

**CONVENTION AGAINST TORTURE AND OTHER CRUEL,
INHUMAN, OR OTHER DEGRADING TREATMENT OR PUNISHMENT
SHADOW REPORT ON
INTIMATE PARTNER ABUSE
AND
SEXUAL ASSAULT IN THE UNITED STATES***

Primary author: Associate Professor Margaret Drew, University of Massachusetts School of Law. Contributors: Darakshan Raja, Washington Peace Center and Falling Walls Initiative; Prof. Joan Meier, Domestic Violence Legal Empowerment and Appellate Project; Attorney Lynn Hecht Schafran. National Judicial Education Program, Legal Momentum

Organizations supporting the report:

Domestic Violence Legal and Appellate Project, Washington D.C.

Family Violence Appellate Project, Berkeley, CA.

Legal Momentum, New York, N.Y. and Washington, D.C.

National Center on Domestic and Sexual Violence, Austin, Texas

Washington Peace Center, Washington, D.C.

Individuals supporting the report:

Prof. Jeff Baker, Pepperdine University School of Law

Prof. Sarah Buel, Arizona State University College of Law

Prof. Carrie Bettinger-Lopez, University of Miami School of Law

Prof. Tanya Cooper, University of Alabama School of Law

Prof. Martha Davis, Northeastern University School of Law

Prof. Justine Dunlap, University of Massachusetts School of Law

Prof. Meg Garvin, National Crime Victims Law Institute, Lewis and Clark Law School

Prof. Leigh Goodmark, University of Maryland School of Law

Prof. Margaret Johnson, University of Baltimore School of Law

Prof. Susan Lyons, University of Alabama School of Law

Prof. Joan Meier, George Washington University School of Law

Prof. Kenyatta Mickles, University of Cincinnati College of Law

Professor Jason Potter, University of Massachusetts School of Law

Professor Frances Rudko, University of Massachusetts School of Law

The Violence Against Women Act¹ (VAWA) has expanded the choices available to abused women seeking safety. Funding under the act supports governmental and non-governmental service providers for survivors of domestic violence and sexual assault. Survivors of intimate partner abuse may contact shelters, hotlines and crisis centers to speak with advocates and find local resources. Under the act, funding is available for police, courts and other governmental institutions for training, policy implementation, development of special units and other resources to assist in addressing intimate partner abuse. After a long and difficult struggle in Congress, the 2013 re-authorization addressed some needs of the LGBT community and immigrant survivors. In a limited way, the act deals with jurisdictional challenges that have interfered with Native populations' criminal prosecution of non-native perpetrators who inflict domestic abuse, dating violence or violate protection orders while on Indian reservations. Left unaddressed is restoring tribal court jurisdiction over stranger rape, stalking and other criminal acts not included in the named crimes. The difficulties faced by African American, Native women, immigrant women and other people of color are addressed in the recently released observations of the committee reviewing United States compliance with the Convention Against Racial Discrimination.² In paragraph 19 the committee observes:

While acknowledging the measures taken by the State party to reduce the prevalence of violence against women, the Committee remains concerned at the disproportionate number of women from racial and ethnic minorities, particularly African American women, immigrant women, and American Indian and Alaska Native women, who continue to be subjected to violence, including rape and sexual violence.³

Paragraph 19 of the Outcomes of the World Conference on Indigenous Peoples,⁴ reported on September 15, 2014, reads:

We commit ourselves to intensifying our efforts, in cooperation with indigenous peoples, to prevent and eliminate all forms of violence and discrimination against indigenous peoples and individuals, in particular, women, children, youth, older persons and persons with disabilities, by strengthening legal, policy and institutional frameworks.

Culturally specific populations suffer from inadequate resources as well as inappropriate state responses.⁵ African American women are more likely to be victims of intimate partner violence than white women and at higher risk of being killed by a current or former intimate partner.⁶ Immigrant survivors may face lack of adequate (or any) translation services from police and some courts. That may leave the English speaking abuser as the only voice to state authority leaving the victim either blamed or with abuse complaints ignored. Gay and transgender survivors may have no shelter to house them, often having to rely on safe houses offered by members of the community. In many states LGBTQ survivors may be ineligible for state orders of protection because relief is limited to married or

different sex partners. While most shelters accept women, lesbian survivors may find themselves effectively barred from admission due to homophobia, as do many survivors with mental health diagnosis, particularly those taking medication. Shelters relied upon by survivors who do not identify with the white, Christian culture often find themselves in shelters with unfamiliar structures and environments that do not accommodate specific cultural and religious needs. Survivors without children may find themselves unable to find shelter. Due to demand, many shelters prioritize admitting women with minor children. The same applies to state provided financial assistance under TANF which is available only to those with dependent children.

Similarly, batterer intervention programs often fail to address culturally specific concerns or to create an environment in which diverse populations feel able to participate.

While VAWA has provided some funds to improve culturally diverse access to domestic violence resources, those resources are not comprehensive. Many community based organizations that provide culturally relevant services are not aware of VAWA streams, or lose funding to more established anti-violence organization. Currently, there aren't any processes in the funding allotments for VAWA STOP grant funds that require direct services providers to demonstrate whether they have a working relationship with disadvantaged communities before they receive funding.

Some governmental advocacy continues. Vice-President Joseph Biden, a long term advocate against the abuse of women, has used his position to combat gender based violence. He established the position of White House Advisor on Violence Against Women. Lynn Rosenthal, an experienced and effective advocate, was appointed as the first advisor and she has led several initiatives on domestic and sexual violence.⁷ Vice-President Biden was pro-active in addressing violence against women on college campuses, which will be discussed further in this report. In September 2014, Vice-President Biden announced that a Summit on Civil Rights and Equal Protection for Women will be held to address solutions so that survivors may sue those who abused them through federal court.

The administration also formed The White House Council on Women and Girls. Part of the council's mission is to address economic barriers encountered by females. Economic independence is a major factor in women's ability to escape abuse and attain safety.

On September 13, 2014, President Obama recommitted the administration to end violence against women stating: "...[W]e rededicate ourselves to strengthening the protections it [VAWA] first codified and we reaffirm the basic human right to be free from violence and abuse."⁸

While VAWA increased options for many women, approximately 1500 women per year are killed by current or former intimate partners. According to the American

Psychological Association, on average, three women are killed each day by a husband or intimate partner. The Association further reports that nearly half of all women in the United States have experienced at least one form of psychological aggression by an intimate partner.⁹

Government reporting captures broader but similar statistics. According to FBI data, in 2011, 1707 women were murdered; and 94 percent were murdered at the hands of someone they knew.¹⁰

According to a Center for Disease Control (2010) study, 36 percent or 42.4 million American women will experience rape, physical violence, and/or stalking at the hands of an intimate partner.¹¹

According to the Department of Justice, 1 in 3 American Indian women are raped during their lifetime, which is double the rate of American women across all racial groups.¹²

According to a New York City Department of Health and Mental Hygiene study, 1 in 2 victims of intimate partner homicide victims were immigrant women.¹³

Although African American women experience abuse at a higher rate than their Caucasian counterparts, previous racist or other negative experiences with the justice system, social services providers, and medical care providers may prevent African American women from seeking help from institutional resources. These resources traditionally may have protected Caucasian women from abuse¹⁴

Women who seek help from the police during or immediately following an abusive incident, risk state intrusion through child protective services. Long after the state of New York was admonished to stop removing children from abused mothers until after other options to ensure the children's safety were attempted,¹⁵ states continue to remove children from families that have experienced violence based solely upon the mother's status as a victim of intimate partner abuse. Women of color and native women are at particular risk for removal of their children under these circumstances.

Culturally, there is much tolerance of violence against women in the United States. The recent furor over the slow and inadequate response of the National Football League to players' abuse of their intimate partners evidences the cultural diminishment of women and the tolerance of abuse of intimate partners. A particularly sad statistic that reflects the cultural tolerance of violence against girls is that, conservatively, one in five female teens report having experienced abuse in their relationships.¹⁶

Domestic Abuse and Sexual Assault as Torture

Under the Convention Against Torture and its Commentary, direct state action is not required to qualify gross mistreatment as either torture or inhuman, cruel or other degrading treatment. The same acts of gender based violence that are easily

recognized as torture during war, do not have the cultural recognition attached to these acts when committed in intimate partner relationships or in acquaintance or stranger assault. The Convention includes gender based violence as falling under its purview. Paragraph 18 of General Comment No. 2, includes the following:

The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation and trafficking.

The committee conducting the 2014 Convention Against Torture review can assist targets of gender violence by aiding the US in reframing how the nation, as well as its residents, views gender violence.

Sexualized violence and harassment constitute gender violence as they assault sexual autonomy and gender identity -concepts at the heart of gender-...whether the target is situated as hetero-normative or transgressive.¹⁷

Recognizing violence against women and other vulnerable populations as a pervasive cultural undercurrent has been acknowledged in international human rights law more clearly than in US law. General comment no. 2 states further that:

Both men and women and boys and girls may be subject to violations of the Convention [Against Torture] on the basis of their actual or perceived non-conformity with socially determined gender roles.¹⁸

There is a multitude of issues that could be addressed relative to abused women. The issues range from racial, religious and ethnic bias, the need for an understanding of trauma, the impact of witnessing abuse on children¹⁹ to inadequate responses of the criminal justice system. Because of the need to narrow issues addressed in this report, the focus will be primarily on barriers faced by survivors of domestic and sexual violence that may not have been addressed at length in prior reports.

Two of the particularly profound, but under-acknowledged, problems experienced by abused women are addressed next.

1. Due to state action, abused mothers frequently lose custody of their children to the abusive parent which places the children at risk.²⁰

A mother who raises claims that a father abused her or their children and may further harm the children, faces enormous barriers in family courts. Family courts prioritize fathers' involvement with their children, often without regard to whether abuse claims are raised and proved. In many such cases, mothers are penalized by not only losing the protections they sought, but by losing custody and sometimes all access to their children. The resistance, and sometimes hostility, on the part of

courts to mothers' claims of abuse is fueled by the myth that many women file false reports of child sexual abuse. Substantial research shows this myth to be false, but courts are rarely convinced by such statistical data in the context of a particular case. Many judges, lawyers and child custody experts lack adequate training in the dynamics of intimate partner abuse and the risks to children from an abusive parent. That risk is actually heightened following separation of the parents. Moreover, trainings can be ineffectual in persuasively demonstrating to some judges the validity of scientific evidence supporting the correlation between abuse of the mother and abuse of the child, despite twenty years of studies supporting the correlation.²¹ This is the case particularly where the abusive parent has not previously abused the child. "...[J]udicial bias takes many forms, such as mitigating the true impact of the violence, disbelieving it altogether, concluding it was mutual or justified despite evidence to the contrary, or choosing to disregard deeming it not relevant to child custody."²²

Also rejected is the testimony of battered mothers. As one commentator states:

Studies suggest that judges tend to doubt the testimony of survivors of domestic violence and are more likely to question the female victim's credibility. Complicating this issue further are the longstanding myths about domestic violence that tend to influence judicial decision-making. This tendency on the part of the fact finder to view victims, specifically women, as less credible and more likely to exaggerate is particularly dangerous in the area of domestic violence.²³

United States family courts do not appoint counsel for the parties to custody cases between parents.²⁴ Due to lack of access to family resources, abused mothers often do not have resources to hire a lawyer or they quickly run out of money because custody litigation opposing an abusive parent is prolonged and expensive. When judges award custody or unsupervised visitation to abusive fathers, the mothers are deterred from raising abuse concerns. The results of awards of unsupervised access to the children by the abusive parent can be tragic. For instance:

In 2009, Kate Tagle of California sought three protection orders protecting her and her infant son from contact with the child's father, Stephen Garcia. Among the allegations raised by Ms. Tagle was that Mr. Garcia, her former boyfriend, had once hit her so hard that he knocked her out. She alleged that since the child's birth Mr. Garcia had threatened to kill her and their child. Ms. Tagle presented corroborating evidence of the threats through emails, text and voicemail messages. Without any evidence disproving the evidence, except for Mr. Garcia's denials, the judge chose to ignore the evidence, accused Ms. Tagle of lying and ordered her to turn over the child to the father. Three days later the father shot and killed the infant and then killed himself.

In the May 6, 2010 issue of *The Crime Report*, Ms. Nagle's case is reported with the comment that "The story of Wyatt Garcia is, sadly, not unusual. The following examples are referenced:

Teigan Peters Brown (3 years old), shot to death by his father during a court-ordered visit. (Arizona June, 2009)

Bekm Bacon (8 months), killed by father, who then killed himself during overnight visitation. (Idaho Feb. 2010)

Janiyah Nicole Hale (1 year), father is charged with her death during an overnight visitation. The father is a registered sex offender. (Alabama July 2009)"

All of these fathers had been granted unsupervised access to the child by family courts against the urgent pleas of their protective mothers.

Abusive fathers obtain access to the children in several ways. One is to litigate against the mother until she is financially and otherwise exhausted. Another widely utilized strategy is to argue that the mother is alleging abuse because she wishes to "alienate" the children from the abusive father, usually out of pathology or vengeance. This so-called "parental alienation syndrome", is an argument that preys on the double stereotype of women as liars and women as mentally ill. The "syndrome" has been debunked and deemed "invalid science" by the American Psychological Association. None the less, the label "alienation" continues to be purveyed widely by custody evaluators and guardians ad litem appointed by the family courts. These individuals are expected to be "neutrals" advocating for the best interests of the children. However, they are generally untrained and lacking experience in domestic violence or child abuse. Federally funded research has confirmed extensive anecdotal reports that such "neutrals" regularly misinterpret what they observe. They incorrectly view the mother's concerns for safety as efforts to interfere with the father's rights of access to the children. To many evaluators and judges, the "rights" of the father trump the safety of the mother and the children even where there is reason to fear that the father's intentions toward the children are dangerous.

In the 2008 Maryland case of the Castillo family, the mother's pleas for the family court to protect the children from the father were ignored. The father had threatened to kill the children and leave the mother "with nothing". The court discredited the mother in part based on the fact that she had had sex with the father after he made this threat, ignoring her testimony that she was afraid *not* to comply with his demand. Despite the mother's plea for supervision of the father's visits, the court ordered the mother to provide the father unsupervised access, even holding her in contempt when she once refused to send the children. During the last visit at a hotel, the father killed each of the three children by drowning them in the bathtub, in sequence.

Joan Meier, founder of the Domestic Violence Legal Appellate and Empowerment Project, an expert on parental alienation, addressed the Castillo case and courts'

reluctance to protect the safety of children in an April 2008 editorial in the Washington Post:

The Castillo family's tragedy ["Deaths of 3 Children Test Md. Legal System," front page, April 6] highlights family courts' failures to protect children in the context of custody litigation. The question permeating media coverage is why the courts allowed Mark Castillo unsupervised access to his children, despite their mother's pleas that they needed protection. Mark Castillo's specific threat -- to kill the children and leave Amy Castillo with "nothing" -- was ignored by both the courts and the psychological evaluators, as was his history of suicidal actions. Had the request for protection come from the state, instead of the mother, the court would have listened.

Even when unsupervised access does not end in death, the results can be the ongoing terrorization of mother and children. Domestic violence lawyers and advocates report that the greatest legal need for battered women is legal representation in custody suits.

The federal government has devoted some attention to these problems. In 2010 the White House Advisor on violence against women convened a roundtable discussion of ten experts to discuss the needs of battered mothers. And in 2011, the Office on Violence Against Women heard from battered women and from experts on the issue of mothers losing custody of children to the abuser. While the federal government may have limited direct jurisdiction to remedy the states' legal outcomes there are actions that the government could take. For example, withholding federal funds could force individual states to enforce standards of decision making in family law cases where violence is alleged. Yet, the federal government fails to take measures against federal courts and federal judges even when the court records are clear that women's abuse claims are being minimized and that women are being treated in dismissive ways. While federal, and some state, judges are lifetime appointees, this status does not immunize them from discipline when evidence, facts and law are ignored. To the extent that a judicial disciplinary system relies upon individual complaints, the process should be amended so that interested parties are able to address, in a meaningful way, either a pattern of gender discrimination or a single serious incident of discrimination. Under funding provisions of the Violence Against Women Act, some providers have been allocated to increase abuse victims' access to legal counsel. But congress has failed to allocate sufficient funds so that all abuse victims can be represented in custody litigation. A fortunate few mothers are able to find appellate lawyers.²⁵ But largely, abused parents are left without counsel and are thus deprived of access to justice. Battered parents are without access to effective remedies for their torture and that of their children. The state

must appoint appellate counsel for abused mothers in order to ensure a fair result.

Mothers enter the judicial system believing that courts will protect them and their children. The state is directly involved in failing to protect abused mothers and children through appointed and elected judges. The state tolerates this discrimination against mothers, failing to sanction or otherwise discipline judges who either ignore evidence of abuse or offensively punish mothers and children who raise abuse concerns.

2. Women raped within marriage .²⁶

Spousal rape is particularly harmful to victims. First, it is a profound betrayal of trust by the person the victim should most be able to trust. Second, marital rape is often perpetrated on an ongoing basis. Finally, bias against marital rape victims is pervasive, making it difficult for survivors to access appropriate remedies. Lynn Hecht Schafran, Director of Legal Momentum's National Judicial Education Program, is a leader in improving the justice system response to marital rape and educating judges about this and other types of violence against women. Attorney Schafran reports:

Marital rapes are not one time events and they often involve more violence than stranger rape. They are repeated,²⁷ and result in long term, psychological and physical injury.²⁸

A major misconception about marital rape is that it is not harmful because the victim is used to having sex with the offender.²⁹

The reality is expressed by a victim quoted in David Finkelhor and Krista Yllo's groundbreaking study of marital rape: "When you're raped by a stranger, you have to live with a frightening nightmare. When you're raped by your husband, you have to live with your rapist."³⁰ Victims may live in constant fear of the next attack. Most victims report being raped more than once, with at least one third reporting being raped 20 times or more over the course of the relationship.³¹

Sexual assault perpetrated by a spouse or intimate partner ranges from repeated degrading remarks to violent forced sexual contact. All of this behavior is harmful to the victim. The following examples of marital rape are cited by the National Judicial Education Program in its training materials for judges:

- Battering before, during or immediately following sex:
 - "Sometimes I was able to fight him off, and I would fight like wild, and he wouldn't be able to get it in. But usually he would [succeed in penetrating her], and he put me in the hospital a lot. He broke my nose and my jaw and cut my wrists."
— Barbara, quoted in Bergen, *Wife Rape* (1996) at 16.

- Forcing physically painful sex
- Assaulting breasts or genitals
- Sadistic acts

When the wife of a physician returned home after a Caesarean section her husband forced her to have oral sex and anally raped her. She stated:

"I told him I couldn't have intercourse, and he told me[,] 'Skin heals in 72 hours.' I'll never forget that. Then he kneeled with a knee on either side of my shoulders and smacked his penis across my face and said, 'You suck me, bitch.'"

— Stacy, quoted in Bergen, *Wife Rape* (1996) at 21.

"He was really into watching porno movies, and he tried to make me do all sorts of things. And I [didn't] like it. He hurt my stomach so bad because I was pregnant and he was making me do these things. I think he's a sadist—he pulls my hair and punches me and slaps me and makes me pass out."

— Tanya, quoted in Bergen, *Wife Rape* (1996) at 18.

In the nearly twenty years since these cases were documented, little has changed. Advocates report similar sexual horror stories. One of author's clients reported repeated punching to her abdomen and forced sex by the children's father within 24 hours following the Caesarian birth of their youngest child. Justice system professionals who work with victims recognize that allegations of marital rape are often met with suspicion because of longstanding biases about women's vindictiveness and the longstanding belief that such a crime was impossible. Some victim advocates and prosecutors advise victims being subjected to both physical and sexual violence not to raise the sexual violence claim because it will heighten the skepticism around the woman's credibility. However, excluding the sexual violence claims in order to secure urgently needed orders of protection and other types of remedies deprives the court of crucial information about the offender's dangerousness.

Research by Professor Jacquelyn Campbell, the leading researcher on domestic violence fatalities in the United States, documents that a batterer who subjects his partner to sexual as well as physical violence is twice as likely to kill her as a batterer who subjects his partner to physical violence only.³²

Despite the extreme harm and risk posed by marital rape, women's allegations are often met with extreme skepticism or devalued and trivialized. A recent federal case dealt with marital rape in the context of determining whether the abuse of the mother posed a grave risk to her child's welfare such that the child should not be returned to the father under the Hague Convention on the Civil Aspects of Child Abduction. The

trial court rejected the mother's calling the sexual abuse to which she was subjected rape by reviving the long discredited common law doctrine of marriage as establishing ongoing consent. The appellate court rejected the doctrine of ongoing consent but refused to overturn the trial court's reasoning and described marital rape as "be[ing] taken advantage of." ³³

Marital rape remains often overlooked and taken less seriously, in part because it is a relatively new concept in U.S. jurisprudence. Until the 1970s states adhered to the common law theory of ongoing consent between married couples, insisting on what was termed the "marital rape exemption" no matter how violent that act. Slowly states began to repeal this "exemption," but the repeal is incomplete. As of this writing, six states place some limitation on the ability of the state to prosecute husbands who sexually abuse their spouses. For example, in Ohio deliberately impairing a victim with drugs or alcohol so that the victim cannot resist, a sexual act is a crime unless the target is a spouse and the parties are still living together.³⁴ As long as any law exempting a husband from sanction for sexually violating his spouse is part of the U.S. statutory scheme, U.S. culture will not fully begin to recognize women as legally and socially equal and autonomous.

Samplings of other challenges faced by those who are targets of gender violence are summarized below and are representative only:

1. Women on college campuses are sexually violated at a rate higher than the general population.

In 2011, Vice President Biden delivered his "Dear Colleague" letter³⁵ to college campuses across the nation. The letter reminded campus administrators of their obligations to protect and provide services to those who experience gender discrimination, including relationship violence. The letter referenced specific protections and obligations incumbent upon colleges and universities to make known to students, including the school's resources and processes in the event a student experiences violence. ³⁶ Subsequently, the Department of Education announced the investigation of over 70 campuses that are currently subject to investigation due to inadequate campus responses to gender violence. Non-compliance can range from inadequate web posting of Title IX resources to failure to provide fair hearings for sexual assault survivors who seek remedies through their schools.

3900 campus sexual assaults were reported in 2012.³⁷ Many schools saw an increase in reporting which is attributed to more responsive efforts on the part of colleges and universities following announcement of the government investigations as well as more accurate reporting. Nonetheless, sexual assault victims continue to report disrespectful and ineffective experiences

in both finding help and suitable remedies through the university systems.³⁸

2. Domestic and sexual assault against soldiers and their partners.

Rape and other sexual coercion and harassment of male and female soldiers by other military personnel occur at a rate higher than the general population. The Department of Defense reported that for 2012 of those surveyed 6.1% of female active duty soldiers and 1.2% of male soldiers reported having been sexually assaulted. These statistics are considered low, but even at the reported rates, the number of soldiers reporting sexual assault is 26,000.³⁹

While soldiers have sought relief through chains of command, historically no or inadequate relief was forthcoming. Often soldiers' complaints were dismissed for lack of corroboration. The problem received public attention with the release of the film "The Invisible War" and some changes were incorporated into the military process. In 2001, the U.S. Department of Defense convened a task force on domestic violence and continues conferring with experts such as the National Center on Domestic and Sexual Violence and National Crime Victims Law Institute for assistance in implementing changes. One component of the process remains flawed as complaint investigations are still handled through the chain of command. One change important to survivors, which was not approved by Congress, is for investigations to be conducted by an independent investigator, one with specialized training situated well outside of the chain of command. Health services for female veterans, including treatment for sexual assault trauma, remain dreadfully inadequate.⁴⁰ Partners of soldiers who abuse them are equally at a disadvantage. All complaints are handled through the chain of command. Commanding officers are unwilling to discipline abusers because doing so will detract from combat missions. There is no legal counsel available to abused partners if the military partner consults with on base legal counsel first. The state facilitates sexual and domestic abuse when it fails to provide needed protection and other resources for military personnel and their partners.

3. Child Prostitution and Sex Trafficking

While statistics cannot be accurate due to the hidden nature of the crime, it is estimated that between 200,000 and 300,000 US children are forced into prostitution each year. Often young girls are lured into relationships with traffickers and pimps who act as the girl's "boyfriend" providing her with shelter and "love". These men then convince the girls to have sex with other men. If the girl shows any resistance, the trafficker/pimp rapes her or organizes other men to accomplish the rape. The next step is the wholesale marketing of the girls through prostitution and child pornography. Young boys are often forced into sexual activity for the same purposes. Some

states have responded to sex trafficking by passing legislation criminalizing trafficking. Unfortunately, many states continue to prosecute trafficking victims as prostitutes rather than provide them with needed services.

The state not only fails to protect other vulnerable populations, but facilitates the abuse:

1. Prison sexual assault continues to be a serious problem despite the passage of the Prison Rape Elimination Act in 2003.⁴¹ Prison rape is a grossly underreported crime for several reasons. One is fear of retaliation by the perpetrators. Another is that complaining prisoners are often placed in solitary confinement for “safety” reasons. Whether for prisoner protection or punishment, the isolation of solitary confinement is torturous. Despite these reporting limitations, according to the Bureau of Justice, in 2013 approximately 4% of state and federal inmates reported having been sexually assaulted.⁴² When one considers that conservatively 4% of prisoners are sexually assaulted, and that the incarcerated population is 2.2 million, the minimum number of prisoners sexually assaulted while incarcerated is over 80,000⁴³.

While some assaults were by other inmates, the majority were perpetrated by correctional facility staff.⁴⁴ Juveniles report a nearly 10% rate of sexual assault⁴⁵, and this statistic does not include sexual assaults of immigrant juveniles held in detention pending a hearing with the Board of Immigration Appeals.⁴⁶ Most juveniles report multiple assaults.⁴⁷ Of those juveniles held in state or federal facilities, one in five reports 11 or more sexual assaults.⁴⁸ Staff is reported to be the overwhelming perpetrators of sexual assault of minors.⁴⁹ With increasing incarceration in the United States, prison overcrowding and the wholesale detention of immigrant juveniles, sexual assault rates of incarcerated and detained minors will likely increase.

Incarcerated individuals who experience mental illness, transgender individuals and juveniles are particularly vulnerable to sexual assault.⁵⁰

The majority of sexual violence against incarcerated men and women are state employees. The state is a direct actor in perpetrating this sexual torture. By sending persons convicted of crime, those awaiting trial and those detained pending immigration hearings to facilities that are known to be unsafe, the state is complicit in the sexual assaults. “...[I]f a person is to be transferred or sent to the custody or control of an individual or institution known to have engaged in torture or ill-treatment, or has not implemented adequate safeguards, the State is responsible, and its officials subject to punishment for ordering, permitting or participating in this transfer contrary to the State's obligation to take effective measures to prevent torture in accordance with article 2, paragraph 1.”⁵¹

2. Violence against transgender women is facilitated by the states’ failure to enact and enforce laws that would protect transgendered individuals. In addition, those in

the NGO community may not offer transgender people the same level of services as provided to other survivors of gender violence. Until 2013 there was no academic literature addressing the legal needs of transgender people who experience intimate partner violence. As Prof. Leigh Goodmark explains, one serious deficiency in the police approach to transgender intimate partner abuse is an inability to properly categorize relationship violence as domestic abuse. The failure originates largely from the reality that transgender people experience a high rate of physical and other abuse outside of relationships. As Goodmark explains: "...[I]t is often difficult to determine whether the violence transgender people experience should be characterized as hate crimes, bullying, intimate partner abuse, random acts of violence, or ordinary assaults."⁵² In addition to the shelter and protection order barriers mentioned earlier, transgender people often find themselves abused by police. Police often refuse to acknowledge the authentic sex of transgender individuals and sometimes are among their abusers. Goodmark reports that a 2011 survey showed that 22% of transgender participants had been harassed by the police, while 6% had been physically and 2% had been sexually abused by them.⁵³ Members of the transgender community are understandably reluctant to involve the state in their protective needs. Goodmark recounts a report "that a transgender woman was pulled over for a broken headlight, and then arrested and jailed when the officer realized she was a transgender woman; the arresting officers told her, "People like you should all be killed at birth."⁵⁴ Transgender people often encounter dismissiveness of them and their claims throughout the legal system. Until transgender individuals are treated respectfully in their encounters with the state, the transgender community will continue to be barred from access to needed assistance and protection.

3. The U.S. criminal justice system often fails to respond appropriately to survivors' needs. While some prosecution offices have developed appropriate and supportive responses to working with survivors of gender violence, those offices are not typical. For example, prosecutors are often reluctant to proceed with criminal sexual assault charges even when the survivor requests prosecution. Campus survivors of sexual assault are often de facto barred from prosecuting their assailants due to this prosecutorial reluctance. Two common prosecutorial misperceptions interfere with adequate decision making. First, prosecutors often believe that sexual assault will be supported by corroborating medical evidence. Second, many prosecutors are unwilling to proceed if the student survivor was intoxicated or otherwise impaired when the assault occurred. The former is an education and awareness issue. The second is a cultural misconception that infects both prosecutors as well as juries. In one case of campus sexual assault in which the author was involved, the prosecutor was reluctant to prosecute even though there were two witnesses to the assault and they were willing to testify. The student had been drinking and passed out before the assault began.

4. Other victims report police interference with proper investigation. One survivor from a rural state reports that following the sexual assault in her home, she was

twice questioned at length at the police station. Yet the police talked to her assailant outside his place of worked and accepted the assailant's statement that the sex was consensual. Police mishandling of sexual assault reports is often rooted in the myth that most rape complaints by females are false. For example, one of the report contributors who worked as a sexual assault advocate had multiple cases where law enforcement refused to file a report or deterred victims because they didn't believe them. The state can discourage sexual assault survivors from pursuing their claims in other ways. For example, access to trained forensic nurses is a challenge for many victims of sexual assault; moreover, despite VAWA laws that prevent victims from being billed for forensic exams, many victims still believe they will be billed for the exam and in a few cases have been billed for the exam. Further, despite VAWA 2005 and subsequent reauthorizations, in many instances even if the forensic component of the exam is covered, victims may incur charges for medical services. In cases where victims do receive an exam, some rape kits are never tested. For example, there are an estimated 400,000 rape kits that haven't been tested across the country.⁵⁵ Not all police departments mishandle sexual assault complaints. Many have specialized sexual assault units staffed with trained officers. The Flagstaff, Arizona police department had a turnaround in how it handled sexual assault cases primarily through education and accurate reporting on drug and alcohol facilitated sexual assault.⁵⁶ Unfortunately, proper police handling of sexual assault complaints is not universal.

Often the laws and systems put in place to assist survivors of domestic and sexual violence ultimately work against survivors due to improper police and prosecutorial action. For example, mandatory arrest policies hurt survivors when police are either uneducated or do not take the time to determine which party is the predominant aggressor. This failure frequently ends in the arrest of the survivor and disproportionately impacts African American women

5. In the 2009 matter of Lenahan v. U.S.⁵⁷, the Inter-American Commission on Human Rights issued its finding that Jessica (Gonzales) Lenahan was deprived of her human rights when the state refused to enforce a protection order she had obtained which limited Simon Gonzales' access to her and their children. How willing police and sheriffs are to serve and enforce protection orders depends upon the priority commanding officers place on service and enforcement. While failure to serve and enforce protection orders is not confined to rural areas and small cities, those locations generate many concerns of those who seek protection. Without the support of what may be a small police force, abuse survivors are left unprotected. Sometimes the state's failure to fund a sufficient number of police results in their inability to serve and enforce orders. At least one woman in a rural area was killed by her former partner after she was told by the one available police officer that due to distance and the lack of other available officers he would not be able to timely respond. In other cases, dispatchers or police engaged in unjustified delay which resulted in the death of the 911 (emergency) callers. In other cases the local enforcement authorities have a policy of non-enforcement. One survivor reported

that the police refused to respond to her calls reporting the increasingly aggressive stalking of her by a former partner.in violation of a protection order. The survivor confirmed that the police had been instructed by the local prosecuting attorney not to enforce protection orders unless physical violence was involved in the violation.

Questions for the United States

1. What incentives does the State provide to ensure that victims of gender discrimination including sexual and intimate partner violence are treated respectfully within State systems?
2. How does the State ensure that survivors of gender violence have adequate resources to provide financial assistance, health care, safe housing, education and other necessities for themselves and their children?
3. What incentives does the state provide so that the public is educated on the existence and causes of gender abuse?
4. What mechanisms are in place to ensure that those representing the State understand trauma, intimate partner violence, sexual assault and other forms of gender violence and discrimination?
5. What mechanisms are in place to hold accountable those who engage in any form of gender violence and discrimination and who represent the State?
6. What actions is the State taking to ensure victims' rights as they proceed through the criminal justice and military systems?

Recommendations

1. That the United States enact the International Violence Against Women Act.
2. That the United States ratify the Convention on the Elimination of Discrimination Against Women.
3. That the United States ratify the Convention on the Rights of The Child.
4. That the United States provide free and adequate services to survivors of gender abuse and their children so that they may live independent and healthy lives.
5. That the United States hold accountable those who engage in gender violence and those who provide a culture where such violence is permitted.
6. That the United States undertake extensive and ongoing public education and services so that the root sources of gender abuse may be eliminated.

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- ² http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cerd_concluding_observations2014.pdf
- ³ http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cerd_concluding_observations2014.pdf
- ⁴ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/534/91/PDF/N1453491.pdf?OpenElement>
- ⁵ The many serious barriers faced by abused women of color are addressed in the shadow reports submitted for the CERD review, as well as in the subsequent observations.
- ⁶ <http://www.cdc.gov/media/presskits/aahd/violence.htm>
- ⁷ <http://www.whitehouse.gov/blog/author/Lynn%20Rosenthal>
- ⁸ <http://www.whitehouse.gov/the-press-office/2014/09/09/presidential-proclamation-twentieth-anniversary-violence-against-women-a>
- ⁹ <http://www.apa.org/topics/violence/partner.aspx?item=2>
- ¹⁰ Violence Policy Center, *When Men Murder Women: An Analysis of 2011 Homicide Data*, (Washington, DC: Violence Policy Center, 2013), Accessed on 2013, <http://www.vpc.org/studies/wmmw2013.pdf>.
- ¹¹ Michelle Black et al., *The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report*, (Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 2011). Accessed from http://www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf.
- ¹² <http://www.justice.gov/ovw/tribal-communities>
- ¹³ *Femicide in New York City: 1995-2002*. New York City Department of Health and Mental Hygiene, October 2004. <http://www.ci.nyc.ny.us/html/doh/html/public/press04/pr145-1022.html>
- ¹⁴ Campbell, et al. *Intimate Partner Violence in African American Women*, *The Online Journal of Issues in Nursing*, Vol. 1 (2002) citing Wyatt, G. E. (1994). Sociocultural and epidemiological issues in the assessment of domestic violence. *Journal of Social Distress and the Homeless* 3, 7-21.
- ¹⁵ *Nicholson v. Scorpetta*, http://courts.state.ny.us/Reporter/3dseries/2004/2004_07617.htm
- ¹⁶ <http://www.apa.org/topics/violence/partner.aspx?item=1> Provider organizations report higher rates.
- ¹⁷ Rhonda Copelon, *Gender Violence as Torture: The Contribution of CAT General Comment No. 2*, *New York City Law Review*, Vol. 11, 229, 250 (2006).
- ¹⁸ General Comment No. 2, note 2 Par. 22 as cited by Copelon, id. at 245.
- ¹⁹ For a discussion about the impact of trauma on children see Lynn H. Schafran, *Domestic Violence, The Developing Brain and The Lifespan*, *Judges' Journal*, Vol. 53 No.3 (2014)
- ²⁰ Same sex partners experience abuse in much the same ways and at the same rates as do survivors in different sex relationships. The reported custody decisions for abused parents involve women. Now that same sex adoptions and same sex marriage are sanctioned or are soon to be sanctioned in many states, data may begin to appear on same sex survivor child custody cases. In terms of numbers, abuse against an intimate partner is overwhelmingly by a man against a woman.
- ²¹ Empirical research makes undeniable the high rate of co-occurrence between abuse of the mother and abuse of her children. See Bancroft & Silverman, *THE BATTERER AS PARENT* 55 (2d Ed. 2012); Expert Report of Jeffrey L. Edleson, PhD, at 46, *Acosta v. Acosta*, No. 12-CV-342 (D. Minn. Apr. 3, 2012)(domestic violence between adults is “a significant marker that a child has, or will, experience direct physical abuse”). This is true even when “violence has previously been directed only at the abuser’s partners.” Lisa Bolotin, *When Parents Fight: Alaska’s Presumption Against Awarding Custody to Perpetrators of Domestic Violence*, 25 *Alaska L. Rev.* 263, 269 (2008); *Elyashiv . Elyashiv*, 353 F. Supp. 2d 394, 408 (E.D.N.Y. 2005)(“credible social science literature establishes that serial spousal abusers are also likely to be child abusers). Studies originating in the 1990’s addressed the high rate of co-occurrence between abuse of the mother and abuse of her children. Prof. Jeff Edleson then of the University of Minnesota, wrote of this co-occurrence between abuse of the children and abuse of the mother in 1995 in *Mothers and Children: Understanding the links between woman battering and child abuse*. <http://www.mincava.umn.edu/documents/nij/nij.html>. Appel, A. E., & Holden, G. W. (1998). Co-occurring spouse and child abuse: Implications for CPS practice. *APSAC Advisor*, 11(1), 11-14.

²² Dana H. Conner, ABUSE AND DISCRETION: EVALUATING JUDICIAL DISCRETION IN CUSTODY CASES INVOLVING VIOLENCE AGAINST WOMEN, 17 Am. U. J. Gender Soc. Pol'y & L. 163, 177-178 (2009)

²³ Id. at 191, citing Jeannette F. Swent, Gender Bias At the Heart of Justice: An Empirical Study of State Task Forces, 6 S. Cal. Rev. L. & Women's Stud. 1, 61-62 (1996)

²⁴ Some, including the American Bar Association, are working to establish a civil right to counsel under various access to justice initiatives.

²⁵ For example, Domestic Violence Legal Empowerment and Appellate Project, <http://dvleap.org/assists> represents protective parents in appeals across the country and files *amicus* briefs in support of protective parent appeals. The Family Violence Appellate Project <http://www.fvaplaw.org/> provides direct appellate services for abused mothers in California, while the New York Legal Assistance Group does the same for NY battered mothers. Direct representation on appeals is quite limited, however, and most women are left on their own to find appellate counsel, and many cannot afford appeal.

²⁶ Because same sex marriage is a relatively recent state sanctioned union, the data on marital rape does not include different sex marriages.

²⁷ National Judicial Education Program, Intimate Partner Sexual Abuse: The Hidden Dimension of Domestic Violence Cases, www.njep-cases.org; <http://njep-ipsacourse.org/IPSA-Prevalence/RepeatedAssaults.php>

²⁸ <http://njep-ipsacourse.org/Victims-Offenders/PhysicalImpact.php>

²⁹ <http://njep-ipsacourse.org/Victims-Offenders/PsychologicalImpact.php> This claim is also raised in cases of intimate partner sexual violence outside of marriage.

³⁰ DAVID FINKELHOR AND KRISTA YLLO, LICENSE TO RAPE: SEXUAL ABUSE OF WIVES (1985).

³¹ Patricia Mahoney, The Wife Rape Fact Sheet, available at:

<https://www.musc.edu/vawprevention/research/wiferape.shtml>, referencing DAVID FINKELHOR AND KRISTA YLLO, LICENSE TO RAPE: SEXUAL ABUSE OF WIVES (1985), and DIANNE RUSSELL, RAPE IN MARRIAGE (1990).

³² Jacquelyn Campbell, et al, *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 AMERICAN JOURNAL OF PUBLIC HEALTH 1089 (2003).

³³ *Souratgar v. Lee*, 720 F.3d 96 (2nd Cir.(2013); 2012 WL 6700214 (S.D.N.Y. Dec.26,2012)

³⁴ 2907.02 Rape.

(A)

(1) No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies:

(a) For the purpose of preventing resistance, the offender substantially impairs the other person's judgment or control by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception.

³⁵ http://www.whitehouse.gov/sites/default/files/dear_colleague_sexual_violence.pdf

³⁶ Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in all education programs or activities that receive federal financial assistance

³⁷ <http://apps.washingtonpost.com/g/page/local/sex-offenses-on-us-college-campuses/1077/>

³⁸ http://www.nytimes.com/2014/07/13/us/how-one-college-handled-a-sexual-assault-complaint.html?_r=0

³⁹ http://www.sapr.mil/public/docs/reports/FY13_DoD_SAPRO_Annual_Report_on_Sexual_Assault.pdf

⁴⁰ <http://www.bostonglobe.com/news/nation/2014/09/25/report-services-for-female-veterans-fall-short/mU4SQzf0MBmJ7rkAjPKLvK/story.htm>

⁴¹ <http://www.bjs.gov/index.cfm?ty=tp&tid=20>

⁴² Bureau of Justice Statistics, *Prison Rape Elimination Act of 2003*, U.S. DEPARTMENT OF JUSTICE, at 1, available at <http://www.bjs.gov/content/pub/pdf/pdca13.pdf>

⁴³ <http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=18613>

⁴⁴ *supra*, note 1

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ General Comment No. 2, Par. 19

⁵² Leigh Goodmark, Transgender People, Intimate Partner Abuse, and the Legal System, *Harvard Civil Rights-Civil Liberties Law Review*, Vol. 48 , 51, 60 (2013)

⁵³ *Id.* at 74.

⁵⁴ *Id.* at 75

⁵⁵ Associated Press (February 2014). Thousands of Rape Kits Remain Untested Across the Country. Accessed from <http://www.cbsnews.com/news/thousands-of-rape-kits-remain-untested-across-the-country/>.

⁵⁶ <http://campaign.r20.constantcontact.com/render?ca=adcc5988-7f1b-49cc-bcef-90442bc29719&c=5980eca0-3628-11e3-872d-d4ae527b6fcc&ch=5a3129d0-3628-11e3-88e5-d4ae527b6fcc>

⁵⁷ <http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/gonzales%20decision.pdf>