For example, contrary to popular belief, many violent acts by domestic partners are not limited to the home, but may occur in workplaces and other public areas and may involve strangers. As Schneider argues, "There is no realm of personal and family life that exists totally separate from the reach of the state. The state defines both the family, the so-called private sphere, and the market, the so-called public sphere. 'Private' and 'public' exist on a continuum." See *id.* at 977. Therefore, it is argued, this dichotomous view of the public and private spheres is artificial and overdrawn.

private, they cannot be treated as appropriate subjects of international human rights law unless the state can in some sense be held responsible.²²

While treaties and covenants speak to freedom from torture, they are silent regarding domestic violence. Legally, one way around this problem is to argue government complicity. By doing so the government admits to knowing that persistent domestic violence occurs but chooses not to act. Simply stated, a state has some duty to protect those within its territory from private acts of violence and illicit force.²³ If the state makes little or no effort to stop private violence, it condones such violence, transforming an

22 This relegation of domestic assault to the private sphere can be found in a number of cases. For example, in the United States, a Colorado court found that the government had not violated a murder victim's equal protection rights even though it provided less protection to victims of domestic assault than to other assault victims. See *Cossio v. City and County of Denver*, Colorado, 986 F. Supp. 1340, 1346 (D. Colo. 1997). "The Supreme Court has held 'nothing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors.'" *Id.* (citing *De Shaney v. Winnebago County Dep't of Social Servs.*, 489 U.S. 189, 195 (1989)). *Cossio* also found that the city did not assume duty to protect the victim or her children from the assailant. "A special relationship arises [only] 'where the state creates a dangerous situation or renders citizens more vulnerable to danger.'" See *Cossio* at 1346, (citing *Reed v. Gardner*, 986 F.2d 1122, 1125 (7th Cir. 1993)). See also, *Losinski v. County of Trempealeau*, 946 F.2d 544 (7th Cir. 1991) (civil rights violation did not occur, even though deputy sheriff had accompanied victim and victim was shot and killed by her husband in presence of deputy sheriff.) See also, *Semple v. City of Moundsville*, 963 F. Supp. 1416 (N.D.W.Va.1997) (where court found no "special relationship" between victims murdered by one of the victim's boyfriend and the Moundsville Police Department that would give rise to a duty to protect.).

23 Kenneth Roth, *Domestic Violence as an International Human Rights Issue*, in *HUMAN RIGHTS OF WOMEN, NATIONAL AND INTERNATIONAL PERSPECTIVES*, 326, 329, (Rebecca J. Cook ed., 1994).

otherwise wholly private act into a constructive act of the state.²⁴ Elizabeth Schneider logically argues that “[w]hen the police do not respond to a battered woman’s call for assistance, or when a civil court refuses to evict her assailant, the woman is relegated to self-help, while the man who beats her receives the law’s tacit encouragement and support.”²⁵ Based upon this argument, a government’s inaction regarding the “torture” of women in their own homes is paramount to state torture, and existing treaties cover state torture.

This theory that a government can be held responsible under international human rights law for its inaction as well as its action has been gaining success. Originally, this theory applied to the human rights movement in holding governments accountable for death squads in places like El Salvador and Guatemala. Although the movement could not rely only on a theory of complicity in these situations, since evidence linking death squads with governmental forces existed, they did contend that the government should be held responsible simply because of its systematic failure to attempt to halt the death squads.²⁶ In addition, Human Rights Watch used a similar theory of government complicity to address private violence against land less peasants in Brazil and Paraguay, as well as a number of other abuses including sectarian violence, violence against labor activists, violence against political opponents, slavery, and forced labor.²⁷ While the effectiveness of these arguments, when used alone, lack clarity, it

24 *Id.* States create and enforce their own criminal laws thus taking some responsibility for what is otherwise private violence. By creating and enforcing criminal laws, then, a government acknowledges its duty to provide at least a minimum level of protection for its citizens.

25 *Id.*

26 Schneider, *supra* note 20, at 977, citing Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497, 1499-1501 (1983).

27 Roth, *supra* note 22, at 329 (emphasis added).

must be noted that they are beginning to be employed. Although one must carefully define and limit state liability by omission, this approach can be considered another weapon to be used to ensure legal accountability and has become a viable means of framing domestic violence as an international human rights problem.

Note again that the instruments discussed thus far are general human rights treaties or covenants that require no explicit action against domestic violence on the part of governments. However, in an attempt to remedy this flaw, the Committee on the Elimination of Discrimination Against Women (CEDAW) is arguing for a "creative interpretation" of one treaty — the Convention on the Elimination of All Forms of Discrimination Against Women.²⁸ This Convention is a comprehensive treaty whose declared purpose is to eliminate gender discrimination.²⁹ States who ratify the Convention agree to ensure, among other things, the principle of gender equality within their national constitutions, the adoption of laws prohibiting gender discrimination, the establishment of public agencies that refrain from inequality, and the abolishment of laws, regulations, customs, and practices that perpetuate gender discrimination.³⁰ CEDAW, as an organ of the Convention, was established to monitor states parties' compliance; although the legal effect of such monitoring is unclear and currently, a number of countries, including the United States, have not ratified the Convention.³¹

28 *Id.* at 329-30.

29 Joan Fitzpatrick, *The Use of International Human Rights Norms to Combat Violence Against Women*, in HUMAN RIGHTS OF WOMEN, NATIONAL AND INTERNATIONAL PERSPECTIVES, 532, 534-35, (Rebecca J. Cook ed., 1994).

30 Julia Ernst, *U.S. Ratification of the Convention on the Elimination of all Forms of Discrimination Against Women*, 3 MICH. J. GENDER & L. 299, 302 (1995).

31 *Id.* at 303.

The Convention begins by defining the term 'discrimination against women' as meaning:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.³²

In January 1992, the eleventh session of CEDAW adopted General Recommendation Number 19, defining gender-based violence as discrimination which inhibits a woman's ability to enjoy rights and freedoms on a basis of equality with men.³³ By defining gender-based violence as discrimination under Recommendation 19, CEDAW found that gender-based violence (of all forms) interferes with the right to life, impairs the prohibition on torture, lessens the right to liberty and security of person, diminishes equal protection of humanitarian law, decreases the right to equality within the family, and reduces the right to physical and mental health.³⁴ Recommendation 19 also recognizes

32 *Id.* at 305 and 335. For a criticism on implementation and monitoring of international standards, including CEDAW, see Anne F. Bayefsky, *General Approaches to the Domestic Application of Women's International Human Rights Law*, in HUMAN RIGHTS OF WOMEN, NATIONAL AND INTERNATIONAL PERSPECTIVES, 351, 351-354 (Rebecca J. Cook ed., 1994).

33 Convention on the Elimination of All Forms of Discrimination against Women, [hereinafter Convention] G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 194, U.N. Doc. A/34/46 (1980).

34 Fitzpatrick, *supra* note 28, at 534. For a more detailed analysis of how domestic violence and rape have been treated by different conferences and commissions since 1980, see *Id.* at 534-540.

the need to address specific forms of violence against women and accordingly, CEDAW called for government action to establish laws on domestic violence.³⁵ According to CEDAW, these laws should give adequate protection to all women, provide training to judicial and law enforcement officers in the area of domestic abuse, promote research on gender-based violence, and secure health services for victims.³⁶

CEDAW also interpreted Article 2 of the Convention as holding states responsible when they failed to intervene in private acts of domestic abuse.³⁷ Article 2 reads: "States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women. . ."³⁸ According to CEDAW, states are responsible for "private acts" if they fail "to act with due diligence to prevent violations of rights, or to investigate and punish acts of violence, and to provide compensation."³⁹ Finally CEDAW found that, under Article 16 of the Convention, governments must impose criminal and civil penalties for domestic violence, remove the "defense of honor" in cases of assault or murder of female family members, create refuges and other services for victims, and provide rehabilitation to perpetrators.⁴⁰

By "creatively" interpreting the Convention, CEDAW hopes to strengthen international law in this area.⁴¹ Unfortunately,

35 *Id.* at 535.

36 *Id.*

37 *Id.*

38 *Id.*

39 Convention, *supra* note 32, art. 2, at 194.

40 Fitzpatrick, *supra* note 28, at 535.

41 *Id.*

international agreements are often viewed as statements of agreed upon principles, rather than binding legislation in their own right; scholars argue over the legal force of international law based upon treaties, even where such a creative interpretation is not used.⁴² The point here, however, is not whether the treaties carry substantial legal weight. Rather, it is — whether through expanding interpretation or force of treaties, customary law, or simply a general heightened awareness — the manner in which the international community views violence against women is changing. Even if the changes are slow, one can argue that progress has been made in legal and socio-political spheres to increase awareness of domestic violence as a human rights issue. For example, one writer notes that the Declaration Against Violence — a declaration which replicates the language of CEDAW calling for equal enjoyment and protection of all human rights by women — has many limitations.⁴³ Despite these

42 *See id.*

43 *See* R.I.R. Abeyratne, *The Effects of Unlawful Interference with Civil Aviation on World Peace and the Social Order*, 22 TRANSP. L.J. 449, 471-472 (1995). "The question raising much debate has been whether international law upon which international treaties are based has the nature and force of law. Although Nineteenth century Austinian thinking did not consider international law to be endowed with the attributes of law, there is a strong view to the contrary. The theory that international law is not enforceable law was based on the thinking that laws emanate from a sovereign authority which was politically superior to those on whom such was imposed. International law, it was claimed, did not emanate from such authority. The contrary view, which is persuasive, holds that if international law had mere force of morality, such authorities as precedents and opinions of jurists would not be cited in instances of adjudication. In addition, certain judicial decisions have expressly recognized the fact that international law is enforceable and has all the attributes of law." *Id.* (citations omitted). But note that in many states, such as Great Britain, international treaties are not binding unless they have been given force of law by Parliamentary statute. Jonathan E. Levitsky, *The Europeanization of the British Legal Style*, 42 AM. J. COMP. L. 347, 352 (1994)(citing Henry G. Schermers and Denis F. Waelbroeck, JUDICIAL PROTECTION IN THE EUROPEAN COMMUNITIES 117-118 (1992)). However, "[o]ther states do not require implementing legislation, since international treaties to which they are

limitations, however, the document achieves important goals in defining violence against women and giving a voice to victims who have been historically silenced out of fear of punishment or shame.⁴⁴ Thus, even given the practical and methodological problems inherent in the human rights approach, such an approach has value. According to Thomas and Beasley:

Human rights activists have shown the effectiveness of prompting governments to curb human rights violations by aiming their spotlight of public scrutiny on the depredations. Therefore, the potential power of the human rights machinery to combat domestic violence is a strong incentive to use this approach.”⁴⁵

Another possible legal tactic in the fight to gain state protection against domestic violence involves litigation in international courts.⁴⁶ One writer argues that because domestic courts have been so unsympathetic to victims, national legal systems have not only failed to remedy the problem, but often have contributed to it.⁴⁷ International litigation, it is argued, raises

parties automatically have the force of law.” Charles D. Siegal, *Deference and its Dangers: Congress' Power to 'Define . . . Offenses against the law of Nations'*, 21 VAND. TRANSNAT'L L. 865, 924 (1988).

44 Michelle Lewis Liebeskind, *Preventing Gender-Based Violence: From Marginalization to Mainstream in International Human Rights*, 63 REV. JUR. U.P.R. 645 (1994) (Page numbers not available in publication).

45 *Id.*

46 Dorothy Q. Thomas & Michele E. Beasley, *Domestic Violence as a Human Rights Issue*, 58 ALB. L. REV. 1119, 1146 (1995) (citations omitted).

47 For an argument on litigating through international courts and the issues involved, see Katherine M. Culliton, *Finding a Mechanism to Enforce Women's Right to State Protection from Domestic Violence in the Americas*, 34 HARV. INT'L

public awareness, increases pressure on states to improve national remedies, and redresses, on an international level, a victim's suffering.⁴⁸

Optimists believe these tactics are effective and are especially heartened by a recent political trend recognizing women's rights as human rights.⁴⁹ One welcome advancement was the 1994 Violence Against Women Act, passed in the United States, which defined violence against women as a civil rights violation.⁵⁰ With this reframing of the issue, activists hope that domestic violence will be viewed as a more legitimate, public concern affecting the entire community.

Finally, activists argue that they have made significant achievements in the past three decades in providing social, human and legal services to battered women.⁵¹ These services have been expanded because of heightened awareness concerning domestic abuse. In comparison to work done thirty years ago, research in this area is now considerably more consistent.⁵²

However, even those who recognize these research developments concede that severe limitations continue to exist. As one writer states, "[t]hat I am writing about developing strategies to deal with domestic violence in mid-1995 and that it is still a central and largely unaddressed global problem is tragic. It is also alarming that a central theme in the entire story of domestic

L.J. 507, 560 (1993).

48 *Id.*

49 *Id.*

50 See Elizabeth Dietz, *Violence Against Women in the United States: An International Solution*, 13 ARIZ. J. INT'L & COMP. L. 551, 554 (1996).

51 Violence Against Women Act of 1994 (VAWA), Pub. L. No. 103-322, 108 Stat. 1796, §40001.

52 Elizabeth M. Schneider, *Epilogue: Making Reconceptualization of Violence Against Women Real*, 58 ALB. L. REV. 1245, 1246 (1995).

violence is that a lot is said but little is done to solve the problem.”⁵³

Critics, who feel international law does little to protect women from particular kinds of abuses, are even harsher in their assessments. The persistence of the public/private dichotomy in the law noted above, coupled with the fact that international bodies confront only abuses defined as state action, that women often do not have adequate representation in the international arena, and the United Nations’ defining of human rights norms from a mostly male perspective are noted as major shortcomings.⁵⁴ “These problems,” according to one writer, “require women and men who are dedicated to bettering women’s lives to seek justice outside the established regime of international law.”⁵⁵

Regardless of whether one is a proponent or critic of such civil and legal approaches, the fact remains that advocates have long understood the reasons why domestic violence should be treated as a human rights issue and how to frame and use such arguments. Yet even with this knowledge, the eradication of domestic abuse remains an unaccomplished, distant goal. Despite the number of sound legal, social, and political arguments made in the last three decades, statistics such as those noted earlier in this paper continue to show that few countries in the world, if any, adequately protect their female citizens.

III. USING AN ECONOMIC ARGUMENT

Why does the goal of women’s freedom from violence remain such a distant aim around the world? Why are the present

53 *Id.* at 1246.

54 Moira L. McConnel, *Violence Against Women: Beyond the Limits of the Law*, 21 BROOK J. INT’L L. 899, 900 (1996)(emphasis added).

55 Margareth Etienne, *Addressing Gender-Based Violence in an International Context*, 18 HARV. WOMEN’S L.J. 139, 146-148 (1995).

arguments so inadequate? The answers to these questions require an honest look at the nature of the beast — to affect significant change activists must bring the problem out of the secret, isolated, private sphere of individual homes and into the public domain. This strategy is not new; much of the current educational, legal, and social tactics attempt to do just that. However, to adequately accomplish this task, governments must be a central player in demanding change. Complete government involvement will not be accomplished by a human rights argument, though. By their nature, governments are large, impersonal, bureaucratic bodies and, as with any big business, they are concerned with profits and losses. Therefore, to gain the aid and support of reluctant governments, activists must show the cost of this problem to these unwilling bodies. They must demonstrate that domestic violence affects not only individuals or even groups of individuals, but also municipalities. Thus, a different and stronger argument must be made — the argument of economics.

To truly invoke positive change for individual women around the globe, advocates must work to expand women's collective political power. To accomplish this goal, activists must educate governments in three areas. First, they must show the contribution women make to global economies. Second, they must show the significant cost to these economies, when women are denied their contributions because of domestic violence. Finally, they must show that these costs are profound enough to require governmental attention when allocating expenses.

A. *The Contribution of Women to Global Economies*

The feminization of employment has been “one of the most important economic changes of the past decade in terms of both the rapid influx of women into the paid labour force and the emerging patterns of employment.”⁵⁶ The 1994 United Nations World

Survey on the Role of Women in Development reported that women play a major economic role in all countries, even though their contributions and labors are still considered undervalued and categorized as economically insignificant.⁵⁷ The report's statistical picture shows it is the "invisibility" of the female worker and unreliable data, rather than the lack of contribution, which perpetrates these misconceptions.

One reason for this underestimation is that much of the work performed by women, particularly in developing countries, occurs in the informal sector.⁵⁸ As the United Nations report notes, "[w]omen's work is undervalued in most societies and the incomes they receive are not a true measure of their economic contribution."⁵⁹

57 U.N. DEP'T FOR POLICY COORDINATION & SUSTAINABLE DEVELOPMENT, WOMEN IN A CHANGING GLOBAL ECONOMY 1994 WORLD SURVEY ON THE ROLE OF WOMEN IN DEVELOPMENT, at 48, U.N. Sales No. E.95.IV.1 (1995). But note, that while statistics indicate that women are working more often outside the home, data has been scarce historically and may not have reflected true numbers of working women in the past.

58 *Id.* Note that women's contributions often are overlooked whether they work within the home in so-called traditional work or as part of the outside marketplace. Some critics may attempt to argue that the cost of domestic violence to the community is small in situations where women work only in the home as housekeepers and/or mothers. This view contains two basic flaws. First, women who work within the home make a valuable contribution in running the household and raising children. While such work may not be valued economically in GNP figures, injury and/or death of such women may cause major hardships and eventual economic loss. For example, the loss of a mother may mean inadequate care of children potentially leading to a need for foster care or other state welfare resources. Secondly, this view fails to realize the vast numbers of women who may be defined statistically as homemakers but who contribute to much of the workforce in both agricultural and manufacturing settings within their countries.

59 U.N. DEP'T FOR POLICY COORDINATION & SUSTAINABLE DEVELOPMENT, *supra* note 56, at 53.

Some estimates of unrecorded activities put the value of women's work at between one third and one half of GNP.⁶⁰ In 1990, 854 million women worked outside the home in some capacity, accounting for 32.1 percent of the global labor force.⁶¹ The same estimates show women increasingly entering the labor force with some 41 percent of the world's women, aged 15 and over, "economically active" in the market.⁶² In 1980, in the OECD countries, approximately 53 percent of women were in the labor force.⁶³ By 1990, that number had reached 60 percent.⁶⁴ In places like North Africa, the increase is even more startlingly. In 1970, only eight percent of women were in the market; by 1990, that number was 21 percent.⁶⁵

Women make significant contributions to the workforce in developing and developed countries. Official statistics show that in developing countries women account for a smaller share of the labor force (only about 31 percent); however such statistics do not account for women's performance the informal or agricultural sectors.⁶⁶ As noted by the United Nations, the use of a wider

60 *Id.* at 50.

61 *Id.* at 58, (quoting Luisella Goldschmidt-Clermont, *Unpaid Work in the Household A Review of Economic Evaluation Methods*, in WOMEN, WORK AND DEVELOPMENT, No. 1, at 4 (1989)).

62 *Id.* at 48 (emphasis added).

63 *Id.*

64 *Id.* at 49, quoting WORLD LABOUR REPORT, 1994, at 29 (1994).

65 *Id.*

66 *Women in Development Network*, (visited August 2, 1998) <<http://www.focusintl.com/statr1a4.htm#001>> quoting statistics from U.N. SOCIAL STATISTICS & INDICATORS, THE WORLD'S WOMEN, 1995 TRENDS & STATISTICS, at 110, U.N. Doc. ST/ESA/STAT/SER.K/12, U.N. Sales No. E.95.XII.2 (1995). Please note that diligent effort was made to confirm sources where statistics were taken from computer web pages. However, due to the difficulty of compiling such

definition of the term "economic activity" when used in India to include activities in the informal sector, boosted the estimated thirteen percent of women active in the economy to eighty-eight percent.⁶⁷ In Africa, women are a vital part of the agricultural economy, producing eighty percent of the food in some countries.⁶⁸

In developing countries, women are very active in the informal sector and are often in charge of such essential activities as petty trading, personal services, and various processing activities. Studies in Latin America and Africa indicate that twenty-five to forty percent of the owners and operators of enterprises in the informal sector are women.⁶⁹

Women are also well represented in professional and technical fields. Around the globe, 41.8 percent of all employees in these categories are women.⁷⁰ According to statistics compiled by the United Nations, in Eastern Europe women comprise 56 percent of the professional, 33 percent of the administrative workforce, 73 percent in office work, 66 percent of the sales force and 27 percent of production and manual labor.⁷¹ Figures are similar for Western Europe.⁷² In Latin America, women make up

information, the author had to rely on the original compilers in some instances.

67 U.N. DEPT'T FOR POLICY COORDINATION & SUSTAINABLE DEVELOPMENT, *supra* note 56, at 49.

68 U.N. DEP'T FOR POLICY COORDINATION & SUSTAINABLE DEVELOPMENT, *supra* note 56, at 49, (quoting WOMEN: CHALLENGES TO THE YEAR 2000, at 39, U.N. Sales No. E.91.I.21 (1991)).

69 *Id.*

70 *Id.* at 48

71 *Id.*

72 Women in Development Network, *supra* note 65, quoting statistics from U.N. SOCIAL STATISTICS & INDICATORS, THE WORLD'S WOMEN 1995 TRENDS & STATISTICS, U.N. Doc. ST/ESA/STAT/SER.K/12, U.N. Sales No. E.95.XII.2 (1995).

49 percent of the professional sector, 23 percent of administration, 59 percent of the clerical force, 47 percent of the sales force and 17 percent of production and manual labor.⁷³ Throughout Asia, the percentages are slightly lower but comparable.⁷⁴ Finally, in Sub-Saharan Africa, women account for 36 percent of technical professions, 15 percent of management, 37 percent of office work, and 52 percent of the sales force.⁷⁵ Again, percentages are slightly lower for Northern Africa, but are comparable except for sales, where women make up only 10 percent of the workforce.⁷⁶

Clearly, women play a significant role in the global economy. The starting point for the economic argument, then, begins with the fact that as major players in the global economy, women must be protected from abuse, not only for their own safety but for the world's economic good. If governments wish their economies to be competitive in the global market, they must protect their female citizens. Otherwise, a country runs the risk of decreased productivity or the loss of a significant and important part of its workforce.

B. *The Cost of Domestic Violence*

At present, the economic cost of domestic violence is difficult to determine. This is especially true on a worldwide scale. Much of the violence remains hidden, making it difficult to determine actual costs. In addition, many human rights groups focus on the individual violence – quoting statistics as to the number of women affected without looking at the impact on the community. However, one can extrapolate much about the cost of

73 *Id.*

74 *Id.*

75 *Id.*

76 *Id.*

such violence by looking at its effects on smaller, local communities. Even viewed in isolation, the statistics are astounding and reveal a major public health problem of epidemic proportions as well as a global economic concern. Certainly, if domestic violence were a biologically-based disease, governments around the world would be decrying the number of victims, feeling overwhelmed by the cost to their communities, and seeking assistance to end the scourge. It is unconscionable, then, that because this plague is brought on, not by biological forces, but by human ones, its negative consequences to the individual and community are afforded lesser attention.

Economically, domestic violence affects all spheres of community life, creating health care, crime and employment costs.

Health-Care Costs

The estimate of medical and mental-health costs related to domestic violence in the United States alone is particularly startling. According to Evan Stark and Anne Flitcraft, physical abuse by male partners may be the single most common source of injury among women – more common than automobile accidents, muggings and rapes combined.⁷⁷ In addition, several studies show that as many as 22 percent to 35 percent of the women who visit emergency departments are there for symptoms related to ongoing abuse.⁷⁸ Other studies estimate that domestic violence causes approximately 100,000 days of hospitalizations, 28,700 emergency

77 *Id.*

78 *Victim Services, Domestic Violence Facts and Figures* (visited March 4, 1998) <<http://www.dvshelter.org/fact.html>>. (quoting testimony by Evan Stark, Ph.D. and Anne Flitcraft, M.D. to the Attorney General's Task Force on Family Violence, New York City, reporting on the major findings from a five-year study at Yale-New Haven Hospital.)

room visits, and 39,900 visits to physicians.⁷⁹ Under these figures, domestic violence costs the United States between five and ten billion dollars per year in medical costs alone.⁸⁰

In addition, domestic abuse creates many hidden medical costs due to the link between the violence and drug/alcohol abuse. In the United States, battered women are fifteen times more likely to be at risk for alcoholism than non-battered women and are nine times more likely to be at risk for drug abuse.⁸¹ In addition, at least 26 percent of female suicide attempts presented to hospitals are preceded by abuse.⁸² Among black women, 50 percent of those who attempt suicide are abused.⁸³ While the cost of drug abuse and suicide is immeasurable in terms of the human lives affected, monetary value can be placed on the resources depleted – of which the amount of lost work time, and the cost of drug treatment programs, medical care, and mental health counseling are examples. However, to better substantiate this economic argument, advocates must keep more detailed records than they do at present. Particularly important is a tracking device to flag all cases involving domestic violence. Although many victims are reluctant to acknowledge their abuse, increased education in this area allows for more access to such information. In addition, many

79 *Id.* (quoting *Domestic Violence Intervention Calls for More than Treating Injuries*, 264 JAMA August 22/29, 1990 No. 8 (Aug. 22-29, 1990)).

80 The National Victim Center, *Domestic Violence* (visited March 4, 1998) <<http://www.nvc.org/edir/domestic.htm>>, (quoting Harris Meyer, *The Billion-Dollar Epidemic*, in *VIOLENCE: A COMPENSUM FROM JAMA, AMERICAN MEDICAL NEWS, AND THE SPECIALTY JOURNALS OF THE AMERICAN MEDICAL ASSOCIATION* (1992)(emphasis added)).

81 *Id.*

82 Victim Services, *supra* note 77.

83 Anne H. Flitcraft & Evan Stark, *Women Battering, A Prevention-Oriented Approach*, in *THE PHYSICIAN ASSISTANT'S GUIDE TO HEALTH PROMOTION AND DISEASE PREVENTION*, at 59 (1986).

doctors are being trained to understand the signs of abuse even when the patient is afraid to disclose.

Total Crime Costs

Just as domestic violence increases the economic cost of medical/mental health care, so it increases the total crime costs in the United States. According to a 1996 National Institute on Justice study, domestic crime against adults accounts for almost fifteen percent of total crime costs, an amount totaling an estimated \$67 billion per year.⁸⁴

Employment Costs

The U.S. Department of Labor recognizes that domestic violence creates huge costs in the workplace.⁸⁵ The Department of Labor's Women's Bureau notes that domestic violence can interfere with a woman's ability to get, perform, or keep a job.⁸⁶ In one small, pilot study, researchers found that 96 percent of employed victims of domestic violence have some type of workplace problem as a direct result of their abuse or abuser.⁸⁷ Problems included more than 60 percent being late, more than 50 percent missing work, 70 percent having difficulty performing the duties of the job, 60 percent being reprimanded for problems

84 *Id.*

85 Family Violence Prevention Fund, *The Impact of Domestic Violence on the Workplace Fact Sheet* (visited March 4, 1998) <http://www.fvpf.org/the_facts/factsht.html>, (quoting NATIONAL INSTITUTE OF JUSTICE, U.S. DEP'T OF JUSTICE, VICTIM COSTS AND CONSEQUENCES: A NEW LOOK 19 (1996)).

86 WOMEN'S BUREAU, U.S. DEP'T OF LABOR, *Domestic Violence: A Workplace Issue* in FACTS ON WORKING WOMEN, No. 96-3, October 1996.

87 *Id.*

associated with the abuse, and 30 percent actually losing a job.⁸⁸ In another small pilot study, researchers found that almost three-quarters of employed battered women reported being harassed by their abusive partners in person or by telephone while at work.⁸⁹ More than half reported missing three days of work each month because of abuse.⁹⁰ In a similar study of fifty battered women conducted in New York, 75 percent said they had been harassed by their batterer while they were at work, 54 percent reported missing an average of three days per month, and 44 percent lost at least one job for reasons directly related to the abuse.⁹¹

In a 1994 survey of senior executives of Fortune 1,000 companies, 66 percent of the respondents believed that addressing the issue of domestic violence among its employees would greatly benefit the company's financial performance.⁹² In this same survey, 49 percent of the respondents reported that domestic violence had a harmful effect on their company's productivity; 47 percent reported a harmful effect on attendance; and 44 percent reported an increase in insurance and medical costs caused by domestic abuse.⁹³

The death of a worker due to domestic violence is an even greater business cost. Setting aside for a moment the incalculable individual loss caused by death, this loss of a trained worker

88 *Id.*

89 *Id.*

90 *Id.*

91 *Id.*

92 Family Violence Prevention Fund, *supra* note 84, (quoting Lucy Friedman & Sarah Cooper, THE COST OF DOMESTIC VIOLENCE (1987)).

93 *Id.*, (quoting Liz Claiborne, Inc., *Addressing Domestic Violence: A Corporate Response*, at 2 (1994) (survey conducted by Roper Starch Worldwide Inc. on behalf of Liz Claiborne, Inc. between July 18 - August 5, 1994)(emphasis added)).

involves lost productivity to business. Such costs include initial time lost, the cost of replacing the lost worker, the cost of training a new worker, and the on-going loss of productivity until the new worker meets the skill level of the lost employee. Further, hidden costs are incurred by the company through grief and loss of morale that such a death can cause for fellow coworkers.

In the United States, homicide is by far the most frequent manner in which female workers are fatally injured at work.⁹⁴ That the workplace is “no sanctuary” is born out by the fact that stalking, threats and violence follow battered women to work.⁹⁵ According to a U.S. Justice Department finding, of all incidents involving on-the-job violence each year, victims know their attackers intimately in at least 60,000 of such incidents.⁹⁶ Furthermore, a U.S. Department of Labor study showed that in 17 percent of on-the-job homicides, the alleged assailants were current or former husbands or boyfriends.⁹⁷

Note, however, that the above statistics regard working women. Sometimes, the abuse actually prevents the victim from working outside the home at all or from obtaining needed education to increase her skills and quality of life. Fewer skills means more dependence on the state. Much of the concern regarding recent welfare reform in the United States, centered on the impact of such reform on battered women trying to leave their abusive homes.⁹⁸

94 *Id.* at 111.

95 WOMEN’S BUREAU, *supra* note 85, at 1.

96 Esta Soler, *Domestic Violence: A Pressing Workplace Issue* (visited August 2, 1998) <<http://www.igc.apc.org/fund/workplace/>>.

97 *Id.*

98 Family Violence Prevention Fund, *The Impact of Domestic Violence on the Workplace Fact Sheet* (visited August 2, 1998) <http://www.igc.apc.org/fund/the_facts/>, (quoting WOMEN’S BUREAU, U.S.

While welfare is needed, especially for women trying to leave their abusive partners, continual state dependency creates yet another high cost for government. A woman can not participate in the marketplace when she is forced to habitually remain isolated in her home because of lack of skills. Such isolation results in a loss of vitality, not only for the individual woman, but for the community as a whole. Individually, many women suffer loss of self-esteem and reduced sense of independence. Communally, public coffers are drained and society loses the valuable contribution of a vibrant, active adult.

Trying to put a concrete figure on such costs, however, is extremely difficult, especially given the appalling lack of adequate records in most, if not all countries. The lack of recognition that domestic violence causes global problems perpetuates the continued shortage in reporting and analyzing data. Because of this dearth of information, therefore, we must begin on a more local level in assessing the worldwide costs. By determining the loss to just one world city, we can better understand the intense economic effect domestic violence has on all of us as global citizens, whether we are a direct victim or not. Following is a breakdown of costs to New York City caused by domestic abuse.

Domestic Violence Impact on New York City's Economy – One Case Study

New York City provides a prime example of how costly domestic violence is to the community and to the government. As Victim Services noted: "Without effective prevention and early intervention, domestic violence will continue to absorb the scarce

resources of New York City's emergency room, court, shelter, and foster care systems."⁹⁹

Regarding the costs to employers, New York City estimates that domestic violence leads to an average of eighteen absenteeism days a year per employee.¹⁰⁰ In 1987, the total cost of absenteeism was estimated at \$250 million to New York City employers.¹⁰¹ Hospital trips due to domestic violence, estimated in 1991 at \$250 per visit, resulted in \$77.5 million in emergency room costs per year.¹⁰² In 1989, the New York City Police made 12,724 domestic violence arrests costing an estimated \$3,241 per arrest, totaling \$41 million for police, court costs, and detention.¹⁰³

99 See Nichola L. Marshall, *The Welfare Reform Act of 1996: Political Compromise or Panacea for Welfare Dependency?*, 4 GEO. J. ON FIGHTING POVERTY, 333 (1997). "President Clinton signed a sweeping welfare overhaul into law in August of 1996. . . . The legislation is said to be crafted particularly to break the cycle of dependence that is often blamed for many ghetto pathologies such as increased crime, drugs, gangs, domestic violence, and inadequate education. Yet work-place-oriented welfare reform, like the law that was just passed, fails to address these fundamental problems [*i.e.*, domestic violence] and only reinforces the conclusion that welfare reform alone will not reinvigorate the areas that form the nation's deepest pockets of chronic poverty." *Id.* See also, Sheryl L. Howell, *How Will Battered Women Fare Under the New Welfare Reform?*, 12 BERKELEY WOMEN'S L.J. 140 (1997). "Unless victims of domestic violence are identified and exempted from certain of the Welfare Act's provisions, the violence they experience may be exacerbated. The lifetime limits of welfare reform may prolong abusive relationships by narrowing financial options for women who are economically dependent on their batterers." *Id.* at 140. For impact on immigrant women, see Tien-Li Loke, *Trapped in Domestic Violence: The Impact of United States Immigration Laws on Battered Immigrant Women*, 6 B.U. PUB. INT. L. J. 589 (1997).

100 Victim Services, *supra* note 77.

101 *Id.*

102 *Id.*

103 *Id.*, (quoting Flitcraft & Stark 1982, US Dept. of Justice 1985, Greater NY Hospital Association Health and Hospitals Corporation and NYC OMB).

Victim Services estimated that 21 percent of homeless families and 25 percent of single homeless women are without shelter due to domestic violence.¹⁰⁴ Shelter costs, estimated at \$90 per day for a family and \$40 per day for singles in 1991, resulted in a total cost of \$34 million.¹⁰⁵ Finally, the shelter found that 40 percent of all children in New York City's foster care system came from domestically violent families.¹⁰⁶ In 1991, the cost of keeping a child in the foster care system was \$13,600 per child annually for a total cost of \$71.5 million.¹⁰⁷

In all, using 1987 to 1991 dollars, New York City spends some \$475 million dollars annually simply addressing the aftermath of domestic violence to its own citizenry. Given such alarming figures, it is difficult to persist with the argument that domestic violence is a "private issue" between a man and his partner. Maintaining this argument that violence within the home involves only individuals and is of no concern to the state offends common sense. In truth, domestic violence is a public health issue with a real cost attached. To argue otherwise is as specious as arguing that the 1918 Influenza outbreak was a private issue affecting only those people who died and had no effect on communities or government.

Once a problem becomes so widespread and so costly to communities, it is disingenuous to hide behind privacy issues. Even the United States Constitution, heavily weighted towards privacy concerns, acknowledges that the interest of protecting

104 *Id.* Statistics from the New York Police Department, New York OMB, and New York state Office of Court Administration.

105 *Id.*, (quoting Victim Services Study, The Screening and Diversion of Battered Women (1990) (unpublished study by Ann D'Ercole)).

106 *Id.*

107 *Id.*, (quoting the New York City Child Welfare Administration and New York City OMB).

public health and safety prevails over most other interests.¹⁰⁸ “What is required is, first, constitutional protection of . . . ‘the inherent right of bodily integrity,’ and, secondly, constitutional recognition of, and protection for, the private lives of citizens.”¹⁰⁹ In the United States, the right to privacy is no argument in public health concerns, such as the need for immunization; likewise it should be no argument where violence is occurring, even if that violence is in the home.

Returning to the actual figures quoted above, note again that they are from a single, Western city. While it may be impossible to calculate a worldwide figure at this time, it is indisputable that the costs to governments – in developed and developing countries – are staggering. In fact, using what we now know of the cost of domestic violence to the public, and factoring in the prevalence of women in the global workforce, we can begin to build an economic argument for involving governments.

IV. HOW AND WHY AN ECONOMIC ARGUMENT MUST BE MADE

Women’s participation in the development process – especially in areas such as family planning, environmental protection and education – is crucial. Yet when women are faced with violence, their ability to participate fully in these and other aspects of development is hampered. In many countries, husbands resist women’s work outside the home, since they fear this may lead to women’s empowerment. Men often use force or threats in order to divert or extort women’s income.

The Women’s Development Programme in Rajasthan, India, was sponsored by the Government, but its success was due largely to the

108 *Id.*

109 CHESTER JAMES ANTIEAU, *MODERN CONSTITUTIONAL LAW: THE INDIVIDUAL AND THE GOVERNMENT*, 263 (2d ed. 1997).

energy and drive of its leader, a young woman. One of the goals of the Programme was to reduce child marriage. The campaign, though popular among women and certain segments of society, angered many people, including some village elders. One day the programme leader's home was raided by a group of men. She was gang-raped by them in front of her husband. As she lay unconscious, the leader of the gang told her horror-stricken husband, 'Keep your wife in line or we will rape her again.' This virtually ended a successful programme aimed at improving the lives of girls and women. A society may eventually quantify its economic loss due to gender-based violence, but how can it ever calculate the loss it suffers due to the fact that women are not safe and their freedom is restricted?¹¹⁰

In the previous section, the author argued that the high cost of violence against women impacts the state monetarily – either directly or indirectly. Therefore, it is in the state's best interest, as well as the individual's, for governments to take on this issue directly. As already noted, activists need to make an economic argument to impel involvement on the part of impersonal governments.

An economic argument is also needed to motivate involvement by the World Bank. As noted at the beginning of this paper, the World Bank has already recognized violence against women as a health issue. However, the Bank, by its Articles of Agreement, is prohibited from straying into "non-economic" territory.¹¹¹ The Bank is limited to considering only economic factors and it must ensure that the proceeds of any loan are used

110 *Id.* at 262 (emphasis added) (quoting *Smith v. Command*, 231 Mich. 409, 204 N.W. 140, 40 A.L.R. 515 (1925)(Weist J., dissenting)).

111 WOMEN: LOOKING BEYOND 2000, *supra* note 1, at 21.

only for the purposes for which the loan was granted, without regard to political or other non-economic considerations.¹¹² However, in 1991, the World Bank accepted a broad concept of development, such as that recognized in the United Nations Declaration on the Right to Development, committing itself to development policies that encompass better education, higher standards of health and nutrition, less poverty, a cleaner environment, more equality of opportunity, greater individual freedom and a richer cultural life.¹¹³ This broader policy may allow for projects promoting the ending of gender-based violence, if the projects can be reframed from political to economic issues.¹¹⁴

How do we reframe such a political issue into an economic one? Economic development is a mantra among many nation-states and international organizations. Under current treaties and covenants, it is not difficult to make an economic argument regarding the need to end violence against women. Again, though not explicitly named, a creative reading of current economic rights can be interpreted to include freedom from domestic violence. One need look no further than Article 1 of the International Covenant on Economic, Social and Cultural Rights which proclaims the right of all peoples to self-determination.¹¹⁵ "By

112 See Ibrahim F. I. Shihata, *Human Rights, Development and International Financial Institutions*, 8 AM. U. J. INT'L L. & POL'Y 27(1992).

113 *Id.* at 30-31. "[T]he World Bank is generally viewed by its members as an agency for economic development par excellence. The Bank's operations have reached numerous diverse issues including population, education, health, and social security, even though none of these issues are specifically mentioned in the Articles of Agreement." *Id.* at 30 (citations omitted).

114 See *United Nations Declaration on the Right to Development*, G.A.Res. 128, U.N. GAOR, 41st Sess., U.N.Doc. A/Res/41/128 (1987).

115 *But see*, Shelley Wright, *Women and the Global Economic Order: A Feminist Perspective*, 10 AM. U.J.INT'L L. & POL'Y 861(1995). "There is little sign yet, however, that these policies are in fact being implemented. In particular, 'improving the economic and social status of women' has not been a high priority

virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”¹¹⁶ As illustrated in the above excerpt, violence denies women this right to pursue development and self-determination. Even more applicable may be Article 3 of the same document which calls for parties to the Covenant to “ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.”¹¹⁷ We have already seen that domestic violence affects not only the enjoyment of economic rights of individual women but of the community as a whole. Clearly, a woman’s right to be free from intimate violence in order that she may pursue her economic and social rights can be argued under this Covenant.

A second approach, similar to that used by activists in other fields like the environmental protection movement, can be used to help reframe political issue into economic ones. Such environmental arguments focus on Sustainable Development which has been defined as meeting the needs of the present while not compromising the ability of future generations to meet their

of the World Bank. There are few programs or discussion papers directly addressing women's issues. There is a ‘Women in Development’ or WID division of the World Bank, but it is at the lowest hierarchical level and appears to have little influence over other divisions and departments in their thinking on women's issues. Where the WID unit of the World Bank has been most influential is in arguing that women must be brought into the mainstream of economic policy, rather than concentrating on maternity or child care issues as in earlier WID policies. Bringing women into the mainstream is seen by the World Bank as conducive to raising returns on investments and improving the balance of payments.” *Id.* at 881 (citations omitted). This criticism seems to bolster the argument that the issue of violence against women must be made in economic terms that the World Bank can understand.

116 *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc, A/6316 (1966).

117 *Id.*

needs.¹¹⁸ The Sustainable Development approach initially developed within the environmental context, arguing for the intelligent use of natural resources. Today, this approach can also be applied to women's development rights. Arguably, a nation's citizenry is one of its most important resources. As such, women should be allowed to develop into full economic, social and political beings. Yet, women cannot meet their present needs, much less their future needs, when constantly confronted with violence in the home and workplace. This inability to meet their needs forces women to be dependent on the state, hindering their right to develop.

The focus here is not to redefine Sustainable Development to include women's rights, but rather to argue that many creative arguments and solutions furthering women's freedom from violence exist within an economic framework. Similarly, for example, environmental activists in the United States have used sustainability arguments in order to increase the role that non-governmental organizations (NGOs) in creating policy.

The role of NGOs changed as environmental issues were increasingly seen as affecting national economic decisions. . . . [Previous] work was on the periphery of national economic policy. Environmental groups were tolerated but were shunted off to low ranking officials of relatively obscure bureaucracies considered irrelevant to the economic engines of modern industrial society. They were denied access to decisions being made at the White House, Treasury, or Commerce Departments. Now NGOs deal with the central national decision-makers, because sustainable development is as much an economic as an environmental goal.¹¹⁹

118 *Id.* at 50.

119 Susan L. Smith, *Ecologically Sustainable Development: Integrating Economics, Ecology, and Law*, 31 WILLAMETTE L. REV. 261, 262 (1995), (citing United Nations Commission on Environment and Development, OUR COMMON FUTURE (1987)).

Forcing governments to acknowledge the harsh impact of violence against women on the economy will help give women's rights advocates more influence on those in power. As the environmentalists have demonstrated, using economic arguments not only broadens the discussion, but also helps get human rights activists involved with those capable of making and shaping policy.

The third approach to re-framing violence against women as an economic rather than political issue is the "Externalities" Approach. The "Externalities" Approach, like the Sustainable Development model, took shape in the environmental context. Environmentalists used this argument to help incorporate the costs of externalities like pollution and resource waste into the total cost of production and therefore into the calculation of profit. As Professor Nicholas Robinson from the Pace University Law School states it, when environmental law works well, it gives externalities such as pollution and resource waste an economic value, thereby "bringing them into the decision-making process."¹²⁰

Likewise, activists for women's rights must give the "externality" of violence against women an economic value to bring this important issue into the government decision-making processes. To begin to give domestic violence an economic value, we must begin to view such abuse as a public health issue that demands significant amounts of government resources. Externalities such as increased medical costs, greater criminal justice costs, and loss of employment dollars must be accounted for when discussing domestic violence. Determining a cost for this violence and adding that cost into decisions as an externality makes the problem more authentic, more legitimate to governments. As long as violence against women remains a hidden expense, the consequences of such violence to the larger world will be seen as non-existent. Domestic violence will remain

120 Barbara J. Bramble & Gareth Porter, *Non-Governmental Organizations and the Making of U.S. International Environmental Policy*, C990 ALI-ABA 407, 410 (1995).

largely a private, sometimes criminal act, or simply ignored for its seeming lack of greater relevance. By no longer hiding the cost, governments must recognize the burden such violence creates for all citizens.

Regardless of how the argument is made, however, critics may be quick to denounce the economic argument. Certainly, in the passage beginning this section, the author implies that the loss a society suffers in not having its women safe cannot be quantified and adequately answered with an economic argument. This reasoning may be true in regards to individuals, but where governments are concerned, an attempt to quantify the suffering of society is exactly what must be done. Most, if not all, governments simply do not make the safety of their female citizens a major priority. Unless those in government understand the cost to their society, the individual harms suffered by women will remain elusive, unappreciable, and, ultimately, of little genuine concern to those with state power.

V. CONCLUSION

Gender violence, through its effects on a woman's ability to act in the world, can serve as a brake on socioeconomic development. The development community has come to realize that such problems as high fertility, deforestation, and hunger cannot be solved without women's full participation. Yet women cannot lend their labor or creative ideas fully when they are burdened with the physical and psychological scars of abuse.¹²¹

Realistically, it may be impossible to place an economic value on the violence suffered by individual women. A woman loses her health or is permanently disfigured because a husband beats her and sets fire to her. A mother rarely is allowed to see her daughter because the daughter is tortured and kept prisoner in her home by a boyfriend. A young child will never know his mother

121 Nicholas A. Robinson, *The Law of Sustainable Development*, 13 PACE ENVTL. L. REV. 507, 510 (1996).

because she is murdered by her partner. These losses are not quantifiable, and even when we try to quantify damages, as through Tort Law in the United States, such attempts appear artificial and contrived.

Similarly, many may argue that an attempt to determine the societal costs of violence against women is just as artificial. However, as environmentalists have demonstrated, externalities can be measured and used to garner greater political support. While an economic argument is no panacea and will not eradicate violence against women tomorrow, it will add to the progress already made and will move this issue forward as an international concern. Most importantly, arguing that freedom from violence is an economic and developmental right allows for the possibility of World Bank and other world organizational involvement.

As a human rights activist, I want to live in a world where each individual is afforded dignity and worth, despite economic contributions, a world where governments seek to protect all of its citizens. Unfortunately, such a world does not yet exist. Rather than becoming frustrated or cynical about this lack, however, activists need to create alternative arguments – sound, coherent arguments that will be heard by governments and by those with economic power.

Today, most, if not all, governments are concerned with their coffers. Making an economic argument is generally the most effective way to gain governmental and international support. In many ways, the time is now “ripe” to address gender-based violence from this perspective. As previously noted, according to the United Nations, heightened awareness exists around the globe concerning this issue.

Further advancements in this area, however, depend on the recognition that women are a viable economic force in the modern world – contributing not only to their individual development, but to the development of their countries. In addition, concrete figures must be given to show that domestic violence diminishes, or ends altogether, a woman’s contribution while simultaneously draining public resource coffers. One woman’s suffering may not matter to

a government, but the collective ramifications of violence against women to the world as a whole can influence national and international policy. Only with such arguments, will state powers begin to understand why governments must be involved and why it is imperative that they promote domestic violence as a human rights violation, a practice that must end.

In the end, while no one can ignore the individual suffering caused by domestic abuse, we can illuminate the economic value of women in the modern world, and in the process, give women more political power. It is this power that ultimately will grant women their freedom from gender-related violence.