

Abuses of Power In Our Societies and Court Systems

Implications and Solutions under Human Rights Law



www.global-expats.com



Safe Child International
www.causes.com/causes/497298

For a long time, we have been the lepers that mar the Ball, we captives are not a politically correct topic...

We must think of where we come from, who we are, and where we want to go. I aspire to our having that thirst for greatness one day that makes people rise up from nothingness to the sun.

When we are unconditional vis-avis the defense of the life and liberty of our own, that is, when we are less individualistic and more committed to the common good, less indifferent and more involved, less intolerant and more compassionate, then at that time we will be the great nation (world) that all of us would like to be.

That greatness is there asleep in our hearts. But hearts have hardened and weigh so heavily that no elevated sentiments are permitted....

...The wars waged against the freedom of a handful of forgotten ones are like a hurricane seeking to bring down everything. It is of no interest. His intelligence, his nobility, and his devotion have given pause to many, and here, more than the freedom of some poor crackpots chained up in the jungle,

it is a matter of taking stock of what it means to defend human dignity.

Ingrid Betancourt

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Domestic Violence Facts

- All forms of domestic abuse have one purpose: to *gain and maintain control* over the victim.
- Abusers use many tactics to exert power over their spouse or partner: dominance, humiliation, isolation, threats, intimidation, denial and blame.
- Around the world, at least one in every three women has been beaten, coerced into sex or otherwise abused during her lifetime. Most often, the abuser is a member of her own family.
- Domestic violence is the leading cause of injury to women—more than car accidents, muggings, and rapes combined.
- 95% of men who physically abuse their intimate partners also psychologically abuse them.

- Based on reports from 10 countries, between 55 percent and 95 percent of women who had been physically abused by their partners had never contacted non-governmental organizations, shelters, or the police for help.
- Psychologically abusive men are more likely to use a weapon against their partners, have prior criminal arrests, abuse substances, and have employment problems.
- Having a physical disability increases a woman's risk of psychological abuse by 83%.
- An employed woman with an unemployed partner is more than twice as likely to be psychologically abused by her partner.
- Women who earn 65% or more of their households' income are more likely to be psychologically abused.

- People who observe their parents abusing each other, or who were themselves abused may incorporate abuse into their behaviour within relationships that they establish as adults. (Kalmuss & Seltzer 1984)
- The UN Declaration on the Elimination of Violence against Women (1993) states that “violence against women is a manifestation of historically unequal power relations between men and women, which has led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.
- Violence is a logical outcome of relationships of dominance and inequality—relationships shaped not simply by the personal choices or desires of some men to [dominate] their wives but by how we, as a society, construct social and economic relationships between men and women and within marriage (or intimate domestic relationships) and families. Our task is to understand how our response to violence creates a climate of intolerance or acceptance to the force used in intimate relationships. (Domestic Abuse Intervention Project (DAIP))

What is Psychological Abuse?

- Denying the victim access to money or economic support.
- Harassing the victim at work or school.
- Threatening to injure, disfigure, or kill the victim and/or loved ones.
- Damaging the victim's property.
- Preventing the victim from eating, sleeping, or leaving the home.
- Threatening or physically abusing the family pet.

Duluth Model - Power and Control Wheel



"Battering is one form of domestic or intimate partner violence. It is characterized by the pattern of actions that an individual uses to intentionally control or dominate his intimate partner. That is why the words "power and control" are in the center of the wheel."

Domestic Abuse Intervention Project
202 East Superior Street
Duluth, Minnesota 55802
218-722-2781
www.duluth-model.org

Duluth Model – Abuse of Children Wheel



"A batterer systematically uses threats, intimidation, and coercion to instill fear in his partner. These behaviors are the spokes of the wheel. Physical and sexual violence holds it all together—this violence is the rim of the wheel."

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Effects of Abuse and Violence on the Victim

- Poor physical health.
- Difficulty concentrating.
- Emotional and/or mental impairment.
- Powerlessness/loss of control.
- Feelings of desperation and isolation.
- Self-blame or shame.
- Hypervigilance and overreactivity.
- Nightmares, difficulty falling asleep or staying awake.
- Avoidance of intimacy.
- Weight loss or gain.
- Poor work or school performance
- Substance abuse (legal, illegal, and pharmaceutical.)
- Suicidal thoughts and/or suicide attempts
- Children are more likely to experience behavior problems, and develop symptoms of anxiety, depression, and post-traumatic stress disorder

The Abuser

- **is controlling**
- **is entitled**; he considers himself to have special rights and privileges not applicable to other family members
- **is disrespectful**; he considers his partner less competent, sensitive, and intelligent than he is, often treating her as though she were an inanimate object
- **has an attitude of ownership**: sees his partner as a personal possession commonly extending to his children, helping to explain the overlap between battering and child abuse...
- **is a learned behavior**, with its roots in attitudes and belief-systems that are reinforced by the batterer's social world... **the belief that battering is justified, and the presence of peers who support abusiveness**

- **desire for control intensifies as he senses the relationship slipping away from him.**
- **abuser (are) more frightening after separation than before, and increase(s) his manipulation and psychological abuse of the children**
- **abuser creates a pervasive atmosphere of crisis in his home, victims and children have difficulty naming or describing what is happening to them until they get respite from the fear and anxiety**

UNDERSTANDING THE BATTERER IN CUSTODY AND VISITATION DISPUTES by R. Lundy Bancroft,

"Creating an atmosphere of crisis, chaos and anarchy is very important in the success of the abuser in controlling his victim. Of all factors in dealing with abuse, a continual and perpetual state of chaos is the most emotionally draining and stressful of all." Quenby Wilcox

Profile of the Abuser

- 80% of men in domestic violence studies exhibited diagnosable psychopathology, typically personality disorders.
- As violence becomes more severe and chronic in the relationship, the likelihood of psychopathology in these men approaches 100%.
- Studies have found high incidence of psychopathy among abusers. Personality traits include sudden bursts of anger, poor impulse control, and poor self-esteem.
- Abusers' efforts to dominate their partners have been attributed to low self-esteem or feelings of inadequacy, unresolved childhood conflicts, economic related stress, hostility and resentment toward women (misogyny), hostility and resentment toward men (misandry), personality disorders, genetic tendencies and socio-cultural influences.

Children and Domestic Abuse

- 15.5 million U.S. children live in families in which partner violence occurred at least once in the past year, and seven million children live in families in which severe partner violence occurred.
- In a single day in 2007, 13,485 children were living in a domestic violence shelter or transitional housing facility. Another 5,526 sought services at a non-residential program.
- The UN Secretary-General's Study on Violence Against Children conservatively estimates that 275 million children worldwide are exposed to violence in the home.

Domestic Violence Affects Children

On average, more than three women a day are murdered by their husbands or boyfriends in the United States and women experience two million injuries from intimate partner violence each year. Many of these women are mothers who often go to great and courageous lengths to protect their children from abusive partners. In fact, research has shown that the non-abusing parent is often the strongest protective factor in the lives of children who are exposed to domestic violence.

- A Michigan study of low-income pre-schoolers finds that children who have been exposed to family violence suffer symptoms of post-traumatic stress disorder, such as bed-wetting or nightmares, and are at greater risk than their peers of having allergies, asthma, gastrointestinal problems, headaches and flu.

- Children of mothers who experience prenatal physical domestic violence are at an increased risk of exhibiting aggressive, anxious, depressed or hyperactive behavior.
- Females who are exposed to their parents' domestic violence as adolescents are significantly more likely to become victims of dating violence than daughters of nonviolent parents.
- Children who experience childhood trauma, including witnessing incidents of domestic violence, are at a greater risk of having serious adult health problems including tobacco use, substance abuse, obesity, cancer, heart disease, depression and a higher risk for unintended pregnancy.
- Physical abuse during childhood increases the risk of future victimization among women and the risk of future perpetration of abuse by men more than two-fold.

Family Law and Divorce Courts

"...the family courts remain a dark and terrifying gauntlet through which battered mothers must pass in their attempts to protect both themselves and their children from the violence of their ex-husbands..."

...historic notions of fathers' rights over their family members, misguided public policy, inadequate judicial guidelines, the perversion of scientific evidence and, finally, the reluctance of many to even contemplate such horrific risks from men who claim to be fighting for the right to be a father, have led to a crisis in which the courts of virtually every state in the nation have increased the desperation of protective mothers and become complicit in the continuing victimization of thousands of children..."

**DOMESTIC VIOLENCE, ABUSE, AND CHILD CUSTODY:
Legal Strategies and Policy Issues** by Jay G. Silverman, Ph.D.

Social Attitudes & Myths About Abuse and Abusers

- Domestic Violence affects only a small percentage of the population and is rare.
- Domestic Violence occurs only in poor, uneducated and minority families.
- The real problem is couples who assault each other. Women are just as violent as men.
- Alcohol abuse causes domestic abuse.
- Domestic violence is usually a one time, isolated occurrence.

- Men who batter are often good fathers and should have joint custody of their children if the couple separates.
- When there is violence in the family, all members are participating in the dynamic, and therefore, all must change for the violence to stop.
- Battered women are masochistic and provoke the abuse. They must like it or they would leave.
- Men have a right to discipline their partners for misbehaving. Battering is not a crime.

Myths vs. Reality in the Courts

In the last few years there has been a growing “backlash” campaign amongst fathers rights groups within the courts, masking the realities of gender violence within the home. They claim to be promoting equality of the sexes in response to discriminatory policies against men in the courts produced by decades of feminist movements.

THE MYTHS

- Talking about gender violence is discriminatory against men.
- Men and women are equally violent within the home for the same reasons and in the same proportions.
- All family conflicts can be resolved by family mediation, even in cases of violence.
- Domestic violence laws are discriminatory against men since they attempt to find a sole guilty party.
- Legalization of divorce has increased cases of domestic conflicts within the courts.

THE MYTHS

- The majority of accusations by women are false and/or exaggerations which unnecessarily over-load the court system.
- Women often manipulate and brainwash children to hate their fathers. Parental Alienation Syndrome (PAS) exists.
- Joint custody helps to resolve conflict within the couple as it equally and justly divides the children, thereby avoiding future violence.
- Women are treated advantageously during divorce proceedings.

THE REALITY...

"In cases of litigated custodial decisions and family mediation 70-75% of the cases involved physical aggression even though the couple was separated."

Janet R. Johnston, "High-Conflict Divorce," The Future of children, Vol. 4, No. 1, Spring 1994, 165-182.

American Psychological Association states that:

"An abuser is twice as likely to seek custody as a non-abuser."

"Abusers accused or condemned for abuse often obtain full custody of their children."

American Psychological Association. Presidential Task Force on Violence in the Family (1996).

“Studies consistently show that 75% of contested custody cases involve a history of domestic violence.”

“Studies show that 2 out of every 3 abusers accused or condemned for domestic abuse are given full custody of children by the courts.”

Pr. Joan Meier, - Professor at George Washington University Law School, DV Leap Clinic, Wash., DC, USA, recognized expert in domestic violence. She has participated in a multitude of studies programs and legislation in regards to this issue..

“Many courts give preference to the needs of fathers over those of mothers and childrens.”

The Massachusetts Supreme Judicial Court Gender Bias Task Force. (Nov. 2002).

Juvenile and Family Court Review states that: “The child is better when he is with the batter.”

“Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes” Peter G. Jaffe, Claire V. Crooks, y Samantha E. Poisson, Juvenile and Family Court Journal 2003.

“Multiple studies have documented gender-based discrimination against women in custody cases.

Contrary to conventional wisdom that women are favored in custodial decisions, testimonies of abused women and empiracle studies show that women who allege abuse are profoundly disfavored in custodial decisions.”

-Gender Bias Study of the Court System in Massachusetts, 24 New Eng.L.Rev. 745, 747, 825, 846 (1990).

-Wellesley Centers for Women Battered Mothers' Testimony Project, Battered Mothers Speak Out: A Human Rights Report on Domestic Violence and Child Custody in the Massachusetts Family Courts (Nov. 2002).

“When deciding custodial and visitation rights of minors, many judges and court personnel do not consider that domestic violence is a relevant factor.”

The Massachusetts Supreme Judicial Court Gender Bias Task Force. (Nov. 2002).

“Children are victims of domestic violence, and as such should be attended to and listened to by protection systems.”

“Violence is not only physical aggression (...)”

It is not only the physical wounds but the fear and humiliation that women as well as children suffer as victims of the abuse.”

Save the Children.

“Of the 10 years that mothers attempted to protect their children from sexually abusive fathers, in 70% of the cases fathers were given supervised visitation or joint custody;

In 20% of the cases mothers lost full custody and even visitation rights.”

Arizona Coalition Against Domestic Violence. Battered Mothers' Testimony Project: A Human Rights Approach to Child Custody and Domestic Violence (June 2003), pp. 33-34, 47-49.

According to the National Council of Juvenile and Family Court Judges:

“The theory of the existence of Parent Alienation Syndrome (PAS) has been discredited by the scientific community.

“A testimony in judicial custody proceedings with allegations of this syndrome should be considered inadmissible (...).”

“Abusive fathers blame their spouse for turning children against them rather than assume responsibility for the impact that their behaviour has on their children.”

National Council of Juvenile and Family Court Judges. Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judge’s Guide. 2007.

“The majority of women interviewed felt that court personnel did not take their complaints of domestic abuse seriously. The personnel ignored them, treated them with lack of respect, and discriminated against them.”

Arizona Coalition Against Domestic Violence, Battered Mothers' Testimony Project: A Human Rights Approach to Child Custody and Domestic Violence (June 2003), pp. 47, 49, 6.

“94% of fathers that actively seek full or joint custody of their children obtain it without taking into account reports of abuse.”

The Massachusetts Supreme Judicial Court Gender Bias Task Force. (Nov. 2002).

“A number of emerging investigations show that mothers who denounce the sexual abuse of fathers run the risk of not being protected when they find themselves in custodial litigation.”

Sexual Assault Report. Myths that Place Children at Risk during Custody Disputes. Volume 9 Number 3. January/February 2006.

“The myth that false accusations of sexual abuse during custody battles is refuted by investigations, showing that the incident of these cases is very small, the same as in other crimes, between 1% and 5%.

Sexual Assault Report. Myths that Place Children at Risk during Custody disputes. Volume 9 Number 3. January/February 2006.

“Our analysis indicates that the problem of paedophile fathers that obtain custody is extensive and well documented by studies.”

Sexual Assault Report. Myths that Place Children at Risk during Custody disputes. Volume 9 Number 3. January/February 2006.

“Courts demand more from mothers than fathers in cases of disputed custody.”

The Massachusetts Supreme Judicial Court Gender Bias Task Force. (Nov. 2002).

“A pattern of human rights violations by family courts has been encountered, including a failure to protect abused women and children, discrimination against abused women, degrading treatment , and denial of due process.”

“History of abuse and violence of women and children are ignored or systematically minimized by the courts.”

Wellesley Centers for Women, Battered Mothers' Testimony Project, Battered Mothers Speak Out: A Human Rights Report on Domestic Violence and Child Custody in the Massachusetts Family Courts (Nov. 2002).

The Reality Belies the Myths.



Asociación para la protección de
menores víctimas de violencia de género

Law Enforcement Inadequacies in Cases of Domestic Abuse

- Police frequently do not respond to cases of domestic violence, rarely remove abusers from the home and typically try to discourage and dissuade women from making formal complaints.
- Police officers often treat domestic violence cases as “unimportant,” not worthy of police attention, and best resolved within the family.
- Police inefficiency and apathy also contributes to women’s inability to prosecute their cases on their own.
- Police may refuse to cooperate and give testimony in court.
- People who provide services to battered women identify police and military officers as perpetrators of violence
- When perpetrators have a connection to the police, the police are even less likely to respond to a call for intervention.

- Police families are 2-4 times more likely than the general population to experience domestic violence.
- Batterers who are police officers may be able to use their increased knowledge of the system to manipulate the victim and prolong the abusive relationship.
- When the alleged abuser is a police officer, however, his status as an authoritative, respected member of the community may allow his account of events to be afforded more weight than it should.
- The strong bonds of loyalty within most law enforcement communities, coupled with the discretion granted to officers in determining how to respond to allegations of abuse, may lead an abusing officer's colleagues to not take action or to emphasize the private, familial nature of the problem.

Judicial Inadequacies...

- Prosecutors may also believe the same myths and stereotypes that absolve the perpetrator of personal responsibility for his actions
- In spite of strongly worded laws prohibiting assault in some countries, prosecutors are often reluctant to enforce these laws in domestic violence cases.
- Judges play important roles in the legal system's response to domestic violence... (and) hold substantial power to sanction (or absolve) batterers, protect (or not protect) battered women, and to send messages to the community, the victim, and the batterer alike that domestic violence will not (or will) be tolerated.
- Sometimes judges exercise their discretion (in interpreting or enforcing laws) in ways that undermine victim safety and batterer accountability.

Legal Counsel Inadequacies...

"the lack of adequate training of lawyers for courtroom work is a ... very serious problem in the administration of justice..."

75% of the lawyers appearing in the courtroom were deficient....

...citing the examples: poor preparation, inability to frame questions properly, lack of ability to conduct a proper cross-examination, lack of ability to present expert testimony, lack of ability in the handling and presentation of documents and letters, lack of ability to frame objections adequately, lack of basic analytic ability in the framing of issues, lack of ability to make an adequate argument to a jury, and lack of basic courtroom manners and etiquette."

Chief Justice Burger

"Particular skills which he suggested...opening arguments, direct and cross-examination, the art of objecting and summation...drafting complaints, answers, motions, and interrogatories, and the taking of depositions and the interviewing of witnesses."

Judge Kaufman

Trial Lawyer Incompetence: What The Studies Suggest About the Problem, The Causes and the Cures by Christen R. Blair

Court Psychologists Inadequacies...

Court psychologist play a vital role in custodial determinations as judges often hand down decisions based exclusively upon their recommendations. Therefore, their role and qualifications should be scrutinized closely in examining the failure of courts to protect victims of domestic abuse.

"... it is important to make a distinction between professionals licensed by forensic clinics...and professionals that are members of psycho-social groups...(who lack) a specific status and whose activities are not duly regulated..."

"What capacity do they (court psychologists and social workers) possess to carry out this role? We have only found "procedural protocol" or "good practice guides" in certain CCAA, but never any specific norms, nor a reference to their professional qualifications, nor specific knowledge of psychology or social work..."

...in examining the complaints of gender violence, we have found cases that have violated the rights of women victims (...) These violations are produced in the majority of cases during judicial procedures and on occasions by psycho-social teams during their examinations, who lack training in gender violence and do not have sufficient resources to carry out investigations or inquiries to understand the conflict between the two parties.

...the determinations of psycho-social teams was accepted by the court as an irrefutable conclusion. The courts consider the technical teams experts for the simple fact that they have obtained this position.

However...one can confirm that a large majority of decisions which are over-turned are based on mala praxis of psycho-social teams assigned to the courts and their lack of specialization in child psychology, deficiencies in the methodology used in their reports, and in many cases in violation of principles of ethics, breaking deontological codes...

...in 85% of cases studied where there have been the intervention of psycho-social teams or an expert psychologist assigned by the courts, the courts dutifully follow the recommendations of those reports. The percentage increases to 88.24% when the intervention comes from the psycho-social team.

In regards to this criteria, the rulings and indications of the team become dogma of faith, absolute truths molded into court decisions without any more reason than those given by the technical teams, without any value, consideration of proof, nor analysis of the circumstances of the case or of the minor. "

Psychiatrists Inadequacies...

- Few forensic doctors receive any training on how to work with domestic violence victims.
- Forensic doctors expressed extreme skepticism of women victims of violence...They expressed the opinion that a woman would lie to achieve an advantage in a court case...they universally expressed mistrust of women.

Stop Violence Against Women www.stopvaw.org

"Lack of theoretical knowledge (by mental health care professionals) about domestic violence, its causes and consequences, is superseded by stereotypes in patriarchal cultures that effect communication with the victims."

Rosario Fernández Hevia. Magistrada de lo Penal. Ex -Decana de los Juzgados de Gijón.
More Rigths: The Same Obstacles by Amnesty International

History of Psychiatry

Psychiatry, the medical specialty dealing with disorders of the mind, has been controversial from its inception.

First, the role of psychiatry within society has often been topic of controversy. Psychiatrists themselves have seen themselves as humanitarian physicians who provided care and treatment for individuals who were least able to take care of themselves.

Critics have argued that psychiatrists merely provide medical explanations for the behaviour of unusual, eccentric, or bothersome individuals, thereby robbing them of the opportunity to be themselves and forcing them to conform to arbitrary social standards.

Second, psychiatry has always been an internally divided discipline. Psychiatrists disagree among themselves about whether mental illness and mental disorders are caused by physiological, psychological, or environmental factors.

Schizophrenia, one of the most severe and persistent forms of mental illness, has been explained as a genetically inherited disease, a defensive reaction against emotionally abusive family relationships, and as a way of dealing with adverse early childhood experiences. In the decades after World War II, psychoanalytic explanations were predominant within psychiatry.

During the 1980s, after the development and introduction of psychopharmacological drugs, somatic explanations have become more popular.

Third, psychiatrists have articulated a wide range of ideas on the nature of society and how it should be organized to reduce the incidence of mental illness and increase the mental health of the population. Critics, however, have argued that psychiatrists should limit themselves to what they do best: the care and treatment of those with mental afflictions.

Mainstream Psychiatry and Psychology - Trained in Diagnosing Victims Not Abusers

Historically, psychiatry has not been concerned with identify or transforming abusive behavior. Their job is diagnosing neurosis, psychosis, and mental disorders; lacking training in diagnosing psychopathic personalities.

The psychologist's ability to identify or treat psychopaths is restricted by similar parameters. They are trained in quantifying personality traits, strengths, weaknesses, etc., and at times treatment of neurotic behavior. However, they are not trained in detecting domestic abuse, treating the victims, or behavior modification of the abuser.

Understanding the role that antiquated, patriarchal beliefs and traditions play in perpetuating violence and abuse in our societies is essential in effectively eradicating abuses of power within the family and social institutions.

Only recently has research in psycho-biology studied psychopathic personalities, their dysfunctional behavior, and its prevalence in our societies. Unfortunately, the results and conclusion of this research has not yet transformed long-standing beliefs, stereo-types, and traditional therapies within mainstream mental health care, nor the policies and decision-making process of government institutions.

Daniel Goleman, author of *Emotional Intelligence* and *Social Intelligence* offers an excellent overview of recent research in psycho-biology and how it applies to everyday people from a macro standpoint. Dr. Justin Frank, author of *Bush on the Couch* explores the same from a psychiatric, micro perspective.

Additionally, Dr. Frank poses a very important question as to how and why narcissistic personality types can manipulate a social group, pointing out that this phenomenon must be examined from an inter-sectional, multi-domain perspective.

Parental Alienation Syndrome (PAS) - Additional Discrimination Against Women in the Courts

"First, when PAS is "diagnosed" coming from the father, the "therapy of menaces" is not applied, and no modification of custodial rights is applied, nor is the "best interest of the child" considered. Additionally, visitation rights of the mother may be restricted in order to not "traumatize" the child who suffers the visits as something "terrible."

Second, When PAS is diagnosed coming from the mother, there is an immediate change of custody, many times without any fore-warning, and a "therapy of de-programming" is applied. Restricting or removing visitation and communication with the mother, in the supposed well-being of the minors."

Jurisprudence Study on the Impact of PAS in Asturias Courts
Institute Asturias of Women Lawyers for Equality

The Role of Corruption and Nepotism Within the Courts

The factors that render the judiciary more or less vulnerable to outside influence and corruption vary widely. They include complex cultural, institutional, historical and socio-economic factors that explain why and how corruption exists.

- Low Salary levels.
- Cultural setting and acceptance .
- Mafia influence.
- Favors: "You ask them a favor basically. This works with anything and anybody, it doesn't necessarily have to relate to organized crime."
- Nepotistic relations and family pressures.
- Public tolerance.

Examining the Link Between Organized Crime and Corruption by the Center for Democratic Studies

Judicial Corruption

- Judicial civil servants can manipulate the dates of hearings in order to favor one party over another.
- Judge can make inexact summary decision or distort the testimonies of witnesses before handing down a sentence.
- Judges can refuse the introduction of evidence or testimonies in order to favor one party over another.
- Civil servants can “lose” a document
- Prosecutors can block avenue of legal reparation
- Corruption is more likely in judicial procedure where journalist do not have free access to all fact or lack of activist groups who push for reform.

Report About Judicial Corruption 2007 by Transparency International.

Factors leading to wrongful judicial decisions

- Inadequate legal representation.
- Police and prosecutorial misconduct.
- Perjured testimony and mistaken eyewitness testimony.
- Racial prejudice/ discriminatory customs
- Suppression and/or misinterpretation of mitigating evidence.
- Community pressure.

International Divorce

As our world becomes more global, cross-national marriages, and thereby international divorces, is a growing phenomenon. However, couples of the same nationality may become involved in an international divorce if they are expatriates and living under a foreign jurisdiction.

Unfortunately, in cases of domestic abuse women will encounter the same afore stated problems within judicial systems, but to an even higher degree due to the fact that she is a foreigner.

International Divorce -The Hague Convention

The Hague Convention on the Civil Aspects of International Child Abduction (the "Hague Convention") was designed to protect children internationally from the harmful effects of their wrongful removal or retention by their parents.

The two main purposes of the Hague Convention are to ensure the prompt return of children to the state of their habitual residence when they have been abducted and to ensure that rights of custody and of access.

The Convention's procedures are not designed to settle the custody dispute, but rather to return the child to his/her home state where the custody dispute to be resolved. In other words, the Convention's focus is to preserve the status quo and to deter parents from crossing international boundaries to secure a more favorable forum for the adjudication of custody rights.

Summary of the Hague Convention on the Civil Aspects of International Child Abduction by Rong Kohtz, Esq.

The Hague Convention and Domestic Abuse

In 1980, an international treaty was designed to return children who had been abducted by a parent who moved to another country... the people drafting the treaty thought the typical abductor would be a noncustodial father skipping town with the kids, leaving mom with little recourse to try to get her children back.

...68% of the abducting parents in cases under this treaty are mothers — and that many of them are fleeing abusive spouses? ...the treaty is often used against women seeking safety for themselves — and for their children — from violent husbands.

Protecting Children: Rethinking the Hague Convention by Mirela Iverac

"The Hague Convention has no state exception for domestic violence."

"The fact that returned children are usually given to fathers in the other country means that these decisions act as de facto custody rulings."

The Judges' Newsletter – La lettera dei giudici

In press, Spring 2011 Publication of the Hague Conference on International Law

Implication of the Hague Convention in Cases of Domestic Abuse

- Women can either choose to save themselves and leave their children behind if they need to escape the violence, or stay in the other country and risk trauma, injury and potentially death at the hands of their abuser in order to seek custody of their children back in the country of habitual residence.
- As U.S. Supreme Court Justice Stephen Breyer asked in the recent *Abbott v. Abbott* hearing: "*She has to choose between her life and her child -- is that what this convention is aimed at?*".

The Judges' Newsletter – La lettera des juges Spring 2011, The Hague Conference on International Law

- Abusers can also use other custody laws such as Uniform Child Custody Jurisdiction and Enforcement Act to gain custody of the children.
- Fathers in the other country often used the fact that children were returned by a U.S. judge as proof that the mother was an unfit parent who had acted illegally in fleeing with the children.

Hague Convention Domestic Violence Project

Battered Women's Flight Across National Borders: Two Paradoxical Issues.

- Women are traditionally castigated for staying with battering husbands... Why does she stay?" For mothers who finally flee the batterer, but end up crossing an international border to do so, the ironic focus becomes the exact opposite: "Why did she leave?"
- Under the current policies and procedures emanating from the Hague Convention, the law indicates that women should stay in the country where they are residing with their children, even in the face of serious abuse, under the assumption that services and resources are available to assist her in the other country (services which were not available to the majority of women in this study).

The Judges' Newsletter – La lettera dei giudici

In press, Spring 2011 Publication of the Hague Conference on International Law

CASE STUDIES

Innes vs. Carrascosa – New Jersey, USA

"The Spaniard, 44 and a lawyer by profession, was married to Peter Innes between 1999 and 2004, and their daughter, who lives in the Spanish region of Valencia with her grandparents, was born in 2000. Carrascosa in April 2005 decided to take the girl to Spain and since then has refused to return her back to the U.S., since then they have been embroiled in a complex legal situation, which has been complicated as there is a conflict of Spanish and American law.

Carrascosa has always defended her decision to travel to Spain with her daughter because she wanted to escape from Innes, whom she accused of abuse, she said during the trial.

Spanish national, María José Carrascosa, sentenced to 14 years in prison in the U.S. convicted of abducting her daughter.

The process began when on 23 August 2006 the New Jersey Superior Court decided, at the request of Innes, that the mother must return the child to her father within ten days.

Carrascosa was at that time in America, the court withdrew her passport and banned her from leaving the country, thus, she was unable to return to Spain to retrieve her daughter on time, Maria hid in an attempt to avoid incarceration until she was arrested on 21 November 2006."

News Source © 2009 Barcelona Reporter

"In April 2001 Maria Jose was accorded a PRIMA FACIE case after filing a complaint against Peter Innes for domestic evidence."

www.caso-carrascosa.com

Sylvina Bassani – Spain

"On April 10, 2008 José Javier Lacasa knocked on the door of the home of Andrés Marzal shot him to death then entered the kitchen of this home and shot and killed his ex-wife, Sylvina Bassani. He then called emergency told them there were two dead bodies, and maybe three then shot himself to death; all in front of his 4 year old son.

This child is now under the care of his grandparents who declared "We are strong for him. If you know what this child has suffered, it is incredible.....He saw everything and afterwards hugged his dead mother's body; this is how he was found one or two hours later. If they (the Spanish judicial system) had done everything correctly and with care, our daughter would still be alive today. How many cases like this are there (in Spain?)"

Gonzalez de Alcala vs. Wilcox – Spain

"In June 2007 my ex-husband threatened to take away my children, all my assets and throw me onto the streets if I did not stop working on www.global-expats.com, promising he had the ability to do so.

When I refused, his intimidation escalated to threats on my life, promises to throw me in prison or institutionalize me "drugging me up for the rest of my life...." At first I thought these were just more of his crazy ranting and ravings. Since then, with the help of his cousin, a local police officer, I learned he has had the power to do as promised.

My Consulate's response (champion human rights defenders....?) has basically been "Well, if that's what they do in Spain, tough luck for you!"

My only consolation; I was not killed nor locked up like so many other women out there. The only thing that keeps me going day after day are my children, my desire to be re-united with them, and my promise to them. "I will do everything in my power to assure that this does not happen to other women and children."

Quenby Wilcox

Anonymous said...

I am a female that has been in a violent marriage in Spain, and I'll tell there is no help from the Guardia Civil, Police, Social Services or the courts. There are no investigations carried out so you are sentenced according to denuncias, anyone from the street that you never met can be a testigo.

If you do not speak the language they do not offer a translator for your statement only for the courts questions to you and your answers. Then you sign maybe 10 papers or more of the legal documents and that is in a language you do not understand. You are not given a choice you have to sign and nothing is explained even when you are sent to prison as was in my case.

I'm still waiting to hear from someone out there why I was sent to prison but unfortunately all the forms I signed is proof I'm guilty. Wish I knew what crime I committed to be collected from my house and not read my rights, even at the courts, forced to sign a document and that was that. If there is help out there I would appreciate it. Thank you

www.blogger.com/comment.g?blogID=6561252&postID=108790075745822956

Another Case in Spanish Courts...

*The judge walked over to me and told me **"YOU HAVE NO RIGHTS" don't come back here again and ask to see anything, your files are not available to you, don't ask for photocopies, don't bother my staff, and if you don't leave right now I will call security"***

And she walked over to the door and held it open with her secretary by her side, and the whole room of staff in silence having heard what she said. I left stunned without saying a word and was very shocked. At that moment I knew that they intend to keep me here until my death or until I flee the country with nothing. They clearly have no intention of finishing this divorce."

British woman in Spain

Abbott vs. Abbott

Diane and Philippe

"... Diane also became increasingly aware of how isolated she and the children were in their life abroad. For example, Philippe would not let Diane go out except to go to work, and he had insisted that the family move to a very remote area of the country. One day, Diane's mother took her to social services where she saw a brochure entitled, "It Shouldn't Hurt to Go Home."

Diane saw her own relationship in the description of abuse, which was the first time she really understood that she was in a domestic violence situation. At this time, Diane was planning to return abroad, and she began to try to contact social services there for support, including a women's aid domestic violence shelter. They originally said they would help her, but then later refused and said they needed to prioritize assisting local women. During this time, Diane also learned that Philippe had not completed Diane's immigration paperwork accurately so she could no longer get back into the country..."

Heather and David

"... returned to northern Europe two months later. Heather returned with her children but did not have anywhere to go... Heather received public assistance as, not being a citizen, she could not work... After several months, immigration served her and her children with a deportation notice to return to the U.S. They have been living in the U.S. since then. A year later, the interviewee obtained sole physical custody of the children but still has joint legal custody with her abusive ex-husband who lives in northern Europe..."

Claudia and Raul

"... Claudia went to the police, who told her to go to the Red Cross, who told her to come back in two days when the bruises were visible, only to turn her away two days later, saying they couldn't help her after the fact. Claudia had no one to defend her, and Raul was well-connected, both to powerful politicians and to drug dealers... Eight months after she came to the U.S., Raul filed a Hague petition and had the police remove the children from her custody..."

Catherine and Jack

"... She had no money, and nowhere to live. She spoke with her local attorney and U.S. embassy staff, both of whom said they thought Christine should return to the U.S....

Three months after that, Jack was granted custody of the children, saying that Christine had violated the custody agreement by leaving the country.

Jack filed a Hague petition against Christine six months later. The U.S. court ruled that Christine's children had to return to Jack, and her appeal failed. After being in the U.S. for a year, Christine's children were returned to her abusive husband. They have experienced physical abuse from him since their return. Christine has returned to Europe and is continuing her efforts to win back custody...."

Sarah and Miguel

"... A year after leaving, Sarah was served with Hague papers. The case went to trial several months later, and the children were returned to Miguel. Sarah then learned that Miguel had filed criminal kidnapping charges against her for leaving with her children.

In the Hague case, the federal judge ruled that those charges should be dropped. Sarah returned to the Latin American country to be with her children and began to have some limited, supervised visitation with her sons. A few months later, Sarah learned that the kidnapping charges had not been dropped.

She began battling custody and property issues in family court and kidnapping charges in criminal court. Six months later, Sarah was awarded custody of the boys again, but the order was reversed one month later due to a "legal technicality." ...Sarah continued to fight for Miguel to have no visitation rights to the children because she was deeply concerned for their well-being...Sarah is now in hiding with her sons in the U.S...

Janet and Marco

"... Once they were abroad, Janet was very isolated. She was not allowed to drive or do anything on her own, and Marco controlled all of the family finances. Marco would also consistently call Janet derogatory names. Two years later, Janet got a job outside the home. At this point, the jealousy, resentment, and name-calling by Marco increased...

During the court case, there was information presented from a school psychologist that there was possible sexual abuse of the daughter by Marco. However, the judge insisted that this was not a "grave" as the children were not going to a war zone...

A month after filing the Hague petition, local courts in the other country gave Marco sole custody of the children and Janet had no contact with her children for six months. ...She still is not able to have regular phone contact with her children who are still living in the other country with her abusive ex-husband."

Rita and David

"... Rita also sought help from a government agency for family development, but David behaved more violently after the agency became involved, and the agency was ultimately not helpful.

...The judge noted that domestic violence was not relevant to the determination. The children returned, but Rita could not immediately return, because David had filed criminal kidnapping charges against her. Rita sought help in the U.S. and was able to find a lawyer in the other country who obtained temporary "immunity" for her...

Rita works, and earns enough to help her afford a small house and car. Her oldest daughter, now 14 years old is in the U.S. living with Rita's parents. Rita does not have enough money to go and see her, and is uncertain if she would be able to obtain a visa for the travel. They communicate via the internet. Rita's children in the other country are having psychological difficulties, including showing aggressive behaviors at school."

Carmen and Rafael

"... Rafael threatened Carmen twice with weapons. The first time, he held an ice pick to her stomach while holding her jaw so tightly he dislocated it. Another time, he held a gun to her head and pulled the trigger. Carmen thought it was loaded and that he was going to kill her. After that, Carmen says she decided to obey everything Rafael said because she was afraid. Rafael hit all the children, sometimes with a belt and left marks.

After they fled to the U.S., her oldest daughter reported that Rafael touched both girls sexually, although he did not rape them. He raped Carmen. She sought help from family services in the other country, but they did nothing. Carmen went repeatedly to the police, but Rafael was a former police officer, and they also did nothing.

After Carmen's youngest child was born, she asked for a divorce, in part because her oldest daughter had started standing up to Rafael when he hit her. Rafael refused to divorce Carmen."

The following year, Rafael moved out for a year but came back to the house frequently and was abusive. He found a therapist and asked Carmen to attend with him. The therapist told Carmen that she needed to go back to Rafael.

A year later, Rafael's behavior changed, became more erratic, guarded. He hit Carmen repeatedly with a doll in the face. She filed another police report, but the police would not pursue it. Rafael pushed her down the stairs while her son watched. He was three years old.

Rafael's mother told Carmen to forget about the past and focus on being his wife. It is unclear what finally motivated her to leave. Carmen had a brother in the U.S., so she came to be with him.

Carmen and her oldest daughter had visas and came legally, but her two younger children were smuggled across the border by a coyote. She sought help at an immigrant women's program and was told to file for asylum....

Lindsey and Michael

"... Once in the other country, Michael told Lindsey that he did not want to return to the U.S. Lindsey felt she had been "tricked" and "trapped," especially after she had her first son... Michael ripped up her passport and the passport of one of her sons. Michael told Lindsey she would never leave again.

According to local law, both parents have to agree to get a passport for a child. Michael did not allow Lindsey to have a bank account, credit card, or money. He monitored Lindsey's phone calls to her family... telling her ways (he could) kill her. Lindsey felt very afraid of him at this point...

She had been told by others in the other country that a person could be detained in a psychiatric hospital if a spouse and a psychiatrist agreed they were mentally ill. Lindsey feared that her husband was trying to have her hospitalized and trying to win the support of the psychiatrist...Six months after returning to the US, Lindsey received a Hague petition in the mail from Michael.

She had no proof of the abusive situation she had lived through in the other country.

She says that he was rarely physically abusive to her, and never hurt the children, just neglected them or did bizarre things like taking all of their schoolbooks and burning them in a bonfire.

After losing her appeal, she was ordered to return the children to the other country... Lindsey found the only international attorney in her area of the U.S., and this was who she hired to represent her in the Hague petition. Lindsey had another attorney in the other country who is appointed by the state... but has not worked while living there, in part because the other country restricts the ability of non-residents to work."

Jennifer and Lawrence

"... While there, Jennifer has not been able to work because of her citizenship status and is not fluent in the language..."

On one occasion, she called the police to intervene in a violent incident. The police told Jennifer that she was crazy and they cautioned Lawrence to "guard the son's paper since he was married to an American woman."...

Jennifer was also asked to return with the child because the judge was not confident that Lawrence could care adequately for the child. Jennifer and her son are currently living in the other country on a tourist visa, which means she cannot work to support them.

They are awaiting a judgment from the local courts about custody and visitation arrangements and child support payments."

Amy and Raymond

".. Amy said "we became prisoners," because they were isolated in the country, with no money and no help from the police. Amy found pictures taken by Raymond of the children naked with their genitals exposed. She talked to the U.S. consulate staff who advised her that she could go home to the U.S. for a visit with the children.

...Raymond filed a Hague petition a few months later.. Amy flew back to the other country at the same time as her children and tried to get the local judge to enforce the undertakings that the U.S. judge required – namely, that criminal kidnapping charges against her be dropped, that the children receive counseling, that the father allow visitation, and that her son receive the operation for his medical problem...

...Has been living in various shelters in the U.S. since, she says because Raymond is continuing to harass her by tapping her parents' phone and having her followed when she lived in an apartment. She found a new attorney through an international battered women organization and she is continuing to pursue her legal case in the other country."

Mother Involved in a Hague Convention Case

"Basically there's three choices in these situations...1. You stay in those conditions and you survive as long as you can. 2. You walk away from your child and you walk away. 3. You run, with your child. So there's three. That's it."

Multiple perspectives on battered mothers and their children fleeing to the U.S. for safety: The Hague Domestic Violence Project

Barriers to Survivors Living Abroad

- No access to travel documents
- Abusers at times hide or destroy passports, visas, birth certificates and other necessary documents
- No permission to leave country. In some countries, travel bans can be legally filed on survivors and children, barring them from leaving the country.
- Abuser may be high ranking in the American Embassy, local government or corporation
- Does not speak the language
- Unfamiliarity with resources and legal system
- No domestic violence laws
- Local services may not be accessible to non-citizens
- Undocumented legal status

Obstacles Facing Survivors After Returning to Home Country

- May be homeless, penniless and will probably not be able to recover any personal possessions or assets
- Protracted international custody cases
- Reverse culture shock
- Lack of support network
- Does not qualify for services such as shelters transitional housing
- Difficulty finding employment due to gap in work history
- Credit history does not transfer from abroad
- Abuser might have contacts in US looking for the survivor and children
- Difficulty enforcing US alimony and child support orders in foreign countries.

Duluth Model - Power and Control Wheel



The same abuses of power used within the home to maintain patriarchal control are used by social institutions to dominate, control and silence rebellious members who challenge the status quo.

Domestic Abuse Intervention Project
202 East Superior Street
Duluth, Minnesota 55802
218-722-2781
www.duluth-model.org

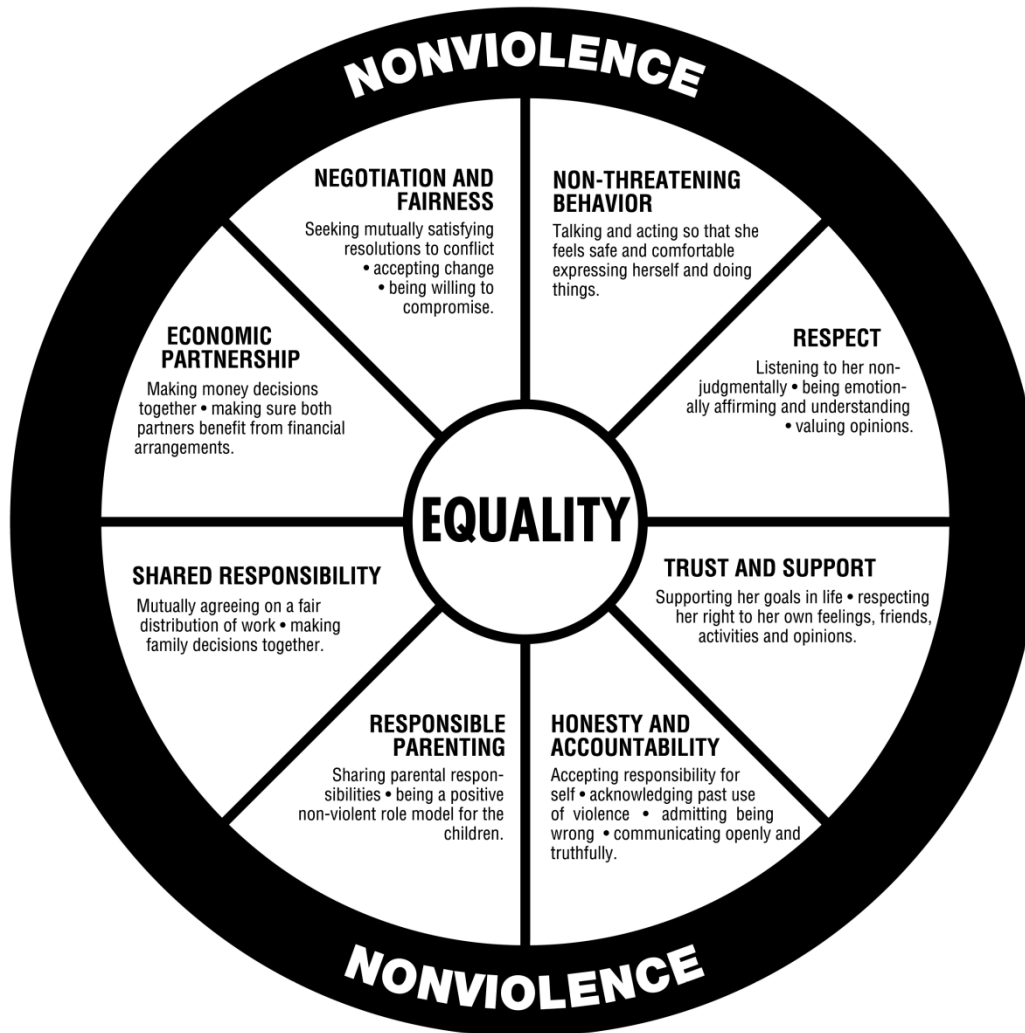
Duluth Model – Abuse of Children Wheel



A batterer systematically uses threats, intimidation, and coercion to instill fear in his victim. These behaviors are the spokes of the wheel. Physical and sexual violence holds it all together—this violence is the rim of the wheel.

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Duluth Model – Equality Wheel



The Equality Wheel was developed not to describe equality per se, but to describe the changes needed ...to move from being abusive to non-violent partnership

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Duluth Model Nurturing - Children Wheel



In order to break the cycle of abuse in our societies, we must start with the way we raise our children and future generations.

The key lies in raising our children in an environment filled with respect and love.

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International Human Rights Implications

"The failure of justice systems across the globe to effectively charge, investigate and prosecute human rights violations against women and girls has resulted in a system of global impunity for perpetrators..."

Good Practices in Combating and Eliminating Violence Against Women"

by the United Nations Division for the Advancement of Women 2005

"An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention [American Convention on Human Rights]."

".. State inaction can be seen in a range of different areas. These include inadequate preventive measures; police indifference to abuses; failure to define abuses as criminal offences; gender bias in the court system; and legal procedures which hamper fair criminal prosecution."

Broken Bodies, Shattered Minds Torture and Abuse of Women by Amnesty International 2001

"Human rights standards are the bare minimum of what every human being should expect to enjoy in their daily lives. They provide internationally recognized and legally enforceable benchmarks....

Adherence to international human rights instruments, without reservations, strengthens women's enjoyment of human rights and fundamental freedoms, including protection from gender-based violence.

Such instruments include:

- International Covenant on Civil and Political Rights;*
- International Covenant on Economic, Social and Cultural Rights;*
- Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol ;*

International Convention on the Elimination of All Forms of Racial Discrimination;

- *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;*
- *Convention on the Rights of the Child;*
- *The gender provisions of the Rome Statute of the International Criminal Code;*
- *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;*
- *Convention relating to the Status of Refugees and the protocol relating to the Status of Refugees;*
- *United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especial y Women and Children;*
- *Security Council Resolution 1325 (2000) on women, peace and security;*
- *Declaration on the Elimination of Violence against Women.*

Conclusions

- Domestic abuse is prevalent in all of our societies. The same tactics and strategies used by abusers within the home are used by a society and its' institutions.
- It is perpetuated by antiquated social norms, traditions and legal codes which support and encourage abuse, with new laws offering little protection or assistance.
- It is the number one mitigating factor of widespread physical and emotional problems, and at the root of modern socio-economic problems.
- Legislation and government campaigns are ineffective in combating abuse, due to the failure of law enforcement officials and the judiciary to uphold the constitutional, human, and civil rights of victims.
- Victims of abuses of power in judicial proceedings have no effective recourse within national regulatory agencies or judicial systems.
- Solution lays in strengthening accountability of State actors and government's responsibility under due diligence, involvement of international courts, application of international conventions and human rights law, and systematic reparations to victims.