



United States' Compliance with the International Covenant on Civil and Political Rights

Suggested List of Issues Relating to Violence Against Women Submitted by The Advocates for Human Rights, a non-governmental organization in special consultative status

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I. Reporting Organization(s)

1. Founded in 1983, The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates is committed to ensuring human rights protection for women around the world. The Advocates' Women's Human Rights Program has published 22 reports on violence against women as a human rights issue, frequently provides consultation and commentary on drafting laws on domestic violence, and trains lawyers, police, prosecutors, and judges to implement new and existing laws on domestic violence effectively. The Advocates was part of a coalition of NGOs who hosted the official visit to the United States of United Nations Special Rapporteur on Violence Against Women in 2011.

II. Issue Summary

2. In 2008, intimate partners committed approximately 552,000 violent crimes against women, including 35,690 rapes or sexual assaults, 38,820 robberies, 70,550 aggravated assaults, and 406,530 simple assaults.¹ Domestic violence affects individuals in every racial, ethnic, religious, and age group; at every income level; and in rural, suburban, and urban communities. Notwithstanding the prevalence of domestic violence across demographic categories, it is overwhelmingly a crime perpetrated against women. Women are far more likely than men to be victims of domestic violence; the rate of intimate partner victimization for women is 4.3/1000, compared with 0.8/1000 for men.²
3. Not only are women more likely than men to experience domestic violence, but they also represent an even greater percentage of victims in the most serious of the assault cases by an intimate partner.³ Women are killed by intimate partners at a rate twice that of men.⁴ In 2007, 64% of female homicides were perpetrated by a family member or an intimate partner.⁵ The percentage of female homicide victims who were killed by an intimate partner increased from 40% in 1993 to 45% in 2007.⁶ The total estimated number of intimate partner homicide victims in 2007 was 2,340, of which 1,640 were females.⁷ "Females made up 70% of victims killed by an intimate partner in 2007, a proportion that has changed very little since 1993."⁸
4. Not all women in the United States experience domestic violence with the same frequency. The data suggests that although the domestic violence epidemic cuts across the lines of gender, race, and immigration status—affecting women and men, African Americans, Latinas, American Indians, Alaska Natives, and whites, and immigrants and United States citizens—it has a

particularly pernicious effect on groups that lie at the intersection of these categories: poor ethnic minorities, immigrants, and American Indian and Alaska Native women.

5. The Violence Against Women Act (VAWA) is a comprehensive legislative package first enacted in 1994⁹ and currently up for reauthorization. In September 2011, VAWA was left to expire for the first time in 18 years.¹⁰ VAWA funds a wide variety of important programs and victim services aiming to address domestic violence in the United States.¹¹ Nevertheless, VAWA fails to accomplish three crucial objectives: (1) it does not provide any direct remedy when abusers or police officers violate victims' rights, (2) it does not require participation by all states or monitor their progress, and (3) it does not fully or adequately fund all the services that are needed for victim safety.
6. In spite of the passage of legislation such as VAWA, the domestic violence epidemic has continued to rage in the United States. The National Crime Victimization Survey (NCVS) reports that incidents of domestic violence increased by 42% and sexual violence by 25% from 2005-2007, and women made up the vast majority of these victims.¹² While it is not clear whether these increased numbers result from increased incidents or increased reporting (or both), the numbers are indeed staggering.
7. The detrimental impact of domestic violence extends to adult victims and children alike. As a result of an increasingly sophisticated understanding of domestic violence, both legislative bodies and professional organizations in the United States have taken strong action to discourage custody awards to violent parents.¹³ Currently, nearly all states in the United States require the court to consider domestic violence when making custody awards,¹⁴ and twenty-two states, plus the District of Columbia, have legislative presumptions against joint custody where domestic violence has occurred.¹⁵
8. Despite extensive research on the detrimental effects of domestic violence on children and the risks that attend unrestricted parental access where domestic violence has occurred, many courts are still reticent about assessing the impact of domestic violence on children when crafting custody arrangements.¹⁶ A recent trend by state legislatures to adopt a presumption for joint physical custody elevates the rights of parents over the safety and wellbeing of children, and creates additional obstacles to protecting victims and children from domestic violence.¹⁷ A number of empirical studies confirm that courts frequently fail to identify and consider domestic violence and fail to provide adequate safety protections in court orders, even where a history of substantiated violence is known to exist.¹⁸ This same phenomenon has been observed in the context of child custody mediations, child custody evaluations, and visitation determinations.¹⁹

III. Concluding Observations from Previous Review by Human Rights Committee and U.S. Government's Fourth Periodic Report

9. During the last review of The United States' compliance with the ICCPR, the Human Rights Committee recommended that "The State party should take all steps necessary, including at state level, to ensure the equality of women before the law and equal protection of the law, as well as effective protection against discrimination on the ground of sex, in particular in the area of employment." See [Concluding Observations of the Human Rights Committee](#) (Consideration of Article 40 report submitted by the United States at the 87th Session (2006), (¶ 28)).
10. In its Fourth Periodic Report to the Human Rights Committee, the United States describes in detail the federal Violence Against Women Act (VAWA) and programs to provide improved response to crimes of domestic violence, as well as services for and advocacy on behalf of

survivors.²⁰ The report also describes expanded legal tools for addressing violence against women,²¹ as well as new guidelines and trainings for, as well as federal investigations of, police departments handling domestic violence claims.²²

IV. **Violations of the International Covenant on Civil and Political Rights**

11. Domestic violence violates a woman's rights to life, freedom from torture, equality before the courts, equal protection before the law, equality with men before the law²³ and protection of the family, among others. The following articles of the International Covenant on Civil and Political Rights articulate a state's duty to protect these fundamental human rights that are commonly violated in domestic violence.
12. *Right to life and security of person (Article 6)*: The right to life is shared by both men and women. However, violence directed against women by their intimate partners (current or former spouses, boyfriends, dating partners) is an epidemic that has devastating and unequal physical, emotional, financial and social effects on women and children.
13. *Prohibition of torture or cruel, inhumane or degrading treatment or punishment (Article 7)*: The Committee against Torture acknowledged that domestic violence may constitute torture or ill treatment under CAT as well as violate the right not to be subjected to torture or ill-treatment under Article 7 of the ICCPR.
14. *Administration of Justice (Article 14)*: When a state fails to ensure that its criminal and civil laws adequately protect women and consistently hold abusers accountable, or that its agents—such as police and prosecutors—implement the laws that protect victims of domestic violence, that state has not acted with due diligence to prevent, investigate and punish violations of women's rights. (See [General Comment No. 32: Right to equality before courts and tribunals and to a fair trial \(article 14\)](#) (2007).)
15. *Protection of the family, the right to marriage and equality of the spouses (Article 23)*: [General Comment No. 19: The family](#) of the ICCPR protects the family and equality of the spouses. Both general recommendation 18 and 19 ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.
16. *Equality before the law (Article 26)*: States are required under international law to provide all citizens with equal protection of the law. If a state fails to provide individuals who are harmed by an intimate partner with the same protections it provides to those harmed by strangers, it has failed to live up to this obligation. For example, when judges impose higher sentences on those who assault strangers than those who assault their intimate partners, battered women have been denied equal protection.

V. **Other UN Body Recommendations**

17. [Report of the Special Rapporteur on violence against women, its causes and consequences: Mission to the United States of America](#) (2011).²⁴ In her report to the UN Human Rights Council, Special Rapporteur Rashida Manjoo noted the lack of substantive protective legislation at federal and state levels. The inadequate implementation of current law has resulted in the continued prevalence of violence against women, and the discriminatory treatment of victims, particularly poor, minority, and immigrant women.²⁵ Special Rapporteur Manjoo recommended expanding federal causes of action under VAWA, which would mitigate current discrimination and increase uniformity at the state and local levels.²⁶ In addition, Special Rapporteur Manjoo

recommended that all courts consider any history of domestic violence, prior orders of protection and domestic violence criminal convictions when determining custody, visitation, and mediation issues.²⁷

18. During the Universal Periodic Review of the United States in 2010, twenty States recommended to the United States that it become a party to and/or ratify the CEDAW.²⁸ The United States indicated that it is “strongly committed to ratifying the CEDAW”²⁹ and in its addendum supported recommendations asking it to ratify the CEDAW.³⁰ (See [Report of the Working Group on the Universal Periodic Review, United States \(2010\)](#)).
19. During the last review of the United States’ compliance with the Convention Against Torture, The United States was requested to provide information on the legislative and other measures it has taken to prevent domestic violence.³¹ The United States responded that it has “many programs” aimed at deterring and punishing domestic violence, but regards this question to be outside the mandate of the Committee against Torture.³²
20. The Committee on the Elimination of all forms of Discrimination Against Women has stated that gender-based violence, including domestic violence, constitutes discrimination under article 1 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).³³ The United States is one of just six countries in the world that has failed to ratify CEDAW.³⁴

VI. Recommended Questions

21. In the United States Fourth Periodic Report to the Human Rights Committee, the federal government maintains that the implementation of VAWA “continues to be an important federal priority.” However, it has been over 200 days since Congress has taken any action on the reauthorization of VAWA. What measures has the federal government taken towards reauthorizing VAWA? What measures have been taken to assure that the bill that Congress passes covers vulnerable groups such as Native American women, undocumented immigrants and members of the LGBT community? What measures have been taken to assure that the bill that Congress passes provides for holding perpetrators of violence accountable for their conduct?
22. VAWA as originally passed attempted to provide victims of gender violence with a federal remedy against perpetrators of violence.³⁵ According to the United States government, “VAWA was designed to improve criminal justice responses to domestic violence, dating violence, sexual assault, and stalking and to increase the availability of services for victims of these crimes.”³⁶ However, VAWA does not provide a federal civil cause of action for victims of domestic violence. What steps has the United States taken to provide for a federal civil cause of action under VAWA?
23. As discussed above, it is widely acknowledged that children are detrimentally affected by domestic violence. In its Fourth Periodic Report, the United States government discussed the “community effort to help” children exposed to domestic violence in Title IX of VAWA 2005.³⁷ However, VAWA has not been reauthorized, nor is this protection sufficient to address the most pressing problems experienced by children. What measures has the United States taken to address deficiencies in court processes in child custody cases involving domestic violence? In particular, has the government considered encouraging state courts to consider a history of domestic violence in custody hearings?

VII. Suggested Recommendations

24. The United States should be encouraged to ensure remedies for all victims of domestic violence. VAWA is up for reauthorization, and the United States must take this opportunity to reauthorize VAWA and broaden its coverage to protect vulnerable groups such as Native American women, undocumented immigrants and members of the LGBT community.
25. In reauthorizing VAWA, the United States government must also strengthen the provisions of the law. The lack of federal causes of action under VAWA inhibits the United States from meeting its obligations to prevent, investigate, and punish those who violate women's rights to physical safety and to provide victims with a court remedy. Providing for federal causes of action under VAWA would promote greater accountability and more consistent implementation of VAWA across the states, rather than operating primarily as a voluntary funding source. Federal causes of action would also mitigate current discrimination and allow women—regardless of location or race—to seek judicial protection from domestic violence.
26. Courts should be required to give priority to the best interests of the child rather than the rights of a parent in determining custody.
27. Courts should be required to consider any history of domestic violence in determining child custody. Such consideration should include any evidence of domestic violence including prior orders of protection and domestic violence criminal convictions.
28. Courts should use a multi-disciplinary approach to custody evaluations involving experts in domestic abuse, child abuse, and mental health in the process.
29. Custody evaluators should be trained to recognize that men who commit domestic violence against their partners often commit other types of crimes, including child abuse.
30. Judges should be required to prepare written findings of fact and conclusions of law to support their custody orders.
31. Courts should include custody transition plans including supervised visitation and third-party transition to protect domestic abuse victims.
32. The United States Congress should promptly ratify the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

¹ Special Rapporteur on violence against Women, its causes and consequences, *Addendum - Mission to the U.S.*, ¶ 8, U.N. Doc. A/HRC/17/26/Add.5 (Jun. 2011) (by Ms. Rashida Manjoo) available at <http://www.unhcr.org/refworld/docid/4ef1ad5d2.html>.

² Special Rapporteur on violence against Women, its causes and consequences, *Addendum - Mission to the U.S.*, ¶ 8, U.N. Doc. A/HRC/17/26/Add.5 (Jun. 2011) (by Ms. Rashida Manjoo) available at <http://www.unhcr.org/refworld/docid/4ef1ad5d2.html>.

³ Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, with request for an investigation and hearing of the merits, at 21-22, *Gonzales v. USA*, Petition P-1490-05, Inter-Am. Ct. H.R. (Dec. 23, 2005) *available at* <http://www.aclu.org/files/pdfs/petitionallegingviolationsofthehumanrightsofjessicagonzales.pdf> [hereinafter *Gonzales Petition*].

⁴ Special Rapporteur on violence against Women, its causes and consequences, *Addendum - Mission to the U.S.*, ¶ 9, U.N. Doc. A/HRC/17/26/Add.5 (Jun. 2011) (by Ms. Rashida Manjoo) *available at* <http://www.unhcr.org/refworld/docid/4ef1ad5d2.html>.

⁵ Special Rapporteur on violence against Women, its causes and consequences, *Addendum - Mission to the U.S.*, ¶ 9, U.N. Doc. A/HRC/17/26/Add.5 (Jun. 2011) (by Ms. Rashida Manjoo) *available at* <http://www.unhcr.org/refworld/docid/4ef1ad5d2.html>.

⁶ Catalano, S., et al., *Female Victims of Violence*, Bureau of Justice Statistics (September 2009), at 4, *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/fvv.pdf>.

⁷ Catalano, S., et al., *Female Victims of Violence*, Bureau of Justice Statistics (September 2009), at 2, *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/fvv.pdf>.

⁸ Catalano, S., et al., *Female Victims of Violence*, Bureau of Justice Statistics (September 2009), at 3, *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/fvv.pdf>.

⁹ Pub. L. 103-322, Tit. IV, 108 Stat. 1796 (1994).

¹⁰ *See, e.g.*, THE HUFFINGTON POST, *Violence Against Women Act: Eric Cantor, Joe Biden In Talks Amid Stalled Tribal Provision* (Dec. 6, 2012), *available at* http://www.huffingtonpost.com/2012/12/06/violence-against-women-act-eric-cantor-native-americans_n_2251924.html.

¹¹ *Gonzales Petition*, *supra* note 3, at 24.

¹² *See* Catalano, S., et al., *Female Victims of Violence*, Bureau of Justice Statistics (September 2009), at 4, *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/fvv.pdf>.

¹³ In 1990, for instance, the United States House of Representatives passed House Concurrent Resolution 172 which “express[ed] the sense of Congress that, for purposes of determining child custody, evidence of spousal abuse should create a statutory presumption that it is detrimental to the child to be placed in the custody of an abusive parent.” H.R. Con. Res. 172 (1990). In 1989, and then again in 1994, the American Bar Association (ABA) passed resolutions calling for statutory presumptions against allowing custody to batterers. ABA MODEL JOINT CUSTODY STATUTE, 15 FAMILY LAW REPORTER (BNA) 1494 (1989). In 1994, the National Council of Juvenile and Family Court Judges added a rebuttable presumption against allowing custody to batterers to its Model Code on Domestic and Family Violence. FAMILY VIOLENCE: A MODEL STATE CODE, § 401 (Nat’l Council of Juvenile & Family Court Judges 1994). The American Psychological Association added its recommendation in 1996 that states adopt statutes giving custody preference to the non-violent parent whenever possible. AM. PSYCHOLOGICAL ASS’N, REPORT OF THE APA PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY (1996).

¹⁴ Am. Bar Ass’n, Comm’n on Domestic Violence, *Child Custody and Domestic Violence by State* (Feb. 2008), *available at* <http://www.abanet.org/domviol/docs/Custody.pdf>.

¹⁵ *Id.*

¹⁶ J.S. Meier, *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining Solutions*, 11 J. GENDER SOC. POL’Y & L., 657, 667 (2003) (internal citations omitted).

¹⁷ Davis, G., K. Lizdas, S. Tibbets Murphy, and J. Yauch, “The Dangers of Presumptive Joint Physical Custody,” Battered Women’s Justice Project, Minneapolis, MN, 3 (2010) http://www.bwjp.org/files/bwjp/articles/Dangers_of_Presumptive_Joint_Physical_Custody.pdf.

¹⁸ *See* J.G. Silverman, *Child Custody Determinations in Cases Involving Intimate Partner Violence: A Human Rights Analysis*, 94 AM. J. PUB. HEALTH 951 (2004) (courts frequently fail to consider documentation of domestic violence in custody determinations); M.A. Kernic et al., *Children in the Crossfire: Child Custody Determinations Among Couples with a History of Intimate Partner Violence*, 11 VIOLENCE AGAINST WOMEN 991 (2005) (courts frequently fail to identify domestic violence and provide adequate safety protections in court orders, even where a history of substantiated violence is known to exist).

¹⁹ N.E. Johnson et al., *Child Custody Mediation in Cases of Domestic Violence: Empirical Evidence of a Failure to Protect*, 11 VIOLENCE AGAINST WOMEN 1022 (2005) (mediators are just as likely to recommend joint legal and physical custody in domestic violence cases as in cases where there are no allegations of domestic violence); J. Bow, *Review of Empirical Research on Child Custody Practice*, 3 J. CHILD CUSTODY 23, 39 (2006) (even where child abuse and domestic violence are documented in the court record, they are often not addressed in the final custody report); L.S. Horvath, *Child Custody Cases: A Content Analysis of Evaluations in Practice*, 33 PROF. PSYCHOL.:

RES.& PRAC. 557 (2002) (domestic violence is largely overlooked by custody evaluators and often plays no role in custody determinations even when it is noted in evaluators' reports); C.S. O'Sullivan et al., *Supervised and Unsupervised Parental Access in Domestic Violence Cases: Court Orders and Consequences*, Final Technical Report Submitted to the National Institute of Justice (Mar. 2006) (history of domestic violence has little impact on court ordered visitation arrangements).

²⁰ [Article 3 \(Equal right of men and women\)](#): The U.S. government in 1994 signed into law VAWA, which takes a comprehensive approach to “end[ing] violence against women”(¶ 134); the implementation of VAWA is an important federal priority (¶ 135) legislation and grant programs, making the Office on Violence Against Women (OVW) a permanent part of the Department of Justice and the expansion of tools to improve the nation's response to crimes of domestic violence (¶ 136-36); the 2009 American Recovery and Reinvestment Act grant of \$225 million to OVW to enhance services and advocacy to victims (¶ 137); victims of domestic violence may be protected under the Fair Housing Act's prohibitions against sex discrimination where housing issues are implicated (¶ 141); racial and ethnic disparities in victims of domestic violence (¶ 142); [Article 6 \(right to life\)](#): Office for Victims of Crime grant support to domestic violence shelters and other community-based organizations (¶ 163).

²¹ [Article 2 \(equal protection of the rights in the Covenant\)](#): the Violence against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005) expands legal tools for addressing domestic violence, dating violence, sexual assault and stalking (¶ 53); Title IX of VAWA 2009 includes for the first time provisions aimed at ending violence against racial and ethnic minorities, including American Indian and Alaska Native women, and supports “community efforts” to help children exposed to violence (¶ 54)

²² [Article 1 \(self-determination\)](#): Signed into law by President Obama in 2010, the Tribal Law and Order Act includes new guidelines and trainings for police departments on domestic violence and sex crimes (¶ 29); [Article 7 \(Freedom from torture or cruel, inhuman or degrading treatment or punishment\)](#): the DOJ launched an investigation of the New Orleans Police Department, which included the DOJ/CRD's first ever finding that a police department engaged in gender-biased policing, including systemic failure to investigate sexual assaults and domestic violence (¶ 183)

²³ [General Comment No. 28: The equality of rights between men and women](#) (article 3) (2000).

²⁴ Note that a longer version of the Special Rapporteur's report online is available at <http://www.law.virginia.edu/pdf/hr/vaw.pdf>.

²⁵ Special Rapporteur on violence against Women, its causes and consequences, *Addendum - Mission to the U.S.*, ¶ 113, U.N. Doc. A/HRC/17/26/Add.5 (Jun. 2011) (by Ms. Rashida Manjoo) *available at* <http://www.unhcr.org/refworld/docid/4ef1ad5d2.html>.

²⁶ *Id.* at A(a) [Remedies for victims of domestic violence, sexual assault and stalking].

²⁷ *Id.* at A(j). “Furthermore, ‘failure to protect’ statutes should not be used to unjustly remove children from non-offending caregivers.”

²⁸ *Id.* ¶ 92 (Australia, Austria, Canada, China, Costa Rica, DPR Korea, Finland, France, Ghana, India, Indonesia, Japan, Malaysia, Netherlands, New Zealand, Republic of Korea, Thailand, Trinidad & Tobago, Turkey, Viet Nam).

²⁹ *Id.* ¶ 28.

³⁰ Addendum of the United States of America to the Report of the Working Group on the Universal Periodic Review, United States of America, A/HRC/16/11/Add.1 (Mar. 8, 2011) ¶ 28, *available at* <http://www.ohchr.org/EN/HRBodies/UPR/Pages/USSession9.aspx>.

³¹ See [List of issues to be considered during the examination of the second periodic report of the United States of America \(Committee against Torture\)](#) (2005)

³² Committee against Torture, List of issues to be considered during the examination of the second periodic report of the United States of America, CAT/C/48/Add.3 (Nov. 2005) ¶ 59, *available at*

<http://www2.ohchr.org/english/bodies/cat/cats36.htm>. The CAT, however, has interpreted domestic violence as being within the purview of the Convention Against Torture. A State's failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking, is a form of de facto permission. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 2, CAT/C/GC/2 (Jan. 24, 2008), ¶ 18, *available at* <http://www2.ohchr.org/english/bodies/cat/comments.htm>

³³ Comm. On the Elimination of discrimination against women, 11th Sess., General Recommendation No. 19 (1992) ¶ 7, *available at* <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>.

³⁴ See generally [Committee on the Elimination of Violence Against Women, General Recommendation 19](#) (1992).

³⁵ The 1994 version of VAWA authorized lawsuits in federal court against those who “commit a crime of violence motivated by gender.” 42 U.S.C. § 13981.

³⁶ *Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights* (Dec. 30, 2011), at ¶ 134, available at <http://www.state.gov/j/drl/rls/179781.htm#art3>.

³⁷ *Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights* (Dec. 30, 2011), at ¶ 54, available at <http://www.state.gov/j/drl/rls/179781.htm#art3>.