

**AMERICAN BAR ASSOCIATION**  
**COMMISSION ON DOMESTIC VIOLENCE**  
**COMMISSION ON IMMIGRATION**  
**SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES**  
**SECTION OF INTERNATIONAL LAW**  
**BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA**  
**YOUNG LAWYERS DIVISION**

**Report to the House of Delegates**

**RECOMMENDATION**

RESOLVED That the American Bar Association urges federal, state, local, territorial, and tribal governments to adopt legislation and appropriate funding to strengthen protection and assistance for victims of gender-based violence within the United States and abroad;

FURTHER RESOLVED, That the American Bar Association urges Congress to enact and fund the International Violence Against Women Act of 2007 or similar legislation that:

1. Supports funding for legal assistance for global victims of gender-based violence in criminal and civil cases;
2. Supports funding to provide training and education globally about gender-based violence and the needs of victims for judges, attorneys, law students and other legal service providers, as well as for law enforcement, government officials, legislators, health care providers, media, community members and other entities or persons who might help further victims' access to justice and create awareness about the law;
3. Supports efforts to foster a multidisciplinary and community approach to serving victims and ending gender-based violence; and
4. Supports efforts to ensure that perpetrators of gender-based violence are held accountable.

# REPORT

## Introduction

The American Bar Association has been consistent in its commitment to protecting and enforcing international human rights and access to justice through its Rule of Law Initiative. Gender-based violence is a pervasive violation of human rights throughout the world, and increasing victims' access to justice is a critical part of expanding the rule of law.

## Definition of Gender-based Violence

In 1994, the General Assembly of the United Nations defined gender-based violence<sup>1</sup> as encompassing any act “that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”<sup>2</sup> This definition encompasses a broad spectrum of acts. Specific examples of such acts include:

- Rape, marital rape, and other acts of sexual abuse
- Sexual harassment in the workplace and educational institutions
- Forced prostitution
- Trafficking in women
- Domestic battery
- Cultural practices harmful to women, such as female genital mutilation and dowry-related violence<sup>3</sup>

These acts have no single perpetrator. Intimate partners, family members, strangers and state institutions all can be perpetrators of these acts. Not surprisingly, therefore, gender-based violence can occur in the home, in the community, or with express or implied approval of the government.<sup>4</sup>

## The Scope of the Problem and Its Effects

In 2005, the World Health Organization released a “*Multi-country Study on Women’s Health and Domestic Violence against Women.*”<sup>5</sup> The study surveyed the incidence and prevalence of domestic violence against women in ten different countries, and produced quantitative and qualitative data about the experiences of women in these very different societies. The results were overwhelming: as many as 71 percent of women in Bangladesh, Ethiopia, Peru and the United Republic of Tanzania reported experiencing some physical or sexual violence at the

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<sup>1</sup> Gender-based violence is also commonly referred as violence against women. *See* Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, Art. I, U.N. Doc. A/RES/48/104 (Feb. 23, 1994) [hereinafter G.A. Declaration].

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at Art. II.

<sup>4</sup> *Id.*

<sup>5</sup> CLAUDIA GARCÍA-MORENO, ET AL., WORLD HEALTH ORGANIZATION, WHO MULTI-COUNTRY STUDY ON WOMEN’S HEALTH AND DOMESTIC VIOLENCE AGAINST WOMEN: INITIAL RESULTS ON PREVALENCE, HEALTH OUTCOMES AND WOMEN’S RESPONSES 2005 [hereinafter WHO STUDY].

hands of an intimate partner during their lifetimes. The study also showed that survivors of domestic violence--one incarnation of gender-based violence--suffer immediate and long term consequences.<sup>6</sup> For example, in Peru Province 55 percent of women who have ever been abused by a partner report resulting injuries. Victims are also more likely to report having miscarriages and induced abortions than non-victims. In addition to injuries sustained directly from acts of violence, survivors frequently have long term health problems that correlate to a lifetime experience of violence. They are also more vulnerable to emotional distress and suicidal behavior.<sup>7</sup>

But the consequences of gender-based violence are not limited to the individual. Violence against women has a destabilizing effect on societies as a whole. By instilling fear and insecurity in women, perpetrators of gender-based violence stunt progress toward equality, development, and peace.<sup>8</sup> “The fear of violence, including harassment, is a permanent constraint on the mobility of women and limits their access to resources and basic activities.”<sup>9</sup> This deprivation has high social, health, and economic costs to a society,<sup>10</sup> and serves to perpetuate further violence. Lack of access to resources, including legal services, inadequate protection, ignorant (and/or disinterested) law enforcement, cultural patterns and social pressures all exacerbate gender-based violence and its effects.<sup>11</sup> Responders must take a holistic and multidisciplinary approach to the problem of gender-based violence; by addressing each of these underlying issues societies can make great strides toward achieving gender equality and strengthening respect for human dignity.<sup>12</sup>

## The International Response

The international community is aware of the immense costs of gender-based violence and is responding to the problem. In 1979 the General Assembly of the United Nations adopted the *Convention on the Elimination of All Forms of Discrimination against Women* (“CEDAW”),<sup>13</sup> laying a foundation for the international movement to end violence against women. CEDAW was the culmination of decades of work by the U.N. monitoring the status of women and promoting women’s rights throughout the international community.<sup>14</sup> It recognized that women are routinely relegated to an inferior status, frustrating the advancement of human rights,

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<sup>6</sup> The ABA Commission on Domestic Violence defined domestic violence in its *Standards of Practice For Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases* (adopted as ABA Policy, August 2007) as follows:

“Domestic Violence”: Physical abuse, alone or in combination with sexual, economic or emotional abuse, stalking, or other forms of coercive control, by an intimate partner or household member, often for the purpose of establishing and maintaining power and control over the victim.

<sup>7</sup> *Id.* at xv.

<sup>8</sup> Fourth World Conference on Women, Sep. 4-15 1995, *Platform for Action* ¶ 117, U.N. Doc. A/CONF.177/20 (Oct. 17, 1995) [hereinafter *Platform for Action*].

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at ¶ 118.

<sup>12</sup> *Id.* at ¶ 119.

<sup>13</sup> In 1981 CEDAW became an international treaty, and it has been ratified by 185 countries to date. The United States is a signatory to CEDAW, although it has not ratified the treaty. United Nations <http://www.un.org/womenwatch/daw/cedaw/states.htm> (last visited April 11, 2008).

<sup>14</sup> U.N. Division for the Advancement of Women, <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#intro> (last visited April 11, 2008).

individual dignity and the equality of the sexes.<sup>15</sup> Although CEDAW did not explicitly target violence against women, activists and professionals recognized that the measures it set out, particularly those seeking to enforce human rights and combat gender inequality, would also reach the undercurrents of gender-based violence.<sup>16</sup>

Indeed, gender-based violence is now accepted to be a human rights issue in and of itself. The international community expressly recognized an obligation to stop violence against women in the *2005 Platform for Action* (“Platform”), adopted at the Fourth World Conference on Women in Beijing, China. The Platform established that “the human rights of women and the girl child are an inalienable, integral and indivisible part of universal human rights.”<sup>17</sup> It further recognized that the failure of states to protect women from gender-based violence amounts to a human rights violation.<sup>18</sup> The Platform committed U.N. member states to making affirmative efforts to combat violence against women.<sup>19</sup> The result of these acknowledgments by the U.N. has been to establish that gender-based violence is a human rights issue.

### **Domestic Integration of International Norms**

The recognition that gender-based violence is a human rights violation has opened doors for victims and their advocates. The acknowledgement has the effect of holding national governments to a higher standard, as victims appeal to international human rights law and policies to pressure domestic change with regard to their rights.

This kind of advocacy is currently taking shape in the United States, with review of the U.S. Supreme Court decision in *Castle Rock v. Gonzales*<sup>20</sup> pending in the Inter-American Court of Human Rights (“IACHR”). In *Castle Rock*, Jessica Gonzales argued that the state of Colorado denied her due process rights when police officers declined to enforce the restraining order she held against her ex-husband, the father of her children.<sup>21</sup> The Supreme Court rejected this argument in June, 2005, holding that Gonzales had no property interest in enforcement of the restraining order that would give rise to a 14<sup>th</sup> Amendment Due Process Claim.<sup>22</sup> In December, 2005, Jessica Gonzales filed a petition, in conjunction with the ACLU, to the Inter-American Court of Human Rights, arguing that the United States failed to protect her human rights, and

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<sup>15</sup> United Nations Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/830 (Dec. 18, 1979) *available at* <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

<sup>16</sup> *See, e.g.*, G.A. Declaration *supra* note 1.

<sup>17</sup> Platform for Action *supra* note 9 at ¶ 213. The Platform included an extensive discussion of the causes and effects of gender-based violence, reiterating the need for comprehensive information about the scope of the problem. The Platform also identified other areas of concern regarding equality for women and the human rights of women, and called for a global response in each of the areas identified. *See generally, id.*

<sup>18</sup> *Id.* at ¶ 112.

<sup>19</sup> *Id.* at ¶ 124.

<sup>20</sup> 545 U.S. 748 (2005).

<sup>21</sup> In the evening of June 22, 1999, Gonzales’ ex-husband came to her house and retrieved their children, in violation of the couples’ custody agreement and Ms. Gonzales’ restraining order. When Ms. Gonzales discovered that her ex-husband had taken their children, she called police to enforce the restraining order. The officers brushed aside her complaint, and refused to take any action pursuant to Ms. Gonzales’ continued phone calls throughout the night. After 3:00 am Ms. Gonzales’ ex-husband appeared at the police station. All three of the Gonzales children were dead in the back of their father’s truck. *Id.* at 752-54.

<sup>22</sup> *Id.* at 768

those of her children, when it (1) failed to enforce the terms of her restraining order and (2) denied her judicial relief.<sup>23</sup> A decision from the IACHR is still pending.

Although many who are familiar with the case expect that the IACHR will find in her favor, Gonzales' petition is significant in its own right. It is reflective of the growing consensus that domestic violence and other forms of violence against women are not isolated on an individual level. Individuals can now seek recourse in a global forum. Furthermore, the responsibility of governments to respond to these problems is not insulated from international expectations about respect for human dignity and human rights.

Governments at all levels share in this responsibility and have a duty to respond to gender-based violence. Our own government has implemented and twice reauthorized the Violence Against Women Act<sup>24</sup> in an effort to increase funding for legal and other essential services to victims of gender-based violence domestically. The introduction of the International Violence Against Women Act of 2007 ("IVAWA") into the U.S. Congress is exemplary of positive efforts to respond to gender-based violence globally. Introduced in the Senate in October, 2007,<sup>25</sup> the Bill recognizes the prevalence of gender-based violence internationally, and the harmful consequences that flow from it. The language of IVAWA affirms that the problem demands U.S. attention, and pledges that it is U.S. policy (a) to promote women's rights world-wide, (b) to promote prevention and response efforts to gender-based violence, (c) to encourage foreign governments to take action, (d) to incorporate efforts to stop violence against women in foreign policy and foreign aid programs, and (e) to engage in a multidisciplinary approach to the problem.

IVAWA strives to accomplish these goals by establishing a number of domestic offices designed to monitor international women's rights and implement programs within the United States and abroad.<sup>26</sup> It mandates that these offices identify ten to twenty diverse countries with severe violence against women and children. Pursuant to identification of the problem and potential solutions, IVAWA calls for the implementation of preventative and remedial programs in these countries. These programs should be targeted at "increasing legal and judicial protections...enhancing the capacity of the health sector to respond to such violence...increasing opportunities for women and girls in education and economic development...[and] promoting societal awareness and changing social norms."<sup>27</sup>

To the extent that IVAWA aspires to a holistic and multidisciplinary plan for addressing gender-based violence, and acknowledges violence against women as a fundamental problem of human dignity within the United States and abroad, it is extremely responsive to the demands of the international community. Like the *Gonzales* petition, IVAWA grows out of the national acceptance of the obligation to integrate international human rights norms into domestic

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<sup>23</sup> Petition Alleging Violations of the Human Rights of Jessica Gonzales (Dec. 23, 2005) available at <http://www.aclu.org/womensrights/gen/232271gl20051223.html>.

<sup>24</sup> Violence Against Women Act of 1994, Pub.L. 103-322, Title IV, Sept. 13, 1994, 108 Stat. 1902; Violence Against Women Act of 2000, Pub.L. 106-386, Div. B, §§ 1001 to 1603, Oct. 28, 2000, 114 Stat. 1491; Violence Against Women Reauthorization Act of 2005, Pub.L. 109-162, Jan. 5, 2006, 119 Stat. 2960.

<sup>25</sup> International Violence Against Women Act of 2007, S. 2279, 110th Cong. (2007) [hereinafter IVAWA].

<sup>26</sup> Id. at § 300G (Comprehensive International Strategy to Reduce and Prevent Violence against Women and Girls).

<sup>27</sup> Id.

practices. Furthermore, IVAWA envisions the justice sector as a key component of achieving justice for victims of gender-based violence and promoting change.

### **Promoting Change through Justice System Reforms**

Despite international efforts to address gender-based violence, victims still face many obstacles to achieving justice. Such obstacles usually involve the absence of legal protections, the degree to which victims know of their rights and have access to legal services, and the prevalence of untrained or biased legal institutions.

Laws that discriminate based on gender and laws that inadequately provide for the protection of victims of gender-based violence frustrate the ability of victims to seek justice and hinder efforts to combat violence against women.<sup>28</sup> Such laws disserve victims, while exculpating perpetrators of violence. Discriminatory laws not only make it difficult for victims to seek justice, but coupled with a paucity of protective laws, may actually place victims in more danger if they choose to seek justice.<sup>29</sup>

Legislative change is an important step in increasing victims' access to justice, but it is only a first step.<sup>30</sup> Victims must know what their rights are and have legal assistance if they are to assert them. Therefore, legal literacy is a fundamental pre-requisite to access to justice for victims of gender-based violence. Women should know what their rights are, how to report their abuse, and how they can access legal services.<sup>31</sup>

In addition, increasing access to legal services is critical in remedying gender-based violence. Some countries currently do not provide for any legal aid to victims of gender-based violence in civil cases.<sup>32</sup> And where legal services are available, women are not always able to access them. In particular, women in rural settings across the world are forced to choose between traveling great distances to legal clinics or foregoing legal services (assuming that these women have and are aware of their legal rights.)<sup>33</sup> In the context of domestic violence in particular, the presence of legal services has been shown to significantly reduce rates of abuse.<sup>34</sup> Effective legal services are crucial to protecting the human rights of women around the world.

However, even where women have the protection of the law and know their rights, victims of gender-based violence often face institutions that function to deny them relief. Bias and lack of

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<sup>28</sup> Human Rights Watch, *What Will It Take? Stopping Violence Against Women: A Challenge to Governments*, HRW Backgrounder (June 2000) available at <http://www.hrw.org/backgrounder/wrd/fiveplus.htm>.

<sup>29</sup> *Id.*

<sup>30</sup> World Bank *supra* note 30 at 3.

<sup>31</sup> *Id.*

<sup>32</sup> See, e.g., Ito Eze-Anaba, *Domestic Violence and Legal Reforms in Nigeria: Prospects and Challenges*, 14 CARDOZO J.L. & GENDER 21, 53 (2007); see also Org. of American States Inter-American Comm'n on Human Rights [IACHR], *Access to Justice for Women Victims of Violence in the Americas*, ¶ 10, OEA/Ser.L/V/II., Doc. 68 (Jan. 20, 2007)[hereinafter *Access to Justice*].

<sup>33</sup> Eze-Anaba *supra* note 37 at 53.

<sup>34</sup> Amy Farmer and Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, 21 CONTEMP. EC. POL'Y 158, 13 (2003) (explaining the impact of increased legal services for domestic violence victims within the United States).

information within the justice system itself can perpetuate the ills of gender-based violence.<sup>35</sup> For example, in 2007, the Inter-American Commission on Human Rights, in a study of access to justice for female victims of violence in the Americas, noted that police investigations were often compromised by (1) unwarranted delays, (2) use of improper procedures (precluding future potential for prosecution), (3) disbelief of female victims and their families, (4) belief that gender-based violence was not a serious problem, (5) disregard for evidence, (6) failure to refer victims for proper evaluation and collection of evidence, (7) cursory dismissal of complaints, and (8) reluctance to follow through on protective orders.<sup>36</sup> Even when law enforcement is well-intentioned, however, the study found that police are often ill-equipped to respond to victims' claims. Frequently they lack clear regulations and procedures for dealing with violence against women, are unfamiliar with applicable laws and what is necessary to prosecute cases, and are generally overburdened.<sup>37</sup>

These practices can have the effect of disadvantaging victims in judicial proceedings, by discouraging victims from filing reports or seeking police help in the first place. In addition, prosecutors--often under-trained or biased themselves--are then left with inadequate evidence to pursue a successful prosecution. Too often, judges also bring societal biases to the bench, dooming claims of victims and pardoning perpetrators.

Holding abusers accountable is a necessary part of vindicating the human rights of victims and ending gender-based violence. One solution is to encourage trainings for responders throughout the legal system that can standardize responses to gender-based violence and ensure that violence against women is met with true justice. Elucidating and establishing more effective procedures for investigation, prosecution and courtroom proceedings would help break down many of the obstacles victims face when pursuing claims of gender-based violence. Equally as importantly, however, training programs should emphasize the breakdown of stereotypes and the cessation of prejudicial practices. All members of the justice system should be educated about the seriousness of gender-based violence, regardless of cultural norms.<sup>38</sup>

### **ABA Commitment**

The ABA has been a strong supporter of the universality of human rights, particularly as it encompasses women's rights and gender-based violence. It has committed to achieving equal rights for women and children in the international context. This commitment is perhaps most evident in the active role the ABA took in the Fourth World Conference on Women ("4WCW") held in Beijing, China, in 1995, and in the preparations for this conference. The ABA focused on the legal issues of human rights, violence against women, law reform to promote equality, and legal literacy as a participant in Conference preparations. During the drafting of the Platform for Action, ABA delegates were active in ensuring that no provisions were included that had the potential to undermine the universality of human rights.<sup>39</sup>

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<sup>35</sup> World Bank *supra* note 30 at 3.

<sup>36</sup> *Id.* at ¶ 7.

<sup>37</sup> *Id.* at ¶ 16.

<sup>38</sup> Human Rights Watch *supra* Note 28.

<sup>39</sup> This includes a proposed provision regarding the extent to which traditional cultural practices could be accepted as human rights norms. Report No 4, 477-78.

In the wake of 4WCW, the ABA commended the UN and its member states for striving to advance the human rights of women, including the recognition that violence against women is a violation of human rights. It also urged the United States to continue its commitment to human rights and the goals of the Platform for Action.<sup>40</sup> The Recommendation here furthers these goals by encouraging governments and non-governmental organizations at all levels in all countries to proactively address gender-based violence in a way that incorporates human rights considerations and enhances the response of the justice system to claims of gender-based violence. By adopting this Recommendation, the ABA takes one step further in its commitment to supporting the rights of women within the United States and abroad.

Respectfully Submitted,

Judge Pamela Brown  
Chair, ABA Commission on Domestic Violence  
August 2008

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<sup>40</sup> Report No 2.