

DOMESTIC VIOLENCE IN BRAZIL: EXAMINING OBSTACLES AND APPROACHES TO PROMOTE LEGISLATIVE REFORM

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I. INTRODUCTION

Before 2006, Brazil did not have a criminal law against domestic violence. However, cases of domestic violence were often tried in the Special Court under Law 9,099/95. Common punishments for domestic violence crimes included donation of food baskets to charity or payments of fines.¹ Brazilian domestic violence law was ineffective in protecting women from violence. Given a long history of wife-murder cases,² the feminist movement,³ coupled with efforts from grassroots organizations⁴ and support from the United Nations, put forth a multifaceted strategy and massive campaign to promote the adoption of international law by the Brazilian government. These collective organized efforts led to the creation of federal criminal domestic violence legislation in Brazil, which has been in effect since September 22, 2006.⁵

1. Latin American and Caribbean Comm. for the Def. of Women's Rights (CLADEM), Paper of the Brazilian Women's Movement Regarding the Brazilian State's Compliance with CEDAW: Proposals and Recommendations, pt. IV, ¶ 71 (2003), http://www.cladem.org/english/regional/monitoreo_convenios/cedawalt_brasil.asp [hereinafter Working Group Paper]. For the statutory language, see Lei. No. 9.099, de 26 de Setembro de 1995, Col. Leis. Rep. Fed. Brazil, 187 (9): 3633, set. 1995, available at http://www.planalto.gov.br/ccivil_03/Leis/L9099.htm.

2. See Sara Nelson, *Constructing and Negotiating Gender in Women's Police Stations in Brazil*, 23 Latin Am. Perspectives 131, 133–34 (1996) (discussing the creation of all-female police stations in Brazil to address the high rate of gendered crimes including wife-murder cases); Maria Luiza Aboim, *Brazil: Domestic Violence and the Women's Movement*, in *Ending Domestic Violence: Report from the Global Frontlines* 7, 7–13 (L. Marin, H. Zia, & E. Soler eds., 1997) (detailing the history of wife-murder cases).

3. For a list of all the organizations involved in the movement, see Working Group Paper, *supra* note 1, at pt. VI.

4. Some organizations involved were Ações em Gênero Cidadania e Desenvolvimento (AGENDE), Seção brasileira do Comitê Latino Americano e do Caribe para a Defesa dos Direitos da Mulher (CLADEM-Brasil), Articulação de Mulheres Brasileiras (AMB), and União Brasileira de Mulheres (UBM). See Working Group Paper, *supra* note 1, at pt. I, ¶ 2.

5. Managing and Org. Comm. of the Shadow Report of Civil Society, Brazil and Compliance with CEDAW 7 (2007), http://www.cladem.org/english/regional/monitoreo_convenios/BRAZILCEDAW%2007.pdf [hereinafter Shadow Report] (noting that Law 11340/2006 (Law “Maria da Penha”) was approved in 2006, creating mechanisms and instituting reforms to restrain domestic violence and bring Brazilian law into compliance with the Convention on the Elimination

International human rights laws and principles can provide an important source of inspiration and a rallying point for social change. The domestic violence reform in Brazil illustrates this fact. The Brazilian women's movement has slowly made great progress in many areas by using international human rights laws and principles. The movement has successfully lobbied for the incorporation of human rights principles found in ratified international covenants, such as the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW," or "the Convention"),⁶ in Brazil's national domestic violence legislation. The passage of legislation criminalizing domestic violence has afforded Brazilian women protection in accordance with human rights conventions such as CEDAW. Legislatively, the developments have resulted in the domestic implementation of international law such as CEDAW and the enactment of domestic laws such as Law 11340 (the Maria da Penha Law or "MDP") of 7 August 2006—the first federal criminal domestic violence law in Brazil.⁷ Women in Brazil utilize existing international treaties to advocate for legal reform to protect women's rights. Prior to the MDP's enactment, Brazilian judges approached domestic violence cases in grossly inadequate ways, as demonstrated by case studies of women who survived violent attacks by their companions/spouses or who died at the hands of their aggressors. This ineffective judicial approach to domestic violence cases is slowly changing as a result of the many efforts aimed at criminalizing domestic violence.

Part II of this Article provides background information about Brazil's adoption of CEDAW. It explains CEDAW, the treatment of domestic violence cases and the state of domestic violence legislation prior to 2006, and the treatment of public versus private crimes. Part III of this Article discusses the efforts of the Brazilian women's movement and grassroots organizations in opposing domestic violence in Brazil. It explores how these collective efforts led to the enactment of the first criminal domestic violence legislation in Brazil. Part III also analyzes the results of this author's fieldwork in Brazil from 5 June 2002 to 12 July 2002 and the author's experiences

of All Forms of Discrimination Against Women and the Convention of Belém do Pará).

6. Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981).

7. Lei No. 11.340, de 7 de agosto de 2006, D.O.U. de 8.08.2006, http://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2006/Lei/L11340.htm.

as the sole international participant on the Brazilian Government Working Group on Law 9,099/95 in October 2002 (at the invitation of President Cardoso of Brazil, the State Minister of Justice, the State Minister of Exterior Relations, and the Secretary of State for Women Rights of Brazil). Part IV discusses Brazil's first criminal domestic violence legislation, the MDP, and examines the protections it affords. Part V discusses the ways in which the MDP proved greatly superior to the civil domestic violence legislation in place prior to 2006. Part VI concludes with recommendations for the continued use of international human rights principles to provide women fundamental protections against violence. This final section promotes the use of education, beginning at the elementary school level and including national awareness campaigns, to promote consciousness of the serious nature of domestic violence crimes, to help prevent domestic violence offenses, and to reduce recidivism rates of aggressors.

II. BACKGROUND

A. The Convention on the Elimination of All Forms of Discrimination Against Women

Commonly known as the international bill of rights for women,⁸ CEDAW defines discrimination against women and establishes a plan to end it.⁹ CEDAW prohibits most forms of violence against women, and those countries that ratify or accede to it are legally bound to provide women protection against such violence.¹⁰

Once ratified, the Convention obligates nations to submit reports to the CEDAW Committee that outline the measures they have taken to comply with its requirements.¹¹ CEDAW provides for equality between women and men by ensuring women's equal access

8. United Nations, Convention on the Elimination of All Forms of Discrimination against Women: Overview of the Convention, <http://www.un.org/womenwatch/daw/cedaw>.

9. Working Group Paper, *supra* note 1, at pt. I, ¶ 3.

10. U.N. Div. for the Advancement of Women, CEDAW: Overview of the Convention, <http://www.un.org/womenwatch/daw/cedaw>.

11. U.N. Dev. Fund for Women (UNIFEM), Bringing Equality Home: Implementing the Convention on the Elimination of All Forms of Discrimination Against Women 35 (Ilana Landsberg-Lewis ed., 1998), available at http://www.unifem.org/attachments/products/BringingEqualityHome_eng.pdf [hereinafter UNIFEM: Bringing Equality Home].

to, and equal opportunities in, political and public life.¹² The Convention guarantees the right to vote and to stand for election (Article 7(a)), and it protects rights regarding education (Article 10), health (Article 12), and employment (Article 11).¹³ Furthermore, through the Convention, “[s]tates parties agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms.”¹⁴ This obligation to take *all appropriate measures* is especially important in combating domestic violence.

In 1984, Brazil ratified CEDAW with several reservations.¹⁵ The government objected to the sections of CEDAW guaranteeing men and women equal personal rights, including the section giving women the option to choose their domicile and family name. Brazil also opposed the equality of men and women in entering marriage, during marriage, and in dissolving marriage.¹⁶ As a result of CEDAW’s ratification in 1984, an effort brought forth by civil society,¹⁷ Brazil amended its constitution in 1988 to include provisions for equality between men and women.¹⁸ In 1994, the National Congress realized that the reservations to the Convention were in direct violation of the guarantees of gender equality and thus removed them.¹⁹ In 1985, after ratification but before the

12. See Working Group Paper, *supra* note 1, at pt. IV, ¶¶ 30, 38, 60.

13. Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 6, arts. 7(a), 10, 11, 12.

14. U.N. Div. for the Advancement of Women, CEDAW: Overview of the Convention, <http://www.un.org/womenwatch/daw/cedaw>.

15. U.N. Div. for the Advancement of Women, CEDAW: States Parties, <http://www.un.org/womenwatch/daw/cedaw/states.htm>.

16. U.N. Div. for the Advancement of Women, CEDAW: Declarations, Reservations, and Objections to CEDAW, <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm#N22>. Brazil originally made a reservation to art. 15, para. 4 and art. 16, paras. 1(a), (c), (g) and (h); this reservation was later withdrawn on December 20, 1994.

17. The term “civil society” is used throughout this Article to discuss the efforts made by grassroots groups, non-governmental organizations, and active citizens.

18. Working Group Paper, *supra* note 1, at pt. III, ¶ 24; see also Leila Linhares Barsted & Jacqueline Hermann, *Legal Doctrine and the Gender Issue in Brazil*, 7 Am. U.J. Gender Soc. Pol’y & L. 235, 248 (1999) (arguing that even though the Federal Constitution adopted in 1988 recognizes the equality of men and women, the moral culture of Brazil charges women with protecting the moral equilibrium, which in turn influences the male-dominated legal culture).

19. UNIFEM: Bringing Equality Home, *supra* note 11, at 14. (“The Brazilian constitution was redrafted in 1988 and now includes extensive

reservations were removed, *delegacias de mulheres*, or women's police stations, were established.²⁰ However, it was not until 2002 that the Brazilian Senate finally approved CEDAW domestically.²¹

The *delegacias de mulheres* aim to control domestic violence against women²² and are a great accomplishment of the post-CEDAW era. In 2002, there were 125 *delegacias de mulheres*; by summer 2007 the number of stations had grown to 396.²³ According to the Brazilian non-governmental organization *Cidadania, Estudo, Pesquisa, Informação e Ação* (CEPIA), as of January 2009 the number had increased to 421.²⁴ Further progress for women's rights in Brazil includes the creation of shelters for victims of violence. For example, in 2002 only one shelter housed victims of domestic violence in the state of Rio de Janeiro; it was built in only two years due to the extraordinary efforts of women leaders such as Denise Brasil.²⁵ By 2008, there were four shelters in Rio de Janeiro.²⁶ As of January 2009, there were sixty-seven shelters throughout the country.²⁷ Prior to the ratification of CEDAW and the ensuing changes to the national legislation, in rural areas abused women had little or no specialized resources available to them, such as sexual violence assistance or access to lawyers. While this problem persists, the MDP

guarantees of women's human rights Between 1985 and 1988 women's NGOs . . . contributed to a national campaign to ensure that women's rights were given proper constitutional recognition.”)

20. See Working Group Paper, *supra* note 1, at pt. IV, ¶¶ 68–69.

21. Phil Lawler, *Brazilian Bishops Criticize Episcopal Conference on Treaty Stand*, Catholic World News, June 6, 2002, <http://www.cwnews.com/news/viewstory.cfm?recnum=18313> (noting the domestic approval of the Convention on the Elimination of All Forms of Discrimination Against Women by the Brazilian Senate on 5 June 2002).

22. James Brooke, *'Honor' Killing of Wives is Outlawed in Brazil*, N.Y. Times, Mar. 29, 1991, at B16.

23. Press Release, Comm. on Elimination of Discrimination Against Women, Anti-Discrimination Comm. Calls for Adequate Enforcement to Support Brazil (July 25, 2007), available at <http://www.un.org/News/Press/docs/2007/wom1640.doc.htm> [hereinafter Press Release, Comm. on Elimination of Discrimination Against Women (July 25, 2007)].

24. Interview with Leila Linhares Barsted, Director, CEPIA, in Brazil (June 26, 2002) [hereinafter Barsted Interview]. The initial interview was conducted in Brazil, on June 26, 2002 and a follow-up interview was conducted by phone on Jan. 15, 2009.

25. *Id.* Dr. Denise Brasil is a feminist leader working for *Rio Muhler* which maintains *Casa Viva Muhler*, a battered women's shelter, and she has worked to create the first shelter (*casas do abrigo*) in Rio de Janeiro.

26. Barsted Interview, *supra* note 24.

27. *Id.*

currently mandates that a victim of domestic abuse be provided a public or private lawyer at all stages of the proceedings. Ultimately, the domestic adoption of CEDAW in 2002, coupled with the pressures of the women's movement and the United Nations, continues to be a catalyst for domestic reforms in Brazil.²⁸

B. Overview of Domestic Violence Crimes Pre-2006

While a full discussion of the crime of homicide in Brazil is beyond the scope of this Article, it is important to provide a brief overview of the history of domestic violence-related homicides that preceded the 2006 domestic violence criminal legislation. The Executive Coordinator of CEPIA, Dr. Leila Linhares Barsted, explains that the "defense of honor"²⁹ was a pervasive problem in Brazil in the 1980s. At that time, this problem was portrayed as haunting middle-class women whose husbands were absolved by juries.³⁰ "Honor killings" involving lower-income women were also prevalent at this time, but these did not make media headlines and were seen as less important. However, high-profile cases enabled the women's movement to show the need for official action, and they utilized the slogan "Quem ama no mata" ("[s]he who loves does not kill").³¹ Posted throughout major cities in the country, the slogan was visible on signs at the trials of husbands who murdered their wives.

The most famous case at the time was that of Angela Diniz and Doca Street.³² In 1979, Raúl Doca Street murdered his lover Angela "when she broke off the relationship."³³ Angela had lived with Doca, who shot her and claimed the "defense of honor." The jury in

28. *Id.*

29. Laura Sue Nelson, Comment, *The Defense of Honor: Is it Still Honored in Brazil?*, 11 Wis. Int'l L.J. 531, 534–535 (1994) ("The defense of honor characterizes the husband as having acted spontaneously in legitimate self-defense against an imminent aggression, although it is an 'aggression' against his marital honor rather than his physical being.").

30. Barsted Interview, *supra* note 24.

31. Other slogans include: "Those who love do not kill," "Let's not keep out of lovers' quarrels," "A real man does not beat a woman," "All women have the right to a life free of violence," "Your life starts when violence ends," and "Where there is violence everybody loses." These slogans "were used in the campaigns that have brought to the public arena what people insisted should be solved within the four walls of the home." *Id.*

32. Nelson, *supra* note 2, at 133 (discussing the 1979 case involving Raul Doca Street, who murdered his lover when she broke off their relationship).

33. *Id.*

the case ruled that the crime was one of *emoçõa violenta* or “violent emotion” and the judge sentenced Doca to only two years in jail.³⁴ Angela’s family contracted an independent lawyer who was able to assist them in nullifying the first trial and obtaining a second trial.³⁵ In Brazil, although a prosecutor (*Promotor*) brings forth the charge of homicide under the jurisdiction of the State Attorney General (*Procurador Geral*), the family of the victim may hire independent counsel to accompany the prosecution during the trial;³⁶ thus, Angela’s family hired an attorney to help the prosecutor in both trials.³⁷ This private attorney can assist in gathering evidence and in questioning witnesses, but does not have the same authority as the prosecutor.³⁸ Heleno Fragoso, the private attorney who represented the family, was a human rights activist who also worked with the feminist movement.³⁹ The second trial resulted in a guilty verdict.⁴⁰ This verdict was a breakthrough for the women’s movement, which had gathered thousands of women to protest the original sentence.

The case of Brazilian singer Lindomar Castilho also made national headlines in Brazil. In 1981, Castilho shot his wife Elaine and her cousin, who Lindomar thought to be her lover.⁴¹ Elaine died but her cousin survived. During the pretrial phase, the judge accepted Castilho’s “violent emotion” defense and sentenced him to twelve years in prison.⁴² The social acceptance of wife-murders has presented an ongoing obstacle in Brazil; this challenge has been difficult to overcome because the juries deciding such cases have great freedom to make their decision regardless of the jury instructions.⁴³

34. *Id.*

35. *Id.*

36. Human Rights Watch, *Criminal Injustice: Violence Against Women in Brazil* 17 (1991), available at <http://www.hrw.org/sites/default/files/reports/BRAZIL91O.PDF/> [hereinafter Human Rights Watch, *Criminal Injustice*] (explaining how charges can be brought in homicide cases in Brazil).

37. Nelson, *supra* note 2, at 133.

38. Human Rights Watch, *Criminal Injustice*, *supra* note 36, at 17.

39. See Barsted Interview, *supra* note 24.

40. Human Rights Watch, *Criminal Injustice*, *supra* note 36, at 7.

41. *Id.* at 7, 29.

42. *Id.*

43. *Id.* at 28, 30–31.

C. Cultural Differentiation and Prioritization in Private versus Public Crimes

In Brazil, the law distinguishes between public criminal acts and private criminal acts. A public criminal act, or a crime committed by a stranger in a public sphere, is a crime committed against one or more persons. This type of crime is considered an offense against society as a whole.⁴⁴ Public criminal acts are punishable by criminal state prosecution.⁴⁵ On the other hand, private criminal acts (which include statutory rape, insults, defamation, threats, and violent attacks intended to shame) differ in that the offended individual or his or her legal representative are the only ones who can report the private criminal act.⁴⁶ Once the individual or her representative reports the private criminal act, then she can choose to initiate state action.⁴⁷ To clarify, private criminal acts can carry severe punishment; these crimes include acts such as rape, the violent attack of modesty, and other acts committed against a woman in the home (such as beatings and murder). Men are predominately victims of crimes committed in public spaces whereas women are usually victims of crimes committed in private spaces.⁴⁸ In theory, Brazilian law provides for punishment of the same degree regardless of whether the crime is committed in the public or private sphere. However, in practice, domestic violence against women is difficult to punish due to the cultural ethos that qualifies these acts as a lesser form of violence.

With regard to domestic violence, a serious problem that has arisen in Brazil and throughout the world⁴⁹ is the tendency to accept

44. Barsted & Hermann, *supra* note 18, at 237 (observing the hierarchical distinction in the Brazilian Criminal Code “between ‘public crimes’ [*crímenes de acción pública*] and ‘private crimes’ [*crímenes de acción privada*]” and the disparate treatment of the two types of crimes).

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*; see also Stop Violence Against Women: A Project of The Advocates for Human Rights, Prevalence of Domestic Violence (Feb. 1, 2006), http://www.stopvaw.org/Prevalence_of_Domestic_Violence.html (providing a brief overview of the problem of domestic violence around the world); UNICEF: Innocenti Digest No. 6, *Domestic Violence Against Women and Girls* 5, June 2000, available at <http://www.unicef-icdc.org/publications/pdf/digest6e.pdf> (listing statistics regarding the prevalence of violence against women in 23 different countries).

the “naturalization of violence against women”⁵⁰ or to accept a law that has a disparate penal impact on certain groups of people. Drs. Barsted and Hermann discuss this type of cultural inequality in Brazil by stating that the law “penalizes some more than others, as is clearly the case with blacks and the poor.”⁵¹ Clearly, this issue is further compounded when race and class are factored into the given situation.⁵² In a nation with an enormous rate of racial hybridity, social class and skin color are factors that deprive poor and black people of basic protections.⁵³ Women suffer because they receive only the most basic protection regardless of their color or social status, and the effect is even harsher when race and class are additional factors.

Another example of this cultural application of the law in Brazil is that crimes committed in public are considered more serious than crimes committed in private.⁵⁴ There is a social prioritization of criminal acts committed by strangers or non-intimates over criminal acts committed in a domestic space.⁵⁵ This prioritization sends the message to society that crimes committed in the private domestic

50. The author uses the phrase “naturalization of violence against women” to describe the ease with which many societies accept violence against women, allowing it to become a natural occurrence that is given little importance or priority. The implication in Brazilian society at this time was that violence against women was a lesser offense. This theory embraced subordinate roles that were perpetuated in society on a daily basis, and thus the act of violence against women became a very natural process.

51. Barsted & Hermann, *supra* note 18, at 238. *See also* U.N. Comm. on the Elimination of all Forms of Discrimination Against Women, *Concluding Comments of the Comm. on the Elimination of Discrimination against Women: Brazil* ¶ 11, U.N. Doc. CEDAW/C/BRA/CO/6, Aug. 10, 2007 [hereinafter CEDAW Concluding Comments 2007] (“The Committee is concerned about the persistent gap between the de jure and de facto equality of women and men, particularly among the most vulnerable sectors of society, such as women of African American descent and indigenous women . . . which is exacerbated by regional, economic and social disparities.”).

52. Shadow Report, *supra* note 5, at 16, para. 30 (discussing a study that concluded that particular groups of Brazilian women “suffer triple discrimination resulting from the identity as woman, poor and almost always non-white”).

53. *Id.* at 15–16, paras. 30–32 (noting pervasive racial inequality and the need to incorporate efforts at ameliorating racial equality into a dynamic and cross-cutting public policy strategy).

54. *Id.* at 10, paras. 13–16 (discussing the differences between crimes committed against women in the domestic versus public spheres).

55. *Id.* at 10, para. 15 (noting the “social and institutional practices that are constants in the systemic pattern of discrimination and impunity”).

space are penalized more leniently than criminal acts committed by a stranger in a public space. In light of the long history of wife-murders and the continuous ineffective handling of domestic violence cases, this message is incompatible with human rights treaties that Brazil has ratified.⁵⁶ Essentially, the government has failed in its duty to protect women as equal citizens.

An example of this inequality can be seen in the case of "Rebecca."⁵⁷ Rebecca was a young woman in her twenties with one adolescent child from her marriage with her husband/aggressor. With the help of Marisa Gaspary, a local battered women's advocate and feminist leader, Rebecca reported eight acts of domestic violence by her husband to local authorities in a town outside Rio de Janeiro. The police failed to adequately address any of her complaints. It was not until her husband shot her in the head, a crime which was witnessed by their adolescent daughter, that local police and judicial officials responded to Rebecca's pleas for help. During the shooting, the handle of the gun knocked out Rebecca's teeth and the bullet grazed her forehead, missing entry into her skull by mere millimeters. It took this attempted homicide for the police to take action and issue a warrant for the husband's arrest for attempted murder. According to the victim, police officials did not take her previous complaints seriously. The aggressor fled the jurisdiction and continued to place life-threatening calls to Rebecca and her family.⁵⁸ Moreover, Rebecca found herself further victimized by the State due to the ineffectiveness and lack of response from both the police and the judiciary in the handling of her matter. This case, which is similar to many of the cases observed by the author during her

56. In addition to the Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 6, Brazil has also ratified the following treaties: Convention on the Rights of the Child (CRC), *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 44 (entered into force Sept. 2, 1990); International Covenant on Civil and Political Rights (ICCPR), *opened for signature* Dec. 16, 1966, S. Exec. Doc. E, 95-2 (1978), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976); International Covenant on Economic, Social and Cultural Rights (ICESCR), *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976); and International Convention on the Elimination of All Forms of Racial Discrimination (CERD), *opened for signature* Mar. 7, 1966, S. Exec. Doc. C, 95-2 (1978), 660 U.N.T.S. 195 (entered into force Jan. 4, 1969).

57. Interview with Domestic Violence Victim (anonymous for protective purposes), in San Gonzalo, Brazil (July 1, 2002).

58. Interview with Marisa Gaspary, Director, Centro Especial de Orientação à Mulher (Ceom) Zuzu Angel, in San Gonzalo, Brazil (July 1, 2002).

fieldwork in Brazil, illustrates some of the obstacles in punishing the aggressors of domestic violence.⁵⁹ Clearly, in this case, the importance of preventing the attempted homicide should have been a priority. It also should have caused state officials to consider domestic violence as a crime at the time. This problem brings the discussion to the issue of legal doctrine.

D. Legal Doctrine: Domestic Violence Legislation and Judicial Observations

Until 2006, Brazil lagged behind other countries in the development of domestic violence legislation, related supportive services, and more importantly, the recognition of domestic violence as a serious crime.⁶⁰ However, as discussed in Part III, the women's movement has slowly made progress in this area which has resulted in the creation and passage of laws such as the MDP. In order to measure progress made post-CEDAW in Brazil, it is important to understand the judicial treatment of domestic violence cases in Brazil prior to passage of the MDP.⁶¹

Before the MDP was passed, Law 9,099/95 was the civil law governing most domestic violence crimes in Brazil.⁶² Under Law 9,099/95, domestic violence crimes were considered penal misdemeanors and had a maximum punishment not to exceed one year, except for the cases in which there was approval of the

59. See Barsted & Hermann, *supra* note 18, at 236–37 (arguing that even when the judiciary in Brazil has become involved in adjudicating a conflict, it is inefficient and tends to deemphasize the seriousness of domestic crimes).

60. Comm. on the Elimination of Violence Against Women, *Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women – Brazil* 6–7, U.N. Doc. CEDAW/C/BRA/1-5 (Nov. 7, 2002), available at <http://www.unhcr.ch/tbs/doc.nsf> (open the “CEDAW” hyperlink; then open the “State Party Report hyperlink; then follow “E” hyperlink for Brazil) [hereinafter Brazil CEDAW Report 2002].

61. See Nelson, *supra* note 2, at 133–34 (describing two highly publicized murder trials in Brazil, one in 1979 and the other in 1984, in which the male defendant had killed his female companion and received lenient treatment after both judges accepted the defense of “violent emotion”).

62. Brazil CEDAW Report 2002, *supra* note 60, at 34 (describing the Special Civil and Criminal Courts created by Law 9,099/95 and noting that enforcement of domestic violence laws pursuant to this legislation was controversial with feminist groups because of the classification of most domestic violence crimes as misdemeanors).

application of special procedure.⁶³ Law 9,099/95 is particularly interesting to discuss in the context of formation of human rights law and legal prosecution in Brazil—it was precisely Law 9,099/95 that covered a significantly large number of the crimes considered less serious prior to 2006.⁶⁴ Approximately 70% of these crimes were committed against women in a domestic environment or in intra-family relations.⁶⁵ The women in Brazil were principally the victims of this violence in the home, which in large part were assault and crimes of “light” batteries.⁶⁶ Therefore, Law 9,099/95, which established JECrim,⁶⁷ the special civil court that handled domestic violence crimes pre-2006, contributed to the problem of domestic violence.

How was this law applied regarding cases of domestic violence against women, and what measures were and were not effective in preventing domestic violence crimes? The fieldwork observations of this author from 2002 illustrate the ineffectiveness of Law 9,099/95 and JECrim in handling domestic violence crimes. During this time, it was observed that the state agency *Centro Integrado de Atendimento a Mulher* (CIAM) had only two staff attorneys.⁶⁸ These attorneys were only able to represent women before a *consiliador* (mediator) on the basis of individual requests from plaintiffs. These attorneys provided women with legal advice and, in essence, a voice in the flawed and ineffective judicial system. Although the two staff attorneys were excellent at representing the victims, there were simply too many cases for them to handle.

A lack of government funding and political turnover further weakened the support available to women survivors of domestic violence.⁶⁹ The author accompanied Dr. Selma da Hor to the trial of

63. *Id.* at 50 (arguing that because the Law privileges settlement, it benefited perpetrators of domestic violence by encouraging them to pay a fine in punishment for their crimes without receiving criminal records).

64. *Id.* at 55.

65. *Id.* at 48.

66. *Id.*

67. JECrim is a Special Civil Court that was created by Law 9,099/95. See Lei. No. 9.099, de 26 de Setembro de 1995, Col. Leis. Rep. Fed. Brazil, 187 (9): 3633, set. 1995, available at http://www.planalto.gov.br/ccivil_03/Leis/L9099.htm.

68. The two attorneys working for CIAM were Dr. Georgia Bello Correa and Dr. Gileyde Selma da Hor.

69. It is the view of this author that this continues to be the case, even after the passage of MDP. See CEDAW Concluding Comments 2007, *supra* note 51, ¶ 21 (“While commending the State party on the enactment of the important new domestic violence legislation . . . the Committee is concerned that violence

one of her clients, a plaintiff who accused her aggressor of assault and battery. The parties stood in the hallway of the JECrim court waiting for their respective attorneys. There were no constructed barriers in the hallway to provide the victim with physical shelter from her aggressor and no metal detectors were used prior to entering the mediation area. The domestic violence case was referred to a person similar to a mediator in the United States, who was politically appointed to resolve 9,099/95 cases. The mediator sat both parties in front of a desk in a cubicle. The seats of the wife and husband actually touched one another with no divider or space between them. Up to this point at the JECrim, the victim had no physical separation from her aggressor.

Dr. Selma da Hor, the plaintiff's counsel, was present, but the proceeding was not allowed to begin until the aggressor was represented. Consequently, the proceeding did not start until the court officer left to find a "promotor," which is similar to a public defender, to represent the aggressor. In the waiting area of the JECrim there were other battered women who were not being represented. In sharp contrast, in every instance, the aggressor was represented by an attorney. The physical configuration of the mediation was improper in itself because it created a continually unsafe environment for the plaintiff. For example, the aggressor often intimidated the plaintiff during the proceedings by staring at her and nudging her. The mediator was a witness to such activities, but failed to take any action.⁷⁰ This case was not settled in mediation but instead went before a judge.

The mediation is particularly problematic because women are subjected to a threatening environment, possibly physical and always psychological, whether in the hallway awaiting mediation or in the

against women and girls is widespread and apparently under-reported . . . [and] is still not recognized by society as a whole as a human rights violation."). *See also* Shadow Report, *supra* note 5, at 9 (urging Brazil to take additional steps to protect women from domestic violence, such as by creating "Special Courts for Domestic and Family Violence against Women throughout the national territory, with civil and criminal competence for prosecution, judgment, and execution of sentences in all cases stemming from this violation."); Press Release, Comm. on Elimination of Discrimination Against Women (July 25, 2007), *supra* note 23 (noting that an expert from Ghana commended the passing of the new legislation, but noted it would "only be useful if the victims were made aware of its existence and of the mechanisms available to them. Resources should be made available for the law's implementation").

70. These are the personal observations of the author who was present during this JECrim mediation.

cubicle during the mediation where they are forced to be physically positioned directly next to their aggressor. Another major problem with these mediations is that the women are not represented in most of these cases before the court, due to the lack of legislation and funding for state attorneys. Thus, due to their unfamiliarity with the judicial system, many women ultimately bargain with the mediators, whose ultimate goal is to clear cases from the dockets, in order to gain political favor with judges, regardless of the repercussions for the women.⁷¹

Also observed in the same JECrim court were two very different cases before the same judge, both considered under the same law. One of the cases mirrored the intimate violence case discussed previously. The other was a neighborly dispute case.⁷² The treatment of these contrasting cases under the same law demonstrates the need for international attention to the issue of domestic violence legislation in Brazil. Although most cases handled by Law 9,099/95 pre-2006 were domestic violence cases, neighborly disputes were also heard pursuant to this same law.⁷³

The first observed JECrim court proceeding before the judge was a dispute between two neighbors. The plaintiff and defendant, two elderly women, had argued over catching a bus and one elderly woman shoved the other in order to get on the bus first. As a result, the defendant was charged with “light” battery and ordered to donate a food basket to a local charitable organization as a penalty.⁷⁴ The second proceeding heard by the judge was a domestic violence case that occurred in the home where the husband battered his wife. He too was ordered by the judge to donate a food basket as a penalty.⁷⁵

Undoubtedly, these two crimes are not worthy of the same judicial treatment or punishment. These proceedings excessively minimized the profound criminality of domestic violence and this was the message being advocated by the State via its judiciary to society.⁷⁶ To treat a crime committed by a stranger in the same way

71. *Id.*

72. *Id.*

73. Brazil CEDAW Report 2002, *supra* note 60, at 50.

74. These are the personal observations of the author who was present during this JECrim mediation.

75. *Id.*

76. U.S. Dep’t of State, Brazil: Country Reports on Human Rights Practices, § 1-e (2007), available at <http://www.state.gov/g/drl/rls/hrrpt/2006/78882.htm> [hereinafter Dep’t of State Report] (“The law provides for an independent judiciary, and the government generally respected this provision

as the same crime committed by a spouse/intimate is unjust for many reasons, one of which is that crimes committed by a spouse/intimate have a higher rate of recidivism. A crime committed by a stranger will reoccur in the same manner in only a few cases. More importantly, a crime of domestic violence committed by a spouse is more likely than a crime between strangers or non-intimates to escalate into a graver crime such as homicide. Additionally, crimes committed by an intimate assailant cause dissimilar psychological ramifications than those committed by a neighbor.⁷⁷

III. WOMEN'S MOVEMENT, GRASSROOTS EFFORTS, AND *DELEGACIAS DE MULHERES*

Brazil is unique in its efforts to achieve gender equity in that it has recognized the active contribution of the women's movement and has cooperated with non-governmental organizations.⁷⁸ As a result of many cooperative efforts, including the work of governmental working groups such as the 2002 Brazilian Governmental Working Group on Law 9,099/95⁷⁹ and the Inter-

in practice; however, the judiciary was under-funded, inefficient, and often subject to intimidation and political and economic influences, particularly at the state level, a situation that occasioned vigilante action (see section 1.a.)."). See also Human Rights Watch, *Essential Background: Overview of Human Rights Issues in Brazil* (2007), <http://hrw.org/englishwr2k7/docs/2007/01/11/brazil14882.htm> [hereinafter Human Rights Watch 2007 Report] (noting that "[h]uman rights violations in Brazil are rarely prosecuted").

77. See Carissa Byrne Hessick, *Violence Between Lovers, Strangers, and Friends*, 85 Wash. U. L.R. 343, 391 (2007) (reviewing studies of victim harm suggesting that, compared with victims of stranger violence, victims of non-stranger violence are more likely to be seriously injured during the attack and are more likely to experience feelings of self-blame, breach of trust, and fear associated with being known to the perpetrator); Patricia A. Resick, *The Psychological Impact of Rape*, 8 J. Interpers. Violence 223, 240 (1993) (reviewing multiple studies that had found that victims of acquaintance rape were less likely to report the rape and more likely to delay treatment and experience self-blame than those who had been raped by strangers).

78. See CEDAW Concluding Comments 2007, *supra* note 51, ¶ 4. ("The Committee welcomes the State party's recognition of the active contribution of the women's movement in Brazil and its cooperation with non-governmental organizations in striving to achieve gender equality."). See also Shadow Report, *supra* note 5, at 6, paras. 1–2 (noting the collaboration between governmental and non-governmental organizations in improving protections against domestic violence through the Law Maria Da Penha).

79. The author was the only non-Brazilian that participated as part of this working group.

Ministerial Working Group (“GTI”), which was charged with drafting a legislative document that resulted in the MDP Law, domestic violence legal reform in Brazil has been achieved.⁸⁰

To a large extent, the demands of the GTI, have been incorporated into the MDP. This recent development serves as an example for other countries by illustrating the value of international human rights law as a tool to help eradicate violence against women domestically. The creation of the MDP, to a large extent, resulted from the promotion and adoption of CEDAW domestically, which initially resulted from pressures by women and support from the United Nations.⁸¹ Prior to the MDP, as will be discussed in Part IV, there was a legacy of impunity under Law No. 9,099/95.⁸²

There are many types of justice movements working to bring global attention to the human rights violations against women in Brazil. The women in Brazil are a part of these varying types of justice movements and the strength of the global women’s movement, which has been built on solidarity, compassion, and cooperation, has influenced them.⁸³ Unfortunately, male involvement in the issue of domestic violence has been deficient. This problem is ongoing not only in Brazil, but at the global level as well. Nonetheless, progress in men’s participation in the elimination of violence against women can be observed in the city of Rio de Janeiro. In Rio, there are several organizations, such as *Instituto de Pesquisas Sistêmicas e*

80. See Shadow Report, *supra* note 5, at 6, para. 2 (discussing the dynamics of collaboration amongst various advocacy and non-governmental organizations).

81. *Id.* at 6, para. 1.

82. See CEDAW Concluding Comments 2007, *supra* note 51, at 6.

83. See, e.g., Martha Nussbaum, *The Supreme Court 2006 Term Foreword: Constitutions and Capabilities: “Perception” Against Lofty Formalism*, 121 Harv. L. Rev. 4, 54–55 n.193 (2007) (“At the Fourth World Conference on Women, a conference on women’s equality in Beijing in June 1995 . . . Chinese feminists spoke of the formative influence of the Chinese translation of The Subjection of Women on their movement.”); Gaytri Kachroo, *Mapping Alimony: From Status to Contract and Beyond*, 5 Pierce L. Rev. 163, 206 (2007) (“[t]he social changes . . . in the second half of the last century” can be attributed “to the influence of the feminist movement and women’s growing participation in market labor”); Athena D. Mutua, *Gender Equality and Women’s Solidarity Across Religious, Ethnic, and Class Differences in the Kenyan Constitutional Review Process*, 13 Wm. & Mary J. Women & L. 1, 48 (2006) (“The influence of the global women’s movement on Kenyan women’s activism became clear during advocacy for a new Kenyan constitution.”).

Desenvolvimento de Redes Sociais (Instituto NOOS),⁸⁴ that work with men who have committed domestic violence crimes. *Instituto NOOS* is a non-governmental organization established in Rio de Janeiro as a Federal Public Utility in 1994.⁸⁵ “[The organization’s] focus is the improvement of relations between people, families, institutions and communities, through participatory practices for the prevention of violence and gender.”⁸⁶ The institution carries its message through courses, publications, events, consultations, research, and campaigns. In addition, it develops workshops and services, including: family therapy, men and women groups, family and community mediation, certification of community leaders, reflective therapists for families and facilitators for groups of this type.⁸⁷ This program is an example of an effort that has effectively increased male involvement in the movement.⁸⁸

Grassroots organizing combined with governmental support, as seen in the case of Brazil’s adoption of CEDAW, has contributed to many developments, such as the creation of women’s police stations and federal domestic violence legislation.⁸⁹ Furthermore, since the adoption of CEDAW, Brazil has made progressive efforts to enact other legislation such as the new Civil Code (2003), Law 11106 of 28 March 2005 amending the Penal Code, and “legislation relating to employment, maternity and health issues and several legislative initiatives at state level in different areas.”⁹⁰ These principles have upheld Brazil’s commitment to promote the principle of equality between women and men in the Constitution and under CEDAW.⁹¹

84. Instituto de Pesquisas Sistemicas E Des Senvolvimento de Redes Socias (Instituto NOOS), Home Page, <http://www.noos.org.br> (last visited Oct. 29, 2009).

85. Instituto NOOS, Presentation, <http://www.noos.org.br/apresentacao.htm> (translated in “Presentation” link) (last visited Oct. 29, 2009).

86. *Id.*

87. Instituto NOOS, Programs, <http://www.noos.org.br/programas.htm> (translated in “Programs” link) (last visited October 29, 2009).

88. Instituto NOOS, Connections, <http://www.noos.org.br/conexoes.htm> (translated in “Connections” link) (last visited October 29, 2009).

89. Barsted Interview, *supra* note 24.

90. CEDAW Concluding Comments 2007, *supra* note 51, ¶6.

91. Constituição Federal [Constitution] art. 5 (Brazil) (“All persons are equal before the law, without any distinction whatsoever . . . being ensured of inviolability of the right to life, to liberty, to equality, to security and to property, on the following terms . . . men and women have equal rights and duties under the terms of this Constitution.”); Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 6, arts. 1, 2(a), 3.

Delegacias de mulheres, women's police stations, are one of the most visible accomplishments of the women's movement and grassroots efforts in Brazil. Women's police stations were created in 1985; prior to their existence, domestic violence investigations were rarely conducted.⁹² Although the *delegacias de mulheres* existed, female police chiefs still reported that many abusers went unpunished, as demonstrated by the cases processed.⁹³ There were also reports confirming the hostile behavior of police officials towards women who filed complaints of domestic abuse.⁹⁴

However, the presence of the *delegacias de mulheres* is changing the perception of criminal accountability for domestic violence crimes in Brazil and they have served as effective tools in data gathering of domestic violence incidents. *Delegadas*—female police officers—blame the low reporting of violence against women in part on the lack of social and economic governmental support.⁹⁵ Low police morale and a lack of training also contribute to low investigation rates.⁹⁶ The women's movement is working on these

92. Shadow Report, *supra* note 5, at 10, para. 16. As the report states: The Special Police Departments for Assistance to Women (DEAMs) constitute the principle mechanism to denounce violence against women since 1985, when they began to be established through demands by women and the feminist movement. However, the 339 DEAMS existing today in the country offers assistance to only 10% of the total of 5,561 Brazilian municipalities. Disproportionality also occurs by region, with the greatest concentration being in the Southeast region of the country, especially in the state of São Paulo. Thus, while the coverage of women in situation of violence is reported as 13% of municipalities (220 municipalities) in the Southeast of the country, in the Northeast region it is 3% (50 municipalities). The lack of training of police agents in dealing with gender violence and the insufficiencies of human and financial resources and adequate infrastructure also are factors that make difficult the capacity of this mechanism to fulfill its role of investigating and classifying crimes committed against women.

93. See Barsted Interview, *supra* note 24.

94. *Id.*

95. Interviews with Marta Rocha, Catarina Noble, Ana Helena, Police Chief and Female Police Officers, DEAM Legal Centro, in Rio de Janeiro, Braz. (2002) [hereinafter Police Interview].

96. Barsted Interview, *supra* note 24.

problems with the government; one of their efforts is the creation of more *delegacias de mulheres* throughout Brazil.⁹⁷

Some of the *delegacias de mulheres* maintain on-site social workers who assist with individual cases. However, most *delegacias de mulheres* do not receive adequate personnel or training.⁹⁸ The persistent social problem has been that domestic violence was, until recently, not considered a crime in Brazil and this mentality carried over to the policing communities. The reports of prosecution rates vary between police chiefs and police officers. Non-governmental organizations have called for a consistent and comprehensive approach to prosecution as an integral element of properly addressing the issue of domestic violence.⁹⁹ Estimates from police chiefs vary, with some reporting that 40% or more of these cases are tried and punished, while police officers in other districts state that no or very few cases are prosecuted.¹⁰⁰ Nevertheless, a substantial number of domestic violence cases go unprosecuted and the figures to date are difficult to assess due to the lack of a standardized reporting system.

With the enactment of the MDP in 2006, conditions should improve and a more effective reporting system will likely be developed. The failure to prosecute before 2006 enhanced the rate of domestic violence. Despite their imperfections, women police stations are an example of how the women's movement and grassroots organizing in Brazil have brought change in the area of violence against women through coordination with and assistance from the international human rights community.

Feminists in the struggle for the eradication of violence against women have a variety of approaches but not all feminists

97. Shadow Report, *supra* note 5, at 13 (recommending that Brazil ensure that appropriate service assistance networks be created in all municipalities and be well-funded and supported to meet existing demands in relation to violence against women; noting the need for such action in accordance with arts. 2, 3, 10, 11, 12, 16 of the Law Maria da Penha). *See also* Comm. on the Elimination of Violence Against Women, *Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women: Sixth Periodic Report of States Parties, Brazil* 34, U.N. Doc. CEDAW/C/BRA/6 (2005) [hereinafter CEDAW Brazil Report 2005] (noting the Brazilian government's increased investment in women's police stations).

98. Shadow Report, *supra* note 5, at 10, para. 16.

99. *Id.*

100. Brazil CEDAW Report 2002, *supra* note 60, at 46.

agree on which is the acceptable or the best practice.¹⁰¹ However, through the continuing efforts of the Brazilian women's movement which has worked with the government to set up women's police stations throughout the country, the police resources available to women have increased.¹⁰² *Delegacias de mulheres* specialize in cases of violence against women and can be an effective tool in combating domestic violence. In addition, *delegacias de mulheres* serve as a model of conscious policing to other nations.

In 2002, the author conducted fieldwork at the main *delegacia de mulheres* in Rio de Janeiro, *DEAM Legal Centro*, and interviewed Dr. Marta Rocha, the chief of police at the time. The author also interviewed Drs. Catarina Noble and Ana Helena, female police officers.¹⁰³ At that time, the police station was receiving funding to purchase advanced technology that would assist women police stations in sharing information on aggressors. While this particular *delegacia de mulheres* had received access to new technology, not all *delegacias de mulheres* were as well equipped.¹⁰⁴ *DEAM Legal Centro* actively worked with the grassroots groups, non-governmental organizations, and governmental groups that provided women with varying types of assistance.¹⁰⁵ However, other *delegacias de mulheres* in the area were not as community-oriented, especially in rural areas such as Niterói.¹⁰⁶

Policing is of particular concern because it has historically been ineffective, due in large part to a lack of communication between the judiciary, prosecutor, and the police in all cases, but especially domestic violence cases. Before 2006, the JECrim process, which postponed sentencing, was commonly used in domestic

101. Rachel Murray, *A Feminist Perspective on Reform of the African Human Rights System*, 1 Afr. Hum. Rts. L.J. 205, 210 (2001) (stating that the feminist legal theorists blame the state-centric approach to human rights law for its male bias on the basis that organizations advocating international human rights are predominantly populated by males).

102. See Shadow Report, *supra* note 5, at 10, para. 16 (discussing how the demands of the women's movement led to the creation of Special Police Departments for Assistance to Women (DEAMs)).

103. Police Interview, *supra* note 95.

104. The police chief and officers were very accommodating to the author and spent weeks helping her gather information on the victim intake processes and allowed her to observe the daily processing of the police station.

105. Police Interview, *supra* note 95.

106. See Shadow Report, *supra* note 5, at 10, para. 16 (discussing regional differences in access to police services for women). See also Police Interview, *supra* note 95.

violence cases. The courts were rarely able to properly supervise the aggressors due to the docket overload. As a result, many aggressors violated the provisions of probation.¹⁰⁷ The inefficiencies in the system, coupled with a lack of police protection for victims, left women subject to repeat violence.

One victim interviewed at the *delegacia de mulheres* explained that her husband, who had battered her repeatedly, accepted during a JECrim hearing the adjournment proposal of the lawsuit for two years under the terms of paragraph 1 of Art. 89 of the Law 9,099/95.¹⁰⁸ This meant that he could not frequent certain places or leave the jurisdiction without the judge's authorization. He was required to see the judge monthly to inform the judge of his activities. According to the victim, the husband never complied with the order yet there were no consequences for him. Aggressors' court requests to travel without restriction were often granted, rendering women helpless and creating distrust in the judicial system by women.¹⁰⁹ This also sent a social message that domestic violence crimes were less important than other crimes. Many of the victims interviewed questioned the existing legislation and viewed it as an enforcement scheme that allowed a husband to attack his wife and effectively "get away with it" due to the lack of protection granted to women by the law. Women had an expectation that the law would protect them yet felt abandoned by Law 9,099/95.¹¹⁰

One victim's group observed by this author also felt this sense of hopelessness and lack of judicial protection because of the government's ineffective handling of domestic violence cases. Another victim asked how she would explain to her children that it was morally wrongful to batter when there was no judicial authority to support this message. These are the situations brought to light by the women's movement and by some individual judges who were concerned with the status of domestic violence.¹¹¹

A judge in Niterói, a city on the outskirts of Rio de Janeiro, stood out from the rest. The judge was asked in an interview whether he would feel safe for his daughter were she a victim of domestic

107. Police Interview, *supra* note 95.

108. *Id.*

109. The author witnessed this frequently during her fieldwork in Rio de Janeiro in 2002.

110. Barsted Interview, *supra* note 24.

111. *Id.*

violence and had a case under Law 9,099/95.¹¹² He responded that he would feel safe for her if she were living in Rio de Janeiro, but not if she were in São Paulo. This indicated that not only was there a need for the reform of Law 9,099/95, but there was also a need for standardization of the application of this law throughout the Brazilian judiciary. Standardization is one method by which the Brazilian government could work towards providing women the same response under the law regardless of the forum. In addition to the creation of women's police stations, the women's movement has argued for a clear standardization of judicial treatment.

There was and continues to be an unmet need for Brazil to standardize the judicial treatment of domestic violence and to send a message that the law is something to be respected because it is enforced. One major problem in many societies is that citizens do not respect the law because laws often go unenforced. This remains a Brazilian reality.¹¹³ When citizens know that the law will not be enforced, or when they know they can buy their way out of liability under the law, they fail to respect that law and even law enforcement generally.

IV. THE MDP LAW: WHAT IS IT AND HOW DOES IT RELATE TO INTERNATIONAL LAW?

A. The Iconic Story of the Woman Behind the Law

Maria da Penha Maia Fernandes was a biopharmacist who lived in Fortaleza, Ceará, with her husband, Marco Antonio Heredia Viveiros, an economist and university professor, and their three daughters.¹¹⁴ In 1983, at age thirty-eight, she was the victim of two homicide attempts in her home.¹¹⁵ Her husband was the aggressor.¹¹⁶ He first shot her in the back while she was sleeping, which rendered

112. Interview with Judge Anatocles, Niterói Court, in Rio de Janeiro, Brazil (July 4, 2002) (on videotape with author).

113. Shadow Report, *supra* note 5, at 10, para. 16 ("The lack of training of police agents in dealing with gender violence and the insufficiencies of human and financial resources and adequate infrastructure also are factors that make difficult the capacity of this mechanism to fulfill its role of investigating and classifying crimes committed against women.").

114. *Id.* at 6–7 (describing the history of Maria da Penha's case and the violent attacks against her).

115. *Id.*

116. *Id.*

her a paraplegic.¹¹⁷ He later tried to electrocute her in a bathtub.¹¹⁸ He remained at large until 1998, despite two convictions, one in 1991 and the other in 1996, by the Jury Court of the State of Ceará.¹¹⁹ There had been no decision in the case and as a result the Center for Justice and International Law (CEJIL) and the Brazilian Chapter of Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM-Brazil) filed a case in support of Maria da Penha with the Inter-American Commission of Human Rights (IACHR) of the Organization of American States (OAS).¹²⁰ The Brazilian government remained silent throughout the proceedings and did not file an answer.¹²¹

In 2001, the IACHR found the State of Brazil responsible for many violations of rights protected under treaties and regional declarations. These violations included the "failure to act, negligence and tolerance with regard to domestic and family violence against Brazilian women."¹²² The Commission noted that the "violence suffered by Maria da Penha is part of a general pattern of negligence and lack of effective action by the State in prosecuting and convicting aggressors."¹²³ The Commission issued significant special

117. *Id.*

118. *Id.*

119. *Id.*

120. In 1998, CEJIL, CLADEM, and Maria da Penha Maia Fernandes filed a complaint before the IACHR alleging that the Brazilian State had "condoned, for years during their marital cohabitation, domestic violence perpetrated in the city of Fortaleza, Ceará State, by Marco Antônio Heredia Viveros against his wife at the time, Maria da Penha Maia Fernandes, culminating in attempted murder and further aggression in May and June 1983," *Maria da Penha v. Brazil*, Case 12.051, Inter-Am. C.H.R., Report No. 54/01, OEA/Ser.L/V/II.111, doc. 20 rev., 704 (2001) (finding Brazil responsible for failure to take adequate measures to protect a battered woman from a habitually abusive husband, about whom it had knowledge). *See also* CEDAW Brazil Report 2005, *supra* note 97, at 20 (noting that following Brazil's domestic implementation of the Convention, "[c]ases, such as the petition filed by Maria da Penha Maia Fernandes, of the State of Ceará, in the Inter-American Commission of Human Rights, on August 20, 1998, have a greater chance of being reduced or even avoided").

121. *See* Shadow Report, *supra* note 5, at 6–7 (discussing the dynamics and progression of Maria da Penha's case).

122. Shadow Report, *supra* note 5, at 7 (analyzing the IACHR report issued pursuant to Maria da Penha's case).

123. *Maria da Penha v. Brazil*, Report No. 54/01, *supra* note 120, para. 56. The Commission concluded that the State of Brazil violated rights protected in regional declarations and human rights treaties, including the American Convention on Human Rights arts. 1(1) (obligation to respect rights), 8 (judicial guarantees), 24 (equality before the law), and 25 (judicial protection); the

recommendations to Brazil regarding the case, including important reforms in public policy that would successfully eliminate “state tolerance and discriminatory treatment of domestic violence against women.”¹²⁴ These suggested reforms ranged from the adoption of measures to train specialized police and judicial officials that handle these cases to increasing the number of special police departments for assisting women.¹²⁵ Most notably, IACHR recommended that Brazil utilize its teaching curricula to promote reform by including “units on women, their rights, the Convention of Belém do Pará and the management of family conflicts.”¹²⁶

B. Time For Change

Maria da Penha’s domestic criminal trial concluded in March 2002, and her aggressor was imprisoned in October 2002.¹²⁷ Brazil was cautioned in 2003 by the CEDAW Committee which had recommended that Brazil “adopt, without delay legislation on domestic violence and practical measures to follow-up and monitor the application of such a law and evaluate its effectiveness.”¹²⁸

American Declaration on the Rights and Duties of Man arts. II and XVIII; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará) arts. 3 (right to life free from violence in the public and private sphere), 4(a) (right to life), 4(b) (right to physical, mental and moral integrity), 4(c) (right to liberty and security), 4(d) (right to not be subjected to torture), 4(e) (right to dignity and protection of the family), 4(f) (right to equal protection before the law and of the law), 4(g) (right to prompt and simple recourse to a competent court), and 7(b), (d), (e), (f), and (g) (state obligations).

124. Shadow Report, *supra* note 5, at 7 (analyzing the IACHR report issued pursuant to Maria da Penha’s case).

125. *Id.* (noting that numerous recommendations of the CEDAW committee still require action to bring Brazil into compliance and highlighting in particular the need for action under General Recommendation No. 19 regarding remedial action and judicial and police reforms). *Id.* (citations omitted). The Convention of Belém do Pará gives broad protection for women against violence for members of the Organization of American States (OAS); see Inter-Am. Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará), June 9, 1994, 33 I.L.M. 1534, available at <http://www.cidh.org/women/convention.htm>.

126. See Shadow Report, *supra* note 5, at 7 (analyzing the IACHR Commission report issued pursuant to Maria da Penha’s case).

127. This occurred “even though he [was] already completing the sentence in ‘semi-open’ detention, in accordance with the national law.” Shadow Report, *supra* note 5, at 7.

128. *Id.* (internal quotations and citations omitted).

Despite serious talks at the 2002 Brazilian Governmental Working Group on Law 9,099/95 about the need for domestic violence legislation and appropriate funding and resources, no forceful action was taken by the Brazilian government at that time.¹²⁹ As a result of the continued push for collaborative efforts from the women's movement and grassroots and local organizations, however, Brazil, through the creation of the GTI, developed the MDP as a comprehensive legal reform. It was later signed into law by the President. The MDP created mechanisms to curtail domestic and family violence against women. It was also an attempt to comply with Section 8 of Article 226 of the Federal Constitution, CEDAW, and the Convention of Belém do Pará.¹³⁰

The MDP, among several other enactments, provides for Courts on Domestic and Family Violence Against Women. Among its more significant procedural reforms are changes to the Penal Code, the Law of Criminal Sentences (Lei de Execução Penal), and the Code of Criminal Procedure, all of which had been insufficient and ineffective in protecting victims.¹³¹ The MDP also changed how domestic violence cases were handled by JECrim.¹³²

To contextualize the need for such reform, the magnitude of domestic violence in Brazil must be noted. As in many parts of the world, domestic violence is a national epidemic. The CEDAW Shadow Report explains that one out of every four women in Brazil has already been the victim of domestic violence.¹³³ Every fifteen seconds, a woman in Brazil is beaten by her intimate partner or ex-partner, a Brazilian woman is hindered by her aggressor from leaving the home, and another Brazilian woman is forced to have sexual relations against her will.¹³⁴ "Close to 70% of murdered Brazilian

129. *Id.*

130. *Id.* (explaining how the MDP created mechanisms and instituted reforms to restrain domestic violence and bring Brazilian law into compliance with the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention of Belém do Pará). *See generally* Constituicao Federal, art. 226, § 8 (Braz.); Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 6; Convention of Belém do Pará, *supra* note 125.

131. *See* Shadow Report, *supra* note 5, at 7.

132. Police Interview, *supra* note 95.

133. Shadow Report, *supra* note 5, at 7, para. 5 (discussing the frequency of the crime of domestic violence against women).

134. *Id.*

women are victims in the sphere of their domestic relations,” and 66.3% of aggressors accused of homicide kill their female partners.¹³⁵

In Brazil, the most disadvantaged groups of women are particularly vulnerable.¹³⁶ All of society, especially women, are uninformed of legislation generally and specifically of the new federal domestic violence legislation.¹³⁷ Therefore, as proposed by the U.N. Commission on CEDAW, one effective way to create awareness among all people is:

[To] ensure that the Convention and related domestic legislation are an integral part of the education and training of judicial officers, including judges, lawyers, prosecutors and public defenders, as well as of the curricula in universities, so as to establish firmly in the country a legal culture supportive of gender equality and non-discrimination [T]o enhance women’s awareness of their rights, including in remote areas and among the most disadvantaged groups, through legal literacy programs and legal assistance so that they can claim all their rights under the Convention . . . to further disseminate and raise awareness about the Convention and the Optional Protocol among the general public so as to create awareness of women’s human rights.¹³⁸

The support and structure called for by the MDP and the CEDAW Commission still need to be created and implemented throughout the country.¹³⁹

C. Progress Since the Enactment of the MDP Law

In terms of progress made since the enactment of the MDP by 2006:

Brazil’s national women’s assistance network had expanded to include 96 help centres, 65 shelters and 396 police stations specifically trained to assist victims of violence The Government had set up 139 civil and criminal courts to

135. *Id.*

136. CEDAW Concluding Comments 2007, *supra* note 51, ¶2.

137. *Id.*, ¶3 (“Committee is concerned that the provisions of the Convention have only rarely been invoked in court cases in recent years, which reveals a lack of knowledge about the Convention. It is also concerned about women’s limited knowledge of their rights under the Convention and . . . related domestic legislation.”).

138. *Id.*

139. *Id.*, ¶4.

handle domestic and family violence cases, and 15 public defence units for women nationwide.¹⁴⁰

According to CEPIA, in 2009 there are 67 shelters in Brazil and as of January of 2009 the number of *delegacias* has increased to 421.¹⁴¹ Despite the increased resources, funding remains insufficient.¹⁴² In the area of data gathering, the Brazilian Institute of Geography and Statistics intends to conduct a door-to-door survey on domestic violence.¹⁴³ This will be the first time such a study has been conducted in Brazil.¹⁴⁴ In the past, data was not gathered efficiently and the judiciary was too decentralized to make use of it. Despite the need for more funding, the MDP does provide change, albeit more legal than social as of now, for the women who are victims of violence in Brazil. Due to the fairly recent passage of the MDP, the implications and effects of the law are difficult to assess and have not yet been fully surveyed.

V. LEGAL DOMESTIC VIOLENCE REFORM IN BRAZIL: THE MDP VERSUS LAW 9,099/95

To understand the legal reforms brought about by the MDP, a general comparison between it and the previous Law 9,099/95 is necessary. Under Law 9,099/95, the penalty for a crime of domestic violence was six months to one year, while under the MDP the punishment is now three months to three years.¹⁴⁵ Domestic violence crimes committed upon a handicapped woman did not increase the penalty under Law 9,099/95, whereas under the MDP the penalty is increased by one third.¹⁴⁶ Under Law 9,099/95, a victim could withdraw her complaint against the aggressor at the police station, whereas under the MDP the victims can only retract it before a judge.¹⁴⁷ This change in retraction policy is crucial for many reasons.

140. Press Release, Comm. on Elimination of Discrimination Against Women (July 25, 2007), *supra* note 23.

141. Barsted Interview, *supra* note 24.

142. Press Release, Comm. on Elimination of Discrimination Against Women (July 25, 2007), *supra* note 23.

143. *Id.*

144. *Id.*

145. Rev. Sérgio Andrade, *Maria Da Penha 2* (2006), http://www.micahnetwork.org/sites/micahnetwork.org/files/Maria_de_Penha.pdf (comparing the effects of Law Maria Da Penha with those of the previous legislation, Law 9,099/95).

146. *Id.*

147. *Id.*

One reason is that it prevents women from having to go through the mediation process. As discussed earlier, this means that now a mediator, whose incentive was to settle cases to clear the court dockets, is no longer an influential factor in the outcome of the case. This policy is also important because it helps prevent women from being intimidated into retracting their legal claims. In addition, Law 9,099/95 did not use imprisonment, whereas under MDP imprisonment of the aggressor is possible.¹⁴⁸ Lastly, Law 9,099/95 allowed for pecuniary punishment of the aggressor and commonly used the donation of food baskets to charity or the payment of fines. By contrast, the MDP prohibits this type of penalty, sending a stronger and more appropriate message to society about domestic violence crimes.¹⁴⁹

Law 9,099/95 did not afford preventative imprisonment for domestic violence crimes, whereas under the MDP a judge can detain the suspect if there is a risk to the physical or psychological integrity of the victim.¹⁵⁰ Law 9,099/95, via JECrim, allowed for “resolution” of the crime only and did not afford consideration of various collateral family matters commonly involved in domestic violence disputes, such as the possibility of marriage dissolution, child custody, or legal separation.¹⁵¹ Such issues were commonly addressed in separate proceedings in Family Court, a process that was often costly, complex, and magnified the victim’s sense of helplessness. The MDP, on the other hand, establishes special courts with criminal and civil jurisdiction to deal with domestic violence crimes.¹⁵² Law 9,099/95 did not recognize same-sex relationships; the MDP does, stating that violence against women, regardless of sex or sexual orientation, is violence.¹⁵³ Law 9,099/95 did not afford victims legal representation, whereas the MDP mandates that a private or public lawyer must accompany the victim at all stages of the proceeding.¹⁵⁴ Finally, under Law 9,099/95, courts could only hear minor offense cases in

148. *Id.*

149. *Id.*

150. *Id.*

151. Rev. Sérgio Andrade, *Maria Da Penha* 2 (2006), http://www.micahnetwork.org/sites/micahnetwork.org/files/Maria_de_Penha.pdf (comparing the effects of Law Maria Da Penha with those of the previous legislation, Law 9,099/95).

152. *Id.*

153. *Id.*

154. *Id.*

which the punishment did not exceed two years of imprisonment. Under the MDP, all domestic violence cases can be heard.¹⁵⁵

VI. CONCLUSION

The Shadow Report of Civil Society, in addition to its many recommendations for further reform, acknowledges Brazil's efforts to eradicate violence against women. The fact that Brazil had previously adopted an international treaty, CEDAW, but was in compliance with neither it nor other domestic and international laws has been used to catapult legal reform. CEDAW is one of the many reasons why violence against women is being discussed more broadly and is a direct result of the strategy and efforts brought forth by the women's movement. This in turn brings further awareness to the global discussion, through bodies such as the United Nations, to the issue of domestic violence and the utility of international human rights law as a mechanism to affect change. The adoption of international law, as seen in the case of CEDAW in Brazil, has promoted significant social and legal reform in the area of domestic violence. It has not created new crimes, but has set a national policy for combating domestic violence against women. These reforms are still in the process of being implemented. However, the achievements in Brazil are an example of how a society can be positively affected by the adoption of international law. The MDP has encouraged women to report incidents of domestic violence. Also, according to CEPIA, the Special Secretariat for Policies for Women (SPM) has expanded its operations through the *Pacto Nacional de Enfrentamento da Violência Contra a Mulher*, a national pact that was designed to tackle violence against women. It has established a hotline for victims.¹⁵⁶ According to data released in January 2009 by SPM, from 2007–2008, there has been an increase in the reported number of incidents of assault on women. This increase has been observed as a result of the expansion of the network of services during that period, specifically encouraged by the MDP.¹⁵⁷

Brazil has made significant legal reforms regarding the status of women and domestic violence and has come a long way in this process in a relatively short period of time. The use of international law and the campaign mounted by the women's

155. *Id.*

156. Barsted Interview, *supra* note 24.

157. *Id.*

movement against domestic violence has been integral to Brazil's progress. The success of these efforts is illustrated by the creation of women's police stations, shelters, and other social services for victims of violence, as well as through significant legislative reform. The strategy of the women's movement in Brazil has always been broad and complex, in order to give credibility and visibility to its complaints, demands, and goals.¹⁵⁸ Although the implications of the MDP are not yet known because it was recently enacted, that there now exist serious criminal sanctions for domestic violence crimes is a major step toward stronger domestic violence policy and gender justice. Brazil exemplifies a country which is relatively similar to the U.S. in terms of size, diversity, and natural resources that has shown how politically, socially, and legally a country can strengthen its domestic violence law through the use of international law combined with the efforts of civil society. Issues such as inefficient resources and inadequate funding of legislative initiatives are a persistent obstacle not unique to Brazil. These, and the other issues discussed in this Article, are areas that must be addressed by the Brazilian government. It is imperative to provide adequate funding to ensure justice and implementation of legislative reforms. The failure to do so will render the efforts to date meaningless and assistance to domestic violence victims will exist only in law and will not be developed further.

Education has and will continue to play an important role in the achievement of equity in Brazilian society. The educational reforms recommended by the international body reports cited herein must permeate all levels of society. Educational reform is essential to the protection and promotion of rights for women. In the case of domestic violence, empowering victims through education will allow them to better assess their situations and make choices that are best suited for them. The need for international attention to the issue of domestic violence in Brazil and the utility of international human rights law to help improve conditions for women has been demonstrated through the efforts of feminist activists and grassroots organizations, as discussed in this Article. Support from the United Nations and international attention has resulted in change for women on the ground. Brazil and its feminist activism should serve as a model to other nations that are pursuing domestic violence reform.

158. *Id.*