

# Battered Mothers vs. U.S. Family Courts

## *Human Rights Dialogue 2.10 (Fall 2003): "Violence Against Women"*

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In Massachusetts, an alarming trend: battered women are losing custody battles to allegedly abusive fathers. (Photo by Steven Sunshine)

Read "*Beyond Name and Blame*," a response to this article by **Mindy Roseman**. Use the link in the right sidebar to access the article.

Many battered mothers in the U.S. state of Massachusetts have found the family court system to be an obstacle, rather than an aid, in their search for lasting safety from their abusers. One survivor noted that "unless there are major changes [in the family court process], I will never believe that a woman and [her] children will be protected." Research has illustrated that batterers often escalate their partner abuse after their victims leave them, and custody and visitation arrangements are reported to provide a context for abusive men to continue to control and victimize women and their children. Moreover, a 1989 report on gender bias commissioned by the Massachusetts Supreme Judicial Court found that, in child custody cases, family court judges and probation officers often consider domestic violence irrelevant to their rulings, and family courts are ordering shared legal custody even when there is a history of domestic violence.

Compounding these problems, there are few accountability mechanisms in the Massachusetts family court system. Massachusetts's family court judges are appointed for life without being subject to a meaningful review process. There are few effective and accessible complaint procedures, and appeals are costly and often decided on narrow legal grounds. As a result, many battered mothers have lost trust in the family court system. The implications are dire: a battered mother may choose to remain with the batterer rather than face a family court system that may deny justice to her and her children.

In 1995, inspired in part by the “women’s rights are human rights” vision that united women throughout the world at the UN Fourth World Conference on Women in Beijing, we founded the Women’s Rights Network at the Wellesley Centers for Women to reframe and address domestic violence (that is, partner abuse) as a human rights issue in the United States.

We chose to use a human rights framework instead of the crisis intervention, criminal justice, and civil rights strategies currently emphasized by U.S. battered women’s movements because the human rights framework, more than any other, covers a broad range of social justice issues and has a set of internationally agreed-upon principles and laws to back it up. A human rights approach specifically stands out because of its emphasis on government accountability; recognition of the equal importance and inextricability of economic, social, cultural, civil, and political rights; overarching framework for addressing multiple oppressions on the basis of, for example, gender, race, ethnicity, and socioeconomic status; connection with the global women’s movement; and grounding in international law. Particularly because it identifies the government, and not just individual perpetrators, as a locus of accountability, we felt that a human rights approach to domestic violence would enable us to effect greater long-term social change. In 1999, after two years of conducting human rights training for battered women’s advocates, we launched the Battered Mothers’ Testimony Project (BMTP) in order to document and apply a human rights analysis to the Massachusetts family court system.

By using human rights, we hoped to raise awareness of the issues and help prompt reform of family court policies and practices in child custody cases involving partner and/or child abuse. Our key strategies included holding a popular human rights tribunal in which five battered mothers testified publicly about their experiences and called for family court reform; engaging in community organizing and education to build a grassroots foundation for human rights-driven activism on the issues; and publishing a human rights report aimed at the public at large, the advocacy and policy communities, the family court system, and survivors.

Our human rights report, *Battered Mothers Speak Out*, used definitions of violence against women and children found in key UN instruments to show how women’s reports of domestic violence, child abuse by ex-partners, and treatment by the family court system are human rights concerns. We cited, for example, the Declaration on the Elimination of Violence against Women, which defines violence against women as a human rights violation and delineates governments’ obligations to end and prevent it, and the Convention on the Rights of the Child, which requires governments to protect and promote the human rights of children, including protecting them from abuse by a parent. We also used human rights standards of government accountability for interpersonal violence contained in human rights instruments—especially the “due diligence”

standard—to spotlight the state’s role in domestic violence and child custody cases, and to provide a basis for demanding reform.

The human rights framework proved a powerful tool for illuminating the problems battered mothers and their children face in the Massachusetts family courts. In our report, we identified six intersecting categories of violations: failure to protect battered women and children from abuse; discrimination and bias against battered women; degrading treatment of battered women; denial of due process to battered women; allowing the batterer to continue his abuse through the family courts; and failure to respect the economic human rights of battered women and children. The human rights framework helped us to demonstrate the linkages and overlap between the violations, the economic issues battered mothers face after separation, and the multiple forms of discrimination many battered women experience. For instance, we were able to use human rights laws and principles to categorize women’s reports of economic hardship related to the high cost of family court litigation, child support, child care, and other issues as violations of women’s and children’s economic human rights, and show how they were linked with the other violations we identified.

Human rights also played a key role in building the foundation for a grassroots movement for family court reform in Massachusetts. After reading and discussing educational materials about human rights, survivors and advocates involved in our project found that the basic concepts resonated deeply with them. One woman reflected that looking at domestic violence from a human rights perspective is important because “the loss of rights is the same as violations in other contexts, like war and racial oppression.” The human rights framework not only helped to define these women’s experiences but also validated the gravity of what they and their children have endured.

Furthermore, the human rights emphasis on government accountability has offered women hope that things in Massachusetts could change: “Referring to human rights, as defined by the UN, becomes a means of identifying the responsibilities of government agencies and authorities,” said one advocate. Because of these advantages, the human rights framework has been an important catalyst for prompting women to take on leadership roles in the BMTP and speak publicly about the issues. Perhaps most importantly, survivors in our project have launched their own grassroots human rights organization to advocate for family court reform, the Massachusetts Protective Parents Association.

Despite our successes, doing human rights work in the United States presents formidable challenges, largely because of what we see as an overall lack of human rights literacy in this country. Also, court officials in Massachusetts appear to have dismissed the applicability of human rights to violence and discrimination against women, implying, among other things, that women’s reported experiences do not rise to the level of human rights abuses. Finally, there appears to be a widespread belief among judges in the global superiority of the U.S. legal system as well as in the inapplicability of international law to the United States. For example, the chief justice of the Family & Probate Courts in Massachusetts was quoted in a local newspaper as saying that framing these problems as human rights violations “may work well for systems in Third World countries, but not for a court in the United States.”

Although the need for government accountability and reform could not be greater in domestic violence and child custody cases, our use of human rights as an advocacy tool has not yet produced any tangible momentum for change from within the family court system. Bridging the gap between using human rights to spark grassroots advocacy efforts and using it to effect policy change, then, may be our toughest long-term challenge. Despite—or perhaps because of—these obstacles, it is critical that U.S. activists continue to use human rights to organize to end violence against women. With this in mind, we plan to move ahead by assisting organizations across the United States in replicating the project and building a national response to the issues.

*Battered Mothers Speak Out* is available at [www.wcwonline.org/wrn](http://www.wcwonline.org/wrn).