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**“NO WOMAN, NO CRY” – ENDING THE WAR ON  
WOMEN WORLDWIDE AND THE  
INTERNATIONAL VIOLENCE AGAINST WOMEN  
ACT (I-VAWA)**

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## ABSTRACT

*The regular occurrence and harmful consequences of violence against women (“VAW”) across the globe is now widely acknowledged. Domestic remedies to combat this violence frequently prove to be ineffective and international solutions are often inadequate. Efforts to eradicate gender-based violence against women are complicated by culture, tradition, and religion. Simply put, VAW remains deeply ingrained because, on some level, it remains acceptable.*

*In view of VAW’s pervasive nature, it is difficult to determine what realistic steps can be taken to eliminate VAW. Along with the international community, the United States has struggled to formulate an appropriate response to VAW, at home and abroad. The enactment of the federal Violence Against Women Act (“VAWA”) in 1994 resulted in a more vigorous law enforcement response and enhanced delivery of services to those subjected to violence in the United States. Beginning in 2007, Congressional sponsors of the International Violence Against Women Act (“I-VAWA”) demonstrated their clear intent to link U.S. foreign policy to efforts to stamp out VAW in other locales. Advocates urged the United*

*States to demonstrate the seriousness of its commitment to women's human rights internationally by passing I-VAWA along with ratifying the Convention to Eliminate All Forms of Discrimination Against Women ("CEDAW").*

*Part I of this article examines the failure of states to deal effectively with VAW on a domestic level. The initial focus in Part II is on the international treaties, conventions, declarations, and customary international law mechanisms that have been used to address the issue of VAW, with a specific look at the role of the United Nations. Next, regional and other international initiatives are considered, including the work of various NGOs. In Part III, the provisions of I-VAWA are discussed; the challenges encountered in attempting to pass this legislation and the alternative strategies pursued are evaluated. Finally, Part IV puts forth recommendations for options that the United States might employ to reduce international violence against women going forward, regardless of the status of I-VAWA.*

#### INTRODUCTION: VIOLENCE AGAINST WOMEN

An intoxicated husband in Papua New Guinea uses a bush knife to chop off his wife's leg as their children watch helplessly.<sup>1</sup> A seventeen-year-old Pakistani girl is gang-raped by five men and, after a faulty investigative process causes the perpetrators to be released from custody, the distraught girl lights herself on fire and eventually dies from her injuries.<sup>2</sup> In Mexico, an eleven-year-old girl is kidnapped by drug cartel members engaged in sex trafficking; she is never heard from again.<sup>3</sup> At the instruction of their commanders, Burmese military units openly keep women as sex slaves.<sup>4</sup> Armed extremists in Nigeria capture more than 200 school girls; rumors circulate that the girls have been forced into marriage with older men in

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<sup>1</sup> *Crying Meri: Violence Against Women in Papua New Guinea*, ABC NEWS BLOGS (June 7, 2013, 8:00 AM), <http://abcnews.go.com/blogs/headlines/2013/06/crying-meri-violence-against-women-in-papua-new-guinea>.

<sup>2</sup> Maria Golovnina, *Pakistani Escape Victim Dies after Setting Self Ablaze in Protest*, REUTERS, Mar. 14, 2014, <http://www.reuters.com/article/2014/03/14/us-pakistan-rape-idUSBREA2D0P520140314>.

<sup>3</sup> Jennifer Clement, *Mexico's Lost Daughters: How Young Women are Sold into the Sex Trade by Drug Gangs*, GUARDIAN, Feb. 8, 2014, <http://www.theguardian.com/world/2014/feb/08/mexico-young-women-sex-trade-drug-gangs>.

<sup>4</sup> Assed Baig, *Is the Burmese Military Keeping Rohingya Women as Sex Slaves?*, VICE (Apr. 12, 2013), <http://www.vice.com/read/rohingya-women-are-being-kept-as-sex-slaves-by-the-burmese-military>; see Katya Cengel, *Rape is a Weapon in Burma's Kachin State, but the Women of Kachin are Fighting Back*, TIME, Feb. 11, 2014, <http://time.com/6429/burma-rape-in-kachin>.

neighboring countries.<sup>5</sup>

These are just a few horrific examples of the ways that violence against women and girls (“VAW”) is perpetrated across the globe.<sup>6</sup> Although methods of inflicting this violence may differ, the ingrained patterns behind the violence remain the same. As does this question: Given the established nature of VAW, what reasonable—and realistic—steps can be taken by members of the international community, including the United States, to address gender-based violence against women?

Part I of this article examines the failure of states to deal effectively with VAW on a domestic level. Initially, Part II focuses on the international treaties, conventions, declarations, and customary international law mechanisms that have been used to address the issue of VAW, elaborating on the role of the United Nations (“U.N.”). Then, regional and other international initiatives are considered, including the work of various non-governmental organizations (“NGOs”). In Part III, the article discusses the provisions of the International Violence against Women Act (“I-VAWA”)<sup>7</sup> and evaluates the challenges encountered in attempting to enact this legislation. Finally, Part IV puts forth recommendations for options that the United States might employ to reduce international violence against women, regardless of I-VAWA’s status.

## I. THE DEARTH OF DOMESTIC REMEDIES

A number of states have failed to live up to their human rights

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<sup>5</sup> Terrence McCoy, *Hundreds of Kidnapped Nigerian Schoolgirls Reportedly Sold as Brides to Militants for \$12, Relatives Say*, WASH. POST, Apr. 30, 2014, <http://www.washingtonpost.com/news/morning-mix/wp/2014/04/30/hundreds-of-kidnapped-nigerian-school-girls-reportedly-sold-as-brides-to-militants-for-12-relatives-say>.

<sup>6</sup> Although the current preference in the international community is to refer to violence against women as “gender-based violence” (“GBV”), this article will use the term “violence against women” for two reasons. First, it more accurately reflects the woman-centered focus of this particular inquiry, and second, it tracks the language used in the International Violence Against Women Act that is analyzed in this article. The use of the more neutral term GBV tends to obscure the fact that this type of violence is much more frequently committed against women because of their status “as women.” Although violent acts are directed toward men, it is not typically the result of their being male, although attacks on gay men are sometimes motivated by sexual orientation animus. The most appropriate terminology may very well be “gender-based violence against women” (“GBVAW”), which would capture the conscious—or unconscious—intent of the perpetrator as well as the impact on the female individual subjected to the violence. If, however, the United States wants to express solidarity with transnational anti-violence advocates, then using the GBV terminology might accomplish that objective more readily.

<sup>7</sup> I-VAWA refers to the International Violence Against Women Act of 2013, H.R. 3571, 113th Cong. (2013), available at <http://beta.congress.gov/bill/113th-congress/house-bill/3571>.

responsibilities to combat VAW.<sup>8</sup> To comply with current international standards, states “must exercise due diligence to prevent violence against women.”<sup>9</sup> This diligence requirement encompasses prevention, investigation, prosecution, and compensation for victims of VAW.<sup>10</sup> Moreover, states are expected to address VAW by developing “expansive strategies to fulfill their international obligations effectively.”<sup>11</sup>

Although enactment of legislation is a typical first step in the area of prevention, twenty countries have no specific laws against domestic violence.<sup>12</sup> Reliance on law enforcement to protect women against varied forms of violence is too often viewed as futile.<sup>13</sup> Bribery and public corruption are endemic throughout the criminal justice processes in many

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<sup>8</sup> Andrew Bynes & Eleanor Bath, *Violence Against Women, Due Diligence, and the Optional Protocol to the Convention to Eliminate All Forms of Discrimination against Women – Recent Developments*, 8 HUM. RTS. L. REV. 517, 520 (1993) (observing that, under the Optional Protocol to the Convention to Eliminate All Forms of Discrimination against Women (“CEDAW”), a substantial portion of the CEDAW Committee’s work focuses on claims regarding the failure of states parties to fulfill their “obligations to prevent and punish violence against women”).

<sup>9</sup> Special Rapporteur on Violence against Women, Its Causes and Consequences, *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Question of the Programme and Method of Work of the Commission Alternative Approaches and Ways and Means within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms*, Comm’n on Hum. Rts., ¶¶ 140-41, U.N. Doc. E/CN.4/1996/53 (Feb. 5, 1996) (by Radhika Coomaraswamy) [hereinafter Special Rapporteur, *Further Promotion*].

<sup>10</sup> REBECCA H. RITTENHOUSE, *THE DUE DILIGENCE OBLIGATION TO PREVENT VIOLENCE AGAINST WOMEN: THE CASE OF PAKISTAN* 4-8 (2012), available at <http://www.ohchr.org/Documents/Issues/Women/WRGS/GirlsAndDisability/OtherEntities/HumanRightsFoundation.pdf>.

<sup>11</sup> Special Rapporteur, *Further Promotion*, *supra* note 9, at 8.

<sup>12</sup> Charlotte Alfred, *These 20 Countries Have No Law Against Domestic Violence*, HUFFINGTON POST (Mar. 10, 2014, 8:59 AM), [http://www.huffingtonpost.com/2014/03/08/countries-no-domestic-violence-law\\_n\\_4918784.html](http://www.huffingtonpost.com/2014/03/08/countries-no-domestic-violence-law_n_4918784.html). Even when legislation is passed, it may fall short of the expectations of advocates. For example, a recently enacted domestic violence law in Lebanon failed to criminalize marital rape and allowed religious law to take precedence over civil law in the area of personal status. Rudayna Baalbaky & Maria Abi Habib, *New Lebanese Domestic Violence Law Evokes Sharp Criticism*, WALL ST. J. BLOG (Apr. 3, 2014, 1:59 PM), <http://blogs.wsj.com/middleeast/2014/04/03/new-lebanese-domestic-violence-law-evokes-sharp-criticism>.

<sup>13</sup> Questions can be raised about an inadequate law enforcement response, even in well-established justice systems. In the United States, a lower number of reported incidents of sexual violence between 2005 and 2010 resulted in fewer arrests (thirty-one percent) than between 1994 and 1998 (forty-seven percent). MICHAEL PLANTY ET AL., DEP’T OF JUSTICE, SPECIAL REPORT – FEMALE VICTIMS OF SEXUAL VIOLENCE 1994-2010 8 (Catherine Bird & Jill Thomas eds., 2013), available at <http://www.bjs.gov/content/pub/pdf/fvsv9410.pdf>.

countries.<sup>14</sup> As a result, the successful prosecution of crimes involving VAW is a questionable proposition around the globe.<sup>15</sup>

More important, VAW is “a deeply entrenched problem in most societies because attitudes and practices that support violence are institutionalized in custom and law at all levels of society—marriage and the family, home, community and state.”<sup>16</sup> Culture, tradition, and religion often complicate the efforts to deal with VAW.<sup>17</sup> Simply put, VAW still exists because it remains acceptable on some level. This harsh truth is reflected in the comment by a Somali rape survivor who, when questioned about her failure to report the incident, explained, “[h]ere rape is normal.”<sup>18</sup>

Can the international community intercede effectively when multiple

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<sup>14</sup> See Nicholas Kristof, Op-Ed., *In This Rape Case, the Victim Was 4*, N.Y. TIMES, Jan. 14, 2014, <http://www.nytimes.com/2014/01/12/opinion/sunday/kristof-in-this-rape-case-the-victim-was-4.html>; see also Michele Mandel, *Ex-Immigration Board Judge Appeals Conviction on Sex Bribes*, TORONTO SUN, July 17, 2013, <http://www.torontosun.com/2013/07/17/ex-immigration-board-judge-appeals-conviction-on-sex-bribes> (“[F]ederal Crown attorney Nick Devlin described the judge’s conduct in a matter involving the asylum claim of a 25-year-old refugee: ‘He asked her to prostitute herself for a future in Canada.’”); Amelia Woodside & Sen Davis, *Finances Tie Victims to Abusers*, PHNOM PENH POST (Jan. 21, 2014), <http://www.phnompenhpost.com/national/finances-tie-victims-abusers> (quoting a former Cambodian minister of women’s affairs, who stated that in domestic violence proceedings “you have to deal with authorities that demand money and court officials that are rarely sensitive to the feelings of victims”).

<sup>15</sup> This remains true, for example, in rape and sexual assault prosecutions in so-called advanced legal systems. See Kathleen Daly, *Rape and Attrition in the Legal Process: A Comparative Analysis of Five Countries*, 39 CRIME & JUST. 565, 597-99 (2010) (concluding, based on victimization surveys in Australia, Canada, Scotland, the United States, and Wales, that rates of conviction have declined in sexual violence cases); see generally Jan Jordan, *Here We Go Round the Review-go-round: Rape Investigation and Prosecution – Are Things Getting Worse not Better?*, 17 J. SEXUAL AGGRESSION 234 (2011) (determining that rape reform efforts in England and New Zealand are more “rhetoric than reality”).

<sup>16</sup> HOLLY JOHNSON ET AL., VIOLENCE AGAINST WOMEN: AN INTERNATIONAL PERSPECTIVE 3 (2008). The authors, who comprised the management team for the International Violence against Women Survey (“IVAWS”), interviewed women in several countries about their experiences with male violence to gauge its extent and intensity.

<sup>17</sup> See, e.g., Samar el-Masri, *Challenges Facing CEDAW in the Middle East and North Africa*, 16 INT’L J. HUM. RTS. 931 (2012).

<sup>18</sup> HUMAN RIGHTS WATCH, “HERE, RAPE IS NORMAL”: A FIVE-POINT PLAN TO CURTAIL SEXUAL VIOLENCE IN SOMALIA 4 (2014), available at [http://www.hrw.org/sites/default/files/reports/somalia0214\\_ForUpload.pdf](http://www.hrw.org/sites/default/files/reports/somalia0214_ForUpload.pdf); see EMMA FULU ET AL., WHY DO SOME MEN USE VIOLENCE AGAINST WOMEN AND HOW CAN WE PREVENT IT? QUANTITATIVE FINDINGS FROM THE UNITED NATIONS MULTI-COUNTRY STUDY ON MEN AND VIOLENCE IN ASIA AND THE PACIFIC 2-3 (2013), available at <http://countryoffice.unfpa.org/timor-leste/drive/p4p-report.pdf> (finding that rape by men was “pervasive” across the region, was motivated by a sense of sexual entitlement, and resulted in no legal consequences for the vast majority of perpetrators).

systems fail to protect women from violence in a particular locale? Examining international human rights protocols may shed some light on this question. It should be noted, however, that nearly all of the crimes involving VAW set forth at the beginning of this article occurred in countries that are signatories to the international conventions designed to protect human rights, including women's human rights.

## II. INSUFFICIENCY OF INTERNATIONAL PROTECTIONS

Although the frequent occurrence and harmful consequences of violence against women is now widely acknowledged, no international treaty or convention specifically proscribes such violence. Moreover, as the noted international women's human rights scholar Alice Edwards observes, "[i]n particular, there is no single treaty *provision* explicitly prohibiting violence against women within any of the eight 'core' human rights treaties. . . ."<sup>19</sup>

Mid-twentieth century international human rights documents, including the U.N. Charter, focused on "equality" as the touchstone to protect women's rights. The Preamble to the U.N. Charter in 1945 emphasizes "the equal rights of men and women."<sup>20</sup> The Charter also uses anti-discrimination terminology in Article 1 as a means of promoting "fundamental freedoms for all without distinction as to race, sex, language, or religion."<sup>21</sup> The Commission on the Status of Women ("CSW"), which assumed the responsibility for drafting declarations and organizing international conferences for women, was established under the auspices of

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<sup>19</sup> Alice Edwards, *Violence against Women as Sex Discrimination: Judging the Jurisprudence of the United Nations Human Rights Treaty Bodies*, 18 TEX. J. WOMEN & L. 1, 3 (2008) (emphasis added). Edwards identifies these "core" human rights treaties as the International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR]; International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969); Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW]; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987); Convention on the Rights of the Child, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158, Annex, U.N. GAOR, 45th Sess., Supp. No. 49A (Vol. I), U.N. Doc. A/45/49, at 262 (July 1, 2003); and Convention on the Rights of Persons with Disabilities 2006, G.A. Res. 61/106, U.N. Doc. A/RES/61/106 (May 3, 2008).

<sup>20</sup> U.N. Charter pmb.

<sup>21</sup> U.N. Charter art. 1, para. 3.

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the U.N.<sup>22</sup>

*A. Universal Declaration of Human Rights*

In 1948, the Universal Declaration of Human Rights (“UDHR”) reaffirmed this anti-discrimination approach in Article 2, which states, “[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>23</sup> In the late 1940s, the UDHR’s explicit ban on sex discrimination in Article 2 may have been viewed as enlightened or perhaps even progressive.<sup>24</sup> Although Eleanor Roosevelt was the Chair of the Human Rights Commission’s drafting committee, of the eighteen members who comprised the Human Rights Commission, Hansa Mehta from India was the only other woman.<sup>25</sup> Although it does not mention specific categories, the UDHR’s Article 7 overtly embraces anti-discrimination in its pronouncement that “[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law.”<sup>26</sup> Furthermore, Article 7 stresses that, “[a]ll are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”<sup>27</sup>

The UDHR promotes equal rights between men and women in marriage by stating that it “shall be entered into only with the free and full consent of the intending spouses”<sup>28</sup> and in employment by pronouncing that “[e]veryone, without any discrimination, has the right to equal pay for equal work.”<sup>29</sup> The UDHR purports to advance gender equality while, at the same time, its terms under Article 25 provide that “[m]otherhood and childhood are entitled to special care and assistance.”<sup>30</sup> Conjoining these two special statuses prompted at least one notable commentator to observe that Article 25 portrays women in their mothering role “as particularly vulnerable individuals” while the family references that pervade the

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<sup>22</sup> Elizabeth Evatt, *Finding a Voice for Women’s Rights: The Early Days of CEDAW*, 34 *GEO. WASH. INT’L L. REV.* 515, 515-16 (2002).

<sup>23</sup> Universal Declaration of Human Rights 1948, G.A. Res. 217 (III) A, at 72, U.N. Doc. A/217(III) (Dec. 10, 1948) [hereinafter UDHR].

<sup>24</sup> MARY ANN GLENDON, *A WORLD MADE NEW* 174, 178 (1st ed. 2001).

<sup>25</sup> *Id.* at 35.

<sup>26</sup> UDHR, *supra* note 23, art. 7.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* art. 16(2).

<sup>29</sup> *Id.* art. 23(2).

<sup>30</sup> *Id.* art. 25(2).



document “reinforce the restricted image of women.”<sup>31</sup>

*B. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights*

The International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), which are the other two foundational human rights documents that constitute the International Bill of Human Rights, carry over the concept of anti-discrimination in the UDHR.<sup>32</sup> Article 26 of the ICCPR, in particular, tracks the equality and equal protection language of the UDHR.<sup>33</sup> Article 3 of each Covenant requires that “States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.”<sup>34</sup> The ICCPR is viewed as a “negative rights” instrument because its focus is largely on what states must refrain from doing to avoid individual political and civil rights violations; in contrast, the ICESCR, for the most part, imposes affirmative obligations on states to provide certain benefits to persons in their jurisdictions.<sup>35</sup>

Each of these Covenants has yet to experience a robust application to VAW, which has in turn interfered with basic human rights guarantees.<sup>36</sup>

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<sup>31</sup> Hilary Charlesworth, *The Mid-Life Crisis of the Universal Declaration of Human Rights*, 55 WASH. & LEE L. REV. 781, 783 (1998). However, this equal treatment/special treatment dichotomy foreshadows the divergence amongst second wave feminists about the way the law should deal with women’s rights issues.

<sup>32</sup> The ICCPR and ICESCR entered into force in 1976.

<sup>33</sup> ICCPR, *supra* note 19, art. 26. The only differences between the UDHR and the ICCPR versions are the inclusion of two additional words in the latter: “All *persons* are equal before the law and are entitled without any discrimination to *the* equal protection of the law.” *Id.* (emphasis added). The ICCPR also suggests a heightened obligation on the part of states parties that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” *Id.*

<sup>34</sup> *Id.* art. 3. The 2014 unveiling of the Gender-Based Violence Emergency Response and Protection Initiative in cooperation with the Avon Foundation and Vital Voices, a non-profit organization founded by Hillary Clinton, is one example. See William J. Burns, Deputy Secretary of State, *Remarks at the Launch of the Gender-Based Violence Emergency Response and Protection Initiative*, U.S. DEP’T. OF STATE (Mar. 20, 2014), <http://www.state.gov/s/d/2014/223777.htm>.

<sup>35</sup> See HENRY J. STEINER ET AL., INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS 513-14 (3d ed. 2008).

<sup>36</sup> FLEUR VAN LEEUWEN, WOMEN’S RIGHTS ARE HUMAN RIGHTS: THE PRACTICE OF THE UNITED NATIONS HUMAN RIGHTS COMMITTEE AND THE COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS 92 (2010). In Chapter 4 titled *Physical Violence against Women and*

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Certainly, this is true when VAW occurs to victims who are in the custody of the State or in armed conflict scenarios.<sup>37</sup> Some scholars make a strong case that the equality and non-discrimination provisions in the International Bill of Rights calls upon states to protect women from violence, even by private actors.<sup>38</sup> But protecting women from violence regardless of the context in which it occurred did not seem to be a pressing priority for the international community generally, or for the U.N. specifically, in the period immediately following the ratification of the ICCPR and ICESCR.<sup>39</sup>

Sections of a number of other treaties, many of which were ratified prior to the ICCPR and the ICESCR, do address discrete topics that may have an impact on women in specific circumstances.<sup>40</sup> But it was increasingly apparent to many interested observers that a specialized women's convention was needed to ensure women's equality and liberty in ways that the International Bill of Rights and other treaty instruments had failed to do.<sup>41</sup>

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

The Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") occupies a critical place in advancing

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*Human Rights, The Human Rights Committee*, the author concludes that the Committee has addressed VAW in various contexts but it needs to do more to be in full compliance with expectations generated by the 1993 World Human Rights Conference. *Id.* at 143. More important, the Committee has not adequately linked "the manifestations of violence against women to discrimination of women in states parties. . . ." *Id.*

<sup>37</sup> *Id.* at 93.

<sup>38</sup> See, e.g., ALICE EDWARDS, *VIOLENCE AGAINST WOMEN UNDER INTERNATIONAL HUMAN RIGHTS LAW* 166 (1st ed. 2011); Joan Fitzpatrick, *International Norms and Violence Against Women*, in *HUMAN RIGHTS OF WOMEN* 532, 534-35 (Rebecca Cook ed., 1994).

<sup>39</sup> Bynes & Bath, *supra* note 8, at 518.

<sup>40</sup> These instruments include: (1) the Convention Concerning Discrimination in Respect of Employment and Occupation, *adopted* June 25, 1958, 362 U.N.T.S. 31 (entered into force June 15, 1960); (2) the Convention Against Discrimination in Education, *adopted* Dec. 14, 1960, 429 U.N.T.S. 93 (entered into force May 22, 1962); (3) the Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, *adopted* June 29, 1951, 165 U.N.T.S. 303 (entered into force May 23, 1953); (4) the Slavery Convention, *opened for signature* Dec. 7, 1953, 212 U.N.T.S. 17 (entered into force July 7, 1955); (5) the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *opened for signature* Mar. 21, 1950, 96 U.N.T.S. 271 (entered into force July 25, 1951); (6) the Convention on the Nationality of Married Women, *done* Feb. 20, 1957, 309 U.N.T.S. 65 (entered into force Aug. 11, 1958); and (7) the Declaration on the Protection of Women and Children in Emergency Armed Conflict, G.A. Res. 3318 (XXIX), U.N. Doc. A/9631, at 146 (Dec. 14, 1974).

<sup>41</sup> Evatt, *supra* note 22, at 516.

women's equality. It contains the first clear-cut pronouncement that women's rights are human rights and spells out the duties of states to protect and promote these rights.<sup>42</sup> CEDAW, as its title suggests, focuses on discrimination against women, which is defined under Article 1 as

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>43</sup>

The goal of CEDAW is clearly stated in Article 2, which conveys a straightforward condemnation of "discrimination against women in all its forms" and which directs all States "to pursue by all appropriate means and without delay a policy of elimination of discrimination against women. . . ."<sup>44</sup>

Articles 2 through 5 amplify the Convention's requirements by directing states parties to take "all appropriate measures" to guarantee women's equality with men.<sup>45</sup> These measures include the adoption of affirmative, temporary remedial steps if necessary under Article 4 and the modification of patterns of conduct that subjugate women and perpetuate gender stereotypes of women under Article 5.<sup>46</sup> States parties are also directed in Article 6 to address another aspect of how women are exploited: sex-trafficking and the use of women for purposes of prostitution. Once again, states are mandated to take "all appropriate measures, including legislation" to address this issue. This article, it should be noted, represents one CEDAW provision that is directly linked to gender-based violence.<sup>47</sup>

The remaining substantive areas addressed by CEDAW serve as a directive to states to, again, "take all appropriate measures" to end discrimination against women in the following areas of political and public life<sup>48</sup>: the ability to represent the government internationally;<sup>49</sup> education;<sup>50</sup> employment;<sup>51</sup> health care, including family planning;<sup>52</sup> economic and

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<sup>42</sup> Elizabeth M. Misiaveg, *Important Steps and Instructive Models in the Fight to Eliminate Violence Against Women*, 52 WASH. & LEE L. REV. 1109, 1118 (1995).

<sup>43</sup> CEDAW, *supra* note 19.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* arts. 2-5.

<sup>46</sup> *Id.* arts. 4-5.

<sup>47</sup> *Id.* art. 6.

<sup>48</sup> *Id.* art. 7.

<sup>49</sup> *Id.* art. 8.

<sup>50</sup> *Id.* art. 10.

<sup>51</sup> *Id.* art. 11.

social benefits;<sup>53</sup> the choice of residence and domicile;<sup>54</sup> and marriage and family relations.<sup>55</sup>

Under the dictates of Article 9, states parties *shall grant* women equal rights “to acquire, change or retain their nationality.”<sup>56</sup> Similar language in Article 15 directs that states parties *shall accord* women “equality with men before the law” in terms of legal status and affairs, the right to contract, and a choice of domicile.<sup>57</sup> In a similar vein, states parties are required to consider the unique circumstances of rural women, particularly in the areas of development.<sup>58</sup>

Over time, “it is CEDAW that women activists around the globe have seized as a vehicle for demanding equal rights now.”<sup>59</sup> One immediate as well as longer-term benefit of CEDAW was the creation of international networks to support and promote CEDAW. One such organization is the International Women’s Rights Action Watch (“IWRAP”), whose mission is to assist with monitoring, research, and networking.<sup>60</sup> Moreover, ratification of CEDAW is viewed as an indicator of a country’s dedication to advancing women’s human rights.<sup>61</sup> The United States is among a group of only seven countries that have not ratified CEDAW; the women in the remaining nations are entitled to the protections of CEDAW.<sup>62</sup>

However, some critics see inadequacies in CEDAW. For example, some feminist theorists have questioned the fact that the Convention’s perceived strong anti-discrimination focus tends to displace a broader vision of the nuanced nature of women’s lives.<sup>63</sup> A number of states parties issued

<sup>52</sup> *Id.* art. 12.

<sup>53</sup> *Id.* art. 13.

<sup>54</sup> *Id.* art. 15(4).

<sup>55</sup> *Id.* art. 16.

<sup>56</sup> *Id.* art. 9(1).

<sup>57</sup> *Id.* art. 15.

<sup>58</sup> *Id.* art. 14.

<sup>59</sup> SUSAN DELLER ROSS, *WOMEN’S HUMAN RIGHTS* 11 (2008).

<sup>60</sup> Elisabeth Friedman, *Women’s Human Rights: The Emergence of a Movement*, in *WOMEN’S RIGHTS, HUMAN RIGHTS* 24 (Julie Peters & Andrea Wolper eds., 1995).

<sup>61</sup> See *infra* notes 286-291 and accompanying text; see also Lisa Baldez, Letter to the Editor, *U.S. Drops the Ball on Women’s Rights*, CNN, Mar. 8, 2013, <http://www.cnn.com/2013/03/08/opinion/baldez-womens-equality-treaty>; Kelsey L. Campbell, *To Prove American Commitment to Women’s Equality, Congress Should Ratify CEDAW*, HUFFINGTON POST BLOG (Aug. 18, 2014, 5:59 AM), [http://www.huffingtonpost.com/kelsey-l-campbell/to-prove-american-commitm\\_b\\_5505786.html](http://www.huffingtonpost.com/kelsey-l-campbell/to-prove-american-commitm_b_5505786.html).

<sup>62</sup> The other six countries are Sudan, South Sudan, Somalia, Iran, and two small Pacific Island nations (Palau and Tonga). U.N. Treaty Collection, Status, Convention on the Elimination of All Forms of Discrimination against Women (June 10, 2014), [https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-8&chapter=4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&lang=en).

<sup>63</sup> See Hanna Beate Schöpp-Schilling, *Reflections on a General Recommendation of*

reservations, understandings, and declarations (“RUDs”), which resulted in CEDAW being the treaty with the most reservations to date.<sup>64</sup> In a few countries, there was an impression that Articles 5 and 16 represented a denunciation of religious beliefs, cultural traditions, and Sharia law.<sup>65</sup>

In addition, the absence of an individual complaint mechanism in the original CEDAW is seen as problematic.<sup>66</sup> The lack of effective enforcement mechanisms has plagued CEDAW to a greater extent than other treaties.<sup>67</sup> The “take all appropriate measures” language is vague and reminiscent of the progressive realization language in the ICESCR.<sup>68</sup>

One would assume that a specialized women’s convention would specifically address gender violence due to its ubiquitous nature and the fact that heightened prevention, as well as protection from violence, was an emerging focus on a number of countries’ legislative agendas. Nevertheless, CEDAW conspicuously refrains from dealing directly with the issue of violence against women.<sup>69</sup>

Various explanations have been offered for this exclusion. One involves timing. According to the international women’s rights scholars who edited and wrote sections of a recent, comprehensive CEDAW treatise, at the time CEDAW was drafted, “violence against women was not yet recognized as widespread, structural, and serious, requiring effective response from States Parties as a matter of law and policy.”<sup>70</sup> In addition, there was uncertainty about the extent to which a state could be held accountable for the conduct of private actors.<sup>71</sup> Since that time, the CEDAW Committee has made it

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*Article 4(1) of the Convention on the Elimination of All Forms of Discrimination Against Women*, in TEMPORARY SPECIAL MEASURES: ACCELERATING DE FACTO EQUALITY OF WOMEN UNDER ARTICLE 4(1) UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 15, 26 (Ineke Boerefijn et al. eds., 2003).

<sup>64</sup> Jennifer Riddle, *Making CEDAW Universal: A Critique of CEDAW’s Reservation Regime under Article 28 and the Effectiveness of the Reporting Process*, 34 GEO. WASH. INT’L L. REV. 605, 606 (2002).

<sup>65</sup> For example, Libya, Egypt, and Bangladesh voiced such objections. Evatt, *supra* note 22, at 518 (citing ELISABETH LIJNZAAD, RESERVATIONS TO UN-HUMAN RIGHTS TREATIES: RATIFY AND RUIN? 298, 320-22 (1994)).

<sup>66</sup> *Id.* at 518.

<sup>67</sup> Alexandra R. Harrington, *Don’t Mind the Gap: The Rise of Individual Complaint Mechanisms within International Human Rights Treaties*, 22 DUKE J. COMP. & INT’L L. 153, 167-68 (2012).

<sup>68</sup> ICESCR, *supra* note 19, art. 2.

<sup>69</sup> See CEDAW, *supra* note 19.

<sup>70</sup> Christine Chinkin & Martha A. Freeman, *Introduction to THE U.N. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: A COMMENTARY* 1, 17 (Marsha A. Freeman et al. eds., 2012).

<sup>71</sup> CHRISTINE M. VENTER, INTERNATIONAL WOMEN’S RIGHTS, EQUALITY, AND JUSTICE 144 (2012).

clear that states do bear responsibility for VAW whether perpetrators engage in VAW in a public or private capacity.

*D. CEDAW Women's Committee General Recommendations*

A decade after CEDAW was opened for ratification, its Women's Committee issued General Recommendation No. 12, which stated that VAW contravened specific provisions in the Convention.<sup>72</sup> In 1992, the Committee issued General Recommendation No. 19 with its specific focus on "gender-based violence," which the Committee viewed as something that, among other injustices, "impair[ed] or nullifie[d] the enjoyment by women of human rights and fundamental freedoms under general international law" as defined under Article 1 of CEDAW.<sup>73</sup>

This Recommendation, issued only three years after the original, was necessary according to the Committee. States parties, as evidenced by the reports submitted, did not fully appreciate the connections between discrimination against women and gender-based violence or the interrelationship of VAW and violations of human rights.<sup>74</sup> NGOs, including IRAW and the International League for Human Rights, contributed to the drafting of General Recommendation No. 19.<sup>75</sup>

General Recommendation No. 19 was significant because it defined "gender-based violence against women in a holistic way that encompass[e]d all its diverse forms and sites."<sup>76</sup> Not only was VAW now recognized as a violation of CEDAW's overall equality guarantees, a connection was also made between violence and women's entitlement to human rights and fundamental freedoms.<sup>77</sup> Another important feature of General Recommendation No. 19 was the determination that states were responsible for public and private acts of violence "if they fail[ed] to act with due diligence to prevent violations of rights, or to investigate and punish acts of

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<sup>72</sup> Comm. on the Elimination of Discrimination against Women, General Recommendation No. 12: Violence against Women, 8th Sess., U.N. Doc. HRC/GEN/1/Rev.7 (May 12, 2004) [hereinafter General Recommendation No. 12].

<sup>73</sup> Comm. on the Elimination of Discrimination against Women, General Recommendation No. 19: Violence against Women, 11th Sess., U.N. Doc. A/47/38, at 1 (Feb. 1, 1992).

<sup>74</sup> *Id.*

<sup>75</sup> Marsha A. Freeman, *The Committee on the Elimination of Discrimination against Women and the Role of Civil Society in Implementing International Human Rights Norms*, 16 *NEW ENG. J. INT'L. & COMP. L.* 25, 39 (2010).

<sup>76</sup> Christine Chinkin, *Violence against Women*, in *THE U.N. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN* 443, 447 (Marsha A. Freeman et al. eds., 2012).

<sup>77</sup> *Id.*

violence, and to provide compensation.”<sup>78</sup> After addressing the VAW issue directly, the U.N. was poised to make a more definitive assertion about the eradication of violence against women.

#### *E. Declaration on the Elimination of Violence Against Women*

The 1993 World Conference on Human Rights in Vienna recognized VAW as a human rights issue by including a statement in its final report regarding “the importance of working toward the elimination of violence against women in public and private life. . . .”<sup>79</sup> Six months later, in December 1993, the U.N. General Assembly approved the Declaration on the Elimination of Violence Against Women (“DEVAW”).<sup>80</sup> This statement represented a heightened awareness by the international community about power imbalances as a fundamental cause of VAW. Its preamble emphasized the General Assembly’s recognition that

[v]iolence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men. . . .<sup>81</sup>

DEVAW also provided a broad definition of violence against women that remains viable today.<sup>82</sup> Under the expanded definition, States are obliged

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<sup>78</sup> General Recommendation No. 12, *supra* note 72.

<sup>79</sup> World Conference on Human Rights, June 14-25, 1993, *Adoption of the Final Documents and Report of the Conference*, U.N. Doc. A/CONF.157/DC/1/Add.1, at 23 (June 24, 1993).

<sup>80</sup> Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Feb. 23, 1994) [hereinafter DEVAW].

<sup>81</sup> *Id.* pmb., cl. 6. One commentator has noted, “[t]he DEVAW provides a pioneering example of this work in the human rights field in its attempt to relocate antidiscrimination narratives in a jurisprudence of power rather than difference.” Dianne Otto, *Rethinking the “Universality” of Human Rights Law*, 29 COLUM. HUM. RTS. L. REV. 1, 26-27 (1997).

<sup>82</sup> DEVAW, *supra* note 80, arts.1-2. DEVAW provides:

Article 1 For the purposes of this Declaration, the term “violence against women” means any act of gender-based violence 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 in private life.

Article 2 Violence against women shall be understood to encompass, but not be limited to, the following: (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional

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to “exercise due diligence” in the prevention, investigation, and prosecution of acts of violence against women, whether such acts are “perpetrated by the State or by private persons.”<sup>83</sup> This effectively eliminated the public/private distinction in terms of state responsibility and imposed a clear, all-encompassing “due diligence” requirement.<sup>84</sup>

Although a landmark pronouncement in many respects, DEVAW’s status as a “Declaration” means that it is not legally binding.<sup>85</sup> DEVAW also fails to clearly condemn cultural and religious justifications for gender violence and is unwilling to make an explicit statement that violence against women is a human-rights violation.<sup>86</sup> Nevertheless, the U.N. signaled additional movement forward shortly after DEVAW was issued by appointing the first Special Rapporteur on Violence against Women to investigate and assess the ways that violence affected various aspects of women’s lives.<sup>87</sup>

*F. Special Rapporteurs*

After her 1994 appointment, Radhika Coomaraswamy, the first of three Special Rapporteurs<sup>88</sup> on violence against women, began working on her

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practices harmful to women, non-spousal violence and violence related to exploitation; (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

<sup>83</sup> *Id.* art 4(c).

<sup>84</sup> *Id.* In the third chapter of the 2013 report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Ms. Rashida Manjoo, examines “State Responsibility for Eliminating Violence against Women.” Special Rapporteur on Violence against Women, Its Causes and Consequences, *Rep. of the Special Rapporteur on Violence against Women, its Causes and Consequences*, Hum. Rts. Council, U.N. Doc. A/HR/C/23/49, at 4 (May 14, 2013) (by Rashida Manjoo).

<sup>85</sup> Rebecca Adams, *Violence against Women and International Law: The Fundamental Right to State Protection from Domestic Violence*, 20 N.Y. INT’L L. REV. 57, 118 (2007). One scholar concludes that DEVAW’s status as a declaration, while important, is perceived as demonstrating “the lack of seriousness with which the international community continues to treat violence against women; it continues to be tolerated, both legally and socially, in a way that other more traditional human rights violations are not.” Serena Parekh, *Gender and Human Rights*, in THE ASHGATE RESEARCH COMPANION TO ETHICS AND INTERNATIONAL RELATIONS 233, 239 (Patrick Hayden ed., 2009).

<sup>86</sup> EDWARDS, *supra* note 38, at 22. Although DEVAW does reference the fact that custom, tradition and religious consideration should not be invoked by states to alleviate their responsibility to ending violence against women, this is viewed as an expectation rather than a dictate and there is no specific mention of VAW as a human rights violation. *Id.*

<sup>87</sup> United Nations Comm. on Human Rights Res. 1994/45, 50th Sess., U.N. Doc. E/CN.4/RES (Mar. 4, 1994).

<sup>88</sup> Radhika Coomaraswamy from Sri Lanka served until 2003. The subsequent



directive to

(a) Seek and receive information on violence against women, its causes and its consequences from Governments, treaty bodies, specialized agencies, other special rapporteurs responsible for various human rights questions and intergovernmental and non-governmental organizations, including women's organizations, and to respond effectively to such information;

(b) Recommend measures, ways and means, at the national, regional and international levels, to eliminate violence against women and its causes, and to remedy its consequences;

(c) Work closely with other special rapporteurs, special representatives, working groups and independent experts of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities and with the treaty bodies, taking into account the Commission's request that they regularly and systematically include in their reports available information on human rights violations affecting women, and cooperate closely with the Commission on the Status of Women in the discharge of its functions.<sup>89</sup>

Her work, and that of her successors, was recorded in annual and other periodic reports to the General Assembly after fact-finding trips were taken by Special Rapporteurs to countries around the world. Deserving particular note is a 2009 in-depth review of the Special Rapporteurs' first fifteen years of service.<sup>90</sup>

Although the mandate of a Special Rapporteur allows for a more broad-based, flexible and unconstrained inquiry into topics of concern, the system is hardly foolproof. States are not required to cooperate with the Rapporteur's efforts and reports and statements issued are categorized as "soft law" instruments.<sup>91</sup> Nevertheless, Special Rapporteurs can play a role

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Rapporteurs are Dr. Yakin Ertürk of Turkey (2003 to 2009) and Ms. Rashida Manjoo of South Africa. A critical review of the Special Rapporteurs' first fifteen years of service is outlined in an identically titled document. Special Rapporteur on Violence against Women, Its Causes and Consequences, *15 Years of the United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences (1994-2009) – A Critical Review*, Hum. Rts. Council, A/HRC/11/6/Add.5 (May 27, 2009) (by Dr. Yakin Ertürk) [hereinafter Special Rapporteur, *A Critical Review*].

<sup>89</sup> Comm. for Human Rights Res. 1994/45, 56th mtg., A/1994/45, art. 7(a)-(c) (Mar. 4, 1994), available at [http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN\\_4-RES-1994-45.doc](http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-1994-45.doc).

<sup>90</sup> Special Rapporteur, *A Critical Review*, *supra* note 88.

<sup>91</sup> EDWARDS, *supra* note 38, at 9.

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in shaping soft law norms and their work is viewed as persuasive.<sup>92</sup>

*G. Beijing Conference and the Beijing Platform for Action*

The year following Coomaraswamy's appointment, the U.N. convened the 1995 Fourth World Conference on Women, which was held in Beijing.<sup>93</sup> The Conference produced the Beijing Declaration and the Beijing Platform for Action ("BPFA").<sup>94</sup> Both the Beijing Declaration and BPFA were the result of compromise among delegates whose perspectives varied dramatically.<sup>95</sup> The BPFA took a strong stance against gender violence and, as one commentator noted, "the document's relatively novel recognition of the international significance of violence against women represented an advance in that area."<sup>96</sup>

The BPFA relied initially on the definition of violence set forth in DEVAW; however, it also raised attention to specific situations where women were detrimentally affected by violence, such as in the context of armed conflict.<sup>97</sup> Perhaps due to its following so soon after the 1994 Cairo Population Conference, which focused on reproductive health, the BPFA clarified that acts of violence against women also included "forced sterilization and forced abortion, coercive/forced use of contraceptives, prenatal sex selection and female infanticide."<sup>98</sup> Finally, the BPFA

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<sup>92</sup> See *id.*; see also CTR. FOR INT'L GOVERNANCE, LAW SCH. UNIV. OF LEEDS, THE ROLE OF THE SPECIAL RAPPORTEURS (2010), available at <http://www.law.leeds.ac.uk/assets/files/research/cfig/special-rapporteurs-workshop-report.pdf>.

<sup>93</sup> The Beijing Declaration and the Beijing Platform for Action ("BPFA") were adopted by consensus on September 15, 1995. Women's Conference, Fourth World Conference on Women (1995) (May 23, 1997), <http://www.un.org/geninfo/bp/women.html>.

<sup>94</sup> Fourth World Conference on Women, Sept. 4-15, 1995, *Beijing Declaration and Platform for Action*, U.N. Doc. A/CONF.177/20, Annex II (Sept. 15, 1995) [hereinafter BPFA].

<sup>95</sup> Margaret Plattner, *The Status of Women under International Human Rights Law and the 1995 U.N. World Conference on Women, Beijing, China*, 84 KY. L.J. 1249, 1271-72 (1995-1996). The conciliatory nature of the interactions among participants may have been due in part to the fact that some controversial topics had already been heartily debated at the 1994 Cairo Population Conference. *Id.* at 1271 (citing Rone Tempest, *Fight Brewed Before Beijing Conference, But It Never Percolated; Women: Legwork on Controversial Issues at Cairo Gathering Paves Way for Pragmatic China Talks*, L.A. TIMES, Sept. 9, 1995, at 18).

<sup>96</sup> Jennifer L. Ulrich, *Confronting Gender-based Violence with International Instruments: Is a Solution to the Pandemic Within Reach?*, 7 IND. J. GLOBAL LEGAL STUD. 629, 650 (2000). This article contains an excellent summary of the perceived successes and failures of the conference. *Id.* at 649-51.

<sup>97</sup> BPFA, *supra* note 94. The BPFA identifies such crimes as "murder, systematic rape, sexual slavery and forced pregnancy" perpetrated against women as possible outcomes in armed conflict scenarios. *Id.*

<sup>98</sup> *Id.* art. 115.

recognized that certain women, such as those who are destitute, displaced, elderly, members of minority groups, or have disabilities, were “particularly vulnerable to violence.”<sup>99</sup>

The BPFA encouraged the adoption of integrated measures to prevent and eliminate violence and included specific, goal-oriented steps to be taken by governments, NGOs, educational institutions, the public and private sectors, and the mass media.<sup>100</sup> While the overly conciliatory nature of the Conference proceedings prompted cries from some feminists about a lost opportunity to make an even stronger statement about women’s human rights, the consensus that was achieved on a number of previously unaddressed or divisive topics was perceived as one of the BPFA’s strengths.<sup>101</sup> Nearly two decades later, it is still cited favorably for its strategic approach and its call for concrete government action to deal with issues of greatest concern to women.<sup>102</sup>

The U.N. has conducted three follow-up assessments, in 2000, 2005, and 2010, of the Beijing Declaration and Platform for Action.<sup>103</sup> The Beijing +5 review exhorted States to “treat all forms of violence against women and girls of all ages as a criminal offence punishable by law, including violence based on all forms of discrimination.”<sup>104</sup> The 2005 appraisal examined the national level implementation; while at the fifteen-year mark, the General Assembly more deliberately linked the enhancement of women’s rights set forth in the BPFA with international development goals.<sup>105</sup>

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<sup>99</sup> *Id.* art. 116.

<sup>100</sup> *See generally id.*

<sup>101</sup> *See Plattner, supra* note 95, at 1271-72.

<sup>102</sup> *See generally* Linda Tarr-Whelan, *The Impact of the Beijing Platform for Action: 1995-2010*, 37 A.B.A. HUM. RTS. MAG. 2 (2010); Nira Yuval-Davis, *Intersectionality and Feminist Politics*, 13 EUR. J. WOMEN’S STUD. 193 (2006); U.N. Econ. and Soc. Comm’n for Asia and the Pacific, *Implementation Of The Beijing Platform For Action In Asia And The Pacific: 20 Year Review* (2014), [www.unescapsdd.org/files/documents/Beijingplus20\\_review\\_process.doc](http://www.unescapsdd.org/files/documents/Beijingplus20_review_process.doc) (last visited Oct. 7, 2014).

<sup>103</sup> U.N. Secretary-General, *Review and Appraisal of the Implementation of the Beijing Platform for Action*, U.N. Doc. E/CN.6/2000/PC/2 (Jan. 19, 2000); U.N. Comm’n on the Status of Women, *Economic and Social Council, Rep. on Its 54th Sess.*, Mar. 1-12, 2010, U.N. Doc. E/CN.6/2010/11 (May 6, 2010); U.N. Comm’n on the Status of Women, *Measures Taken and Progress Achieved in the Follow-up to and Implementation of the Fourth World Conference on Women and to the Twenty-third Special Session of the General Assembly, with an Assessment of Progress Made on Mainstreaming a Gender Perspective within the United Nations System*, 49th Sess., Feb. 28-Mar. 11, 2005, U.N. Doc. E/CN.6/2005/3 (Dec. 10, 2004) [hereinafter U.N. Comm’n on the Status of Women, *Measures Taken and Progress Achieved*].

<sup>104</sup> G.A. Res. S-23/3, ¶ 66(c), U.N. Doc. A/RES/S-23/3 (Nov. 16, 2000).

<sup>105</sup> G.A. Res. 64/187, U.N. Doc. A/RES/664/187 (Feb. 1, 2010); U.N. Comm’n on the Status of Women, *Measures Taken and Progress Achieved*, *supra* note 103; *see infra* note

*H. CEDAW Optional Protocol*

In 2000, an Optional Protocol was drafted to accompany CEDAW, which had been implemented twenty years earlier.<sup>106</sup> Similar to the structure of the ICCPR, this separate treaty contains an individual complaints mechanism and requires independent adoption by CEDAW states parties.<sup>107</sup> The Committee on the Elimination of Discrimination against Women, which is composed of twenty-three expert members, is charged with the responsibility to receive complaints from those who claim that their Convention rights have been violated.<sup>108</sup> The addition of an individual complaints mechanism is a marked improvement to the original Convention; however, only three-fourths of the parties to CEDAW have ratified the Optional Protocol.<sup>109</sup>

In the 2003 case of *A.T. v Hungary*, the Committee expressed concerns about the absence of a legislative scheme to combat domestic violence, the lack of effective remedies, and the state's overall failure to protect the complainant from domestic violence.<sup>110</sup> Two years later, the Committee took a stronger stance with respect to state responsibility in two cases brought against Austria where the women subjected to abuse had been murdered by their husbands.<sup>111</sup>

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132 (MDG dealing with women).

<sup>106</sup> Optional Protocol to the Convention on the Elimination of Discrimination against Women, G.A. Res. 54/4, U.N. Doc. A/RES/54/4 (Dec. 22, 2000) [hereinafter *Optional Protocol*].

<sup>107</sup> *Id.*

<sup>108</sup> Optional Protocol, *supra* note 106, Annex, art. 2.

<sup>109</sup> See the list of countries who have ratified the treaty at U.N. Treaty Collection, Status, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Oct. 29, 2014), [https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-8&chapter=4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&lang=en); see also Elizabeth Sepper, *Confronting the "Sacred and Unchangeable": The Obligation to Modify Cultural Patterns under the Women's Discrimination Theory*, 30 U. PA. J. INT'L L. 585, 635 (2008).

<sup>110</sup> As noted by the Committee, Austria had enacted domestic violence legislation but problems with enforcement and prosecution continued. U.N. Comm. on the Elimination of Discrimination against Women, *Views of the Comm. on the Elimination of Discrimination against Women under Article 7, Paragraph 3 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, A.T. v. Hungary*, U.N. Doc. CEDAW/C/32/D/2/2003 (Jan. 26, 2005), available at <http://www.un.org/womenwatch/daw/cedaw/protocol/decisions-views/CEDAW%20Decision%20on%20AT%20vs%20Hungary%20English.pdf>.

<sup>111</sup> U.N. Comm. on the Elimination of Discrimination against Women, *Yildirim v. Austria*, U.N. Doc. CEDAW/C/39/D/6/2005 (Oct. 1, 2007), available at [www.un.org/womenwatch/daw/cedaw/protocol/dec-views.htm](http://www.un.org/womenwatch/daw/cedaw/protocol/dec-views.htm) (follow "English" hyperlink under "Fatma Yildirim (deceased) v/ Austria, 5/2005"); U.N. Comm. on the Elimination of Discrimination against Women, *Goekce v. Austria*, U.N. Doc. CEDAW/C/39/D/5/2005 (Aug. 6, 2007),

To date, relatively few individual complaints have been filed under the Optional Protocol, in part because many women are not in a position to bring a complaint due to illiteracy, fear of retribution from family and friends, poverty, or economic dependency.<sup>112</sup> Additionally, several of the CEDAW provisions provide for rights that could be characterized as economic, social, or cultural rights, which are sometimes viewed as non-justiciable.<sup>113</sup> The issue of who can file a complaint, which was controversial throughout the Optional Protocol drafting process, is resolved by allowing either an individual or a third party to file a complaint; however, the real name of the complainant must be used.<sup>114</sup> Finally, as one commentator observed, the Protocol did not adequately involve the women's movement in its formulation, which may account for its being less than user-friendly.<sup>115</sup>

### *I. United Nations Security Council and the Secretary-General*

Security Council Resolution 1325, which was enacted in the year 2000, called on all parties involved in situations of armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse.<sup>116</sup> *Ad hoc* international criminal tribunals recognized sexual violence as a crime of impunity.<sup>117</sup> When the International Criminal Court was established with the ratification of the Rome Statute in 2003, its jurisdiction included gender-related crimes and crimes of sexual violence.<sup>118</sup> Under its defined terms, rape could

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available at [www.un.org/womenwatch/daw/cedaw/protocol/dec-views.htm](http://www.un.org/womenwatch/daw/cedaw/protocol/dec-views.htm) (follow "English" hyperlink under "Şahide Goekce (deceased) v. Austria, 5/2005").

<sup>112</sup> Heidi Gilchrist, *The Optional Protocol to the Women's Convention: An Argument for Ratification*, 39 COLUM. J. TRANSNAT'L L. 763, 769 (2001).

<sup>113</sup> *Bringing a Claim under the Convention to End All Forms of Discrimination Against Women*, ONT. WOMEN'S JUSTICE NETWORK (Mar. 2009), [http://owjn.org/owjn\\_2009/legal-information/international-law/280-bringing-a-claim-under-the-convention-on-the-elimination-of-all-forms-of-discrimination-against-women](http://owjn.org/owjn_2009/legal-information/international-law/280-bringing-a-claim-under-the-convention-on-the-elimination-of-all-forms-of-discrimination-against-women).

<sup>114</sup> *Id.*

<sup>115</sup> Felipe Gomez Isa, *The Optional Protocol for the Convention to End All Forms of Discrimination against Women: Strengthening the Protection Mechanisms of Women's Human Rights*, 20 ARIZ. J. INT'L & COMP. L. 291, 320 (2003).

<sup>116</sup> S.C. Res. 1325, ¶ 10, U.N. Doc. S/RES/1325 (Oct. 31, 2000).

<sup>117</sup> U.N. Dep't of Peacekeeping Operations, Review of the Sexual Violence Elements of the Judgments of the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, and the Special Court for Sierra Leone in the Light of Security Council Resolution 1820 (2009), available at [http://www.unrol.org/files/32914\\_Review%20of%20the%20Sexual%20Violence%20Elements%20in%20the%20Light%20of%20the%20Security-Council%20resolution%201820.pdf](http://www.unrol.org/files/32914_Review%20of%20the%20Sexual%20Violence%20Elements%20in%20the%20Light%20of%20the%20Security-Council%20resolution%201820.pdf).

<sup>118</sup> Rome Statute of the International Criminal Court art. 7(1)(g)-(h), opened for signature July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002). There are

constitute “a war crime, a crime against humanity or a constitutive act with respect to genocide or torture.”<sup>119</sup>

The Security Council’s Resolution 1820 in 2008 acknowledged the relationship between the methodical use of targeted sexual violence as an instrument of conflict and the maintenance of international peace and security.<sup>120</sup> The Security Council further pledged to evaluate the appropriate steps to stop such atrocities and to penalize the wrongdoers.<sup>121</sup>

Almost exactly twenty-five years after CEDAW was entered into force, the U.N. Secretary-General released his first in-depth study in 2006 on violence against women.<sup>122</sup> The U.N. General Assembly responded a few months later with its own resolution to “intensify” the efforts to eradicate violence against women.<sup>123</sup> Four subsequent similar resolutions suggested that the U.N., at least publicly, was taking its commitment to the goal of eliminating gender violence seriously.<sup>124</sup>

### *J. United Nations Agencies*

In addition to the issuance of formal decrees and recommendations, a number of steps have been taken by international organizations, particularly U.N. agencies, to prevent VAW and provide services to its victims. The most prominent agency involved in anti-violence work against women and

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differences of opinion about the efficacy of the ICC and its handling of gender crimes. According to Catharine MacKinnon, “[p]ursuing the gender crimes the Rome Statute defines, wherever they happen of concern to the international community, presents the chance to develop grounded procedures and reality-based substantive doctrines that respond to the practical imperatives for their effective prosecution.” Catharine A. MacKinnon, *Creating International Law: Gender as Leading Edge*, 36 *HARV. J.L. & GENDER* 105, 120 (2013). *But see* Solange Mouthaan, *Victim Participation at the ICC for Victims of Gender-based Crimes: A Conflict of Interest?*, 21 *CARDOZO J. INT’L & COMP. L.* 619, 634 (2013) (expressing concern that “[t]he current system of victim participation in the ICC does not meet the expectations of victims of gender-based crimes”).

<sup>119</sup> Mouthaan, *supra* note 118, at 637.

<sup>120</sup> S.C. Res. 1820, U.N. Doc. S/RES/1820 (June 19, 2008).

<sup>121</sup> *Id.* ¶ 15.

<sup>122</sup> U.N. Secretary-General, *In-Depth Study on All Forms of Violence Against Women*, U.N. Doc. A/61/122/Add.1 (July 6, 2006), available at [www.un.org/womenwatch/daw/vaw/violenceagainstwomenstudydoc.pdf](http://www.un.org/womenwatch/daw/vaw/violenceagainstwomenstudydoc.pdf).

<sup>123</sup> Intensification of Efforts to Eliminate All Forms of Violence Against Women, G.A. Res. 63/155, U.N. Doc. A/RES/63/155, at 1 (Dec. 18, 2008), available at [www.un.org/womenwatch/daw/documents/ga63.htm](http://www.un.org/womenwatch/daw/documents/ga63.htm) (“Recalling its resolutions 61/143 of 19 December 2006 and 62/133 of 18 December 2007, and all its previous resolutions on the elimination of violence against women.”).

<sup>124</sup> G.A. Res. 61/143, U.N. Doc. A/RES/61/143 (Dec. 19, 2006); G.A. Res. 62/133, U.N. Doc. A/RES/62/133 (Dec. 18, 2007); G.A. Res. 63/155, U.N. Doc. A/RES/63/155 (Dec. 18, 2008); G.A. Res. 64/137, U.N. Doc. A/RES/64/137 (Dec. 18, 2009).

girls is the U.N. Entity for Gender Equality and the Empowerment of Women (“UN Women”).<sup>125</sup> At least thirty entities operating under the auspices of the U.N. have engaged in projects that address some aspect of violence against women.<sup>126</sup>

Multiple campaigns based on joint U.N. agency efforts have been launched to combat VAW, both generally and in specific circumstances. In 2008, United Nations Secretary-General Ban Ki-moon unveiled the multi-year UNiTE to End Violence against Women international campaign. Ban Ki-moon’s intent was to combine the efforts of a number of U.N. agencies and offices to “galvanize action across the U.N. system” that will “prevent and eliminate violence against women and girls in all parts of the world.”<sup>127</sup> An example of a specialized campaign is the U.N. Action against Sexual Violence in Conflict (“UN Action”), which brings together the efforts of thirteen existing U.N. entities “to improve coordination and accountability, amplify programming and advocacy, and support national efforts to prevent sexual violence and respond effectively to the needs of survivors.”<sup>128</sup>

The U.N. has been faulted, especially by spokespersons from the United States, for its perceived past failures to use resources effectively.<sup>129</sup> On the issue of VAW, however, the U.N. has made progress. Recent attempts by the U.N. to coordinate its inter-agency efforts by instituting broader topic-focused campaigns should result in greater overall accountability, transparency, and improved service delivery, which could stave off further reproach.

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<sup>125</sup> U.N. Entity for Gender Equality and the Empowerment of Women, UN Women – Headquarters, [www.unwomen.org](http://www.unwomen.org) (last visited Sept. 4, 2014).

<sup>126</sup> See generally U.N. Entity for Gender Equality and the Empowerment of Women, Inventory of United Nations System Activities to Prevent and Eliminate Violence Against Women (2014), <http://www.unwomen.org/~media/Headquarters/Attachments/Sections/What%20We%20Do/evaw-inventory.pdf>. Other U.N. agencies that have a focus on gender-based violence include the UNDP – United Nations Development Programme (Sept. 4, 2014), [www.undp.org](http://www.undp.org); UNICEF – Children’s Rights & Emergency Relief Organization (Sept. 4, 2014), [www.unicef.org](http://www.unicef.org); WHO – World Health Organization (Sept. 4, 2014), [www.who.int](http://www.who.int); UNFPA – United Nations Population Fund (Sept. 4, 2014), [www.unfpa.org](http://www.unfpa.org); and UNHCR – The U.N. Refugee Agency (Sept. 4, 2014), [www.unhcr.org](http://www.unhcr.org).

<sup>127</sup> UNiTE to End Violence against Women, See What We Do, [www.endviolence.un.org/what.shtml](http://www.endviolence.un.org/what.shtml) (last visited Sept. 4, 2014).

<sup>128</sup> U.N. Action against Sexual Violence in Conflict, About UN Action, <http://www.stoprapenow.org/about> (last visited Sept. 5, 2014); see U.N. Action Against Sexual Violence in Conflict, *Stop Rape Now*, at 3, available at <http://www.stoprapenow.org/uploads/about/downloads/1282162584.pdf>.

<sup>129</sup> See, e.g., Matthew Saltmarsh, *A Bloated U.N. Bureaucracy Causes Bewilderment*, N.Y. TIMES, Jan. 5, 2011, <http://www.nytimes.com/2011/01/06/world/europe/06iht-nations06.html> (expressing concern about U.N. bureaucracy and the organization’s overall lack of efficiency).

A more pressing issue is the inadequate level of U.N. generated capital devoted to the elimination of VAW. According to its own accounting, The U.N. Trust Fund to End Violence against Women has awarded \$95 million to 368 VAW initiatives in 132 countries and territories since its inception in 1996.<sup>130</sup> This represents an average outlay of only \$5 million annually, which is a minuscule amount in light of the enormity of the recognized need.

Finally, despite its favorable public rhetoric, the resoluteness of the U.N.'s commitment to anti-violence policies is ostensibly undercut by its policy initiative priorities. For example, the General Assembly in 2002 adopted the Millennium Declaration with the primary objective to eradicate extreme poverty by improving economic and social conditions through investment and debt forgiveness in the world's poorest countries.<sup>131</sup> The Declaration's centerpiece, the Millennium Development Goals ("MDGs"), called for the completion of eight goals by established target dates with a final deadline of 2015.<sup>132</sup> Championed vigorously by the U.N. and its partners, the MDGs have been critiqued for their failure to place sufficient emphasis on true gender equality and ending VAW, despite the original Declaration's clear recognition that VAW was a primary obstacle to development.<sup>133</sup>

The specific focus of the third MDG titled *Promote Gender Equality and Empower Women* was the creation of equal opportunities for women and girls in the areas of education and employment.<sup>134</sup> Even the United Nations Development Fund for Women ("UNIFEM"), a part of UN Women, publicly acknowledged that, "while ending violence against women is a strategic priority for achieving gender equality and the goals overall, it remains a 'missing target' of the MDGs."<sup>135</sup> Another U.N. organization,

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<sup>130</sup> U.N. Entity for Gender Equality and the Empowerment of Women, UN Trust Fund to End Violence against Women, <http://www.unwomen.org/en/trust-funds/un-trust-fund-to-end-violence-against-women> (last visited Sept. 9, 2014).

<sup>131</sup> United Nations Millennium Declaration, G.A. Res 55/2, U.N. Doc. A/RES/55/2 (Sept. 18, 2000).

<sup>132</sup> United Nations Millennium Development Goals, <http://www.un.org/Millennium-goals/bkgd.shtml> (last visited Sept. 5, 2014). The goals are: (1) eradicate extreme hunger and poverty; (2) achieve universal primary education; (3) promote gender equality and empower women; (4) reduce child mortality; (5) improve maternal health; (6) combat HIV/AIDS, malaria, and other diseases; (7) ensure environmental sustainability; and (8) develop a global partnership for development. *Id.*

<sup>133</sup> *Id.*; see, e.g., Christine Bradley, *Ending Violence Against Women and Achieving MDG3*, AUSAID OFFICE OF DEVELOPMENT EFFECTIVENESS (Nov. 2011), [http://www.ode.dfat.gov.au/current\\_work/documents/ending-violence-against-women-christine-bradley.pdf](http://www.ode.dfat.gov.au/current_work/documents/ending-violence-against-women-christine-bradley.pdf).

<sup>134</sup> United Nations Millennium Development Goals, *supra* note 132.

<sup>135</sup> U.N. Entity for Gender Equality and the Empowerment of Women, UNIFEM, The Facts: Violence against Women & Millennium Development Goals, [www.unwomen.org/](http://www.unwomen.org/)



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the World Health Organization (“WHO”), has emphasized the critical connection between the MDGs and ending VAW.<sup>136</sup> As one commentator observed, “[v]iolence against women threaten[ed] to undermine fulfillment of all the Goals,” unless specific MDG anti-violence strategies were adopted and incorporated into the overall campaign.<sup>137</sup>

The long-standing reluctance of the international community to make the cessation of VAW a high priority supported by adequate financial subsidies has allowed deep-rooted patriarchal structures to remain in place globally at every level in both the public and private spheres.<sup>138</sup> Although some recent international progress could be characterized as “better late than never,” the lengthy delays in implementing any meaningful reform efforts have caused women’s rights advocates to look elsewhere for remedies.

### *K. Regional Arrangements*

#### 1. Inter-American

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (the “Convention of Belém Do Pará”) entered into force in 1995.<sup>139</sup> Adopting the stance that women have “the right to be free from violence in both the public and private spheres,” this Convention includes domestic violence among its basic tenets.<sup>140</sup> It

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~/media/Headquarters/Media/Publications/UNIFEM/EVAWkit\_02\_VAWandMDGs\_en.pdf (last visited Sept. 8, 2014).

<sup>136</sup> World Health Org., Addressing Violence against Women and Achieving the Millennium Development Goals, [http://whqlibdoc.who.int/hq/2005/WHO\\_FCH\\_GWH\\_05.1.pdf](http://whqlibdoc.who.int/hq/2005/WHO_FCH_GWH_05.1.pdf) (last visited Sept. 6, 2014).

<sup>137</sup> Ceri Hayes, *Out of the Margins: The MDGs Through a CEDAW Lens*, 13 GENDER & DEV. 67, 76 (Mar. 2005). According to Hayes, the former Policy Manager at the UK-based NGO, WOMANKIND International, who now serves as a gender and human rights consultant at Gender Matters:

MDG strategies should: 1) adopt specific indicators to measure the quantity and quality of programmes aimed at addressing violence against women and changing social norms that tolerate violence against women; 2) support the reform and full implementation of laws against family violence and abuse, rape, and sexual assault; 3) harmonise strategies to eradicate poverty with strategies to tackle violence; and 4) promote national-level media campaigns to promote respect for women.

*Id.* at 77.

<sup>138</sup> See generally Gwen Hunnicutt, *Varieties of Patriarchy and Violence Against Women: Resurrecting “Patriarchy” as a Theoretical Tool*, 15 VIOLENCE AGAINST WOMEN 553, 553 (2009).

<sup>139</sup> Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, June 9, 1994, 33 I.L.M. 1534 (entered into force Mar. 5, 1995) [hereinafter Convention of Belém Do Pará].

<sup>140</sup> *Id.* art. 3.

also emphasizes respect for the inherent dignity both of a woman and her family and addresses the right of protection for both through “a simple and prompt recourse to a competent court.”<sup>141</sup>

In 2000, the Inter-American Court of Human Rights determined that Brazil bore responsibility in a case which had dragged on for more than fifteen years. The case involved the attempted murder of a woman whose husband had inflicted debilitating injuries on her.<sup>142</sup> In 2011, the Inter-American Commission on Human Rights concluded that the human rights of a Colorado woman and her three daughters were violated by the failure of the police to respond to the woman’s repeated calls for assistance after her ex-husband kidnapped the girls.<sup>143</sup> Although the basis for imputing responsibility to the State was different in each of these domestic violence cases, the process reaffirms the system’s commitment to provide heightened protection for women.<sup>144</sup>

The 2009 case of *González and Others v. Mexico* (the “Cotton Field Case”) involved the disappearance of one woman and two girls in the Ciudad Juarez area. The disappearances were part of a larger pattern of disappearances of women, mostly factory workers, over the course of more than a decade.<sup>145</sup> The Inter-American Court of Human Rights determined that Mexico had violated the American Convention of Human Rights and the Convention of Belém Do Pará by failing to respond affirmatively to

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<sup>141</sup> *Id.* art. 4. Although the United States is a member of the Organization of American States, it has not ratified this treaty. Org. of American States [OAS], *General Information of the Treaty: A-61*, [www.oas.org/juridico/English/signs/a-61.html](http://www.oas.org/juridico/English/signs/a-61.html) (last visited Sept. 13, 2014).

<sup>142</sup> *Fernandes v. Brazil*, Case 12.051, Inter-Am. Comm’n H.R., Report No. 54/01, OEA/Ser.L./V/II.111, doc. 20 (2001). The concept of state responsibility for conduct by non-state actors under the American Human Rights system was established earlier in *Velasquez-Rodriguez v. Honduras*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, 162 (July 29, 1988).

<sup>143</sup> *Gonzales v. United States*, Case 12.626, Inter-Am Comm’n H.R., Report No. 80/11, OEA/Ser.L./V/II, doc. 69 (2011). The Commission’s decision was based on the provisions of the American Declaration of the Rights and Duties of Man, which are applicable to non-signatories of the other regional human rights treaties such as the United States. The Commission’s determination stands in stark contrast to the U.S. Supreme Court’s decision in *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005), where the Justices ruled that Jessica Lenahan (then Gonzales) had no constitutional right to police protection, and that the failure of the police to enforce Lenahan’s order of protection was not unconstitutional. *See id.*

<sup>144</sup> For an-depth look at the analytical distinctions between these two cases, *see generally* Patricia Tarre Moser, *The Duty to Ensure Human Rights and Its Evolution in the Inter-American System: Comparing Maria da Penha v. Brazil with Jessica Lenahan (Gonzales) v. United States*, 21 AM. U. J. GENDER SOC. POL’Y & L. 437 (2012).

<sup>145</sup> Carol Bettinger-Lopez, *The Challenge of Domestic Implementation of International Human Rights Law in the Cotton Field Case*, 15 CUNY L. REV. 315, 318-19 (2012).

violence by private actors.<sup>146</sup> The Court's landmark decision acknowledges the broader implications for dealing with VAW in a range of situations beyond the intimate partner context.<sup>147</sup>

## 2. The European System

In the same year as the *Cotton Field Case*, the European Court of Human Rights handed down another landmark domestic violence ruling in *Opuz v. Turkey*.<sup>148</sup> This case imposed a slightly different form of due diligence on the state, requiring it to protect victims from harm where the State knew, or should have known, that there was an imminent risk.<sup>149</sup>

After much debate, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence was opened for signature in 2011.<sup>150</sup> Article 3 of the Convention specifically acknowledges that not only is VAW a form of discrimination, but it is also a human rights violation.<sup>151</sup> This convention establishes a legal framework at an Inter-European level to prevent violence, protect women and girls from violence, and prosecute the perpetrators of violence, when necessary.<sup>152</sup> Contemporaneously, the European Parliament unanimously adopted a resolution containing the "priorities and outline of a new EU policy framework to fight violence against women."<sup>153</sup>

A 2014 survey conducted across the European Union revealed a higher than expected incidence of VAW.<sup>154</sup> One in three respondents reported subjection to physical violence, sexual violence, or both after reaching the age of fifteen.<sup>155</sup> In the previous twelve months, it was estimated that

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<sup>146</sup> *Id.* at 318.

<sup>147</sup> *Cotton Field*, Inter-Am. Ct. H.R. (Ser. C) No. 205 (Nov. 16, 2009).

<sup>148</sup> *Opuz v. Turkey*, 2009-III Eur Ct. H.R. 110 (2009).

<sup>149</sup> VENTER, *supra* note 71, at 182.

<sup>150</sup> Council of Europe, *Signatory Information for the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence*, <http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=210&CM=&DF=&CL=ENG> (last visited Sept. 7, 2014).

<sup>151</sup> Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence art. 3, CETS No. 2, May 11, 2011, *available at* <http://www.coe.int/t/dghl/standardsetting/convention-violence/convention/Convention%20210%20English.pdf>.

<sup>152</sup> *Id.* art. 62.

<sup>153</sup> European Parliament Resolution of 5 April 2011, 2011 O.J. C 2010/2209, *available at* <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-0127> (last visited Sept. 7, 2014).

<sup>154</sup> *Violence Against Women: an EU-wide Survey, Main Results*, at 21 (2014), [http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results\\_en.pdf](http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results_en.pdf).

<sup>155</sup> *Id.* at 21.

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thirteen million women in the EU had been subjected to violence.<sup>156</sup> These results suggest the need to renew the focus on addressing VAW in the region.

### 3. The African System

In 2003, a Protocol on the Rights of Women in Africa (“Maputo Protocol”) was added to the African Charter on Human and Peoples’ Rights.<sup>157</sup> The African Charter had been critiqued for its failure to focus sufficiently on gender equality as well as on human rights issues of the greatest concern to women.<sup>158</sup> The Maputo Protocol is viewed as a “domestication of CEDAW on the African continent.”<sup>159</sup>

In reality, the Maputo Protocol goes beyond CEDAW by addressing VAW directly. For example, it obligates states to eliminate harmful practices and specifically outlaws all forms of female genital mutilation.<sup>160</sup> The Maputo Protocol requires states parties to provide legal protections for women targeted for violence and obligates them to provide “effective access by women to judicial and legal services” as a remedy.<sup>161</sup>

There has been some pushback to the Maputo Protocol by conservatives who contend that the Protocol does not reflect the perspective of African women but instead promotes a feminist theoretical approach to gender that is more prevalent in developed parts of the world.<sup>162</sup> The section of the Protocol addressing the protection of reproductive rights has proven especially controversial.<sup>163</sup> Other women’s rights advocates have

<sup>156</sup> *Id.* at 33.

<sup>157</sup> Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, July 11, 2003, O.A.U. Doc. CAB/LEG/66.6 (entered into force in 2005) [hereinafter Maputo Protocol], available at [www.achpr.org/files/instruments/women-protocol/achpr\\_instr\\_proto\\_women\\_eng.pdf](http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf).

<sup>158</sup> Carole J. Petersen, *Bridging The Gap?: The Role of Regional and National Human Rights Institutions in the Asia Pacific*, 13 *ASIAN-PAC. L. & POL’Y J.* 174, 188 (2011).

<sup>159</sup> Elizabeth A. Oji, *Fighting Discrimination in Africa through CEDAW: Hard Fights! Easy Fights!*, 16 *NEW ENG. J. INT’L & COMP. L.* 89, 105 (2010).

<sup>160</sup> Maputo Protocol, *supra* note 157, art. 5.

<sup>161</sup> *Id.* art. 8.

<sup>162</sup> Joseph M. Isanga, *Foundations of Human Rights and Development: A Critique of African Human Rights Instruments*, 11 *AVE MARIA L. REV.* 123, 135 (2012).

<sup>163</sup> *Id.* at 136. As one commentator concludes,

The Women’s Protocol is the first treaty to provide for the right to circumscribed medical abortion. . . . It is also the first binding treaty to provide for the right of a woman to be protected against HIV infection and to know the HIV status of her sexual partner.

Frans Viljoen, *An Introduction to the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa*, 16 *WASH. & LEE J. CIVIL RTS. & SOC. JUST.* 11, 21-22 (2009).

expressed concern that, despite the intended positive direction of the Protocol, there could be a negative effect on African women due to failures in implementation.<sup>164</sup>

#### *L. Other Global Initiatives to Address VAW*

A network of international and domestic organizations, often working behind the scenes, has established anti-VAW programs to confront the various ways women are harmed by violence.<sup>165</sup> High-profile NGOs such as Amnesty International<sup>166</sup> and Human Rights Watch<sup>167</sup> have assumed a leading role in efforts to eradicate VAW as part of their primary goal to promote human rights. In particular, Amnesty's Stop Violence Against Women ("SVAW") Campaign, which ranged from 2004 to 2010, was based on the organization's firm belief that a life free from violence is a basic human right.<sup>168</sup> After adopting a comprehensive global strategy that required collaboration with a number of international organizations on anti-violence endeavors, Amnesty was placed at the forefront of combatting VAW.<sup>169</sup> This single-issue tactic represented a changed approach for Amnesty, which had previously focused its attention on a broader range of civil and political rights on a country-by-country basis.<sup>170</sup> The partnership with other organizations and the heightened dedication to women's issues

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<sup>164</sup> See Kaniye Ebeku, *A New Dawn for African Women? Prospects of Africa's Protocol on Women's Rights*, 16 SRI LANKA J. INT'L L. 83, 135 (2004); see generally Kristin Davis, *The Emperor is Still Naked: Why the Protocol on the Rights of Women in Africa Leaves Women Exposed to More Discrimination*, 42 VAND. J. TRANSNAT'L L. 949 (2009).

<sup>165</sup> Although the emphasis in this section is principally on organizations that are U.S.-based or have a highly visible U.S. presence, there is no intention to slight the exceptional NGOs that exist elsewhere such as the UK-based WOMANKIND, <http://www.womankind.org.uk/> (last visited Sept. 7, 2014); AUSTRALIAN WOMEN AGAINST VIOLENCE ALLIANCE, <http://www.awava.org.au> (last visited Sept. 7, 2014); or WHITE RIBBON, <http://www.whiteribbon.ca> (last visited Sept. 7, 2014).

<sup>166</sup> AMNESTY INTERNATIONAL, <http://www.amnesty.org> (last visited Sept. 7, 2014).

<sup>167</sup> HUMAN RIGHTS WATCH, <http://www.hrw.org/topic/womens-rights> (last visited Sept. 7, 2014).

<sup>168</sup> TINA WALLACE & HELEN BANOS SMITH, *A SYNTHESIS OF THE LEARNING FROM THE STOP VIOLENCE AGAINST WOMEN CAMPAIGN 2004-10* (2013), available at <http://www.amnesty.org/sites/impact.amnesty.org/files/PUBLIC/FINAL%20SVAW%20REVIEW%20SYNTHESIS%20act770082010en.pdf>. This SVAW assessment commissioned by Amnesty is a forthright appraisal of the strengths and struggles of Amnesty in its implementation of the campaign.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.* at 5.

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were touted as positive outcomes of the SVAW campaign.<sup>171</sup>

U.S. based non-profit groups such as Women Thrive Worldwide (formerly the Women's Edge Coalition),<sup>172</sup> Futures Without Violence (formerly the Family Violence Prevention Fund),<sup>173</sup> and V-Day<sup>174</sup> have mounted international crusades to eliminate VAW. Women Thrive works on VAW issues in designated countries and, from its base in D.C., serves as a legislative advocate on the national level for increasing aid for women's issues at home and abroad.<sup>175</sup> Futures Without Violence, located in San Francisco, strives to create through training and leadership, an environment that allows men and women to live free from violence.<sup>176</sup> While both of these organizations emphasize the importance of creating alliances with men to wipe out VAW, the origins of the V-Day campaign were decidedly more woman-centered. Founded in 1998 by New York playwright Eve Ensler after the success of her performance piece, *The Vagina Monologues*, the V-Day organization stages performances and large-scale benefits in the United States and elsewhere and "produces innovative gatherings, films and campaigns to educate and change social attitudes towards violence against women."<sup>177</sup> More recently, the related One Billion Rising for Justice Campaign has reached out to include men and women in its events.<sup>178</sup>

Stopping VAW is often linked with making significant progress in the areas of development, peace and security, and human rights.<sup>179</sup> VAW is a multi-faceted problem, which makes it difficult to craft an effective message that will resonate with stakeholders, galvanizing them into taking action.<sup>180</sup>

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<sup>171</sup> *Id.* at 12.

<sup>172</sup> WOMEN THRIVE WORLDWIDE, [www.womenthrive.org](http://www.womenthrive.org) (last visited Sept. 14, 2014).

<sup>173</sup> FUTURES WITHOUT VIOLENCE, [www.futureswithoutviolence.org](http://www.futureswithoutviolence.org) (last visited Sept. 7, 2014).

<sup>174</sup> V-DAY, <http://www.vday.org/home> (last visited Sept. 7, 2014).

<sup>175</sup> *About Us*, WOMEN THRIVE WORLDWIDE, [www.womenthrive.org/about-us](http://www.womenthrive.org/about-us) (last visited Sept. 14, 2014).

<sup>176</sup> *About FUTURES*, FUTURES WITHOUT VIOLENCE, <http://www.futureswithoutviolence.org/section/about-us/our-mission> (last visited Sept. 14, 2014).

<sup>177</sup> *About V-Day*, V-DAY, <http://www.vday.org/about> (last visited Sept. 7, 2014).

<sup>178</sup> *The Campaign*, ONE BILLION RISING FOR JUSTICE, <http://www.onebillionrising.org/about/campaign> (last visited Sept. 7, 2014).

<sup>179</sup> *See, e.g.*, Press Release, Security Council, "Wherever There is Conflict, Women Must Be Part of the Solution," Security Council Told in Day-Long Debate Urging Their Inclusion in Restoring Fractured Societies, U.N. Press Release SC/10840 (Nov. 30, 2012). *But see infra* notes 236-238 and accompanying text (pointing out potential downsides to these linkages).

<sup>180</sup> For a range of effective strategies to end VAW that are designed to reach different

## III. THE UNITED STATES AND I-VAWA LEGISLATION

*A. Background*

Advocates in the United States from international NGOs concerned about women's human rights had long recognized the devastating consequences of violence and its pervasive impact on all aspects of the lives of women and girls worldwide.<sup>181</sup> Acknowledging that a wide-ranging, well-funded global strategy was required to address VAW, representatives from Amnesty International, Futures Without Violence, and Women Thrive Worldwide began working together on Amnesty International's transnational SVAW campaign.<sup>182</sup>

Although United States' governmental departments were making certain efforts to address VAW on an international scale, members of the organizations involved in the Amnesty campaign discovered that there was no central clearinghouse to coordinate programs or to allow strategic collaboration.<sup>183</sup> This realization prompted the three lead organizations to formulate specific policy recommendations based on emerging global norms, which could be enshrined in domestic legislation called the International Violence Against Women Act.<sup>184</sup> The proponents of I-VAWA operated with an awareness of the "separate challenges facing different countries depending on the form the violence takes in each."<sup>185</sup> After obtaining input from more than 150 groups worldwide, members of these three organizations were integrally involved in crafting the provisions of I-VAWA.<sup>186</sup> The manifesto's proponents relied on "extensive research on what works"<sup>187</sup> in designing I-VAWA. The proponents sought to address gender violence across borders by channeling up to \$1 billion in U.S. foreign aid over a five-year period, focusing specifically on programs

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audiences, see generally MICHAELA RAAB & JASMIN ROCHA, CAMPAIGNS TO END VIOLENCE AGAINST WOMEN AND GIRLS (2011), available at <http://www.endvawnow.org/uploads/modules/pdf/1342724232.pdf>.

<sup>181</sup> Noha Shawki, *Civil Society Advocacy and the Diffusion of Violence Against Women Norms: An Analysis of the International Violence Against Women Act*, 11 GLOBAL SOC. POL'Y 175, 180 (2011).

<sup>182</sup> *Id.*

<sup>183</sup> *Id.* (citing LUISA BLANCHFIELD ET AL., CONG. RESEARCH SERV., RL34438, INTERNATIONAL VIOLENCE AGAINST WOMEN: US RESPONSE AND POLICY ISSUES (2008)).

<sup>184</sup> Shawki, *supra* note 181, at 180.

<sup>185</sup> *SPECIAL ISSUE: The International Violence Against Women Act*, FAMILY VIOLENCE PREVENTION FUND (Nov. 16, 2006), [http://www.ncdsv.org/images/IVAWA\\_Special%20Issue\\_Speaking%20Up.pdf](http://www.ncdsv.org/images/IVAWA_Special%20Issue_Speaking%20Up.pdf) (last visited Oct. 4, 2014).

<sup>186</sup> WOMEN THRIVE WORLDWIDE, *supra* note 172.

<sup>187</sup> *Frequently Asked Questions*, AMNESTY INT'L, [http://www.amnestyusa.org/pdfs/ivawa2013\\_faq.pdf](http://www.amnestyusa.org/pdfs/ivawa2013_faq.pdf) (last visited Sept. 8, 2014).

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aimed at education, prevention, and service provision.<sup>188</sup>

### *B. Introduction of I-VAWA Legislation*

In 2007, then-Senator Joseph Biden (D-DE) introduced the original version of the bill.<sup>189</sup> In a contemporaneous press release, Biden emphasized that “[t]aking an active stand against global violence against women isn’t just moral, it’s smart foreign policy.”<sup>190</sup> Remarks by Co-sponsor Senator Richard Lugar (R-IN) focused on the necessity of educating and empowering women to break the cycle of violence.<sup>191</sup> Biden noted the progress toward the reduction of gender violence in the United States since the passage of the 1994 Violence Against Women Act (“VAWA”), which he also championed.<sup>192</sup> I-VAWA was introduced into the Senate and referred to the Foreign Relations Committee where the bill languished.<sup>193</sup> It encountered a similar fate in the House of Representatives.<sup>194</sup>

By the time I-VAWA was re-introduced in the 111th Congress in 2009, it had attracted significant bi-partisan support and the backing of more than two hundred organizations.<sup>195</sup> Its import was underscored by this statement of Co-Sponsor Representative Janice “Jan” Schakowsky (D-IL):

This unprecedented legislation firmly establishes the prevention of violence against women as a foreign policy priority. And it requires the integration of this goal into every aspect of our diplomatic and developmental policy. I-VAWA authorizes a multi-year comprehensive strategy to prevent and respond to violence against women in a select number of targeted countries. The funding will cover a full spectrum of programs, including judicial reform, health

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<sup>188</sup> 153 Cong. Rec. 28821 (2007) (statement of Sen. Joe Biden).

<sup>189</sup> S.B. 2279 was introduced in October 2007 by Senator Joseph Biden (D-DE), and it ultimately “died” in Committee. S. 2279, 110th Cong. (2007); *Text of S. 2279 (110th)*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/110/s2279> (last visited Sept. 8, 2014).

<sup>190</sup> *Senators Biden and Lugar Introduce the International Violence Against Women Act*, ALLAMERICANPATRIOTS.COM (Nov. 2, 2007, 1:33PM), [www.allamericanpatriots.com/48736202\\_joseph\\_biden\\_senators\\_and\\_lugar\\_introduce\\_international\\_violence\\_against\\_women\\_act](http://www.allamericanpatriots.com/48736202_joseph_biden_senators_and_lugar_introduce_international_violence_against_women_act).

<sup>191</sup> FAMILY VIOLENCE PREVENTION FUND, *supra* note 185.

<sup>192</sup> ALLAMERICANPATRIOTS.COM, *supra* note 190.

<sup>193</sup> GOVTRACK.US, *supra* note 189.

<sup>194</sup> H.R. 5927 was introduced in April 2008 by Rep. Howard Berman (D-CA28) and referred to the House Committee on Foreign Affairs. H.R. 5927, 110th Cong. (2008).

<sup>195</sup> H.R. 4594 was sponsored by Rep. William Delahunt (D-MA). H.R. 4594, 111th Cong. (2010). S. 2982 was introduced by Senator John Kerry (D-MA). S. 2982, 111th Cong. (2010).



care, education, economic empowerment, and changing social norms. It includes tools to ensure accountability and oversight to determine the effectiveness of U.S. efforts.<sup>196</sup>

VAW in the United States is covered by individual state criminal codes that address substantive crimes, such as rape and domestic violence, where women usually comprise the largest percentage of victims.<sup>197</sup> Congress had also previously enacted the aforementioned federal anti-violence legislation: the VAWA.<sup>198</sup> The hallmark of the original VAWA, which was part of the 1994 Violent Crime Control and Law Enforcement Act (known as the Crime Bill), was its emphasis on expanding social services delivery systems and improving the response of the criminal justice system to victims of sexual assault and rape, domestic violence, and stalking.<sup>199</sup> Enhancements were added to VAWA, which was reauthorized with widespread bi-partisan support in 2000 and then again in 2005.<sup>200</sup>

Some characterized I-VAWA as an extension of VAWA, perhaps to capitalize on the latter's early success; however, linking foreign policy and women's human rights is clearly I-VAWA's distinguishing feature.<sup>201</sup> Congress has previously evinced its willingness to tackle transnational VAW issues by passing the 2000 Victims of Trafficking and Violence Protection Act ("VTVPA").<sup>202</sup> Under the gender-neutral terms of VTVPA, financial assistance and other types of aid are made available to countries that are willing to work collaboratively to identify traffickers and prosecute them.<sup>203</sup> At the same time, economic pressure is brought to bear against countries that are uncooperative in the trafficking and violence reform

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<sup>196</sup> Int'l Violence Against Women: Stories and Solutions: Hearing before the Subcomm. on Int'l Org., Human Rights and Oversight Comm. on Foreign Affairs, 111th Cong. 2 (2009) (statement of Rep. Jan Schakowsky).

<sup>197</sup> See generally Lori L. Schick, *Breaking the "Rule of Thumb" and Opening the Curtains – Can the Violence against Women Act Survive Constitutional Scrutiny?*, 28 U. TOL. L. REV. 887 (1997).

<sup>198</sup> Violence Against Women Act of 1994, 42 U.S.C. § 13701 (1994).

<sup>199</sup> Robin R. Runge, *The Evolution of a National Response to Violence Against Women*, 24 HASTINGS WOMEN'S L.J. 429, 429 (2013).

<sup>200</sup> For example, the 2000 Act added provisions to cover women with disabilities, victims of elder abuse, and those in violent dating relationships, and the 2005 incarnation again focused on victims with unique challenges. *Id.* at 431-32.

<sup>201</sup> Shawki, *supra* note 181, at 179.

<sup>202</sup> Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 [hereinafter VTVPA] (codified as amended in various titles of U.S.C.); see also Susan Tiefenbrun, *The Saga Of Susannah A U.S. Remedy For Sex Trafficking In Women: The Victims Of Trafficking And Violence Protection Act Of 2000*, 2002 UTAH L. REV. 107, 113 (2002).

<sup>203</sup> VTVPA, *supra* note 202, § 134.

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efforts.<sup>204</sup>

Given the prior pledge of Congress to combat VAW and its enactment of the VTVPA, the stage seemed set to give a favorable nod to I-VAWA. But the legislation's failure to gain sufficient traction during three sessions of Congress suggests possible problems with the bill's substance, the legislative process, or both.

### *C. Overview of I-VAWA Provisions*

Many of the primary features of I-VAWA have remained constant throughout its legislative path from 2007 to the present. Subtle substantive differences do exist, however, among the various versions of I-VAWA. This section uses H.R. 3571, 113th Cong. (2013), as the primary basis for assessment, while pointing out some of its differences from earlier versions.<sup>205</sup>

#### 1. The Findings

The Congressional findings about violence against women are set forth in Section 2 of I-VAWA.<sup>206</sup> This foundational material provides information about the scope of the problem of gender violence and its various forms.<sup>207</sup> The conclusions specifically reference intimate partner violence,<sup>208</sup> sexual coercion,<sup>209</sup> rape,<sup>210</sup> child marriage,<sup>211</sup> and its concomitant problems such as increased maternal and infant mortality or obstetric fistulas.<sup>212</sup> I-VAWA also directly acknowledges the susceptibility of displaced, refugee, and stateless women who "face extreme violence and threats."<sup>213</sup> This introductory section places the impact of violence against women in a broader context by noting that it "impedes progress in meeting many United States global development goals"<sup>214</sup> and also recognizes the significance of enhancing women's economic opportunities to counter domestic and sexual

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<sup>204</sup> *Id.* § 110.

<sup>205</sup> H.R. 3571, 113th Cong. (2013).

<sup>206</sup> *Id.* § 2.

<sup>207</sup> *Id.* Earlier versions of I-VAWA relied on sources such as the U.N., the World Health Organization, and UNICEF to support the findings. *See, e.g.*, H.R. 5905, 112th Cong. § 2(3) (2012) (referencing World Bank data). While the occasional references to such organizations remain, the 2013 version of the bill tends to be vaguer. H.R. 3571, 113th Cong. § 2(13) (2013).

<sup>208</sup> H.R. 3571, 113th Cong. § 2(4) (2013).

<sup>209</sup> *Id.* § 2(5).

<sup>210</sup> *Id.* § 2(11).

<sup>211</sup> *Id.* § 2(12).

<sup>212</sup> *Id.* § 2(12)(D).

<sup>213</sup> *Id.* § 2(10).

<sup>214</sup> *Id.* § 2(5).

violence.<sup>215</sup>

The findings attempt to give a sense of the varied occurrences of VAW; however, the information is presented somewhat randomly and in an inexplicably non-linear format. For example, the findings reference a 2010 survey involving violence against children in Tanzania which reveals “that nearly 3 in 10 females and 1 in 7 males experienced sexual violence prior to the age of 18.”<sup>216</sup> No context is provided for why this particular statistic or country is mentioned when the findings do not specifically refer to other locales. Although I-VAWA clearly focuses on women and girls, information about boys is also reported without any explanation.<sup>217</sup> Finally, surveys that are time-dated lose their currency as the legislative process unfolds.

Additionally, I-VAWA includes a targeted focus on HIV/AIDS, which is emphasized repeatedly in the findings.<sup>218</sup> HIV/AIDS is a critical issue affecting women and girls, especially in sub-Saharan Africa where women comprise fifty-eight percent of the population afflicted with HIV/AIDS.<sup>219</sup> Despite its importance and connection to VAW, it is not made clear why HIV/AIDS should be an I-VAWA priority given current alternative financing options and the extensive HIV/AIDS expertise coming from other public and private sector efforts.<sup>220</sup>

Early on in the findings, there is a reference to domestic violence, which is a pressing concern for an alarmingly high number of women everywhere.<sup>221</sup> But the findings digress from this reference and do not mention domestic abuse again until the end of the section.<sup>222</sup> By providing examples of different types of violence, the findings exclude other equally pernicious forms. A more logical way to proceed would have been to select categories of the various ways that VAW occurs and then extrapolate

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<sup>215</sup> *Id.* § 2(8).

<sup>216</sup> *Id.* § 2(3).

<sup>217</sup> Men are also referenced elsewhere in the findings, again without an expressed rationale. *Id.* § 2(4), 2(9).

<sup>218</sup> *Id.* § 2(5)-(7), (12)(D).

<sup>219</sup> *Statistics: Women and HIV/AIDS*, AMERICAN FOUND. FOR AIDS RESEARCH, <http://www.amfar.org/about-hiv-and-aids/facts-and-stats/statistics—women-and-hiv-aids> (last visited Sept. 8, 2014).

<sup>220</sup> See *The Global HIV/AIDS Crisis Today*, AIDS.GOV, <http://aids.gov/federal-resources/around-the-world/global-aids-overview> (last visited Sept. 8, 2014).

<sup>221</sup> The findings indicate that up to seventy percent of women in some countries have been subjected to domestic violence. H.R. 3571, 113th Cong. § 2(2). Also, see *Violence Against Women: An EU-Wide Survey*, *supra* note 154, at 33 for the incidence of reported domestic violence incidents across countries in the European Union.

<sup>222</sup> H.R. 3571 § 2(2).

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briefly to demonstrate the consequences.<sup>223</sup>

## 2. The Policy

In Section 3, I-VAWA declares that it is the policy of the United States to tie efforts “to prevent and respond to violence against women and girls” with the overall “foreign policy and with foreign-assistance programs.”<sup>224</sup> This emphasis on integration and coordination of efforts to eradicate gender violence is a significant policy component.

Support and capacity building in partnership with local NGOs, particularly women’s organizations, is also a hallmark of the legislation.<sup>225</sup> In calling for the use of so-called multi-sectoral methods to prevent and respond to violence, I-VAWA policy provisions highlight the need for “activities in the economic, education, health, nutrition, legal and judicial” arenas along with the obligation to work at the individual, family, local, community, national, and global levels.<sup>226</sup> As one commentator has noted, “[t]his method reflects an approach towards gender-based violence that acknowledges the impact of structural factors that contribute to violence against women and reflects a comprehensive approach.”<sup>227</sup>

Working with faith-based and traditional leaders was mentioned in earlier versions of I-VAWA; however, in its current form, that focus has been changed to a commitment “to consult, cooperate, coordinate, and collaborate with a wide variety of nongovernmental partners . . . including faith-based organizations. . . .”<sup>228</sup> This represents a huge shift in orientation and should be monitored for possible unintended consequences.<sup>229</sup>

I-VAWA anticipates training by U.S. personnel for professionals who have responsibility for preventing and responding to acts of violence such as foreign military personnel, police officers, and judicial officials.<sup>230</sup> I-

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<sup>223</sup> Previous renderings of I-VAWA contained a Findings section that was more directed and succinct. *See, e.g.*, H.R. 5905, 112th Cong. § 2 (2012).

<sup>224</sup> H.R. 3571 § 3(2).

<sup>225</sup> *Id.* § 3(3)-(4).

<sup>226</sup> *Id.* § 3(5)-(6).

<sup>227</sup> Sara Angevine, *Global Women’s Rights: A Study of the International Violence Against Women Act (IVAWA) 6* (Sept. 3, 2011) (unpublished manuscript) (on file with author). This paper was presented at the Annual Meeting of the American Political Science Association, which took place from September 1-3, 2011 in Seattle, Washington.

<sup>228</sup> H.R. 3571 § 3(4).

<sup>229</sup> Jimmy Carter makes the connection between the use of doctrine and women’s equality by noting that some male religious leaders “distort the Holy Bible, the Koran, and other sacred texts to perpetuate their claim that females are, in some basic ways, inferior to them . . .” and “to justify physical punishment of women and girls.” JIMMY CARTER, *A CALL TO ACTION: WOMEN, RELIGION, VIOLENCE AND POWER* 3 (2014).

<sup>230</sup> H.R. 3571 § 3(7).

VAWA also seeks to engage men and boys as partners in violence reduction.<sup>231</sup>

In its previous three incarnations, an intriguing feature of I-VAWA was its explicit declaration to “promote women’s political, economic, educational, social, cultural, civil, and human rights and opportunities throughout the world.”<sup>232</sup> It should come as no surprise that the United States is committed to advancing human rights and civil and political rights.<sup>233</sup> However, one would not expect the U.S. Government to endorse economic, social, and cultural rights for women outside of the United States given its reluctance to pass dedicated domestic legislation to that effect or to ratify the ICESCR.<sup>234</sup> Perhaps this irony did not go unnoticed seeing as such a provision is absent from the latest I-VAWA draft.

The final policy sections refer to implementation of the U.S. Strategy to Prevent and Respond to Gender-based Violence Globally (“U.S. Strategy”) and the U.S. National Action Plan on Women, Peace and Security.<sup>235</sup> The most sustained, serious critiques of I-VAWA focus on the alignment of U.S. foreign policy with the objective of ending violence against women.<sup>236</sup>

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<sup>231</sup> *Id.* § 3(8). A broader and more affirmative role of men in the movement to stop violence against women is a relatively recent occurrence. Organizations such as Futures Without Violence began emphasizing the importance of connecting with men and boys as “allies, upstanders (active positive bystanders) and influencers of other men and youth” in the anti-violence movement. *Engaging Men to Prevent Violence Against Women*, FUTURES WITHOUT VIOLENCE, <http://www.futureswithoutviolence.org/engaging-men-prevent-violence> (last visited Oct. 6, 2014). The Futures Without Violence Executive Director, Esta Soler, has stated that “we cannot change society unless we put more men at the table, amplify men’s voices in the debate, enlist men to help change societal norms on the issue, and convince men to teach their children that violence against women is always wrong.” JACKSON KATZ, *THE MACHO PARADOX: WHY SOME MEN HURT WOMEN AND HOW ALL MEN CAN HELP* 10 (2006).

<sup>232</sup> See, e.g., H.R. 5905, 112th Cong. § 3(3) (2012); H.R. 4594, 111th Cong. § 3(3) (2010).

<sup>233</sup> Jack Goldsmith, *The Unexceptional U.S. Human Rights RUDs*, 3 ST. THOMAS L.J. 311, 311 (2005).

<sup>234</sup> The Obama Administration has indicated that “it does not seek action [on the ICESCR] at this time.” Barbara Stark, *At Last? Ratification of the Economic Covenant as a Congressional-Executive Agreement*, 20 TRANSNAT’L L. & CONTEMP. PROBS. 107, 108 (2011) (citing Letter from Richard R. Verma, Assistant Sec’y of Legislative Affairs, to the Hon. John F. Kerry, Chairman of the Comm. on Foreign Relations (May 11, 2009)).

<sup>235</sup> H.R. 3571, § 3(12)-(13); Proclamation No. 13623, 47 Fed. Reg. 159 (Aug. 16, 2012); H.R. REP. NO. 112-331 § 7601 (2011) (accompanying the Dep’t of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Division I of Public Law 112-74)), available at <http://www.state.gov/documents/organization/196726.pdf>.

<sup>236</sup> See Corinne L. Mason, *Global Violence Against Women as a National Security “Emergency,”* 2 FEMINIST FORMATIONS 25, 55 (2013); Nissa Thompson, *Does the International Violence Against Women Act Respond to Lessons from the Iraq War?*, 23

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Yet, it is precisely this alignment that has been touted as one of the hallmarks of I-VAWA.

There remains a sense that the United States will be disinclined to act, even in situations involving the most egregious forms of VAW, unless there is a U.S. economic or political interest for doing so.<sup>237</sup> Moreover, these concerns intensify when anti-violence efforts are paired with security interests. In the words of one scholar, U.S. foreign policy's emphasis on global VAW, "functions to 'genderwash' American foreign interests and facilitates the securitization and militarization of programs designed to end violence at the expense of women's well-being."<sup>238</sup> These claims may eventually be deflated in the future by examining the programs that are actually implemented; there should, nonetheless, be greater awareness of these recurring concerns.

### 3. The Office of Global Women's Issues

Section 101 of I-VAWA creates an Office of Global Women's Issues under the auspices of the Office of the Secretary of Department of State and headed by an Ambassador-at-Large.<sup>239</sup> Under I-VAWA, the Ambassador is charged with the roles of coordinator, advisor, promoter, integrator, resource director, designer, supporter, and implementer, and of "relating to gender equality and the advancement of women and girls internationally," including those efforts intended to prevent and respond to violence against women and girls.<sup>240</sup>

Under section 102 of I-VAWA, the position of a Senior Coordinator for Gender Equality and Women's Empowerment, who is responsible for integrating gender in U.S. foreign policies, programs, and activities, was established in the U.S. Agency for International Development ("USAID").<sup>241</sup> Section 111 directs the Ambassador-at-Large and the Senior Coordinator to develop and implement a five-year strategy aimed at dealing with VAW issues internationally and to make this strategy available to the public.<sup>242</sup> I-VAWA requires consultation "with heads of relevant Federal agencies and representatives of civil society and multi-lateral

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BERKELEY J. GENDER L. & J. 1 (2008).

<sup>237</sup> Thompson, *supra* note 236, at 4 (citing HAIFA ZANGANA, *CITY OF WIDOWS: AN IRAQI WOMAN'S ACCOUNT OF WAR AND RESISTANCE* 81 (2007)).

<sup>238</sup> Mason, *supra* note 236, at 63. Mason uses the term "genderwash" "to denote the way that feminist and liberal concerns for equality and women's rights are co-opted for imperialist projects." *Id.*

<sup>239</sup> H.R. 3571 § 101; *see also Office of Global Women's Issues*, U.S. DEP'T OF STATE, <http://www.state.gov/s/gwi> (Office of Global Women's Issues official website).

<sup>240</sup> H.R. 3571 § 101(c)(1)(A).

<sup>241</sup> *Id.* § 102.

<sup>242</sup> *Id.* § 111(e)(1)-(3).

organizations with demonstrated experience in addressing violence against women and girls or promoting gender equality internationally.”<sup>243</sup> Although this section is titled “Collaboration and Coordination,” which seemingly contemplates a different degree of involvement by others, only consultation is required.<sup>244</sup>

An integral part of the strategy calls for the identification of between five to twenty countries that not only have serious levels of gender violence, but also have the capacity and infrastructure to devise effective ways to prevent violence against women and girls on an international basis and to respond to such violence when it occurs.<sup>245</sup> After conducting an assessment of a country’s needs and existing resources, assistance will be offered in the form of programming, which includes at least two of five different categories: (1) development and implementation of programs that work to change social norms and attitudes so that violence against women and girls is neither condoned nor tolerated; (2) promotion of accessible, quality educational and literacy opportunities for women and girls; (3) promotion of access to economic opportunities, including the increase of distribution, credit, property, and inheritance rights for women and girls; (4) development and enforcement of civil and criminal legal and judicial sanctions, protections, trainings, and capacity; and (5) enhancement of the health sector’s capacity to detect, prevent, and respond to violence against women and girls.<sup>246</sup>

Finally, Section 113 delineates oversight mechanisms, such as data collection and evaluation processes, and promotes transparency and accountability through a bi-annual briefing to Congress—including a presentation of information about the progress in the prevention of gender violence, best practices, effective strategies, suggested improvements, and the impact of funded activities.<sup>247</sup> Significantly, and unlike earlier I-VAWA legislation, there is no mention of funding provided in the 2013 version.<sup>248</sup>

#### *D. Process Challenges Based on Previous Attempts to Pass I-VAWA*

After the original I-VAWA was announced with appropriate fanfare in the fall of 2007 by its primary advocates, then-Senator Joseph Biden (D-

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<sup>243</sup> *Id.* § 111(d)(1)-(3).

<sup>244</sup> *Id.* § 111(d)(1).

<sup>245</sup> *Id.* § 111(e)(1)-(2).

<sup>246</sup> *Id.* § 112 (b)(1)-(5).

<sup>247</sup> *Id.* § 113.

<sup>248</sup> See H.R. 4594 §112(b)-(d). There was also funding in 2010 allocated to the UN Development Fund for Women Trust Fund in Support of Actions to Eliminate Violence Against Women. *Id.* § 201.

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DE) and Senator Richard Lugar (R-IN), the extent of its broader based support was difficult to gauge because it became bogged down in Committee.<sup>249</sup> Subsequent public opinion surveys revealed that people who were polled in 2008 believed that the treatment of women in other countries was a “very important” priority in U.S. foreign policy.<sup>250</sup> The issue of violence against women in other countries was perceived by voters, regardless of their political affiliation, as a top priority for the United States. When informed about the goals of I-VAWA, eighty-two percent of voters indicated general support for the legislation.<sup>251</sup>

The favorable reception among voters that was documented between I-VAWA’s initial introduction in the 110th Congress and its subsequent presentation to the 111th Congress was only one of the factors that portended auspiciously for its enactment the second time around. In addition, I-VAWA had a significant number of high-profile sponsors and advocates.<sup>252</sup> Other encouraging indicators included: (1) an overall Democratic majority in Congress; (2) the combination of an enhanced human rights’ consciousness in U.S. foreign policy and the growing impact of global women’s rights advocacy; (3) the greater number of women in Congress who might serve as “natural allies” for the legislation; (4) the repeat successful reauthorization of VAWA, which insured that Congress would be familiar with the underlying issues addressed by I-VAWA; and (5) Secretary of State Hillary Clinton’s role in promoting women’s rights.<sup>253</sup> Indeed, the last positive factor gave rise to the phrase “The Hillary Doctrine,” which represented former Secretary of State Clinton’s perspective that “the rights of women and girls is the unfinished business of the 21st century.”<sup>254</sup>

In assessing I-VAWA’s failure to be enacted in 2010, various

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<sup>249</sup> H.R. 2927, 110th Cong. (2008).

<sup>250</sup> See, e.g., Americans and the World, *Women’s Rights* (Aug. 2008), [http://www.americans-world.org/PDF/women\\_data\\_update-8\\_2008.pdf](http://www.americans-world.org/PDF/women_data_update-8_2008.pdf).

<sup>251</sup> Angevine, *supra* note 227, at 9 (citing a public opinion poll conducted by Lake Research Partners in July 2009 wherein a majority of respondents “felt that global violence against women is a serious problem and the majority of voters across partisan lines believed that ‘this issue should be among the country’s top priorities’”).

<sup>252</sup> Katie Glueck, ‘Landmark’ *International Violence Against Women Act Receives Bipartisan Support*, HUFFPOST POLITICS DAILY (Feb. 8, 2010), <http://www.politicsdaily.com/2010/02/08/landmark-international-violence-against-women-act-receives-bip; Bill Summary & Status, LIBRARY OF CONGRESS, http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR04594:@@P> (last visited Oct. 7, 2014) (naming 134 co-sponsors of IVAWA).

<sup>253</sup> Angevine, *supra* note 227, at 14-16.

<sup>254</sup> Gayle Zemach Lemmon, *The Hillary Doctrine*, NEWSWEEK, Mar. 6, 2011, <http://www.newsweek.com/hillary-doctrine-66105>.



commentators stated simply that “we ran out of time.”<sup>255</sup> But there were other obstacles as well. Any women’s rights legislation regardless of its actual subject matter is viewed in certain circles to be an overt, or at least a covert, mechanism to expand protection for reproductive autonomy.<sup>256</sup> Drafters of I-VAWA consciously avoided any mention of abortion; however, the phrase “women’s rights,” or references to women’s “empowerment” as well as “liberty” have been construed by some as code words for abortion.<sup>257</sup> In Congress, policy discussions about women’s issues eventually became inextricably intertwined with political divisiveness about abortion regardless of subject area or the original intention.<sup>258</sup> Criticisms of I-VAWA revolved around its failure to condemn China’s One Child Policy as a form of violence against women<sup>259</sup> and its promulgation of a feminist agenda abroad.<sup>260</sup>

Despite the difficulties in the previous attempts to pass I-VAWA, the bill was re-introduced in May 2012, with the support of different sponsors.<sup>261</sup> This occurred contemporaneously with the reauthorization of VAWA on the national legislative agenda. Although earlier VAWA reauthorizations in 2000 and 2005 had moved smoothly through the process, the House offered an alternative bill that removed protections for immigrant women, native women, and LGBT victims of intimate partner violence.<sup>262</sup> Conservatives in Congress who signed onto this watered-down version nevertheless proclaimed their support for VAWA and women’s rights in the 2012

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<sup>255</sup> Angevine, *supra* note 227, at 16.

<sup>256</sup> *Id.* at 21.

<sup>257</sup> *Id.* at 22.

<sup>258</sup> As 2013 I-VAWA sponsor Congresswoman Jan Schakowsky explains: “My bill is not about abortion,” she said. “That is why I am extremely disappointed that, after over a year of negotiations with my colleagues on the other side of the aisle, House Republicans refused to support I-VAWA unless it included the Global Gag Rule or other extremely restrictive abortion restrictions. I hope they will reconsider that position.” Adrienne Vogt, *Protecting Our Sisters in Tahrir*, DAILY BEAST (July 26, 2013), <http://www.thedailybeast.com/witw/articles/2013/07/26/i-vawa-a-step-toward-safety.html>.

<sup>259</sup> Phyllis Schlafly, *The Feminist Left Goes Global on Our Money*, CREATORS.COM, <http://www.creators.com/opinion/phyllis-schlafly/the-feminist-left-goes-global-on-our-money.html> (last visited Oct. 14, 2014); *Talking Points: S. 2982 International Violence Against Women Act (IVAWA)*, CONCERNED WOMEN FOR AMERICA (Sept. 29, 2010), <http://www.cwfa.org/talking-points-s-2982-international-violence-against-women-act-ivawa-2>.

<sup>260</sup> Schlafly, *supra* note 259.

<sup>261</sup> H.R. 5905, 112th Cong. (2012).

<sup>262</sup> Kate Bolduan, *House Passes GOP Version of Violence Against Women Act Renewal*, CNN, May 16, 2012, <http://www.cnn.com/2012/05/16/politics/gop-violence-against-women/index.html>.

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election cycle.<sup>263</sup>

After the election outcomes revealed a huge gender gap, the GOP began to re-examine its approach to dealing with women's issues.<sup>264</sup> Part of this reassessment resulted in stronger support for VAWA and culminated in the passage of the original version in March 2013.<sup>265</sup> However, VAWA's recent struggles with reauthorization do not bode well for the future success of I-VAWA, which has struggled to gain legislative support from the beginning.<sup>266</sup>

#### *E. An Alternate Strategy*

Fortunately, the backers of I-VAWA developed an alternative approach to achieving I-VAWA's goals. Without waiting for I-VAWA's enactment, President Obama established the Secretary's Office of Global Women's Issues ("S/GWI") and its concomitant position of the Ambassador-at-Large in April 2009 under the auspices of the Department of State.<sup>267</sup> Despite the similar titular designation, it is unclear whether the responsibilities envisioned by the applicable I-VAWA provisions will also constitute an

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<sup>263</sup> *Id.*

<sup>264</sup> Jason Linkins, *GOP Dudes Get Trained Up in the Ways of Womenfolk, Apparently*, HUFFINGTON POST (Dec. 5, 2013), [http://www.huffingtonpost.com/2013/12/05/gop-men-coached-women\\_n\\_4393609.html](http://www.huffingtonpost.com/2013/12/05/gop-men-coached-women_n_4393609.html).

<sup>265</sup> Greg Sargent, *VAWA Victory Shows House GOPs Need Democrats*, WASH. POST, Feb. 28, 2013, <http://www.washingtonpost.com/blogs/plum-line/wp/2013/02/28/vawa-victory-shows-that-house-gop-needs-democrats>.

<sup>266</sup> Although conservative critiques of VAWA are foreseeable, even some feminist academics question aspects of VAWA such as its emphasis on law enforcement remedies rather than focusing on prevention, job training, housing and other logistics for those leaving an abusive relationship. Law professor Donna Coker observed: "You look at the relatively miniscule amount of money going to transitional housing compared to criminal justice and it's outrageous." Kate Pickert, *What's Wrong With the Violence Against Women Act*, TIME, Feb. 27, 2013, <http://nation.time.com/2013/02/27/whats-wrong-with-the-violence-against-women-act>.

<sup>267</sup> Office of the Press Sec'y, *President Obama Announces Key State Department Appointments*, WHITEHOUSE.GOV (Mar. 6, 2009), [http://www.whitehouse.gov/the\\_press\\_office/President-Obama-Announces-Key-State-Department-Appointments](http://www.whitehouse.gov/the_press_office/President-Obama-Announces-Key-State-Department-Appointments). The appointment of high-level advisors who are not subject to congressional approval has been criticized. See, e.g., Jonathan Puvak, *Executive Branch Czars, Who Are They? Are They Needed? Can Congress Do Anything About Them?*, 19 WM. & MARY BILL RIGHTS J. 1091, 1093 (2011) (arguing that an increase in the number of non-confirmed advisors during the Bush and Obama Administrations demonstrates "an unwary and unchecked expansion of the power of the executive branch"); see also *NLRB v. Noel Canning*, 573 U.S. 2550, 2550 (2014) (unanimously striking down President Obama's recess appointments to the NLRB during a three-day legislative intra-session break, thereby by-passing Senate approval, based on the majority's determination that a legislative break of less than a ten day period is presumptively too short to trigger the President's recess-appointment power).

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integral component of the duties of the Ambassador-at-Large position, which, under I-VAWA, would have an overall mandate that is more expansive than violence against women.<sup>268</sup>

To date, the S/GWI Office, as part of a \$5 million small grants initiative, has awarded more than \$1.2 million to NGOs that deal with various issues of gender-based violence worldwide.<sup>269</sup> These include projects such as “increasing access to justice for survivors of sexual and domestic violence,” “the establishment of adolescent leadership groups,” and “working with men and boys to raise awareness about gender-based violence.”<sup>270</sup>

Although many viewed the creation of the S/GWI Office as an important step toward linking women’s rights and foreign policy under the sponsorship of the State Department, advocates were convinced that the timing was right to pursue an even broader global initiative that was more narrowly focused on gender-based violence against women. Perhaps to avoid relying on the vagaries of the legislative process, which often succumbs to special interest group pluralism, proponents opted to pursue an alternative route: the Executive Branch.

### 1. Specific Executive Orders

On December 19, 2011, President Obama issued Executive Order 13595 titled Instituting a National Action Plan on Women, Peace, and Security (“NAP”), which contains provisions to address sexual and gender-based violence in conflict areas.<sup>271</sup> Eight months later, on August 10, 2012, President Obama signed Executive Order 13623 titled Preventing and Responding to Violence Against Women and Girls Globally.<sup>272</sup> The Order refers to the United States Strategy to Prevent and Respond to Gender-

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<sup>268</sup> According to its website, the work of the S/GWI is organized around on four pillars: (1) promoting the full engagement of women in the political and economic spheres; (2) mitigating the impact of violence against women; (3) addressing underlying socio-economic problems, including women’s access to health and education, food security, and global problems such as climate change; and (4) ensuring that women are integrated as equal participants in reconciliation, post-conflict reconstruction and development in areas affected by conflict. Office of Global Women’s Issues, *Programs*, U.S. DEP’T OF STATE, <http://www.state.gov/s/gwi/programs/index.html> (last visited Oct. 7, 2014).

<sup>269</sup> *Sexual and Gender-Based Violence*, U.S. DEP’T OF STATE, <http://www.state.gov/s/gwi/programs/policy/gbv/index.htm> (last visited Oct. 6, 2014).

<sup>270</sup> *Id.*

<sup>271</sup> *U.S. National Action Plan on Women, Peace and Security*, WHITEHOUSE.GOV (Dec. 2011), [http://www.whitehouse.gov/sites/default/files/emailfiles/US\\_National\\_Action\\_Plan\\_on\\_Women\\_Peace\\_and\\_Security.pdf](http://www.whitehouse.gov/sites/default/files/emailfiles/US_National_Action_Plan_on_Women_Peace_and_Security.pdf).

<sup>272</sup> *Executive Order Preventing and Responding To Violence Against Women and Girls Globally*, WHITEHOUSE.GOV (Aug. 10, 2012), <http://www.whitehouse.gov/the-press-office/2012/08/10/executive-order-preventing-and-responding-violence-against-women-and-gir>.

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Based Violence Globally (“U.S. Strategy”), which the President characterizes as the administration’s response to the earlier House of Representatives request for the Executive to develop a multi-year strategy.<sup>273</sup>

The executive order allows a President to make definitive pronouncements and, in certain cases, to act quickly by circumventing the usual lawmaking process.<sup>274</sup> It also has the force of law and has been subject to surprisingly few challenges by the legislative or the judicial branches.<sup>275</sup> Early in his Administration, President Obama seemed less inclined than did his Executive predecessors to issue unilateral pronouncements, preferring instead to work with Congress.<sup>276</sup> A change in the composition of Congress after the 2010 mid-term elections, which produced a Republican majority in the House, spurred President Obama’s increased use of his executive order authority.<sup>277</sup>

One major drawback to an executive order is the possibility of its rescission by the original author or by a subsequent president.<sup>278</sup> Another

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<sup>273</sup> H.R. REP. NO. 112-331 § 7601 (2011) (accompanying the Department of State, Foreign Operations, and Related Programs Appropriations Act 2012) (Division I of Public Law 112-74)).

<sup>274</sup> Famous executive orders include both popular and unpopular decisions affecting civil rights. The creation of Japanese internment camps during World War II was the result of an executive order by President Franklin Roosevelt while President Eisenhower issued an executive order in 1957 to end the desegregation of public schools. Richard M. Salesman, *When It Comes to Abuse of Presidential Power Obama is a Mere Piker*, FORBES, Jan. 28, 2013, <http://www.forbes.com/sites/richardsalsman/2013/01/28/when-it-comes-to-abuse-of-presidential-power-obama-is-a-mere-piker>.

<sup>275</sup> *Id.* An example of legislative pushback is the “Separation of Powers Restoration Act” first introduced by Representative Ron Paul (R-TX) and Jack Metcalfe (R-WA) during the Clinton Administration. The bill establishes the first statutory definition of “presidential directive,” although it uses the term “presidential order,” and limits the application and effect of such presidential action to the executive branch only. H.R. 2655, 106th Cong. (1999). In a rare judicial rejection of a Presidential directive, the U.S. Supreme Court struck down President Harry Truman’s executive order to seize the steel mills to avert a labor strike during the Korean Conflict because his action conflicted with a prior congressional mandate and exceeded his legitimate authority to act unilaterally. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

<sup>276</sup> Salesman, *supra* note 274.

<sup>277</sup> Carl Hulse, *Hardened, Obama Strikes Tough Tone for Modest Agenda*, N.Y. TIMES, Jan. 28, 2014, [http://www.nytimes.com/2014/01/29/us/politics/executive-order-may-be-only-option-but-it-comes-with-limits.html?\\_r=0](http://www.nytimes.com/2014/01/29/us/politics/executive-order-may-be-only-option-but-it-comes-with-limits.html?_r=0). During the fall 2012 Presidential campaign, a viral Internet report suggested that President Obama had signed more than 900 executive orders; however, the non-profit organization Fact-checker verified that the actual number at the time was 140. *Executive Orders: Washington-Obama*, AMERICAN PRESIDENCY PROJECT (Sept. 20, 2014), <http://www.presidency.ucsb.edu/data/orders.php>.

<sup>278</sup> Jim Powell, *How President Obama Could Be Swept Away With His Executive*

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problem is that it cannot provide for any direct appropriations of funds.<sup>279</sup> An executive order that purports to carry out the intent of Congress should fare better than one that is perceived as unilateral lawmaking by the President. President Obama thus wisely linked the U.S. Strategy in Executive Order 13623 to a previous congressional mandate.<sup>280</sup> Executive Order 13595 is closely associated with peace and security issues—a compelling government interest that falls in large part under the purview of the Executive Branch.

The U.S. Strategy and NAP enshrined in these Executive Orders allows an opportunity to maneuver without the more intense congressional oversight that might accompany a legislative pronouncement. In determining whether NAP and the U.S. Strategy measure up to I-VAWA, a quick comparison suggests that nearly all of the significant provisions of I-VAWA are contained in these two executive orders.<sup>281</sup> Policy analysts at Women Thrive Worldwide concluded, after conducting a more comprehensive analysis of the major components of the U.S. Strategy and NAP, that, taken together, both do “an *excellent* job of addressing nearly every element of the I-VAWA, and many more.”<sup>282</sup>

As would be expected, in the U.S. Strategy and NAP, the most obvious differences are the omissions of I-VAWA’s specific funding levels and the concomitant grants-awarding processes as well as its congressional reporting and oversight elements. It remains to be seen whether the NAP and U.S. Strategy endeavors under the auspices of the S/GWI will have the ability to create viable and sustainable programs, especially in the absence of a guaranteed budget line.<sup>283</sup>

#### IV. NEXT STEPS

Are the goals of I-VAWA worth pursuing? The answer is an unqualified “yes.” The strategies and tactics to be employed in pursuing those goals, however, are less clear. Proponents seem committed to forging ahead with

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*Orders that Defy Congress and the Courts*, FORBES, Jan. 30, 2014, <http://www.forbes.com/sites/jimpowell/2014/01/30/how-president-obama-could-be-swept-away-with-his-executive-orders-that-defy-congress-and-the-courts>.

<sup>279</sup> *Id.*

<sup>280</sup> Exec. Order No. 13,623, 3 C.F.R. 13623 (2012); see WHITEHOUSE.GOV, *supra* note 272.

<sup>281</sup> *U.S. Strategy to Prevent and Respond to Gender Based Violence Globally*, WOMENTHRIVE.ORG (Aug. 2012), [http://womenthrive.org/sites/default/files/gbv\\_strategy\\_analysis\\_final.pdf](http://womenthrive.org/sites/default/files/gbv_strategy_analysis_final.pdf).

<sup>282</sup> *Id.*

<sup>283</sup> H.R. 2874, 113th Cong. (2013). The provisions of NAP have been incorporated into H.R. 2874, which was introduced by Representative Jan Schakowsky (D-IL9), the primary proponent of I-VAWA.

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attempts to pass I-VAWA in lieu of following a different, longer-term course of action. Indeed, Representative Jan Schakowsky (D-IL) reintroduced I-VAWA as bill H.R. 3571 during the 113th Congress and Senator Barbara Boxer (D-CA) followed suit six months later.<sup>284</sup> Based on the previous experiences, I-VAWA's probability of successful enactment is uncertain at best.<sup>285</sup> In the interim, there are other strategies that the United States can pursue to strengthen its resolve to ending VAW at home and abroad.

#### A. Ratify CEDAW

Over the past three decades, a myriad of commentators have urged the United States to ratify CEDAW in order to underscore the seriousness of the country's commitment to women's human rights.<sup>286</sup> Although CEDAW does not directly address violence against women, CEDAW's focus on gender equality assumes that gender-based violence constitutes a violation of its core principles.<sup>287</sup> More important, women's rights activists across the globe fail to understand the reluctance of the United States to sign onto the preeminent "Women's Convention."<sup>288</sup>

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<sup>284</sup> Compare H.R. 3571, 113th Cong. (as introduced Nov. 21, 2013), with S. 2307, 113th Cong. (as introduced May 8, 2014). Minor changes in punctuation and capitalization are the only differences between the House and Senate versions.

<sup>285</sup> For example, H.R. 3571 is predicted to have only a six percent chance of passing and a twenty-six percent chance of moving out of the House Foreign Affairs Committee. *H.R. 3571: International Violence Against Women Act of 2013*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/113/hr3571> (last visited October 24, 2014). On the other hand, its Senate counterpart, S. 2307, is estimated to have a sixty-two percent probability of moving out of the Senate Foreign Relations Committee and a twelve percent probability of enactment. *S. 2307: International Violence Against Women Act of 2014*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/113/s2307> (last visited October 24, 2014). Changes in the composition of Congress would have an impact on these projections.

<sup>286</sup> See, e.g., Marjorie Cohn, *Resisting Equality: Why the U.S. Refuses to Ratify the Women's Convention*, 27 T. JEFFERSON L. REV. 15, 26 (2004); Penny Wakefield, *CEDAW Ratification: Backseated Once Again*, 37 SUMM. HUM. RTS. 22 (2010); Adrien Wing & Peter Nadimi, *Women's Rights in the Muslim World and the Age of Obama*, 20 TRANSNAT'L L. & CONTEMP. PROBS. 431, 450-51 (2011). In conjunction with a hearing convened by the Senate Foreign Relations Subcommittee on International Operations and Organizations, Human Rights, Democracy, and Global Women's Issues on June 24, 2014, seventy-four organizations signed a letter, urging both the passage of I-VAWA and the ratification of CEDAW. *Combatting Violence and Discrimination Against Women: A Global Call to Action*, FREEDOMHOUSE.ORG (June 24, 2014), <http://www.freedomhouse.org/article/combating-violence-and-discrimination-against-women-global-call-action#.VEw4p890zIY>.

<sup>287</sup> See *supra* notes 69-84 and accompanying text.

<sup>288</sup> Women's rights activists such as Sakena Yacoobi, founder of the Afghan Institute for Learning, and Sima Samar, who is the current chair of the Afghan Independent Human

A variety of explanations have been offered for the United States' reluctance to commit itself to international conventions, including concerns about: (1) interfering with U.S. sovereignty;<sup>289</sup> (2) undermining constitutional and legislative guarantees against sex discrimination;<sup>290</sup> and (3) foisting a "politically correct feminist ideology" on the country's citizens.<sup>291</sup> Nevertheless, the symbolic significance of CEDAW ratification is frequently viewed as an essential prerequisite if the United States intends to hold itself out as a credible leader in combating violence against women on an international scale.<sup>292</sup> Retired Associate Justice of the U.S. Supreme Court Sandra Day O'Connor summed up the situation succinctly:

The Senate's failure to ratify CEDAW gives other countries a retort

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Rights Commission, have "long argued that U.S. support for CEDAW would significantly strengthen its power as a tool for women worldwide to help themselves." Kavita M. Ramdas & Kathleen Kelly Janus, *Ratifying Women's Rights*, HOOVER.ORG, <http://www.hoover.org/publications/policy-review/article/94311> (last visited Oct. 7, 2014).

<sup>289</sup> Many policymakers support CEDAW's goal of ending gender discrimination, but have expressed apprehension about undercutting U.S. sovereignty. LUISA BLANCHFIELD, CONG. RESEARCH SERV., R40750, *THE U.N. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: ISSUES IN THE U.S. RATIFICATION DEBATE I* (2013). For this reason, obtaining the constitutionally required two-thirds vote in the Senate to approve a resolution of ratification of a treaty is a daunting prospect. U.S. CONST. art. II, § 2.

<sup>290</sup> If CEDAW's intent is to apply strict scrutiny to sex-based classification schemes and to guarantee that women enjoy both *de jure* and *de facto* equality, this represents a shift in the current U.S. Supreme Court approach to sex discrimination. See Janet Benshoof, *U.S. Ratification of CEDAW: An Opportunity to Radically Reframe the Right to Equality Accorded Women Under the U.S. Constitution*, 35 N.Y.U. REV. L. & SOC. CHANGE 103, 122 (2011). Another women's rights advocate points to the three principles that comprise the notion of equality under CEDAW: "the principle of nondiscrimination, the principle of state obligation, and the principle of substantive equality—the equality of result," which represents an expansion of the way gender equality is framed in U.S. law and policy. Aldo Facio, *Equity or Equality for Women? Understanding CEDAW's Equality Principles*, 60 ALA. L. REV. 1133, 1134 (2009). Other feminist academics have urged that, along with ratifying CEDAW, the United States "should consider restarting the national conversation about ratifying the Equal Rights Amendment (ERA)." Adrien K. Wing, *Conceptualizing Global Substantive Justice in the Age of Obama*, 13 J. GENDER, RACE & JUSTICE 705, 716 (2010).

<sup>291</sup> See, e.g., Anne F. Bayefsky, Denesha Reid & Kathryn Balmforth, *The CEDAW Convention: Its Contributions Today*, 94 AM. SOC'Y INT'L L. 197, 202 (2000) ("CEDAW calls for an unprecedentedly intrusive government. The fact that the intrusion would be made to advance a politically correct feminist ideology makes it no less oppressive.").

<sup>292</sup> Brenton Culpepper, *Missed Opportunity: Congress's Attempted Response to the World's Demand for the Violence Against Women Act*, 43 VAND. J. TRANSNAT'L L. 733, 743 (2013); Julia Ernst, *U.S. Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women*, 3 MICH. J. GENDER & L. 299, 361-62 (1995); Wing & Nadimi, *supra* note 286, at 448.

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when U.S. officials raise issues about the treatment of women, and thus our non-ratification may hamper the effectiveness of the United States in achieving increased protection for women worldwide.<sup>293</sup>

CEDAW is not only a treaty that declares certain rights; it comes with other existing mechanisms, such as its committee structure, which allow for ongoing dialogue and collaboration among states parties.<sup>294</sup> Rather than advocating for the eradication of gender-based violence as an outsider, the United States, as a party to CEDAW, might be able to leverage its CEDAW connections to work cooperatively with other countries' CEDAW representatives as well as other would-be beneficiaries of I-VAWA support. One noted women's rights advocate and scholar explains that the CEDAW ratification campaign "presents an opportunity for United States advocates to organize, document gender discrimination, educate about women's rights, and link their domestic efforts to global efforts on women's rights. It gives women's rights activists in the United States a concrete focus—local organizing with global connections."<sup>295</sup> At the same time, the ratification campaign signals the willingness of the United States to learn from what is happening with respect to women's rights issues internationally.

There is not a monolithic perspective, even among feminists, on the benefits of pursuing ratification of CEDAW. In earlier debates over CEDAW, conservative groups lobbied vigorously in opposition to ratification due to the Convention's reference to "family planning" in Article 12.<sup>296</sup> The CEDAW Committee's actions in particular have come

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<sup>293</sup> *Women's Rights are Human Rights: U.S. Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Hearing before the Subcomm. on Human Rights and the Law of the S. Comm. on the Judiciary*, 111th Cong. 1-2 (2010) (Statement of Sen. Dick Durbin) (quoting Letter from Sandra Day O'Connor, Assoc. Justice of the Supreme Court (retired) to Dick Durbin, Senator (Nov. 17, 2010)).

<sup>294</sup> Even those, such as Professor Darren Rosenblum, who express concerns about aspects of CEDAW do recognize advantages to participation. As Rosenblum acknowledges, "the Convention appears to foster connections among nongovernmental activists, which lends strength to some gender equality efforts." Darren Rosenblum, *Unsex CEDAW, Or What's Wrong with Women's Rights*, 20 COLUM. J. GENDER & L. 98, 103 (2011).

<sup>295</sup> Elizabeth M. Schneider, *Transnational Law as a Domestic Resource: Thoughts on the Case of Women's Rights*, 38 NEW ENG. L. REV. 689, 723 (2004).

<sup>296</sup> See BLANCHFIELD, *supra* note 289, at 15-19 (citing Letter from Douglas Johnson, Legislative Dir., Nat'l Right to Life Comm. (NRLC), and Jeanne E. Head, R.N., Vice President for Int'l Affairs, NRLC, to the Members of the U.S. Senate (Mar. 25, 2009)), available at <http://www.nrlc.org/international/cedawlettertosenate2009>; Grace Smith Melton, *CEDAW: How Interference Threatens the Rights of American Women*, HERITAGE FOUND. (Jan. 9, 2009), <http://www.heritage.org/research/family/bg2227.cfm>. While many have chosen to downplay the implications of CEDAW for reproductive autonomy, others have embraced the possibilities. See, e.g., Barbara Stark, *The Women's Convention, Reproductive Rights, and the Reproduction of Gender*, 18 DUKE J. OF GENDER L. & POL'Y



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under scrutiny for allegedly promoting a radical feminist agenda.<sup>297</sup> Although the United States has gradually backed away from affirmative action remedies, CEDAW suggests that “special measures may be required to achieve equality between men and women.”<sup>298</sup>

Other recent commentary suggests that CEDAW’s moment in the sun has indeed passed.<sup>299</sup> CEDAW’s emphasis on equality and anti-discrimination adopts a kind of “equal treatment” approach that is already included in other human rights instruments.<sup>300</sup> At first glance, this notion seems anachronistic in the face of 21st Century post-modern feminism; however, CEDAW’s primary goal is to bring about equality of result, sometimes referred to as substantive equality, which should comport with current feminist methods.<sup>301</sup>

Until the advent of I-VAWA, no alternative mechanism besides CEDAW ratification was available for the United States to demonstrate its unflinching dedication to women’s human rights. I-VAWA represents a different form of this dedication, but its unilateral approach could be perceived as just another example of American exceptionalism and isolationism in the absence of CEDAW ratification, which arguably represents a more

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261, 261 (2011) (asserting that CEDAW would require the United States to subsidize family planning services and abortion).

<sup>297</sup> Former Senator Jesse Helms expressed this opinion repeatedly. Ellen Chesler, *Introduction to WHERE HUMAN RIGHTS BEGIN: HEALTH, SEXUALITY, AND WOMEN IN THE NEW MILLENNIUM 1*, 14 (Wendy Chavkin & Ellen Chesler eds., 2005).

<sup>298</sup> CEDAW, *supra* note 19, art. 4(1). Article 4(1) sanctions the use of “special measures” to achieve equality, which suggests affirmative action may be necessary to achieve CEDAW’s ends. Justice Ruth Bader Ginsburg made this observation and referenced CEDAW in her concurring opinion in the education affirmative action case *Grutter v. Bollinger*, 539 U.S. 306, 344 (2003). Also, see Comm. on the Elimination of Discrimination against Women, General Recommendation No. 25, U.N. Doc. HRI/GEN/1/Rev.7, at 282 (2004) for clarification of the term “special measures.” Another prominent scholar suggests that involvement by the U.S. in CEDAW endeavors might result in attempts to impose its current anti-affirmative action views of equality on other countries. Judith Resnik, *The Internationalism of American Federalism: Missouri and Holland*, 73 MO. L. REV. 1105, 1137 (2008).

<sup>299</sup> Ann Piccard, *U.S. Ratification of CEDAW: From Bad to Worse?*, 28 LAW & INEQ. 119, 156-57 (2010).

<sup>300</sup> See ICCPR, *supra* note 19; see also ICESCR, *supra* note 19. Author and feminist critic Christina Hoff Sommers, after acknowledging there are some notable features of CEDAW, stated “its key provisions are 1970s feminism preserved in diplomatic amber.” *Feminism by Treaty: Why CEDAW Is Still a Bad Idea*, AMERICAN ENTER. INST. (June 1, 2011), <http://www.aei.org/article/society-and-culture/race-and-gender/feminism-by-treaty>.

<sup>301</sup> Rachel Rebouche, *The Substance of Substantive Equality: Gender Equality and Turkey’s Headscarf Debate*, 24 AM. U. INT’L. L. REV. 711, 712 (2009); see also *Minority Schools in Albania*, Advisory Opinion, 1935 P.C.I.J. (ser. A/B) No. 64 (Apr. 6) (recognizing that sameness is not necessarily equal where groups are not similarly situated).

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expansive public commitment by the United States to protect women's rights at home and abroad.

*B. Recognize the Intersection of Anti-Violence Efforts and Rule of Law Reform*

Combatting violence against women is a multi-faceted endeavor that intersects with traditional rule-of-law reform efforts in fashioning remedies, strengthening the capacity of law enforcement, addressing public corruption, establishing independent judiciaries, and increasing access to the courts. Initial rule-of-law reform efforts abroad centered largely on the provision of outside assistance in constitution drafting and institution building.<sup>302</sup> Suggestions for second-generation rule-of-law reform efforts dovetail with feminist principles most notably in the emphasis on working within a country at the community level to identify problems and then craft appropriate solutions.<sup>303</sup>

While this concept may seem self-evident, it contrasts sharply with the "one-size-fits-all" and "best practices" approach used in past reform efforts that exported Western institutions and methods in a wholesale manner to other places.<sup>304</sup> In its programming and funding initiatives, S/GWI must be dedicated to the notion of finding solutions for specific problems within the political, social, and cultural contexts in which they arise.<sup>305</sup>

Determining the necessary steps to implement changes that will help end violence against women and girls does not lend itself to quick and easy solutions; rather, it requires a long-term strategy. Public corruption, especially in the law enforcement and prosecutorial sectors, must be confronted because it creates a disparate impact on women.<sup>306</sup> Corruption can take many forms, ranging from pervasive schemes to smaller scale

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<sup>302</sup> See, e.g., Jaques deLisle, *Lex Americana? United States Legal Assistance, American Legal Models, and Legal Change in the Post-Communist World and Beyond*, 20 U. PA. J. INT'L ECON. L. 179, 179-80 (1999).

<sup>303</sup> See *infra* notes 318-330 and accompanying text.

<sup>304</sup> See Patricia E. Erwin, *Exporting U.S. Domestic Violence Reforms: An Analysis of Human Rights Frameworks and U.S. "Best Practices,"* 1 FEMINIST CRIMINOLOGY 188, 188 (2006) (advising that the U.S. should "proceed cautiously in exporting U.S. 'models' of intervention in domestic violence" due to the nearly exclusive focus on legalistic approaches, which excludes other options and denies other linkages); see also RACHEL KLEINFELD, *ADVANCING THE RULE OF LAW ABROAD: NEXT GENERATION REFORM* 204 (2012).

<sup>305</sup> KLEINFELD, *supra* note 304, at 204.

<sup>306</sup> See generally U.N. Dev. Program, *Seeing Beyond the State: Grassroots Women's Perspectives on Corruption and Anti-Corruption* (Oct. 2012), <http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Anti-corruption/Grassroots%20women%20and%20anti-corruption.pdf> (contending that oftentimes women experience the effects of corruption differently than men do).

occurrences such as demands for payments of fees for services that are supposed to be free, outright bribery, or requests for sexual favors.<sup>307</sup> Women's direct participation in oversight and monitoring functions has the potential to diminish the effects of corruption in some instances.<sup>308</sup>

Acknowledgment that the causes of gender-based violence against women are rooted in entrenched cultural practices and institutions provides some sense of the magnitude and scope of the efforts required to eliminate this violence. Short-term funding efforts that anticipate clear-cut measurable outcomes within a specific time frame may be doomed to fail. If a project is moving forward on solid footing, then the extension of deadlines for completion should not only be permissible, but should be encouraged.

### *C. Emphasize Collaboration, Domestically and Internationally*

One of the highlights of I-VAWA as well as the U.S. Strategy/NAP in place under the S/GWI is the emphasis on coordination, collaboration, and communication among U.S. government departments that are working on similar issues and concerns.<sup>309</sup> Sharing information is a necessary first step in the coordination efforts.

The S/GWI should develop an easily accessible database that includes material on past and current U.S. government programs to address violence against women and girls domestically.<sup>310</sup> On the international front, the U.N. in 2006 created the U.N. Secretary-General's Database on Violence against Women, which was designed to capture information "on the extent, nature and consequences of all forms of violence against women, and on the impact and effectiveness of policies and programmes for, including best practices in, combating such violence."<sup>311</sup> The American Bar Association's

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<sup>307</sup> Marie Chêne, Ben Clench & Craig Fagan, *Corruption and Gender in Service Delivery: The Unequal Impact* 2-3 (Transparency Int'l, Working Paper No. 2, 2010), available at [http://issuu.com/transparencyinternational/docs/2010\\_wp\\_genderinservice\\_delivery\\_en?e=2496456/2858942](http://issuu.com/transparencyinternational/docs/2010_wp_genderinservice_delivery_en?e=2496456/2858942); see also *supra* note 14 and accompanying text.

<sup>308</sup> See Farzana Nawaz, *State of Research on Gender and Corruption*, ANTI-CORRUPTION RES. CTR. (June 24, 2009), <http://www.u4.no/publications/state-of-research-on-gender-and-corruption>.

<sup>309</sup> Anyone who has ever worked or volunteered abroad will instantly recognize the importance of communication, coordination, and collaboration. The lack of all three is often startling. Even within the same government branches, perhaps even the same offices, staff are frequently unaware of what colleagues are doing on similar programs.

<sup>310</sup> Exec. Order No. 13,623, 77 C.F.R. 54783 (2012) requires reporting by agencies and organizations that receive financing. Currently, this information is not easily accessed.

<sup>311</sup> Women Watch, Directory of UN Resources on Gender and Women's Issues, [http://www.un.org/womenwatch/directory/violence\\_against\\_women\\_3004.htm](http://www.un.org/womenwatch/directory/violence_against_women_3004.htm) (last visited Oct. 6, 2014).

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Section of International Law has embarked on a recent venture titled the International Models Project on Women's Rights ("IMPOWR").<sup>312</sup> The goal of IMPOWR is the creation of a global collaborative database on women's legal rights that will include information on reform and enforcement efforts in more than 185 countries in forty discrete subject areas.<sup>313</sup>

The focus of the S/GWI is broader than "mitigating the impact of violence against women."<sup>314</sup> As an umbrella entity for gender concerns, the S/GWI can acknowledge more directly that the breadth of its responsibilities allows a greater understanding of the interconnectedness of women's issues. At the same time, the S/GWI can capitalize on the expertise, connections, and advocacy of NGOs such as Women Thrive Worldwide, Futures Without Violence, and Amnesty International that have a lengthy commitment to specialized anti-violence work. Along with building on pre-existing partnerships with groups that have been instrumental in supporting I-VAWA and the creation of the S/GWI, there is also an opportunity to reach out more broadly to other organizations that have been engaged in VAW work.<sup>315</sup>

Still, fostering cooperation among U.S. governmental departments is not enough. The S/GWI should recognize the importance of working with international NGOs and other governments that also concentrate on anti-violence efforts.<sup>316</sup> Although the harmonization efforts may be challenging, the pay-off could be substantial. In some instances, S/GWI may conclude that other actors may be better equipped to handle a particular situation due to such factors as greater familiarity with the issues, closer proximity to the region, better compatibility with an overseas partner, or a more complete understanding of the power structures. At the very least, this coordination may avoid duplication of services and may reduce confusion among grant recipients.

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<sup>312</sup> *International Models Project on Women's Rights*, AMERICAN BAR ASSOC., [http://www.americanbar.org/groups/international\\_law/initiatives\\_awards/task\\_forces/international\\_models\\_project\\_on\\_womens\\_rights.html](http://www.americanbar.org/groups/international_law/initiatives_awards/task_forces/international_models_project_on_womens_rights.html) (last visited Oct. 6, 2014).

<sup>313</sup> *Id.*

<sup>314</sup> U.S. DEP'T OF STATE, *supra* note 239.

<sup>315</sup> The 2014 unveiling of the Gender-Based Violence Emergency Response and Protection Initiative in cooperation with the Avon Foundation and Vital Voices, a non-profit organization founded by Hillary Clinton, is one example. See William J. Burns, *Remarks at the Launch of the Gender-based Violence Emergency Response and Protection Initiative*, U.S. DEP'T OF STATE (Mar. 20, 2014), <http://www.state.gov/s/d/2014/223777.htm>.

<sup>316</sup> Europeans may be more accustomed to operating across borders in cooperation with their EU partners. See, e.g., KRISTIN ARCHICK, CONG. RESEARCH SERV., RS21372, *THE EUROPEAN UNION: QUESTIONS AND ANSWERS* (2013) (describing the EU's political and economic partnership as "a unique form of cooperation among sovereign countries").

Various entities sometimes find themselves in actual or perceived competition with others for money and sponsorship. As a result, a proprietary interest often develops in programs, a situation that tends to discourage basic communication and cooperation among both like-minded government organizations and NGOs.<sup>317</sup> Competition might be reduced if the S/GWI prioritized collaborative projects in awarding grants.

*D. Select a Feminist Theoretical Framework to Guide the Anti-Violence Work of the S/GWI*

It is not clear that I-VAWA or the mission of the S/GWI, especially with respect to violence against women and girls, is specifically grounded in any particular feminist theoretical framework. A more deliberate adoption of an overarching theoretical approach could guide the S/GWI's work. But is there a current feminist theoretical approach that is compatible with the mission and values of S/GWI?

One possibility is social justice feminism. This theory has been described by noting that "social justice feminism is structural in its orientation, identifying issues that contribute to systemic subordination and developing theories and strategies for change."<sup>318</sup> Social justice feminism emphasizes being productive by thinking creatively;<sup>319</sup> acting constructively and differently;<sup>320</sup> and providing mechanisms for healing as well as bringing women together.<sup>321</sup> A hallmark of its methodology is "developing solutions informed by a bottom up approach."<sup>322</sup>

Transnational feminism, which also centers on the inter-sectionality of oppression and their impact on women, shares many characteristics with social justice feminism.<sup>323</sup> It emphasizes the need for direct acknowledgment of transnational cultural flows and the "material conditions that structure women's lives in diverse locations."<sup>324</sup> Its specific emphasis on working across borders seems ideally suited to serve as the

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<sup>317</sup> There is heavy emphasis in international aid work on "branding," that is, literally leaving one's mark to insure that the appropriate entity gets credit for its good works with the expectation that the funder will be viewed more positively by the recipients. *Branding*, U.S. DEP'T OF INT'L DEV., <http://www.usaid.gov/branding> (last visited Oct. 6, 2014).

<sup>318</sup> Kristen Kalsem & Verna L. Williams, *Social Justice Feminism*, 18 *UCLA WOMEN'S L.J.* 131, 161 (2010).

<sup>319</sup> *Id.* at 165.

<sup>320</sup> *Id.* at 167.

<sup>321</sup> *Id.* at 172.

<sup>322</sup> *Id.* at 183.

<sup>323</sup> CHANDRA TALPADE MOHANTY, *FEMINISM WITHOUT BORDERS: DECOLONIZING THEORY, PRACTICING SOLIDARITY* 146 (2003).

<sup>324</sup> SCATTERED HEGEMONIES: POSTMODERNITY AND TRANSNATIONAL FEMINIST PRACTICES 17 (Inderpal Grewal & Caren Kaplan eds., 1994).

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guiding force behind the S/GWI's programming, which is designed to accomplish that goal. However, transnational feminism, while emphasizing solidarity in transnational feminist practices, also calls for a heightened awareness about differences in women's lives "as well as links between transnational power structures."<sup>325</sup> Using particular feminist theoretical approach as a guide star would be challenging for the S/GWI because it is currently housed in the U.S. Department of State, which is perceived as the epitome of a transnational power structure.<sup>326</sup>

Academic categorization of a specific feminist methodology is not crucial to the S/GWI's work in areas such as grant allocation; however, there should be an awareness of the different feminist perspectives on dealing with VAW issues. For example, in the area of domestic violence, the "second-wave" feminist approach was concerned primarily on preventing violence, protecting the battered woman, and punishing the perpetrator.<sup>327</sup> Current thinking in this area has moved away from the former "universal fit" strategy with its reliance on the government to automatically arrest the perpetrator, issue a restraining order, and proceed with prosecution.<sup>328</sup> Instead, some "third-wave" feminists emphasize the agency of the woman subjected to abuse and her ability to make choices about available options.<sup>329</sup> Others decry the one-dimensional battering narrative that has assumed a preferred position in the U.S. legal system because it ignores the multi-factored nature of the overall situation and the complexities of the people involved.<sup>330</sup>

This divergence of perspectives among feminists has the potential to affect outcomes at the S/GWI. Without clear, guiding theoretical principles, grant proposals may receive less consideration, even

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<sup>325</sup> *Id.* at 26-27. There are also concerns about reproduction of Western essentialist notions. Niamh Reilly, *Doing Transnational Feminism, Transforming Human Rights: The Emancipatory Possibilities Revisited*, 19 *IRISH J. SOC.* 60, 64 (2011).

<sup>326</sup> See, e.g., STEPHEN M. WALT, *TAMING AMERICAN POWER: THE GLOBAL RESPONSE TO U.S. PRIMACY* (2005) (viewing the United States and its foreign policy from the perspective of other nations).

<sup>327</sup> See Barbara Hart, *Arrest: What's the Big Deal?*, 3 *WM. & MARY J. WOMEN & L.* 207, 207-208 (1997) (pointing out that during the late 1970s and early 1980s, stress was placed on the safety of the victims and accountability for abusers).

<sup>328</sup> See generally LEIGH GOODMARK, *A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM* (2012); Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Cases: A Critical Review*, 4 *BUFF. CRIM. L. REV.* 801, 801 (2001); Aya Gruber, *Neofeminism*, 50 *HOUS. L. REV.* 1325, 1325 (2013); Kristian Miccio, *A House Divided: Mandatory Arrest, Domestic Violence and the Conservatization of the Battered Women's Movement*, 42 *HOUS. L. REV.* 237, 238 (2005).

<sup>329</sup> Leigh Goodmark, *Autonomy Feminism: An Anti-Essentialism Critique of Mandatory Interventions in Domestic Violence Cases*, 37 *FLA. ST. U. L. REV.* 1, 45 (2009).

<sup>330</sup> Gruber, *supra* note 328, at 1375.

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unknowingly, based on their point of view with respect to VAW. Transparency is always preferable to uncertainty in this regard.

*E. Commit to the Creation of Model Programs through the Office of Global Women's Issues*

Future attempts to pass I-VAWA could benefit from the success of S/GWI sponsored projects. Moreover, current Secretary of State John Kerry, who was the primary Senate sponsor of I-VAWA in 2010, will likely continue his predecessor Hillary Clinton's promotion of S/GWI.<sup>331</sup> Because violence against women programming at S/GWI lacks a dedicated stream of funding, S/GWI must be creative in financing its programs and should be discerning in the selection of programs that it chooses to sponsor.<sup>332</sup>

A bigger challenge may be addressing the public perception that the U.S. Department of State is not a particularly woman-friendly work environment. Professor Anne-Marie Slaughter's article in the mainstream press about the work-life balance issue she encountered as the director of policy planning at the State Department from 2009 to 2011 drew attention to this issue generally and in her specific workplace.<sup>333</sup> A visible commitment to women's equality in the State Department would underscore the S/GWI's dedication to working overseas to end discrimination, to promote women's equality, and to stamp out VAW.

CONCLUSION

Voices in the media clamor for the enactment of I-VAWA. Cristina Finch, writing in the *Guardian*, tells her own story about surviving dating

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<sup>331</sup> Press Statement, Secretary of State, Int'l Day for the Elimination of Violence against Women and 16 Days of Activism (Nov. 25, 2013), *available at* <http://www.state.gov/secretary/remarks/2013/11/218050.htm>.

<sup>332</sup> For example, in late 2012, S/GWI in conjunction with the U.S. President's Emergency Plan for AIDS Relief ("PEPFAR"), awarded \$3 million in grants to organizations in twenty-eight countries whose work concentrated on prevention and response to gender-based violence with a connection to HIV preventive measures. *Ambassador Veveer Announces Grant to Address Gender Based Violence as Part of a Global HIV Response*, U.S. DEP'T OF STATE (Nov. 27, 2012), <http://www.state.gov/r/pa/prs/ps/2012/11/201095.htm>.

<sup>333</sup> Anne-Marie Slaughter, *Why Women Still Cannot Have It All*, ATLANTIC, July/Aug. 2012, <http://www.theatlantic.com/magazine/archive/2012/07/why-women-still-cant-have-it-all/309020>; *see also* Sarah Kendzior, *US Foreign Policy's Gender Gap: US Foreign Policy Needs Greater Diversity of Skills and Ideas, More Women and a Breakdown of Economic Barriers*, AL JAZEERA, Mar. 20, 2014, <http://www.aljazeera.com/indepth/opinion/2014/03/us-foreign-policy-gender-gap-201431951640115291.html>.

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violence.<sup>334</sup> She identifies “rape and abuse of women [as] a global human rights crisis” and poses the question: “[w]hy won’t Congress pass the International Violence Against Women Act?”<sup>335</sup> In her blog for the *Huffington Post*, Amanda Klasing tells the story of Dolores, a former battered woman from Colombia, who is now an advocate in her community for other women who are subjected to abuse.<sup>336</sup> Klasing requests her readers “to stand in solidarity with victims of violence against women around the world” and to ask their congressional representatives to pass I-VAWA.<sup>337</sup> In a piece that she penned for *MSNBC.com*, Ruth Messinger debunks myths about VAW and indicates that she has grown weary of the excuses concerning why the United States cannot do more to fight “the global epidemic of violence against women that continues unabated.”<sup>338</sup> She presses for passage of I-VAWA to make sure that U.S. foreign aid dollars will be spent on programs that make a critical difference for women and girls.<sup>339</sup>

Finally, Nicholas Kristof, columnist for the *New York Times*, has championed the adoption of I-VAWA for the past several years.<sup>340</sup> Writing about acid attacks, he concludes that I-VAWA “would help put gender violence on the global agenda, and it would give a bit of our voice to help the voiceless. It wouldn’t be a panacea, but it would be a modest step in the right direction. These women deserve it.”<sup>341</sup>

Perhaps there is no such “panacea.” Considering the vastness of the problem, especially in the many ways that it plays out across the globe, international remedies to violence against woman defy any means of a simple fix; there is, therefore, no easy way to assess the prospects for achieving any kind of meaningful and long-lasting change. Even so, the

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<sup>334</sup> Cristina Finch, *Why Won’t Congress Pass the Violence Against Women Act?*, *GUARDIAN*, Nov. 20, 2013, <http://www.theguardian.com/commentisfree/2013/nov/20/international-violence-against-women-act-congress>.

<sup>335</sup> *Id.*

<sup>336</sup> Amanda Klasing, *Human Rights Day: U.S. Should Support Victims of Violence Against Women*, *HUFFINGTON POST* (Dec. 10, 2013), [http://www.huffingtonpost.com/amanda-klasing/human-rights-day-us-shoul\\_b\\_4418427.html](http://www.huffingtonpost.com/amanda-klasing/human-rights-day-us-shoul_b_4418427.html).

<sup>337</sup> *Id.*

<sup>338</sup> Ruth Messinger, *Everything We Think About Worldwide Violence against Women is Wrong*, *MSNBC.COM* (Mar. 7, 2014), <http://www.msnbc.com/msnbc/myths-about-violence-against-women>.

<sup>339</sup> *Id.*

<sup>340</sup> Nicholas Kristof, *Acid Attacks and IVAWA*, *N.Y. TIMES BLOG* (Nov. 24, 2009, 8:06 AM), [http://kristof.blogs.nytimes.com/2009/11/24/acid-attacks-and-ivawa/?\\_php=true&\\_type=blogs&module=BlogPost-Title&version=Blog%20Main&contentCollection=Opinion&action=Click&pgtype=Blogs&region=Body&\\_r=0](http://kristof.blogs.nytimes.com/2009/11/24/acid-attacks-and-ivawa/?_php=true&_type=blogs&module=BlogPost-Title&version=Blog%20Main&contentCollection=Opinion&action=Click&pgtype=Blogs&region=Body&_r=0).

<sup>341</sup> *Id.*



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many voices that have been raised in protest of violence against women have attracted noticeable attention among international communities, even those that hold competing political views. To that end, collaborative work on I-VAWA programs that target the worldwide war on women is undoubtedly a good place to start.