



How International Human Rights Law Can Contribute to the Prevention of Domestic Violence

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"This should not have happened" has become the mantra repeated after every incidence of domestic violence. Domestic violence is the physical, psychological, sexual, financial, or emotional abuse of a victim by a current or former spouse or intimate partner. Indeed, this should never happen. Despite the special attention it has received in recent years, domestic violence continues to happen. What can authorities do to effectively prevent violence taking place within the confines of homes and other private spaces? In my research, I explore how international human rights law provides some answers to this question.

U.S. Domestic Violence

According to [data](#) from the Bureau of Justice Statistics, domestic violence accounts for one of every ten violent victimizations. The U.S. government has taken several steps to address this grave social problem. The Violence Against Women Act was signed into law in 1994. Then, in 1995, the U.S. Department of Justice set up the Office on Violence Against Women to provide federal leadership and funding to help local and tribal authorities willing to improve their capabilities for tackling domestic violence. In addition, some U.S. states have taken steps to train law enforcement officers and judges on domestic violence. Specialized domestic violence courts have been set up in 32 states, as have domestic violence units in some mid-to-large-sized police departments.

Such new policies and practices, while promising, are typically developed in scattered ways without any clear, overarching structure. A [Department-of-Justice-funded study](#) found that specialized domestic violence courts across the country do not share a set of core goals, policies, and practices. Another [study](#) found that police domestic violence units have serious deficiencies in their efforts to document injuries sustained during domestic violence incidents. Inadequate documentation can undercut victims' cases, leaving them without reliable recourse to justice.

Institutional failings stoke fears that domestic violence complaints are not taken seriously – and such fears often discourage victims from reporting and seeking legal protection. Further impediments come from local and federal laws that put domestic violence victims at risk. For example, the American Civil Liberties Union recently highlighted the negative impact of nuisance laws that are prevalent across the country. When a landlord or a tenant repeatedly calls the police, a property can get labeled a "nuisance." And once that happens, the owner is required to abate the nuisance or pay penalties. This creates an incentive for owners to prevent further calls, taking steps that may include evicting victims of domestic violence. Indirectly, therefore, nuisance laws can discourage victims or people who observe domestic violence from reaching out to the police for help. Similar effects can flow from an executive order called Enhancing Public Safety in the Interior of the United States signed by President Trump in January 2017. This order encourages the removal of aliens and likely dissuades domestic abuse victims who are undocumented from reaching out to the authorities for help.

The Root Cause of Justice System Deficiencies

My research suggests that the justice system fails to effectively address domestic violence, in part, because domestic violence is perceived as a family – and therefore "private" – matter. This mindset can affect lawmakers and law enforcement officers when they devise measures to tackle domestic violence. In this view, the failure to protect a victim of domestic violence is seen as an "unfortunate tragedy," rather than a *failure of the state to protect a victim*. In contrast, put simply, laws and policies regarding domestic violence should be guided by a different understanding – that it is the justice system's duty to prevent abuse perpetrated by private actors.

This problem reared its head in the 2005 U.S. Supreme Court case *Town of Castle Rock v. Gonzales*. This case featured a claim that the authorities should be held responsible for their failure to protect Jessica Lenahan and her three daughters from her estranged husband, Simon Gonzales, who had violated a restraining order and kidnapped their daughters. Despite Jessica's relentless calls for help, the Castle Rock Police did not take any steps to find the girls or arrest Simon, before the girls were eventually found dead in the back of their father's truck. Reviewing Jessica's complaint that the authorities failed to protect her children, the Supreme Court ruled that there is no constitutional duty to enforce restraining orders and protect the victims of domestic abuse. Left without justice, Jessica then took her case before the Inter-American Commission on Human Rights – an international institution that reviews the human rights practices of the members of the Organization of American States, including the United States.

The Human Rights Perspective

In its 2011 decision, the Inter-American Commission arrived at a completely different conclusion than the U.S. Supreme Court. The Commission found that Jessica's human rights were violated when the authorities failed to take action to protect her and her children. According to the Commission, member states have an obligation to act with *due diligence* and take necessary measures to protect victims from private actors. Moreover, it said that authorities have an obligation to act when they know of a real and imminent risk of harm to victims.

This ruling means that even if violations are committed in the private sphere by private actors, governments still bear the responsibility of a due diligence investigation. Should public authorities fail to live up to that obligation, they bear responsibility for the violation. This means that states are required to take effective preventive measures and mount responses against violations in public and private spaces alike.

As this example reveals, U.S. federal, state, and local governments could improve the protections they offer residents by integrating the language and logic of international human rights law into U.S. legal practice. Such efforts should include training police officers and judges to fill protection gaps and tackle domestic violence as a public concern rather than a private matter. In addition, policymakers must understand the consequences of existing and new laws that increase victims' exposure to risk or make victims less likely to report abuses. To make steady progress against the scourge of domestic violence, U.S. law enforcement must take proactive measures to protect victims and assume responsibility when they fail to do so. Then victims might gain enhanced trust in the legal system and become more likely to seek help from authorities.

Read more in Ezgi Yildiz, "A Norm in Flux: The Development of the Norm against Torture under the European Convention from a Macro Perspective" SSRN iCourts Working Paper Series No. 45 (2016).