

Spring 2010

# Mulieris Dignitatem, Ephesians 5, and Domestic Violence

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## CU Commons Citation

Joseph Isanga, *Mulieris Dignitatem, Ephesians 5, and Domestic Violence: Grounding International Women's Human Rights*, 8 Ave Maria L. Rev. 405, 430 (2010).

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*MULIERIS DIGNITATEM, EPHESIANS 5,*  
AND DOMESTIC VIOLENCE: GROUNDING  
INTERNATIONAL WOMEN'S HUMAN RIGHTS

*Joseph Isanga*<sup>†</sup>

[Young women] have been trained to accept that to be equal to men, they must be the same in every respect; and they, and the men, are worse off for it. It is for the next generation of young women that I am writing this book. Perhaps . . . I will only end up making a fool of myself, but I think the stakes are now high enough to justify the risk.<sup>1</sup>

~Wendy Shalit

INTRODUCTION

This Article considers the contribution of Pope John Paul II's apostolic letter *On the Dignity and Vocation of Women* to the deeper understanding of women's dignity as it relates to the process of articulating and rearticulating international women's rights, with particular attention on domestic violence.<sup>2</sup> This letter, *Mulieris Dignitatem*, brings together some of the Catholic Church's most important teachings on gender equality. This Article delineates norms articulated in *Mulieris Dignitatem* that can inform international standards regarding the protection of women from domestic violence.

To date there are no legally binding global human rights instruments that explicitly recognize the right to be free from domestic violence, and remarkably, domestic violence is not robustly emphasized in several feminist legal theories. The objective of this

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1. WENDY SHALIT, A RETURN TO MODESTY: DISCOVERING THE LOST VIRTUE 11 (1999).

2. Pope John Paul II, *Mulieris Dignitatem* [*Apostolic Letter on the Dignity and Vocation of Women*] (1988) [hereinafter *Mulieris Dignitatem*].

Article is to contribute recommendations for a more truly pro-women global community and Catholic Church.<sup>3</sup>

This Article is structured as follows: Part I discusses the global problem of domestic violence and the lack of response from states; Part II focuses on the contribution of the Catholic Church regarding international human rights and the dignity of women as expressed in *Mulieris Dignitatem*; Part III discusses the norms and enforcement of women's rights with particular emphasis on the United Nations' Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") and the international instruments and precedents complimenting it; Part IV sets forth the Catholic Church's teaching on the dignity of the family and the general principles applicable to the issue of domestic violence; and Part V evaluates the international effort against domestic violence and how reservations to certain articles in CEDAW have inhibited the enforcement of women's rights. This Article concludes by calling for stronger domestic laws to protect women as well as increased efforts to educate the public on the inherent dignity of women.

#### I. DOMESTIC VIOLENCE: A GLOBAL AND PERSISTENT PROBLEM

Many countries have taken social and structural steps to tackle domestic violence, but legal progress has been limited.<sup>4</sup> Domestic violence is a global problem.<sup>5</sup> Every day, throughout the world, women

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3. Luciana Reali, for example, argues that feminist legal theory can be "reconciled with and informed by the principles" of Catholic social thought, and that if this is done, it is "possible to create a 'new social reality' for women." Luciana Reali, *Women in Catholic Social Thought: The Creation of a New Social Reality*, 44 J. CATH. LEG. STUD. 461, 462 (2005).

4. Domestic violence is a term that applies to a miscellany of harm. Article 2(a) of the Declaration on the Elimination of Violence Against Women notes:

Violence against women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation[.]

Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, art. 2(a), U.N. GAOR, 48th Sess., Supp. No. 49, U.N. Doc. A/RES/48/104 (Feb. 23, 1994) [hereinafter Declaration on the Elimination of Violence Against Women].

5. Some countries maintain a strict distinction between public and private law, and most states are notoriously unable or unwilling to protect women affected by domestic violence. See Bonita C. Meyersfeld, *Reconceptualizing Domestic Violence in International Law*, 67 ALB. L. REV. 371, 375 (2003).

are commonly subjected to humiliating and debilitating acts of physical and other violence.<sup>6</sup> In 2005, the World Health Organization released the most comprehensive and scientific international study on the issue of domestic violence to date.<sup>7</sup> It confirmed that “[v]iolence against women by their live-in spouses or partners is a widespread phenomenon, both in the developed and developing world, as well as in rural and urban areas.”<sup>8</sup> An article in the *New York Times* summarizes similar studies:

The rate of abuse by [domestic] partners is estimated to be around 20 percent to 25 percent in the European Union, smaller studies have found, although the problem is reported to the police in only a tiny fraction of cases.

In the United States, national surveys by the federal Centers for Disease Control and Prevention have found that about 25 percent of women said they had been physically or sexually assaulted by a spouse, partner or date.<sup>9</sup>

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6. *Id.* at 371.

7. WORLD HEALTH ORG., WHO MULTI-COUNTRY STUDY ON WOMEN'S HEALTH AND DOMESTIC VIOLENCE AGAINST WOMEN: INITIAL RESULTS ON PREVALENCE, HEALTH OUTCOMES AND WOMEN'S RESPONSES (2005), available at [http://www.who.int/gender/violence/who\\_multicountry\\_study/Introduction-Chapter1-Chapter2.pdf](http://www.who.int/gender/violence/who_multicountry_study/Introduction-Chapter1-Chapter2.pdf).

8. Elizabeth Rosenthal, *Women Face Greatest Threat of Violence at Home, Study Finds*, N.Y. TIMES, Oct. 6, 2006, at A7.

The researchers used meticulously designed surveys and statistical techniques. Their work took root more than a decade ago, after organizers of the 1995 International Women's Conference in Beijing rued the lack of hard data on the issue and asked the [World Health Organization] for help.

For the study, 1,500 interviews were conducted in each country at sites in Bangladesh, Brazil, Ethiopia, Japan, Namibia, Peru, Samoa, Serbia, Thailand and Tanzania. . . .

*Id.*

9. *Id.*; see also NAT'L INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN 26 (2000), available at <http://www.ncjrs.gov/pdffiles1/nij/183781.pdf> (showing the prevalence of domestic violence in the United States); WORLD HEALTH ORG., *supra* note 7, at xii (“The proportion of ever-partnered women who had ever suffered physical violence by a male intimate partner ranged from 13% in Japan city to 61% in Peru province, with most sites falling between 23% and 49%.”). “Approximately 1.3 million women and 835,000 men are physically assaulted by an intimate partner annually in the United States.” NAT'L INST. OF JUSTICE, *supra*, at iv. In 2000, 1247 women (and 440 men) were killed by an intimate partner, and in recent years, an intimate partner killed approximately 33% of female murder victims and 4% of male murder victims. Callie Marie Rennison, *Intimate Partner Violence, 1993–2001*, CRIME DATA

Likewise, in justifying its focus on domestic violence against women, the U.S. Conference of Catholic Bishops notes that eighty-five percent of the victims in reported cases of nonlethal domestic violence are women.<sup>10</sup>

Despite this prevalence, at the global level there is no international treaty that specifically addresses violence against women as a human rights issue.<sup>11</sup> Although there has been recognition of gender-based international crimes, such as rape being both a war crime and a crime against humanity, states have been painfully slow in recognizing gender-based violence in the domestic setting to be a matter of their concern.<sup>12</sup> The failure to recognize the responsibility of states with regard to domestic violence bespeaks a narrow understanding of women's dignity and signifies the persistence of unacceptable attitudes toward women.

Sexism is still a problem in both liberal and conservative circles, although it has metamorphosed into more complex forms than in previous generations. Domestic violence, for example, need not take brutal forms. It could be more subtle but still have an equally negative impact on the dignity and welfare of women. None of the dominant outlooks—liberal or conservative—are absolutely blameless in regard to domestic violence. In liberal environments, “women often risk being viewed as objects, while in more conservative

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BRIEF (Bureau of Justice Statistics, U.S. Dep't of Justice, Wash., D.C.), Feb. 2003, at 1, *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/ipv01.pdf>.

10. U.S. CONFERENCE OF CATHOLIC BISHOPS, *WHEN I CALL FOR HELP: A PASTORAL RESPONSE TO DOMESTIC VIOLENCE AGAINST WOMEN* para. 5 (10th anniv. ed. 2002), *available at* <http://www.usccb.org/laity/help.shtml> [hereinafter *WHEN I CALL FOR HELP*]; *see also* Am. Inst. on Domestic Violence, *Domestic Violence in the Workplace Statistics* (2001), <http://www.aidv-usa.com/Statistics.htm> (reporting that 85% to 95% of domestic violence victims are female).

11. The global community has not moved much beyond the Declaration on the Elimination of Violence Against Women, *supra* note 4. The only international treaties that are legally binding are regional in nature. *See infra* Part V (discussing regional human rights documents).

12. *See* Rome Statute of the International Criminal Court arts. 7(1)(g), 8(2)(b)(xxii), July 17, 1998, 2187 U.N.T.S. 90; *see also* Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, U.N. Doc. S/25704, Annex, art. 5, 32 I.L.M. 1192 (1994) (granting the court the power to prosecute rape committed during armed conflict against a civilian population); *Prosecutor v. Rutaganda*, Case No. ICTR-96-3-T, Judgment & Sentence, ¶ 65 (Dec. 6, 1999) (recognizing that rape is a crime against humanity); *Prosecutor v. Furundzija*, Case No. IT-95-17/1-T, Judgment, ¶¶ 170–171 (Dec. 10, 1998) (holding that although “[n]o international human rights instrument specifically prohibits rape . . . [it] can amount to torture”).

environments, women are sometimes shunned or avoided."<sup>13</sup> The Church's teachings are of particular relevance when discerning what needs to be done to improve recognition of the fundamental dignity of women and to protect the rights that derive from that dignity.

## II. *MULIERIS DIGNITATEM* AND OTHER CHURCH TEACHINGS

International women's rights can best be articulated and anchored on the basis of a rational understanding of the true meaning of the dignity of women and their role in society. In July 2008, while speaking at the twenty-third World Youth Day, Pope Benedict XVI questioned:

Do we recognize that the innate dignity of every individual rests on his or her deepest identity . . . and therefore that human rights are universal, based on the natural law, and not something dependent upon negotiation or patronage, let alone compromise? . . .

. . . How can it be that domestic violence torments so many mothers and children?<sup>14</sup>

From the standpoint of international law, the plethora of reservations filed on the most important provisions of CEDAW (some of which could indirectly protect women from domestic violence) indicates that cultural acceptance of domestic violence sadly carries on many years after the adoption of CEDAW and the publication of Pope John Paul II's *Mulieris Dignitatem*.<sup>15</sup>

The Catholic Church and the international community, represented by the United Nations, have much in common with regard to women's dignity. In *Mulieris Dignitatem*, Pope John Paul II addressed precisely the essential challenge of a proper understanding

13. Irene Lagan, *Congress Marks 20 Years of "Mulieris Dignitatem,"* ZENIT, Sept. 22, 2008, <http://www.zenit.org/article-23689?l=English> (internal quotation marks omitted) (quoting Jane Adolphe, Professor of Law, Ave Maria School of Law).

14. Pope Benedict XVI, Address at the World Youth Day Welcoming Celebration by the Young People (July 17, 2008), in *Aboriginal Dance, 'Tu es Petrus' for Pope*, L'OSSERVATORE ROMANO (English ed.), July 23, 2008, at 4.

15. See *infra* Part V. Article 2(1)(d) of the Vienna Convention on the Law of Treaties defines "reservation" as "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State." Vienna Convention on the Law of Treaties art. 2(1)(d), May 23, 1969, 1155 U.N.T.S. 331.

of the true nature of women's dignity and rights from the perspective of the teachings of the Catholic Church.

It is important, in the first instance, to appreciate that with respect to understanding the true nature of women's dignity and rights, both the State and the Church could benefit from further growth in consciousness and clarity. Pope Benedict XVI articulated the need for collaboration in succinct fashion during his visit to the United Nations:

[T]he Holy See has always had a place at the assemblies of the Nations, thereby manifesting its specific character as a subject in the international domain.

*As the United Nations recently confirmed, the Holy See thereby makes its contribution according to the dispositions of international law, helps to define that law, and makes appeal to it.*

The United Nations remains a privileged setting in which the Church is committed to contributing her *experience "of humanity", developed over the centuries among peoples of every race and culture, and placing it at the disposal of all members of the international community.*

This experience and activity, directed towards attaining freedom for every believer, seeks also to increase the protection given to the rights of the person.<sup>16</sup>

International human rights instruments stand to be supplemented, even corrected, in light of what Pope John XXIII calls "law which is revealed in the order of nature . . . [and whose] principles are beacon lights to guide the policies of men and nations."<sup>17</sup> Catholic social teaching is a very important source of norms, and as Pope Benedict XVI has noted, it "argues on the basis of reason and natural law, namely, on the basis of what is in accord with the nature of every human being."<sup>18</sup> Pope Benedict notes well that "[a]s history proceeds, new situations arise, and the attempt is made to link them to new rights. Discernment, that is, the capacity to distinguish good from evil,

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16. Pope Benedict XVI, Address to the U.N. General Assembly (Apr. 18, 2008), in *U.N.: Sign of Unity, Instrument of Service to the Human Family*, L'OSSERVATORE ROMANO (English ed.), Apr. 23, 2008, at 12 (emphasis added).

17. Pope John XXIII, *Pacem in Terris* [Encyclical Letter on Establishing Universal Peace in Truth, Justice, Charity, and Liberty] ¶ 85 (1963).

18. Pope Benedict XVI, *Deus Caritas Est* [Encyclical Letter on Christian Love] ¶ 28 (2006).

becomes even more essential in the context of demands that concern the very lives and conduct of persons, communities and peoples."<sup>19</sup>

Some may object to the proposition that the Church can legitimately provide a sound anthropological and reasoned basis for laws that the international community adopts in regard to women's rights. One of the reasons advanced for this objection is that some of the scriptural passages that are the basis of the Church's teachings seem to be opposed to women's welfare. *Ephesians* 5 in particular has been blamed for being used by men to justify their violent behavior toward women. In *Ephesians* 5:22–24, St. Paul states, "Wives, be subject to your husbands," and again, "As the church is subject to Christ, so let wives also be subject in everything to their husbands."<sup>20</sup> These few verses must be understood in their proper context within the entire letter of St. Paul to the Ephesians—the context of marital love and obligations. The letter analogizes the family relationship to the love Christ has for the Church, and love excludes all forms of submission and violence.<sup>21</sup>

As Pope John Paul II points out in *Mulieris Dignitatem*, it is significant that in another passage St. Paul, in referring to the mother of Jesus, states that "God sent forth his son, born of woman," without mentioning Mary's name.<sup>22</sup> He simply calls her "woman," as if to associate Jesus with all women, recognizing women's dignity.<sup>23</sup> In addition, Pope John Paul II notes while reflecting on the description of Mary the mother of Jesus as being "full of grace" that her true greatness and dignity derive from her being the full expression of what was "characteristic of woman."<sup>24</sup> He then invites that notion to determine our understanding of the dignity of women, because "Mary, the woman of the Bible, is the most complete expression of this dignity and vocation."<sup>25</sup>

Pope John Paul II also notes that the biblical text has another deep insight regarding every woman's "essential identity with regard to man" that underscores a "unity of the two" and ensures that "solitude is overcome" through "mutual relationship" between man and

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19. Pope Benedict XVI, *supra* note 16.

20. *Ephesians* 5:22, 24 (Revised Standard, Catholic Edition).

21. *See infra* Part IV.

22. *Mulieris Dignitatem*, *supra* note 2, ¶ 3 (emphasis omitted); *Galatians* 4:4 (Revised Standard, Catholic Edition).

23. *Mulieris Dignitatem*, *supra* note 2, ¶ 3.

24. *Id.* ¶ 5 (emphasis omitted) (internal quotation marks omitted).

25. *Id.*

woman.<sup>26</sup> Man and woman must “exist mutually ‘one for the other’ [because] . . . [t]o be human means to be called to interpersonal communion.”<sup>27</sup> Pope John Paul II argues that meaningful elaboration of women’s rights must embrace these notions, because it would not be in the best interest of women if “[i]n the name of liberation from male ‘domination,’ women . . . appropriate to themselves male characteristics contrary to their own feminine ‘originality.’”<sup>28</sup>

Pope John Paul II maintains that, in order for women to reach their fulfillment, they must not sacrifice their femininity, because by doing so they would only “*deform and lose what constitutes their essential richness.*”<sup>29</sup> He notes, “The personal resources of femininity are certainly no less than the resources of masculinity: they are merely different.”<sup>30</sup> Throughout his letter, Pope John Paul II presses the argument that “women can discover the entire meaning of their femininity and thus be disposed to making a ‘sincere gift of self’ to others, thereby finding themselves.”<sup>31</sup> Authentic existence requires no less, and to serve the true needs of women, international women’s rights ought to express that truth about women.

### III. INTERNATIONAL WOMEN’S RIGHTS: NORMS AND ENFORCEMENT

When the dignity of a woman is threatened by violence within the marital relationship, the injured spouse, as a member of the human family, should be able to seek from the rest of society protection and justice. This presupposes that the society will have in place a proper and comprehensive elaboration of norms and enforcement structures that correspond to the true nature of women’s dignity. This fundamental expectation is betrayed when efforts of the international community and courts of justice are met with domestic or international law and enforcement structures that are inadequate.<sup>32</sup>

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26. *Id.* ¶¶ 6–7 (internal quotation marks omitted).

27. *Id.* ¶ 7.

28. *Id.* ¶ 10.

29. *Id.*

30. *Id.*

31. *Id.* ¶ 31.

32. Discrimination on the basis of gender persists in spite of the best efforts in articulating women’s rights in instruments. See Beate Rudolf & Andrea Eriksson, *Women’s Rights Under International Human Rights Treaties: Issues of Rape, Domestic Slavery, Abortion, and Domestic Violence*, 5 INT’L J. CONST. L. 507 (2007).

Where human rights, such as the right to be free from bodily harm, are threatened with violence, the state has an obligation to intervene.

The U.N. Convention on the Elimination of All Forms of Discrimination Against Women, the primary international instrument respecting the articulation and protection of women's dignity and rights, is an extremely significant step for the international community. However, there are many difficulties in regard to its actual understanding of the dignity of women, and there is no individual enforcement mechanism in respect to the rights that the instrument recognizes. It is one thing to talk about human dignity and quite another to actually adopt substantive operative provisions that are consistent with the true dignity of the woman. In addition, the very fact that there are so many reservations to CEDAW indicates that its normative content needs attention.<sup>33</sup> As if that is not enough, CEDAW does not specifically identify domestic violence as a human rights issue.<sup>34</sup> Because of these insufficiencies, it is imperative to look to other instruments that complement CEDAW.<sup>35</sup>

Without pretending to be exhaustive, the International Covenant on Civil and Political Rights ("ICCPR") recognizes some important rights of women.<sup>36</sup> In *Aumeeruddy-Cziffra v. Mauritius*, for example, the Human Rights Committee noted that the "protection of a family

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33. Currently, 186 countries have ratified CEDAW. See Convention on the Elimination of All Forms of Discrimination Against Women, June 23, 2006, *Declarations, Reservations, Objections and Notifications of Withdrawal of Reservations Relating to the Convention on the Elimination of All Forms of Discrimination Against Women*, U.N. Doc. CEDAW/SP/2006/2 (Apr. 10, 2006) [hereinafter *CEDAW Reservations*]. However, almost half that number have made reservations. See *id.*

34. See Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

35. There are a number of instruments that complement CEDAW. The discussion that follows will not include the U.N.'s Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and regional human rights instruments such as the European Convention for the Protection of Human Rights and Fundamental Freedoms, the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights.

36. International Covenant on Civil and Political Rights, Mar. 23, 1976, 999 U.N.T.S. 171 [hereinafter ICCPR]. The ICCPR provides that every member state undertakes to respect and ensure the rights of all individuals in their respective territories without any distinction based, inter alia, on sex, and the rejection of any discrimination based on sex is reiterated in Articles 4(1), 24(1), and 26. Article 3 of the ICCPR provides that state parties "undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant." Article 6(5) provides that the death penalty shall not be imposed on pregnant women.

cannot vary with the sex of the one or the other spouse.”<sup>37</sup> The Committee noted that restrictions on the exercise of political rights may be contrary to the purpose of Article 25 or to the provisions of the ICCPR against discrimination if they deny sexual equality.<sup>38</sup>

The ICCPR contains only a few norms regarding women’s dignity and rights. The paucity of opinions regarding women’s rights that have come out of the Human Rights Committee indicates that the bulk of domestic violence litigation must be directed through the CEDAW Committee. In a recent development, the CEDAW Committee was empowered to issue views or recommendations under the individual complaints mechanism.<sup>39</sup> However, the Committee’s recommendations are just that—recommendations. They are not

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37. *Aumeeruddy-Cziffra v. Mauritius*, U.N. Human Rights Committee, Commc’n No. 35/1978, ¶ 9.2(b)(2)(ii)(3), U.N. Doc. CCPR/C/12/D/35/1978 (Apr. 9, 1981). The Human Rights Committee does not issue binding legal decisions, but only recommendations. Nevertheless its recommendations can be politically significant.

38. *Id.* ¶ 9.2(c)(2).

39. There are only ninety-nine state parties to the Optional Protocol to the Convention of the Elimination of All Forms of Discrimination Against Women as of Feb. 14, 2010. See United Nations Treaty Collection, Status of Treaties, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8-b&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en) (last visited May 13, 2010); see also JIM MURDOCH, THE OPTIONAL PROTOCOL TO THE UNITED NATIONS CONVENTION FOR THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW): THE EXPERIENCE OF THE UNITED KINGDOM 7 & n.6 (2008), available at <http://www.justice.gov.uk/publications/docs/un-optional-protocol-women.pdf>. This protocol provides for the individual complaints mechanism before the CEDAW Committee. See Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, Oct. 6, 1999, 2131 U.N.T.S. 83. The number of states parties to the primary instrument—CEDAW—is 186. Under the individual complaints mechanism, see *id.* arts. 1–8, as of August 24, 2008, CEDAW had handled only eight cases in three years: *Kayhan v. Turkey*, Committee on the Elimination of Discrimination Against Women [CEDAW Comm.], Commc’n No. 8/2005, U.N. Doc. CEDAW/C/34/D/8/2005 (2006) (finding the communication inadmissible under Article 4(1) of the CEDAW Protocol); *Szjijarto v. Hungary*, CEDAW Comm., Commc’n No. 4/2004, U.N. Doc. CEDAW A/61/38 (2006) (finding the author’s rights under Article 16(1)(e) of the CEDAW Protocol were violated); *Nguyen v. Netherlands*, CEDAW Comm., Commc’n No. 3/2004, U.N. Doc. CEDAW A/61/38 (2006) (finding no violation of the CEDAW Protocol); *Salgado v. United Kingdom*, CEDAW Comm., Commc’n No. 11/2006, U.N. Doc. CEDAW/C/37/D/11/2006 (2007) (finding the communication inadmissible under Article 4(2)(e) of the CEDAW Protocol); *N.S.F. v. United Kingdom*, CEDAW Comm., Commc’n No. 10/2005, U.N. Doc. CEDAW/C/38/D/10/2005 (2007) (finding the communication inadmissible under Article 4(1) of the CEDAW Protocol); *Goekce v. Austria*, CEDAW Comm., Commc’n No. 5/2005, U.N. Doc. CEDAW/C/39/D/5/2005 (2007) (finding Austria had violated its obligation under CEDAW Protocol); *Yildirim v. Austria*, CEDAW Comm., Commc’n No. 6/2005, U.N. Doc. CEDAW/C/39/D/6/2005 (2007) (finding the State violated its obligation under CEDAW Protocol); and *Muñoz-Vargas y Sainz de Vicuña v. Spain*, CEDAW Comm., Commc’n No. 7/2005, U.N. Doc. CEDAW/C/39/D/7/2005 (2007) (finding the communication inadmissible under Article 4(2)(e) of the CEDAW Protocol). Of these cases, the Committee found violations in three of them, determined four were inadmissible, and found no violation in one.

legally binding decisions, just like those of the Human Rights Committee.<sup>40</sup> Still, it is an important development.

The jurisprudence from the individual complaints mechanism is thin but significant in its reasoning, which has been adopted by bodies that issue binding judicial decisions.<sup>41</sup> One can only imagine that if the obstacles women find in bringing such complaints were fewer, the number of complaints might be higher. The contribution of the Committee to the understanding that domestic violence constitutes gender-based discrimination—violence directed toward women precisely because they are women—is noteworthy in its current jurisprudence.

The first decision by an international human rights body to hold that domestic violence constitutes gender-based discrimination was *A.T. v. Hungary*.<sup>42</sup> In this case, the author of the communication stated that for four years she was subjected to regular domestic violence and serious threats by her common law husband, who possessed a firearm and had threatened to kill her.<sup>43</sup> Even after being hospitalized following a serious assault by her husband and claiming her life was in danger, the Hungarian authorities did not take any measures to protect her from her husband, allowing him to return to the family residence.<sup>44</sup> She complained of the lack of protection and

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40. See Optional Protocol to the International Covenant on Civil and Political Rights art. 4, Dec. 19, 1966, 999 U.N.T.S. 302.

41. The European Union has no legal instruments specifically dedicated to violence against women. However, the European Court of Human Rights has had various opportunities to condemn domestic violence while interpreting and enforcing the European Convention on Human Rights. In the case of *Bevacqua & S. v. Bulgaria*, for example, the court cited the Declaration on the Elimination of Violence Against Women, recognizing that it “urges States to ‘exercise due diligence to prevent, investigate and . . . punish acts of violence against women, whether those acts are perpetrated by the State or private persons.’” *Bevacqua & S. v. Bulgaria*, App. No. 71127/01 Eur. Ct. H.R. 9 (2008) (quoting Declaration on the Elimination of Violence Against Women, *supra* note 4, art. 4(c)). Further, the Court noted that this conclusion was based in part on the case law of international bodies, including the views of the CEDAW Committee. *Id.* at 9. In particular the Court held that

the authorities’ positive obligations—in some cases under Articles 2 or 3 and in other instances under Article 8 taken alone or in combination with Article 3 of the Convention—may include, in certain circumstances, a duty to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals.

*Id.* at 12.

42. *A.T. v. Hungary*, CEDAW Comm., Commc’n No. 2/2003, U.N. Doc. CEDAW/C/32/D/2/2003 (2005).

43. *Id.* ¶ 2.1.

44. *Id.* ¶¶ 2.3–2.4.

restraining orders under Hungarian law and sought the intervention of the Committee to stop the gender-based violence.<sup>45</sup> The Committee noted:

[The Committee] has stated on many occasions that traditional attitudes by which women are regarded as subordinate to men contribute to violence against them. . . . In respect of the case now before the Committee, the facts of the communication reveal aspects of the relationships between the sexes and attitudes towards women that the Committee recognized vis-à-vis the country as a whole. . . . The author could not have asked for a restraining or protection order since neither option currently exists in the State party. . . . None of these facts have been disputed by the State party and, considered together, they indicate that the rights of the author under articles 5(a) and 16 of the Convention have been violated.<sup>46</sup>

This approach has been adopted by other bodies dealing with human rights.<sup>47</sup>

A similar approach was taken by the Committee in *Goekce v. Austria*, where the Vienna Intervention Center against Domestic Violence and the Association for Women's Access to Justice brought a communication alleging that Austria had failed to protect Sahide Goekce from domestic violence.<sup>48</sup> On at least two occasions, her husband Mustafa Goekce battered and threatened to kill her.<sup>49</sup> The public prosecutor refused to detain her husband even after police orders were ineffective in stopping the beatings.<sup>50</sup> The prosecutor stopped all pending prosecutions against the husband on the grounds that there was insufficient reason to prosecute him.<sup>51</sup> Two days later, Mustafa Goekce shot his wife with a handgun in their apartment in

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45. *Id.* ¶¶ 3.1–3.4.

46. *Id.* ¶ 9.4.

47. Some legal theorists argue that because the Declaration on the Elimination of Violence Against Women, *supra* note 4, has been signed by 180 states, prohibition of domestic violence has become part of customary international law. See Andreea Vesa, *International and Regional Standards for Protecting Victims of Domestic Violence*, 12 AM. U. J. GENDER SOC. POL'Y & L. 309, 338–39 (2004). However, this argument is difficult to sustain in light of the fact that the declaration is no more than a political commitment to enact a binding instrument and the fact that domestic violence is so pervasive in many states.

48. *Goekce v. Austria*, CEDAW Comm., Commc'n No. 5/2005, U.N. Doc. CEDAW/C/39/D/5/2005 (2004).

49. *Id.* ¶¶ 2.1–2.4.

50. *Id.* ¶¶ 2.4, 2.6.

51. *Id.* ¶ 2.10.

front of their two daughters.<sup>52</sup> The authors argued that Austria did not exercise due diligence to investigate and prosecute acts of violence and to protect Sahide Goekce's human rights to life and personal security.<sup>53</sup> The Committee reiterated its observations that there are "linkages between traditional attitudes by which women are regarded as subordinate to men and domestic violence," and also that the enactment of legislation aimed at addressing domestic violence is not sufficient unless it is supported by state actors adhering to the state's due diligence obligations.<sup>54</sup>

In addition, the CEDAW Committee issued General Recommendation No. 19, stating that "discrimination under the Convention is not restricted to action by or on behalf of Governments" and that "[u]nder general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation."<sup>55</sup>

The issue of due diligence of state actors has been a problem even in the United States, which considers itself at the forefront of human rights protections. In a recent case, *Gonzales v. United States*, Jessica Gonzales was a victim of domestic violence.<sup>56</sup> Her estranged husband abducted her three children in violation of a protection order that Colorado police repeatedly failed to enforce.<sup>57</sup> Ten hours after the abduction, her estranged husband opened fire at the police station and was shot and killed; however, the bodies of Ms. Gonzales' three daughters were found dead in his truck.<sup>58</sup> The case made its way to

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52. *Id.* ¶ 2.11.

53. *Id.* ¶ 3.1.

54. *Id.* ¶¶ 12.2–12.4.

55. CEDAW Comm., 11th Sess., General Recommendation No. 19, U.N. Doc. CEDAW/C/1992/L.1/Add.15 (1992). The Human Rights Committee, the monitoring body established by the ICCPR, clarifies that "[i]t is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity." U.N. Office of the High Comm'r for Human Rights, 44th Sess., General Comment No. 20, ¶ 2, U.N. Doc. A/47/40 (1992); *see also* Human Rights Committee, 68th Sess., General Comment No. 28, ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000) (specifically recognizing the concept of "gender based violence"). The Inter-American Court of Human Rights recognized the concept of due diligence in *Velásquez-Rodríguez v. Honduras Case*, 1988 Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 172 (July 29, 1988).

56. *Gonzales v. United States*, Petition No. 1490-05, Inter-Am. C.H.R., Report No. 52/07, OEA/Ser.L./V/II.128, doc. 19 ¶¶ 10–11 (2007).

57. *Id.* ¶¶ 11–13.

58. *Id.* ¶ 14.

the U.S. Supreme Court over the issue of the police's failure to enforce the protection order, and the majority held that Ms. Gonzales did not have a personal entitlement to police enforcement of her restraining order.<sup>59</sup>

The case was deemed admissible by the Inter-American Commission on Human Rights, which ultimately found that Jessica Gonzales and her three daughters had a right to be free from gender-based and domestic violence under the American Declaration, and that where law enforcement fails to act with due diligence, the state incurs liability for the acts of its private actors.<sup>60</sup> By denying Ms. Gonzales a remedy for the police failures, the judicial system failed to act with due diligence.<sup>61</sup> The Commission recommended that the United States sign and ratify additional human rights treaties, publicly recognize that current laws, policies, and practices too often condone domestic violence, educate legislators about obligations under international human rights law, and acknowledge the necessity of due diligence within the police departments and judicial systems in responding to domestic violence.<sup>62</sup>

#### IV. DOMESTIC VIOLENCE: UNDERSTANDING THE BASICS

The need for collaboration between the community of nations and the Catholic Church is premised on the fact that domestic violence is

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59. *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 768 (2005); *see also* Caroline Bettinger-López, *Jessica Gonzales v. United States: An Emerging Model for Domestic Violence & Human Rights Advocacy in the United States*, 21 HARV. HUM. RTS. J. 183, 183–85 (2008).

60. *See Gonzales v. United States*, Report No. 52/07, doc. 22 rev. 1, ¶¶ 56–59.

61. *Gonzales v. United States*, Hearing Before the Inter-Am. Comm'n on Human Rights, Org. of Am. States, Petition No. P-1490-05, ¶¶ VII(d), X(d)(i) (2007) [hereinafter *Gonzales Hearing*]. As part of the petition, counsel for Ms. Gonzales claimed, "The American Declaration of the Rights and Duties of Man is binding on the United States and its provisions must be interpreted in light of recent developments in universal and regional human rights laws as well as state practice, and customary international law." *Id.* ¶ III(d). Additionally, counsel recommended that the United States publicly scrutinize and eliminate "those institutional and cultural attitudes that foster, justify, or tolerate private and state violence against women." *Id.* ¶ X(d)(i). The Commission agreed and found the United States in violation of Articles I, II, V, VI, VII, IX, XVIII, and XXIV of the American Declaration of Rights and Duties of Man. *See Gonzales v. United States*, Report No. 52/07, doc. 22 ¶¶ 57–58.

62. *Gonzales Hearing*, *supra* note 61, ¶ IV(c). Unfortunately, the United States is not a party to the Inter-American Convention on Human Rights, and so there is no possibility of the Inter-American Court of Human Rights, which alone can issue binding decisions, hearing this case. The Inter-American Commission on Human Rights can only entertain this case in light of the American Declaration of the Right and Duties of Man and can issue only nonbinding recommendations on the case. *See Bettinger-López, supra* note 59, at 185–86.

not simply a private family matter; it is also a matter of social, legal, and spiritual importance. Both the State and the Church are clearly affected by domestic violence. As the U.S. Conference of Catholic Bishops notes, "Many abused women seek help first from the Church because they see it as a safe place."<sup>63</sup> Therefore, the experience of the Church, as well as its teachings, can play a critical role in understanding the mindset of perpetrators of domestic violence, in recognizing how relations between women and men can best be understood by the international community, and in crafting solutions to domestic violence when it happens.<sup>64</sup>

General principles are important in understanding what is at issue in domestic violence. The Catholic Church teaches that the family is endowed with the dignity of being "the first and vital cell of society."<sup>65</sup> When this "first and vital cell" is disrupted or destroyed through violence, all of society suffers. This is a teaching that the international community ought to acknowledge and that could inform its articulation of norms relating to domestic violence. The *Catechism of the Catholic Church* teaches that the foundation of each family, whose "members are persons equal in dignity," is the marriage of a man and a woman.<sup>66</sup> *Mulieris Dignitatem* reiterates the necessity of this teaching.<sup>67</sup> The connection between family and domestic

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63. WHEN I CALL FOR HELP, *supra* note 10, para. 7.

64. See, e.g., *id.* paras. 14, 17 ("Domestic violence is learned behavior. Men who batter learn to abuse through observation, experience and reinforcement. . . . [T]heir behavior gives them power and control over their partner. . . . Many abusive men hold a view of women as inferior . . . believ[ing] that men are meant to dominate and control women."); see also U.S. CONFERENCE OF CATHOLIC BISHOPS, DIOCESAN RESPONSES TO DOMESTIC VIOLENCE: REPORT FROM A SURVEY OF U.S. DIOCESES (2008), available at <http://www.usccb.org/laity/women/violence/survey.shtml>.

65. Second Vatican Council, *Apostolicam Actuositatem* [*Decree on the Apostolate of the Laity*] ¶ 11 (1965), reprinted in THE SIXTEEN DOCUMENTS OF VATICAN II 333, 348 (Nat'l Catholic Welfare Conference trans., 1967).

66. CATECHISM OF THE CATHOLIC CHURCH ¶ 2203 (2d ed. 1997).

67. *Mulieris Dignitatem*, *supra* note 2, ¶ 6 ("[B]oth man and woman are human beings to an equal degree . . . . Man is a person, man and woman equally so, since both were created in the image and likeness of the personal God. . . . The biblical text provides sufficient bases for recognizing the essential equality of man and woman from the point of view of their humanity." (emphasis omitted)).

Women are recognized by Jesus as being central to Jesus' ministry. Women accompanied Jesus and his disciples as they journeyed through towns and villages, and these women "provided for them out of their means." *Luke* 8:1-3 (Revised Standard, Catholic Edition). With incredible compassion Jesus is said to have restored to life the only son of a widow of Nain. "Do not weep," he said to her. *Id.* 7:13 (internal quotation marks omitted). Jesus' understanding attitude toward the woman caught in adultery is quite unlike that of those who stood in condemnation of her while ostensibly disregarding her partner in crime. "Let him

violence goes without saying. Pope John Paul II regards all forms of “domination” as an indication of the “disturbance and *loss of the stability* of that *fundamental equality* which the man and the woman possess” and notes that “this is especially to the disadvantage of the woman.”<sup>68</sup> Pope John Paul II provides deep insight into human nature by observing that this domination also “diminishes the true dignity of the man.”<sup>69</sup>

Some might express concern regarding the apparent ambivalence within some of the Church’s teaching regarding the relations between men and women—particularly the idea expressed in *Ephesians* 5:22–23 that women must be subject to men.<sup>70</sup> The true sense, import, and significance of *Ephesians* is explained by Pope John Paul II. To begin with, Pope John Paul II stresses the importance of a holistic reading of *Ephesians* to a proper understanding of *Ephesians* 5:22–23.<sup>71</sup> In *Ephesians* 5:25–28, St. Paul writes, “Husbands, love your wives, as Christ loved the Church and gave himself up for her . . . . He who loves his wife loves himself.”<sup>72</sup> The truth about the character of love between a woman and a man must be acknowledged because it is critical to understanding the whole ethos of mutual relations between men and women. Everything else flows from that understanding. The equal dignity of man and woman, as well as the significance of the differences between them, only derive their true meaning when understood from the perspective of love. Only a man

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who is without sin among you be the first to throw a stone at her,” he told her accusers. *John* 8:3–11 (Revised Standard, Catholic Edition) (internal quotation marks omitted). Women are the first at Jesus’ tomb, and he does not hesitate to assign them with the most important responsibility—that of being the first to announce his Resurrection. *Id.* 20:11–18; *cf. Matthew* 28:1–10. Reflecting on the attitude of Christ toward women, Pope John Paul II concludes that Jesus’ attitude “confirms and clarifies . . . the truth about the equality of man and woman.” *Mulieris Dignitatem*, *supra* note 2, ¶ 16. Clearly, Jesus’ high regard for women was revolutionary in light of the discrimination against women prevalent in his day. Vatican II also recognizes the “new social relationships between men and women,” adding that “[w]here they have not yet won it, women claim for themselves an equity with men before the law and in fact.” Second Vatican Council, *Gaudium et Spes* [*Pastoral Constitution on the Church in the Modern World*] ¶¶ 8–9, 60 (1965), reprinted in THE SIXTEEN DOCUMENTS OF VATICAN II, *supra* note 65, at 513, 521–22.

68. *Mulieris Dignitatem*, *supra* note 2, ¶ 10.

69. *Id.*

70. *Ephesians* 5:22–23. This understanding of subordination is espoused by many feminist legal theorists who subscribe to the “non-subordination theory.” This theory focuses on the power balance between men and women and examines whether a law or policy furthers the subordination and oppression of women. See Reali, *supra* note 3, at 464.

71. See *Mulieris Dignitatem*, *supra* note 2, ¶ 23.

72. *Ephesians* 5:25, 28 (Revised Standard, Catholic Edition).

who understands true love between a man and a woman can fully appreciate the equality of dignity between men and women, and only a man who understands the true character of that love can understand the reason for the existence of differences between men and women. Those differences—far from being the *raison d'être* for man's dominance of the woman—are an occasion for celebration.<sup>73</sup> It is that ethos that affirms the true nature of woman and man and that dominates the sense of *Ephesians*. This is because in love, both men and women bring about "the sincere gift of self."<sup>74</sup> Any affirmation of the dignity of women that seeks to deemphasize the importance of that mutual giving could only impoverish the scope of what truly belongs to the woman's dignity. It is in that sense that St. Paul saw no contradiction between this conception of women's dignity and the words "Wives, be subject to your husbands, as to the Lord. For the husband is the head of the wife . . . ."<sup>75</sup> As Pope John Paul II notes:

[T]his way of speaking, so profoundly rooted in the customs and religious tradition of the time, is to be understood and carried out in a new way: as a "*mutual subjection out of reverence for Christ*" (cf. Eph 5:21). This is especially true because the husband is called the "head" of the wife *as* Christ is the head of the Church; he is so in order to give "himself up for her" (Eph 5:25), and giving himself up for her means giving up even his own life. However, whereas in the relationship between Christ and the Church the subjection is only on the part of the Church, in the relationship between husband and wife the "subjection" is not one-sided but mutual.<sup>76</sup>

Domestic violence is the very antithesis of love. Love cannot, therefore, be a ground to exonerate or excuse domestic violence.

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73. Some who espouse the non-subordination theory, however, would disagree with the Catholic position that celebrates differences between the sexes and the ontological complementarity these differences represent. Whereas the Church would want to promote equality by taking account of the differences between men and women, adherents of the non-subordination theory would rather suppress those differences because they are the source of women's subordination. See Reali, *supra* note 3, at 477. It is precisely this conflict in understanding that is responsible for some of the norms contained in international human rights instruments such as CEDAW. Masculinization of women must be avoided if the truth about women is to be achieved. See generally CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT (1993) (arguing that women are different from but not inferior to men).

74. *Mulieris Dignitatem*, *supra* note 2, ¶ 24 (internal quotation marks omitted).

75. *Ephesians* 5:22–23 (Revised Standard, Catholic Edition).

76. *Mulieris Dignitatem*, *supra* note 2, ¶ 24.

Clearly, then, although there is something unique and special about the marital relationship—it being a promise, a union, a covenant, and a contract—this relationship has legal implications.<sup>77</sup> A spouse does not give up basic human rights by entering this relationship.

#### V. DOMESTIC VIOLENCE: EVALUATING INTERNATIONAL EFFORTS

In the international community, domestic violence continues to be tolerated despite the signature and ratification of covenants, declarations, and treaties expressing otherwise. While the effort to create declarations condemning domestic violence is praiseworthy, more needs to be done to ensure the dignity of women is recognized in society and protected in law.<sup>78</sup> Against this backdrop, a proper understanding of Scripture and the teachings of the Catholic Church can guide lawmakers and, perhaps more importantly, individual citizens in their treatment of women.

In his *Letter to Women*, Pope John Paul II recognizes the persistent challenges regarding the full realization of the true dignity and rights of women.<sup>79</sup> He cautions that more is necessary than simply condemning discrimination and injustice.<sup>80</sup> Respect for women must first be won through an “intelligent *campaign for the promotion of women*, concentrating on all areas of women’s life and beginning with a *universal recognition of the dignity of women*.”<sup>81</sup> The ability to recognize this dignity in spite of historical conditioning comes from the use of reason to understand “the law of God written in the heart of every human being.”<sup>82</sup>

One of the most notable international attempts to eradicate domestic violence and ensure protection for the dignity of women is CEDAW, which entered into force as an international treaty on September 3, 1981.<sup>83</sup> Although Pope John Paul II does not specifically

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77. CATECHISM OF THE CATHOLIC CHURCH, *supra* note 66, ¶ 1603 (stating the Catholic view that marriage is a covenant and God himself is the author of marriage).

78. The very fact that the international community adopted a Declaration on the Elimination of Violence Against Women underscores the magnitude and persistence of domestic violence.

79. See Pope John Paul II, *Letter to Women* (1995), reprinted in POPE JOHN PAUL II ON THE GENIUS OF WOMEN 45 (Comm. on Women in Soc’y & in the Church, U.S. Catholic Conference ed., 1997) [hereinafter *Letter to Women*].

80. *Id.* ¶ 6.

81. *Id.*

82. *Id.*

83. 1249 U.N.T.S. 14 n.1.

mention this treaty in his 1995 *Letter to Women*, many of the themes, goals, and shortcomings of this treaty are reflected in his message.

CEDAW recognizes violence against women as a manifestation of historically unequal power relations between men and women, which have forced women into a subordinate position in society.<sup>84</sup> The preamble to CEDAW notes that there have been documents promoting the equality of rights between men and women, but “despite these various instruments extensive discrimination against women continues to exist.”<sup>85</sup> This discrimination is evident even in countries that have ratified CEDAW but have maintained reservations that weaken the agreement—in effect allowing violence against women to continue.<sup>86</sup>

While the purpose of reservations is to allow a greater number of states to enter into the convention, blanket-clause reservations undermine the scope and nature of norms articulated for the protection of women’s dignity and rights. Ambiguous terms in blanket-clause reservations give rise to weak application of CEDAW’s provisions.<sup>87</sup> Many countries claim exemption from specific articles because of strict adherence to religious law and the practical difficulties of legislating to protect women in traditional societies, but some reservations seem to make the process of enforcing the CEDAW most difficult.<sup>88</sup> Reservations that outwardly protect the deeply rooted beliefs of male superiority habituate the cycle of domestic violence both within the family and within the international community.

Among the reservations that weaken protection against domestic violence are reservations to Articles 2, 5, and 16 of CEDAW. Article 2

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84. CEDAW, *supra* note 34, pmb. (stating that the “traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women”).

85. *Id.*

86. See *CEDAW Reservations*, *supra* note 33.

87. For example, Saudi Arabia’s reservation to the CEDAW states, “In case of contradiction between any term of the Convention and norms of Islamic law, the Kingdom of Saudi Arabia is not under obligation to observe the contradictory terms of the Convention.” *Id.* at 26.

88. See, e.g., *id.* at 9–11, 17–18, 20, 22, 26–27, 29–31 (reservations of Bahrain, Bangladesh, Egypt, Libyan Arab Jamahiriya, Malaysia, Mauritania, Morocco, Saudi Arabia, Singapore, Tunisia, and the United Arab Emirates). Concerning CEDAW reservations to Articles 5(a) and 16, “India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent.” *Id.* at 14. Iraq’s reservations to Articles 2 and 16 “shall be without prejudice to the provisions of the Islamic sharia according to women rights [sic] equivalent to the rights of their spouses so as to ensure a just balance between them.” *Id.*

of CEDAW emphasizes the importance of states “condemn[ing] discrimination against women in all its forms, [by] agree[ing] to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.”<sup>89</sup> To this end, states must undertake “[t]o take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”<sup>90</sup> States who have a reservation to Article 2 may not adequately protect women from domestic violence if they fail to provide legal redress for spousal abuse and instead allow customs and practices that deny the fundamental human dignity of women to continue.

Article 5 calls for the modification of social and cultural patterns to eliminate prejudices and customary “practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”<sup>91</sup> Article 5 also calls for family education that “includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children.”<sup>92</sup> States who create a reservation to Article 5 may perpetuate harmful stereotypes that devalue women and tolerate violence.<sup>93</sup>

Lastly, Article 16 calls for state parties to “take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.”<sup>94</sup> Article 16 specifically addresses the need for equal rights in choosing a marriage partner, making decisions regarding children, and dealing with property—ultimately calling for “[t]he same rights and responsibilities during marriage and at its dissolution.”<sup>95</sup> States who chose to make reservations to Article 16 may not provide adequate protection for the rights of women within the marital relationship and may tend to favor policies of noninterference with family affairs.<sup>96</sup>

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89. CEDAW, *supra* note 34, art. 2.

90. *Id.* art. 2(f).

91. *Id.* art. 5(a).

92. *Id.* art. 5(b).

93. India, Malaysia, Micronesia and Niger have made reservations to Article 5. See *CEDAW Reservations*, *supra* note 33, at 14, 18, 20, 24.

94. CEDAW, *supra* note 34, art. 16.

95. *Id.*

96. Bahrain, Egypt, India, Iraq, Israel, Libyan Arab Jamahiriya, Malaysia, Malta, Micronesia, Morocco, Niger, Oman, the Republic of Korea, Singapore, Syrian Arab Republic, Thailand, Tunisia, and the United Arab Emirates have declared reservations to Article 16. See

The CEDAW preamble also proclaims that the international community should be “[a]ware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women.”<sup>97</sup> By urging focus on change, the CEDAW Committee may risk misconstruing the true nature of the dignity of women as it relates to their maternal functions. Recognition of the dignity and equality of men and women may not come by subversion but rather by affirmation of the enormity and significance of the distinctions between motherhood and fatherhood. Recognizing the importance of women as mothers is significant when discussing the rights and dignity of women and is a focal point of Catholic teaching.<sup>98</sup> Recent international declarations that support that understanding deserve every encouragement. The Catholic Church instructs that women must have a place “in all areas of culture, economics, politics and ecclesial life” so that society can benefit from the different gifts of “masculinity and femininity” possessed by men and women respectively.<sup>99</sup>

In *Mulieris Dignitatem*, as well as later in his *Letter to Women*, Pope John Paul II addresses the same needs mentioned in the CEDAW preamble.<sup>100</sup> He speaks of the “urgent need to achieve *real*

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*CEDAW Reservations*, *supra* note 33, at 9, 11, 14–15, 18, 20, 22, 25–30. Additionally, general reservations to the CEDAW by Islamic countries are not uncommon. Malaysia “declares that [their] accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic sharia law and the Federal Constitution of Malaysia.” *Id.* at 18. Less general but still ambiguous are reservations that specify articles in contention: “In the context of Singapore’s multiracial and multireligious society and the need to respect the freedom of minorities to practise [sic] their religious and personal laws, the Republic of Singapore reserves the right not to apply the provisions of articles 2 and 16 where compliance with these provisions would be contrary to their religious or personal laws.” *Id.* at 27.

97. CEDAW, *supra* note 34, pmb1.

98. See *Mulieris Dignitatem*, *supra* note 2, ¶ 18.

99. See Pope John Paul II, Angelus Address at Castel Gandolfo ¶ 1 (July 23, 1995), reprinted in *SERVING THE HUMAN FAMILY: THE HOLY SEE AT THE MAJOR UNITED NATIONS CONFERENCES 440* (Monsignor Carl J. Marucci ed., 1997).

100. *Mulieris Dignitatem*, *supra* note 2, ¶ 31; *Letter to Women*, *supra* note 79, ¶ 4. The CEDAW preamble emphasizes the importance of women in the family and society and the need for men and women to share responsibility for the upbringing of children. See CEDAW, *supra* note 34, pmb1. The preamble states that the treaty is undertaken

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, . . . the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole[.]

*Id.*

*equality* in every area . . . [including] equality of spouses with regard to family rights and the recognition of everything that is a part of the rights and duties of citizens in a democratic State.”<sup>101</sup>

While CEDAW certainly stands out as the legally binding instrument, there have been additional, albeit nonbinding, international efforts specifically aimed at protecting women from violence.<sup>102</sup> The United Nations’ Declaration on the Elimination of Violence Against Women recognizes the enforcement difficulties of many international declarations and conventions and preempts any cultural relativist argument that might hinder the protection of women, stating that “[s]tates should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination.”<sup>103</sup>

Regional human rights organizations have also addressed the issue of women’s rights and hence increased the extent to which they can be protected. The American Convention on Human Rights, also known as the Pact of San José, emphasizes the importance of respecting every person “without any discrimination for reasons of race, color, sex, language, religion . . . or any other social condition.”<sup>104</sup> The American Convention on Human Rights also emphasizes the importance of equality between all people and highlights personal responsibilities within the family, stating that “States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution.”<sup>105</sup>

Another important regional instrument is the African Charter on Human and Peoples’ Rights, which recognizes that every human being, regardless of sex, shall be entitled to respect for his life and the

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101. *Letter to Women*, *supra* note 79, ¶ 4.

102. *See, e.g.*, ICCPR, *supra* note 36. The ICCPR, written over forty years ago, undertakes to respect all individuals, regardless of gender. It seeks to ensure equality between men and women—both single and married—in social, civil, and political arenas. *Id.* arts. 2(1), 3, 23(4), 26.

103. Declaration on the Elimination of Violence Against Women, *supra* note 4, art. 4. Article 4(a)–(j) encourages state parties to sign and ratify CEDAW, implement policies, enact legislation, develop penalties to punish and redress the wrongs to women who are subjected to violence, and adopt measures to “modify social and cultural patterns” and other “practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women.” *Id.* art. 4(j).

104. Organization of American States, American Convention on Human Rights art. 1(1), Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

105. *Id.* art. 17(4).

integrity of his person.<sup>106</sup> The Charter requests that all state parties eliminate every form of discrimination against women and ensure the protection of the rights of women as stipulated in international declarations and conventions.<sup>107</sup> The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa specifies and expands upon the protections guaranteed to women under the Charter and asks states to modify social and cultural patterns and harmful traditional practices that perpetuate the idea of the inferiority of either of the sexes.<sup>108</sup>

The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belem do Para) is another regional agreement which seeks to educate people about the harm perpetuated from stereotyped patterns of gender roles and destructive social and cultural practices.<sup>109</sup> The Convention emphasizes the importance of protecting women through active steps in the legislature, by authority figures, through institutions, and through the imposition of penalties for perpetrators of violence against women.<sup>110</sup> It seeks "to modify social and cultural patterns of

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106. African Charter on Human and Peoples' Rights art. 2, June 27, 1981, 1520 U.N.T.S. 217.

107. *See id.* arts. 3–4, 19.

108. According to Article 4, state parties to the Protocol agree to take all appropriate measures to:

- a) enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public;
- ...
- c) identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;
- d) . . . eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise [sic] and exacerbate the persistence and tolerance of violence against women.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa art. 4, July 11, 2003, OAU Doc. CAB/LEG/66.6. The conception of the dignity of women, however, in other provisions of the Protocol could be broader. While the Protocol does a good job of conceiving violence in terms of physical or verbal abuse, it could extend this understanding to other forms of violence that ultimately do not comport with the dignity and welfare of women by considering psychological impact of a permissive reproductive rights regime—as contemplated in Article 14. *Id.* art. 14.

109. Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women art. 6(b), June 9, 1994, 27 U.S.T. 3301, 1438 U.N.T.S. 63. The Convention's definition of violence against women includes "physical, sexual, and psychological violence . . . that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman." *Id.* art. 2(a).

110. *Id.* arts. 7(a)–(b), (e), 8(b).

conduct of men and women” in order to counteract prejudices and customs and protect women from violence.<sup>111</sup>

Articulating norms is not enough. There must be sufficient mechanisms for enforcing women’s rights as they relate to domestic violence. But because of the distinction between the public and private realm and the invocation of local customary and religious sensibilities, effective enforcement (especially at the national level) is rarely a reality. The difficulty in enforcing women’s rights legislation was recognized by the Joint Declaration of the Special Rapporteurs on Women’s Rights, comprised of the Inter-American Commission on Human Rights, the African Commission on Human and Peoples’ Rights, and the U.N. Special Rapporteur, in March 2002:

We recognize the diversity among women and the right of people in community and with other members of their group to enjoy their own culture. We recognize the particularities in the different regions regarding the application of women’s rights. However, states must not invoke any custom, tradition or religious consideration to avoid their obligations with respect to the elimination of violence and discrimination against women. All women have the right to live in freedom, equality and dignity.<sup>112</sup>

Most people are used to thinking of human rights violations in a separate category from domestic violence. Many national societies tend to allow a great deal of privacy within the family unit, and states have been hesitant to interfere with marriage and family relations.<sup>113</sup> States must recognize that they have a duty to respond to the needs of their citizens when human rights violations are involved. This has been evidenced by an influx of cases heard within international tribunals where domestic violence victims have not been properly protected by a state’s police force, legislature, and judicial system.<sup>114</sup>

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111. *Id.* art. 8(b).

112. Joint Declaration of the Special Rapporteurs on Woman’s Rights (Mar. 8, 2002), available at <http://www.cidh.org/declaration.women.htm>.

113. See, e.g., *Yildirim v. Austria*, CEDAW Comm., Commc’n No. 6/2005, U.N. Doc. CEDAW/C/39/D/6/2005 (2007).

114. Domestic violence is habituated by an ineffective legislature and judicial system. For cases involving claims of human rights abuses by a state, see *A.T. v. Hungary*, CEDAW Comm., Commc’n No. 2/2003, U.N. Doc. CEDAW/C/32/D/2/2003 (2005); *Goekce v. Austria*, CEDAW Comm., Commc’n No. 5/2005, U.N. Doc. CEDAW/C/39/D/5/2005 (2007); and *Yildirim v. Austria*, CEDAW Comm., Commc’n No. 6/2005, U.N. Doc. CEDAW/C/39/D/6/2005 (2007). The aforementioned cases involved domestic disputes where the authors of the human rights complaints alleged failure to be protected by their respective state.

## CONCLUSION AND RECOMMENDATIONS

From a normative standpoint, international and regional human rights instruments need to rearticulate norms to truly reflect the dignity of women. The Catholic Church's teaching in that respect is especially instructive. But normative improvement is not enough. At the national level, it is imperative for states to ensure that their domestic laws sufficiently criminalize domestic violence and satisfy the obligation of due diligence. Concerted efforts are required to change persistent attitudes that view women as subordinate to men. This change can be brought about through nonlegal measures such as adopting educational curricula aimed at training hearts and minds with a view to "civilizing" future generations in view of the true dignity of women.

Through treaties, conventions, and declarations, the international community has signed on to eradicating violence against women. Although most countries have agreed that domestic violence is a pressing matter, cultural relativism still remains problematic when striving to enforce these agreements. Through cultural relativism, "people can be persuaded that women's status is merely an expression of cultural and religious traditions that outsiders are bound to respect."<sup>115</sup> This mindset ignores the duty we all have to one another as members of the international community and as members of the human family. Recognition of the dignity of the human person, as urged by the teachings of the Catholic Church, is of central importance—this human dignity is the foundation of the entire concept of human rights.<sup>116</sup>

Men and women are endowed with equality as human persons and separate respective beings—"man and woman possess an inalienable dignity."<sup>117</sup> Violence against women, which denies their essential rights and violates their dignity, has an effect on the whole of society. Effective measures must be taken to ensure the dignity of women is respected in society and protected in law. The teachings of the Catholic Church provide a guide for legislators and citizens to recognize the dignity inherent to all human beings.

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115. Ann Elizabeth Mayer, *A "Benign" Apartheid: How Gender Apartheid Has Been Rationalized*, 5 *UCLA J. INT'L L. & FOREIGN AFF.* 237, 238 (2000) (emphasis omitted).

116. See Interview by Austrian Radio Programme "Christ in Time" with Archbishop Donato Squicciarini, Head of the Holy See Delegation to the World Conference on Human Rights (June 20, 1993), in *SERVING THE HUMAN FAMILY*, *supra* note 99, at 161, 161.

117. See *CATECHISM OF THE CATHOLIC CHURCH*, *supra* note 66, ¶ 369.