



## Генеральная Ассамблея

Distr.: General  
6 June 2011  
Russian  
Original: English

### Совет по правам человека

#### Семнадцатая сессия

#### Пункт 3 повестки дня

**Поощрение и защита всех прав человека,  
гражданских, политических, экономических,  
социальных и культурных прав,  
включая право на развитие**

### **Доклад Специального докладчика по вопросу о насилии в отношении женщин, его причинах и последствиях г-жи Рашиды Манджу**

#### Добавление

### **Миссия в Соединенные Штаты Америки\* \*\***

#### *Резюме*

Специальный докладчик по вопросу о насилии в отношении женщин, его причинах и последствиях посетила Соединенные Штаты Америки с 24 января по 7 февраля 2011 года. В настоящем докладе она подробно рассматривает существующую в стране ситуацию с насилием в отношении женщин, включая такие вопросы, как насилие в специальных учреждениях, насилие в семье, насилие в отношении женщин в вооруженных силах и насилие в отношении женщин, которые сталкиваются с формами множественной и перекрестной дискриминации, в частности в отношении женщин из числа коренного населения Америки, иммигрантов и женщин, относящихся в афроамериканской общине.

Специальный докладчик отмечает позитивные законодательные и директивные инициативы, предпринятые правительством с целью сокращения числа случаев насилия в отношении женщин, включая принятие и последующие продления срока действия Закона о борьбе с насилием в отношении женщин и создание на самом высоком уровне исполнительной власти специальных бюро по вопросам борьбы с насилием в отношении женщин. Закон о борьбе с насилием в отношении женщин предусматривает последовательное увеличение объема

\* Резюме распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется в полученном виде только на том языке, на котором он был представлен.

\*\* Представлен с опозданием.

средств, выделяемых на цели борьбы с насилием в семье, при этом при каждом продлении срока действия этого Закона предусматривался охват групп населения, исторически находившихся в неблагоприятном положении.

Вместе с тем Специальный докладчик отметила отсутствие имеющих обязательную юридическую силу федеральных положений, предусматривающих материально-правовую защиту от актов насилия в отношении женщин и предупреждение таких актов. Такое отсутствие законодательства, предусматривающего материально-правовую защиту, в сочетании с недостаточно эффективным осуществлением некоторых законов, стратегий и программ приводит к сохранению практики насилия в отношении женщин и дискриминационного обращения с жертвами, а также оказывает особенно неблагоприятное воздействие на малоимущих женщин и женщин, принадлежащих к группам меньшинств и иммигрантов.

С учетом вышеуказанных выводов Специальный докладчик представляет конкретные рекомендации, касающиеся предоставления средств правовой защиты женщинам, являющимся жертвами насилия, расследования и судебного преследования актов насилия в отношении женщин в вооруженных силах, улучшения условий, в которых женщины содержатся под стражей, и решения проблем, связанных с многочисленными формами дискриминации, с которыми сталкиваются некоторые группы женщин, в результате чего они являются более уязвимыми перед насилием.

## Annex

### **Report of the Special Rapporteur on violence against women its causes and consequences on her visit to the United States of America**

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## I. Introduction

1. At the invitation of the Government, the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, conducted a country mission to the United States of America from January 24 to February 7, 2011. The objective of this visit, which included meetings in Washington D.C, North Carolina, Florida, California, Minnesota and New York, was to examine the situation of violence against women broadly, including issues such as violence in custodial settings, domestic violence, violence against women in the military, and violence against women who face multiple, intersecting forms of discrimination, particularly Native-American, immigrant and African-American women.

2. In 1998, the first Special Rapporteur on violence against women, its causes and consequences, visited eight prisons in the United States to study specifically the issue of violence against women in custodial settings. This mission report examines some of the issues raised in the 1998 report, but it includes a broader focus on violence against women.

3. The Special Rapporteur would like to express her gratitude to the Government of the United States of America for the cooperation extended prior to, during and after her visit to the country.<sup>1</sup> During the visit, consultations were held in Washington D.C. with officials of the Department of State; Department of Justice's Federal Bureau of Prisons and Office of Violence against Women; the Department of Homeland Security; Department of Labor; Department of Housing and Urban Development; Department of Health and Human Services; Department of Veterans Affairs, and Department of Defense. The Special Rapporteur also met with the White House Advisor on Violence against Women and with members of the judiciary.

4. At the local level, the Special Rapporteur met with tribal authorities in the Eastern Band of Cherokee Indians, North Carolina; and with state and county authorities in St. Paul and Minneapolis, Minnesota.

5. The Special Rapporteur visited three prisons and detention facilities managed by Federal and State authorities, including the Glades County Detention Centre in Florida; and two of the facilities visited by her predecessor in 1998, the Federal Correctional Institution (FCI) in Dublin, California and the Central California Women's Facility (CCWF) in Chowchilla. The Special Rapporteur regrets not having been granted full access to the Monmouth County Correctional Institution in New Jersey<sup>2</sup> and not receiving timely instructions regarding her request for access to a military base<sup>3</sup>.

6. The Special Rapporteur is grateful to her interlocutors, including state officials, civil society advocates, survivors of violence, and women in custody who shared their personal stories and experiences with her. She looks forward to a fruitful and continued dialogue with the Government and other stakeholders on the implementation of her recommendations.

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<sup>1</sup> The Special Rapporteur would particularly like to thank the government of the United States, for agreeing to respond to the current report in a very short time frame.

<sup>2</sup> A tour of the facility was offered to the Special Rapporteur, yet with no possibility of conducting individual interviews with the inmates.

<sup>3</sup> The Special Rapporteur enquired about the possibility of visiting a military base two weeks before the mission started and reiterated the request upon commencement of the mission. She was informed that Department of Defense protocol was unable to accommodate the request on such short notice.

## II. Manifestations of violence against women and girls

7. Violence against women occurs along a continuum in which the various forms and manifestations of violence are often both causes and consequences of violence. These manifestations cross public and private domains and range from intimate and interpersonal violence to structural, systematic, and institutional forms of violence. In the interests of clarity, the following sections disaggregate and address the specificity of violence against women encountered in different contexts within the country.

### A. Domestic violence, sexual assault and stalking

8. Domestic Violence or Intimate Partner Violence (IPV) is a pervasive human rights violation that continues to affect women across the United States. According to the National Crime Victimization Survey (NCVS)<sup>4</sup>, in 2008 approximately 552,000 violent crimes by an intimate partner were committed against women. These include 35,690 rapes or sexual assaults, 38,820 robberies, 70,550 aggravated assaults and 406,530 simple assaults.<sup>5</sup> In 2008, the rate of intimate partner victimization for women was 4.3/1000 victimizations, whereas the equivalent rate for men was 0.8/1000.<sup>6</sup>

9. In 2007, 64% of female homicides were perpetrated by a family member or an intimate partner. These include a spouse or ex-spouse (24% of cases), a boyfriend or girlfriend (21% of cases) and other family members (19%).<sup>7</sup> Furthermore, women were killed by intimate partners at twice the rate of men. In 2007 the rate of intimate partner homicide for women was 1.07 per 100,000, whereas the rate for male victims was 0.47 per 100,000.<sup>8</sup>

10. The Violence Policy Center reports, that in 2008 firearms were the most common weapon used by men to murder women, with nearly two-thirds of the women having been murdered by male intimate partners. The number of women shot and killed by their husband or intimate acquaintance was more than four times higher than the total number murdered by male strangers using all weapons combined.<sup>9</sup> In addition to domestic homicide committed with a gun, women also suffer “hostile gun displays” as a form of IPV by which abusive partners threaten to use guns against their victims.<sup>10</sup>

11. Rape and sexual assault are also prevalent forms of violence against women in the country. The NCVS reported 182,000 cases of women raped or sexually assaulted in the United States during 2008 i.e. approximately 500 women every day.

<sup>4</sup> NCVS data includes crimes that were not reported to the police.

<sup>5</sup> Catalano, S., et al, Female Victims of Violence, BJS. September 2009, p. 1. <http://bjs.ojp.usdoj.gov/content/pub/pdf/fvv.pdf>.

<sup>6</sup> IPV is identified as violence committed by current or former spouses, boyfriends or girlfriends, and comprises instances of non fatal violence (i.e. assault, rape, robbery), and of fatal violence (i.e. homicide).

<sup>7</sup> Catalano, op.cit. p.3.

<sup>8</sup> Ibid.

<sup>9</sup> Violence Policy Center, When Men Murder Women: An Analysis of 2008 Homicide Data. Washington, DC, 2010, p.7.<http://www.vpc.org/studies/wmmw2010.pdf>.

<sup>10</sup> Ibid. p. 1.

12. Stalking is a crime that targets women at higher rates than men in the United States and may have dangerous links with more violent crimes, such as battering, rape and murder. According to the Bureau of Justice Statistics Supplemental Victimization Survey on Stalking, an estimated 3.4 million persons were victims of stalking during a 12 month period in 2005 and 2006.<sup>11</sup> Women were at higher risk of stalking than men, with 20 victimizations per 1,000 females, as compared to 7 victimizations per 1,000 males.

13. Domestic violence is an extremely underreported crime, with victims hesitating to contact the authorities due to factors such as: 1) fear of retaliation from their abuser, 2) the perception that the police will not respond adequately to the abuse and/or 3) a feeling that these are personal issues that should be addressed privately.<sup>12</sup>

14. The reluctance to reach out to the police is even more entrenched among minority and immigrant communities, as they may view the police and the courts as oppressive, rather than protective institutions. For example, during interviews with survivors and advocates the Special Rapporteur heard accounts of disproportionate arrests of women of color following incidents of IPV. For instance, stereotypes about African-American women as being “more aggressive” sometimes lead to police officers not adequately differentiating between victim and perpetrator when intervening in such cases.

15. Interlocutors stated that, although every state now defines domestic violence as a crime, it is still not investigated or prosecuted with the same seriousness as other violent crimes. Furthermore, the police often fail to respond to reports of IPV and/or violations of protection orders, and when they do respond, they do so inappropriately. It is reportedly not uncommon for police officers to encourage informal resolution between the parties instead of arresting perpetrators. This is coupled by a failure to conduct adequate investigations including not enquiring about the presence of firearms, not taking photographs despite visible injuries of victims, and/or not enquiring about perpetrators history of abuse.

16. In relation to criminal trials, statistics reveal that alleged abusers are rarely prosecuted with a serious offence in domestic violence cases. A 2009 Department of Justice report, which reflects findings from a study of 16 large urban counties in 2002, indicates that 56% of intimate partner violence cases filed with the courts resulted in a conviction. Furthermore, only 18% of those defendants were convicted of felonies and most of those convictions were for a misdemeanor. A third (33%) of the cases were discontinued by the prosecution or dismissed by the court.<sup>13</sup> The study also showed that conviction rates varied drastically depending on the location, ranging from a low of 17% to a high of 89% across the 16 counties.<sup>14</sup>

17. Underreporting and lack of investigation is also prevalent regarding instances of rape and sexual assault. From 1992 to 2000, only 36% of rapes, 34% of attempted rapes, and 26% of sexual assaults were reported to police. This is mainly due to perceptions of such victimization as a personal matter, fear of reprisals by perpetrators

<sup>11</sup> Statistics available at: [http://www.ovw.usdoj.gov/arrest\\_grant\\_desc.htm](http://www.ovw.usdoj.gov/arrest_grant_desc.htm).

<sup>12</sup> Greenfeld, L. et al., Violence by Intimates, BJS, Mar. 1998, p.19. <http://bjs.ojp.usdoj.gov/content/pub/pdf/vi.pdf>.

<sup>13</sup> Smith E. and Farole, Profile of Intimate Partner Violence Cases in Large Urban Counties, BJS, Oct. 2009, p.6. <http://bjs.ojp.usdoj.gov/content/pub/pdf/pipvcluc.pdf>.

<sup>14</sup> Ibid.

and lack of confidence in the police.<sup>15</sup> This reluctance is further exacerbated, by inadequate responses in the investigation and prosecution of the crime. A study published in 2010 revealed that most police officers hold attitudes and opinions that undermine their ability to treat rape victims appropriately. Furthermore, there is reticence to changing current investigation and case processing methodologies. According to the report, most law enforcement officers have received training on how to interview offenders, conduct forensic examinations, search for evidence, and interview witnesses. The interviewing of victims is usually done through inadequate adaptations of these techniques, thus resulting in victims being presumed to be lying and being examined closely for evidence of this.”<sup>16</sup>

18. Apart from the physical and psychological consequences faced by women victims of violence, interlocutors made reference to a wide range of subsequent obstacles faced by victims. In some cases, victims have been arrested, charged inappropriately and even wrongfully convicted as perpetrators. Women victims may have their children removed by child protective services and accused of “failing to protect” them from their abuser. Women who are wrongfully arrested during an incident of IPV might have this used against them in subsequent custody proceedings. Furthermore, it is not uncommon for women to be pressured to agree to plea bargain arrangements, or to attend dispute resolution or other procedures through which batterers continue to harass and intimidate them.

19. Victims of domestic violence also face grave consequences in terms of economic instability, loss of employment and homelessness. In some cases, victims lose their homes after landlords evict them, using “zero tolerance” or “one strike” policies that permit the eviction of a tenant if any criminal activity occurs in her home. Unfortunately, in most cases such policies fail to distinguish between a primary perpetrator and a victim who acts in self-defense.

20. Domestic and sexual violence can also significantly affect the workplace, either because these crimes occur on the job<sup>17</sup>, or because they create problems with employers, i.e batterers preventing victims from going to work or harassing them on the job. This puts victims at risk of losing their jobs, makes them more dependent on their abusers and, therefore less able to escape a situation of violence.

21. Women victims of violence also face enormous challenges in terms of their sexual and reproductive health. Abusers usually exercise control over victims’ access to contraception, abortion and other reproductive health services. According to the National Domestic Violence Hotline, 25% of 3,169 callers who participated in a recent survey, reported that they had experienced birth control sabotage and pregnancy coercion.<sup>18</sup> Women experiencing IPV commonly also experience sexual assault, and abusive partners often refuse to use condoms and respond violently to women’s intentions to use contraception. As a result, women experiencing IPV are more likely to experience unplanned pregnancies and the contacting of sexually transmitted dis-

<sup>15</sup> The most recent statistics found at: Rennison C.M, Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000. BJS, August 2002.<http://bjs.ojp.usdoj.gov/content/pub/pdf/rsarp00.pdf>.

<sup>16</sup> Schwartz, M., National Institute of Justice Visiting Fellowship: Police Investigation of Rape-Roadblocks and Solutions, p.54. <http://www.ncjrs.gov/pdffiles1/nij/grants/232667.pdf>.

<sup>17</sup> In average, 1.7 million violent crimes occur on the job. Approximately 36,500 people each year are raped and sexually assaulted at work, 80% of whom are women. Detis T, Violence in the Workplace, BJS, Dec. 2001, p.1.<http://bjs.ojp.usdoj.gov/content/pub/pdf/vw99.pdf>.

<sup>18</sup> <http://www.thehotline.org/2011/02/1-in-4-callers-to-the-national-domestic-violence-hotline-report-birth-control-sabotage-and-pregnancy-coercion/>.

eases. During pregnancy, women are at risk of escalated rates of abuse and of greater financial and emotional dependency on their abusers.

## **B. Violence against women in the military**

22. Sexual assault and harassment of women in the military has become progressively acknowledged as a pervasive form of violence against women in the United States. Advocates report that when women join the military, they not only face the physical risks associated with war and combat, but also the risk of assault at the hands of their peers. Although sexual assault affects both military men and women, available statistics show that the vast majority of victims who report tend to be women, under the age of 25, and from junior enlisted ranks.<sup>19</sup>

23. The Special Rapporteur was informed of a federal class-action lawsuit against Donald Rumsfeld and Robert Gates, former Secretaries of Defense for failing to respond to rape and sexual assault in the ranks, failing to investigate and prosecute the perpetrators, and maintaining a weak judicial system. The suit also claims that rape and sexual assault victims were openly subjected to retaliation, discouraged from reporting the crimes and ordered to keep quiet and refrain from telling anyone about the criminal acts.<sup>20</sup>

24. Because most cases of sexual assault in the military go unreported, accurate statistics are not available. According to the Department of Defense's (DoD) most recent anonymous survey, 4.4% of active duty women and 0.9% of active duty men indicated they had experienced an incident of unwanted sexual contact in the 12 months prior to the survey. These incidence rates reflect a one-third decrease for women and a one-half decrease for men compared with 2006 incidence rates. Of those active duty women and men who indicated they experienced unwanted sexual contact, only twenty-nine percent of women and fourteen percent of men indicated that they reported the incident to a DoD or civilian authority.<sup>21</sup>

25. In an attempt to remedy this, since 2005 the DoD offers a "Restricted Reporting" option, which allows sexual assault victims to confidentially disclose the details of their assault and receive medical treatment and counseling, without triggering an official investigative process. This has contributed to an increase in the number of reports made each year. On average, the Department has received more than 750 Restricted Reports annually since the enactment of the Restricted Reporting policy in 2005; about 15 percent of these reports convert to an Unrestricted Report each year at the victim's request.<sup>22</sup> In 2010<sup>23</sup> the Department received 3,158 reports involving service members as either the subject and/or the victim of sexual assault which reflects a 2% decrease in overall reporting from FY09. According to the *DoD FY10 Annual Report on Sexual Assault in the Military*, despite this small decrease in reports, the trend since 2005 has been for increased numbers of victims to come forward each year and report the crime.<sup>24</sup> DoD surveys support this increase in reporting. In 2006, reports of sexual assault to DoD authorities accounted for about 7% of

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<sup>19</sup> DoD Report on Sexual Assault in the Military. March 2010, pp. 77.

<sup>20</sup> <http://www.airforcetimes.com/news/2011/02/military-sexual-assault-lawsuit-021511w/>.

<sup>21</sup> Defense Manpower Data Center (DMDC) 2010 Workplace and Gender Relations Survey of Active Duty Members (WGRA).

<sup>22</sup> This number is based on Military Service reporting statistics to the Department from FY05 to FY10.

<sup>23</sup> The report covers Fiscal Year (FY) 2010 (October 1, 2009 to September 30, 2010).

<sup>24</sup> DoD FY10 Annual Report on Sexual Assault in the Military. March 2011, page 3.



the sexual assaults estimated to have occurred that year, based on estimates derived from anonymous surveys of the active duty population.<sup>25</sup> In 2010, reports by victims accounted for about 14% of the sexual assaults estimated to have occurred.<sup>26</sup>

26. In relation to sexual harassment and violence at the Military Service Academies, during the 2009-2010 academic program year there were a total of 41 reports of sexual assault, which represent a 64% increase from the 25 reports received during the previous year.<sup>27</sup> The latest DMDC survey also shows that 12.9% of women and 1.9% of men indicated experiencing unwanted sexual contact, and 56% of women and 12% of men indicated experiencing sexual harassment. These results suggest that the 41 reports of sexual assault at the Military Service Academies accounted for fewer than 10% of the incidents of unwanted sexual contact that may have actually occurred.<sup>28</sup>

27. Violence against women in the military is prompted by numerous factors, ranging from a very hierarchic and command driven structure, to a culture that promotes masculine traits of power and control, and a pattern of underreporting and impunity. Survivors explained how perpetrators often exert control over victims, and are likely to outrank them. If the perpetrators are in the victims' chain of command, reporting the incident can seem impossible and victims often feel that they need to make a choice between their military career and seeking justice.

28. Underreporting of sexual assault in the military is strongly linked to a military culture which values readiness for duty, but also poses reporting barriers, ranging from lack of confidentiality, fear of punishment for collateral misconduct, perceived impact on security clearance, and availability for deployment. Advocates reported that victims also fear retaliation by perpetrators because commanders often fail to protect those who report sexual assault.<sup>29</sup>

29. Many sexual assault cases are disposed of administratively through non-judicial punishment. In 983 investigations of sexual assault in 2009, 42% of perpetrators had court-martial charges initiated, with 36% receiving non-judicial punishments under Article 15 of the Uniform Code of Military Justice (UCMJ), and 22% receiving a discharge or another adverse administrative action.<sup>30</sup> The low number of prosecutions is purportedly exacerbated by the exercise of discretion by commanders in responding to allegations.<sup>31</sup> The Special Rapporteur heard allegations of com-

<sup>25</sup> DMDC. 2006 WGRA. March 2008.

<sup>26</sup> DoD FY10 Annual Report on Sexual Assault in the Military, March 2011, page 98.

<sup>27</sup> Report on Sexual Harassment and violence at the military service academies. Academic program year 2009-2010, p.3.

<sup>28</sup> Bi-annual Defense Manpower Data Center's (DMDC) 2010 Service Academy Gender Relations (SAGR) Survey [http://www.sapr.mil/media/pdf/reports/FINAL\\_SAGR\\_2010\\_Overview\\_Report.pdf](http://www.sapr.mil/media/pdf/reports/FINAL_SAGR_2010_Overview_Report.pdf).

<sup>29</sup> According to the 2010 Workplace and Gender Relations Survey of Active Duty Members survey, 71% of the women who indicated they experienced unwanted sexual contact, chose not to report it to a DoD or civilian authority. The most frequently endorsed reasons given were the following: 1) They did not want anyone to know (67%), 2) they felt uncomfortable making a report (65%), 3) they did not think their report would be kept confidential (60%), 4) they were afraid of retaliation/reprisals from the person who did it (54%), 5) they had heard about negative experiences other victims went through (47%), or 6) they did not deem the event important enough to report (46%). DMDC. 2010 WGRA. March 2010. pp. vi.

<sup>30</sup> DoD Report on Sexual Assault in the Military. March 2010, pp. 57-58.

<sup>31</sup> Each commander has discretion to dispose of offenses by members of that command. Ordinarily the immediate commander of a person accused or suspected of committing an offense triable by court-martial initially determines how to dispose of that offense." Source: Manual for Courts-Martial United States (2008 ed.) Rule 306(a).

manders who took into consideration the value of the tasks carried out by both victims and alleged perpetrators when deciding how to address a case of sexual assault within their units. The Special Rapporteur was informed by the DoD that, overall, only 14% to 18% sexual assault cases in the United States are ever prosecuted. DoD rates are therefore a reflection of these low prosecution rates in the country as a whole.

30. The Special Rapporteur was made aware of how sexual assault that occurs in the military has additional impact for Service women as compared to civilian survivors. The feelings of betrayal experienced by survivors are particularly intense given the high expectations of support and loyalty among service members, and given the strict sense of respect for the chain of command. One survivor described sexual assault in the military as equivalent to a situation of incest in which victims face the trauma of being raped by a brother and then having to make the difficult choice of reporting the abuse to a father figure, who does not believe them.

31. According to the Department of Veteran Affairs (DVA), Military Sexual Trauma (MST)<sup>32</sup> impacts veterans in several ways ranging from mental health problems, to physical health symptoms and conditions, as well as difficulties readjusting to everyday life after discharge. The VA has identified Post-traumatic stress disorder (PTSD) and depression, anxiety, adjustment and substance use disorders, as the top mental health diagnoses associated with MST. Among Veterans using DVA outpatient healthcare in FY 2009, 21.9% of women Veterans and 1.1% of male Veterans screened positive for MST at some time. Of these Veterans with a positive MST screen, 52.3% of women and 35.3% of men had an MST-related mental health encounter. A substantially larger proportion of women and men, 69.7% and 53.1% respectively, had at least one MST-related health encounter (which includes both mental health and physical health encounters).<sup>33</sup>

### C. Violence against women in custodial settings

32. The mission carried out in 1998 by the first UN Special Rapporteur on violence against women highlighted the main challenges faced by women in detention, particularly with regards to: 1) the high rates of incarceration of disadvantaged women, particularly racial minorities; 2) the severity of sentencing for drug-related offences and the lack of alternative rehabilitation programs, especially for women with children; 3) the lack of gender-specific health care services including sexual and reproductive health, mental health, substance abuse and counseling for victims of physical and sexual abuse, 4) the abuse in the use of restraints; 5) the lack of minimum standards with regard to state practices in women's prisons, especially as regards sexual misconduct by staff; 6) the privatization of prisons and the need for strict guidelines and oversight; and 7) the challenges of accessing legal remedies, particularly, the impact of the Prison Litigation Reform Act's PLRA.<sup>34</sup>

33. While many of the abuses continue to exist today, some important gains have been made. Most notably, the Prisoner Rape Elimination Act (PREA), passed in

<sup>32</sup> The VA defines MST as "psychological trauma which [...] resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred while the veteran was serving on active duty or active duty for training". "Sexual Assault" is the term used by the DoD to denote contact sex crimes against adults. "MST" and "Sexual Assault" are two different terms which describe two different phenomena.

<sup>33</sup> Data provided by the DVA.

<sup>34</sup> E/CN.4/1999/68/Add.2.

2003, which signaled the government's willingness to take seriously the issue of sexual assault in prisons, and has led to positive changes such as increased reporting and proposed standards. There have also been successful lawsuits in a number of states challenging inhumane conditions of confinement in women's prisons. As noted in the 1998 report, the prevailing attitude towards incarcerated people in the United States is punitive, although currently there are efforts in some states to explore alternative, rehabilitative approaches.

34. As regards the sexual abuse of women in prisons, a 2008-2009 report indicates that, in a 12 month period, 4.7% of women in prison had experienced sexual assault by an inmate and 2.1% had experienced sexual misconduct by a staff member.<sup>35</sup> Sexual assault of women in prisons includes rape, non-consensual sexual acts, abusive sexual contacts, sexual misconduct and sexual harassment.<sup>36</sup> A 2009 report by the Office of the Inspector General found that male staff members were most often accused of sexual misconduct stemming from pat searches.<sup>37</sup> Several interlocutors reported that, in the case of staff sexual misconduct, while forced non-consensual sex does occur, it is more common for staff to use their position of power to coerce sexual activity. This was confirmed during interviews with inmates who explained how women prisoners sometimes accept sexual advances to ensure their access to phone calls, visits, or basic supplies such as food, shampoo, or soap. Interlocutors and inmates themselves note high incidents of verbal abuse and general mistreatment by both male and female guards, particularly younger staff who are new.

35. Advocates conveyed how victims of sexual abuse often suffer from lifelong physical and mental repercussions including post-traumatic stress disorder, anxiety, depression, and thoughts of suicide. In prison, the stress of the abuse can be exacerbated by the prisoner's inability to escape her perpetrators and the fear of retaliation if she reports the abuse.

36. A number of additional challenges often result in tension and conflict among inmates and with prison staff. These include inadequate access to basic hygiene products, the high costs of telephone calls and, the inadequacy and sufficiency of the food served. This was a particular concern at the Central California Women's Facility (CCWF) where interlocutors pointed out persistent deficiencies in terms of services and the hostility with which some guards respond to inmates. These challenges are further intensified by the overcrowding in the facility which was designed to hold 2,004 inmates but currently holds 3,686 people.<sup>38</sup>

37. Despite access to telephones, the prohibitive cost of calls impedes inmates' possibilities to contact lawyers and families. These were highlighted as particular concerns for detainees at the Glades County Detention Centre (Glades). Given the remoteness and geographical isolation of the facilities, telephone calls are often the only means for inmates and detainees to remain in contact with their family members. This is a particular concern for women with minor children.

38. The poor state of health care services for inmates was also flagged as a concern by many interlocutors. Inadequate access to health services in prison and detention facilities is characterized by delays, neglect, and mistreatment of inmates and

<sup>35</sup> Beck A. et al, Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-2009, BJS, p.12 <http://bjs.ojp.usdoj.gov/content/pub/pdf/svpjri0809.pdf>.

<sup>36</sup> 2010 PREA Quarterly Report 'At a Glance'.

<sup>37</sup> Available at <http://www.justice.gov/oig/reports/plus/e0904.pdf>, p. 26.

<sup>38</sup> Central California Women's Facility Report, January 2011.

detainees.<sup>39</sup> Patients with chronic health concerns have complained of the long delays in seeing a doctor, intrusive body searches immediately upon their return from therapy, and regular indifference of staff to requests for special assistance. One inmate stated that she had consistently complained of a lump in her breast but was only examined by a doctor eight months after her initial complaint, and was immediately sent to surgery to have her breast removed. Interlocutors referenced many other examples including one inmate who waited three months to have a cast put on a broken arm.<sup>40</sup>

39. The inadequacy of dental health care was also raised by a number of interlocutors who point out that some inmates have been waiting for more than two years to see a dentist despite complaints of extreme discomfort and the inability to chew properly.

40. Many of the women in custodial facilities also face inadequate mental health services. Reportedly, 60-80% of women prisoners face substance abuse problems<sup>41</sup> but few received professional treatment. The mental distress of women in detention within the criminal justice system is further increased by the continued practice of cross-gender supervision and searches, the frequent lockdowns, the isolation of inmates, and the general aggressive climate and verbal abuse prevalent within the facilities. While efforts have been made to look more closely at the mental health concerns of inmates, interlocutors note a growing concern with the over-medication of mental health patients in some facilities.

41. At the core of these health concerns is an inadequate system which is insufficiently responsive to gender-specific needs,<sup>42</sup> including the reproductive health<sup>43</sup> needs of women, and is understaffed and under-resourced.<sup>44</sup> Correctional facilities increasingly charge fees for medical services, posing even more challenges for inmates and potentially discouraging them from seeking much needed medical assistance.<sup>45</sup>

42. The 1998 mission report expressed concern about the lack of minimum standards and the continued practice of shackling of prisoners, including pregnant women.<sup>46</sup> In *Nelson v. Correctional Medical Services*, the court held that women had a clearly established right not to be shackled during the final stages of labour unless there was clear evidence of security of flight risk.<sup>47</sup> As at October 2010, ten States had enacted laws prohibiting shackling of pregnant women in custodial settings.<sup>48</sup> Despite these developments, interlocutors reported that pregnant women are rou-

<sup>39</sup> Silja J.A. Talvi, 'Women Behind Bars: The Crisis of women in the US Prisons System', (2007).

<sup>40</sup> Ferarro, K. and Moe, A. 'Women's Stories of Survival and Resistance' in *Women in Prison: Gender and Social Control* 71.

<sup>41</sup> The Sentencing Project, *Women in the criminal justice system: Briefing Sheets* 2007.

<sup>42</sup> Silja J.A. Talvi, *Op cit*.

<sup>43</sup> In 2007, the BJS stated that on average 5% of women entering prisons are pregnant and 6% of women in jails are pregnant, highlighting the importance of reproductive health services for women prisoners. Rebecca Project, 'Mothers Behind Bars', October 2010. <http://www.rebeccaproject.org/images/stories/files/mothersbehindbarsreport-2010.pdf>.

<sup>44</sup> HRW USA, 'Detained and Dismissed: Women's Struggle to Obtain Health Care in the United States Immigration Detention', 2009.

<sup>45</sup> Michael Puisis, *Clinical Practice in Correctional Medicine* 32, 2006.

<sup>46</sup> E/CN.4/1999/68/Add.2.

<sup>47</sup> *Nelson v. Correctional Medical Services*, 586 F.3d 522, 533 (8th Cir.2009)

<sup>48</sup> Rebecca Project, *Shackling Fact Sheet* [http://www.rebeccaproject.org/images/stories/factsheets/ShacklingFactSheet\\_7-12-10.pdf](http://www.rebeccaproject.org/images/stories/factsheets/ShacklingFactSheet_7-12-10.pdf).

tinely shackled on their way to and from hospital and sometimes remain shackled during labour, delivery, and post-delivery.

43. The Federal Bureau of Prisons' policy on shackling<sup>49</sup> establishes that an inmate who is in labour, delivering her baby or is in post-delivery recuperation should not be placed in restraints unless there are reasonable grounds to believe the inmate presents an immediate, serious threat of hurting herself, staff or others, or there are reasonable grounds to believe the inmate presents an immediate and credible risk of escape that cannot be reasonably contained through other methods. With regard to immigration detention, current draft policy<sup>50</sup> dictates that without extraordinary circumstances that render restraints absolutely necessary, a pregnant woman in ICE facilities shall not be restrained. The Rapporteur was even informed that, when possible, aliens who are pregnant and subject to removal are typically released on bond, orders of recognizance or supervision, or are enrolled into an alternative to detention program.

44. Nevertheless, advocates state there is insufficient evidence that these policies are adequately enforced or implemented in practice. The DHS informed the Special Rapporteur that ICE is in the process of finalizing its policy on detention standards, yet advocates have expressed concerns regarding the real enforceability of such standards if they are not promulgated as regulations. They have also stressed that these standards must be part of a broader transition to a civil detention system.<sup>51</sup>

45. An underlying problem identified during the mission is the general over-incarceration of women, commonly for non-violent or drug related crimes.<sup>52</sup> A 1997 study by the U.S. Department of Justice found that women were over-represented among low level non-violent drug offenders; they had minimal or no prior criminal history; and were not principal figures in criminal organizations or activities. Nevertheless they received sentences similar to "high level" drug offenders under the mandatory sentencing policies.<sup>53</sup> Furthermore, following the introduction of mandatory sentencing in federal drug laws in the mid-1980s, the number of women in prison has risen by 400%, mostly non-violent first-time offenders.<sup>54</sup> This rapid increase has resulted in overcrowding in many facilities, thereby creating an environment which is ripe for violence.

46. Another concern is the disproportionate impact of over-incarceration of African-American and immigrant women. More than one million women are currently under the supervision of the criminal justice system in the United States with African-American women being the fastest growing population in prison.<sup>55</sup> African-American women represent 30% of all women incarcerated under state or federal jurisdiction, and Hispanic women represent 16%. The possible causes for racial disparity are complex and varied but many interlocutors criticized criminal laws with mandatory sentencing provisions which have a disparate impact on certain racial groups.

<sup>49</sup> Federal Bureau of Prisons, U.S. Department of Justice, No. 5538.05.

<sup>50</sup> Performance Base National Detention Standards (PBNDS) 2010.

<sup>51</sup> ACLU letter to DHS Regarding Sexual Assault in Detention Facilities. Available at : [http://www.aclu.org/files/assets/DHS\\_letter\\_re\\_sex\\_assault\\_\\_6-29-10\\_.pdf](http://www.aclu.org/files/assets/DHS_letter_re_sex_assault__6-29-10_.pdf).

<sup>52</sup> From 1986 to 1996 the number of women sentenced to state prison for drug crimes increased ten-fold. Amnesty International USA, 'Women in prison: A Fact Sheet on Sexual Assault and Misconduct Against Women in Prison'.

<sup>53</sup> Ibid.

<sup>54</sup> Rebecca Project, 'Mothers Behind Bars', op.cit.

<sup>55</sup> Dorothy E. Roberts, 'The Social and Moral Cost of Mass Incarceration in African-American Communities', 56 Stan. L. Rev. 1271, 1274 (2004).

47. A major factor pushing the high numbers of detained women is the rapidly growing detention of individuals without valid immigrant status who are in custody of U.S. Immigration and Customs Enforcement (ICE).<sup>56</sup> These include certain arriving asylum seekers and other undocumented immigrants in removal proceedings, including immigrants who are inadmissible or deportable based on convictions for certain crimes or due to terrorism-related activity. The detained population of individuals in administrative detention is now over 29,000 nationwide, up almost 50% from 2005.<sup>57</sup>

48. Most of the women interviewed at Glades had been arrested on minor charges and were held in immigration detention, awaiting deportation. Many were legal residents who had been convicted of drug related offences and faced the possibility of removal from the country, due to immigration laws. Although immigration detention facilities are civil and administrative forums, many function similarly to punitive correctional facilities in terms of confinement and isolation practices. Among the concerns of immigration detainees are access to state-sponsored legal aid; separation from families, especially minor children; access to health care services; access to interpreters; and the lack of opportunities for employment and education while in detention.<sup>58</sup> At Glades, many immigrant detainees considered that they were not given opportunities for employment and education due to the likelihood of their early deportation. Officials noted that the average stay of a detainee is 30 days (56 days for field cases). However, many of the detainees had been in the facility for several months with very little to occupy them, due to their ineligibility for employment or educational opportunities.

49. Incarcerated women face particular challenges relating to separation from their children, as they are more likely than male prisoners to be primary caretakers. Furthermore, the Adoption and Safe Families Act (ASFA) enacted in 1997 facilitates the easy termination of parental rights of mothers whose children have been placed in foster care for more than 15 months. Additionally, the Act provides bonuses to States that increase their adoption rate and allows States to by-pass the 'reasonable effort' to reunite children with their biological parents in certain circumstances.<sup>59</sup> Even if custody is maintained, prisons make it difficult for women to visit with their children and infants. As mentioned above, the remoteness and geographical isolation of the facilities, and the high cost of telephone calls impedes the ability of inmates to maintain regular contact with their family.

#### **D. Violence against women who face multiple forms of discrimination**

50. Not all women in the United States experience violence with the same frequency or intensity. Although violence against women cuts across gender, race, and immigration status, it has a particularly pernicious effect on groups that lie at the intersection of these categories. In 2008, the Committee on the Elimination of Racial Discrimination found that racial, ethnic and national minorities were disproportionately concentrated in poor residential areas with sub-standard housing conditions, limited employment opportunities, inadequate access to health care facilities, under-resourced schools and high exposure to crime and violence. The Committee ex-

<sup>56</sup> HRW USA, 'Detained and Dismissed: Women's Struggle to Obtain Health Care in the United States Immigration Detention', 2009.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> 42 U.S.C. 671 (15) (D).

pressed its concern about the incidence of rape and sexual violence experienced by women belonging to racial, ethnic and national minorities.<sup>60</sup>

51. Combinations of poverty, age, employment status, residence, and social position – and not race or culture per se – may explain the higher rates of abuse among African-American, Native-American and immigrant communities.

## 1. African-American women

52. Due to their historical treatment in the United States, African-American women experience unique socio-economic and cultural pressures that contribute to higher rates of discrimination and violence than other women. They experience intimate partner violence at rates 35% higher than their White counterparts and 2.5 times the rate of men and other race groups.<sup>61</sup>

53. Although African-American women comprise just 8% of the U.S. population, in 2005 they accounted for 29% of all female victims of intimate partner homicide.<sup>62</sup> In such cases where the weapon was identified, 54% were killed with guns.<sup>63</sup> Where the relationship between the victim and the murderer could be determined, over 90% knew the male killer; 60% of the victims were wives, common-law wives, ex-wives, or girlfriends of the offenders.<sup>64</sup> Where the circumstances could be ascertained, 91% of the killings happened during an argument, and not in conjunction with another crime.<sup>65</sup>

54. There are many factors that prevent African-American women from reporting or leaving abusive partners. Because her partner is also a “victim” of a racist system, some African-American women may see their abuser’s behavior as a display of anger stemming from their frustration of living in such a society.<sup>66</sup> African-American women may also feel a sense of racial and cultural “loyalty” to hold their families together, even if it means staying in an abusive relationship.<sup>67</sup> Also, if their abusers are arrested, they may feel guilty for subjecting their mate to an institution they perceive as racist.<sup>68</sup> Their religious faith and cultural beliefs may also keep some African-American women from reporting abuse. They might feel the need to “impart goodness and mercy”<sup>69</sup> on their abuser and refuse to do anything they feel will hurt their partner, such as leaving them or going to the police.

<sup>60</sup> CERD/C/USA/CO/6, para. 26.

<sup>61</sup> Institute on Domestic Violence in the African-American Community University of Minnesota. Factsheet.

<sup>62</sup> Bureau of Justice Statistics Homicide Trends in the U.S.: Trends in Intimate Homicides Source: FBI, Supplementary Homicide Reports, 1976-2005. (Available at: [www.ojp.usdoj.gov/bjs/homicide/intimates.htm](http://www.ojp.usdoj.gov/bjs/homicide/intimates.htm)).

<sup>63</sup> VPC Report, op cit., p.9.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid., p.10.

<sup>66</sup> Nash, S.T., Through Black Eyes: African-American Women’s Constructions Of Their Experiences With Intimate Male Partner Violence, 11 Violence Against Women 1420, 1422 (2005).

<http://vaw.sagepub.com/content/11/11/1420.full.pdf+html>.

<sup>67</sup> Ibid.

<sup>68</sup> Women of Color Network, Domestic Violence: Communities of Color, Facts & Stats Collection 2, (June 2006)

[http://womenofcolornetwork.org/docs/factsheets/fs\\_domestic-violence.pdf](http://womenofcolornetwork.org/docs/factsheets/fs_domestic-violence.pdf).

<sup>69</sup> Nash, op.cit, p. 1427.

55. Racial profiling by law enforcement in the “war on drugs” is a prominent issue for African-American women. The exercise of discretion by law enforcement officials permits officers to decide on arrests as to who may be carrying drugs or committing crimes, which leads to racial disparities in rates of prosecution and arrest of women.<sup>70</sup> A National Institute of Health study found that even though white women and Latinas were more or as likely as African-American women to report using drugs at least once in their lives,<sup>71</sup> incarceration rates for African-American women (mostly for drug crimes) was double that of women of all races.<sup>72</sup>

## 2. Immigrant and undocumented women

56. A 2004 study in New York City found that 51% of intimate partner homicide victims were foreign-born, while 45% were born in the United States.<sup>73</sup> Married immigrant women experience higher levels of physical and sexual abuse than unmarried immigrant women.<sup>74</sup>

57. In addition to IPV, undocumented immigrant women are particularly vulnerable to violence in the workplace. The Special Rapporteur heard testimonies of women who not only faced unfair working conditions as undocumented workers, but also sexual harassment and abuse from their employers. Complaints about their working conditions often resulted in threats of losing their jobs or being reported to immigration authorities. Other vulnerability factors include language barriers and the lack of knowledge by such women of the rights and remedies available to them.

58. Immigrant women often suffer higher rates of battering as they have less access to legal, social and support services. Battered immigrant women who attempt to flee may not have access to bilingual shelters, financial assistance, or food. It is also less likely that they will have the assistance of a certified interpreter in court, when reporting complaints to the police or a 911 operator, or in acquiring information about their rights and the legal system.<sup>75</sup>

59. The Special Rapporteur heard testimonies of undocumented immigrant women who were partners of US citizens who had never married them or legalized their status. Most of these women have children who are American citizens. When facing abuse by their partners, these women hesitated in seeking assistance from the authorities as they feared deportation, given their lack of immigration status. They are usually isolated from family and other support systems, and more economically dependent on their abuser than other victims.

60. Although an abused woman who is married to a citizen or a permanent resident is entitled to receive permanent status, abusers often do not initiate this process - as a way to maintain their power and control over these women.<sup>76</sup> Other ways of control include threatening to call immigration authorities and having the victim

<sup>70</sup> ACLU et al., *Caught in the Net: The Impact of Drug Policies on Women and Families* 27 (2005).

[http://www.aclu.org/files/images/asset\\_upload\\_file431\\_23513.pdf](http://www.aclu.org/files/images/asset_upload_file431_23513.pdf) p.9.

<sup>71</sup> Ibid. p.7.

<sup>72</sup> Ibid. p.17.

<sup>73</sup> NYC Department of Health and Mental Hygiene, *Femicide in NYC: 1995-2002* (2004), available at [http://www.nyc.gov/html/doh/downloads/pdf/ip/femicide1995-2002\\_report.pdf](http://www.nyc.gov/html/doh/downloads/pdf/ip/femicide1995-2002_report.pdf).

<sup>74</sup> Ibid.

<sup>75</sup> Family Violence Prevention Fund, *The Facts on Immigrant Women and Domestic Violence*. [http://www.futureswithoutviolence.org/userfiles/file/Children\\_and\\_Families/Immigrant.pdf](http://www.futureswithoutviolence.org/userfiles/file/Children_and_Families/Immigrant.pdf).

<sup>76</sup> This is addressed by VAWA's self-petitioning provision which is further described in paragraph 96 below.



deported if she decides to leave or does not obey the abuser; convincing the victim that the police and other community services will contact the immigration authorities if she seeks help; convincing the victim that her children will remain in the country with the abuser if the victim is deported; making the victim believe that she will be charged with abandoning the home if she leaves her abuser, and then face legal repercussions; and keeping all of her relevant papers, including immigration papers, out of her reach.<sup>77</sup>

61. Immigrant women in the United States are usually women of diverse ethnic backgrounds, who do not speak English as their first language and who are at the intersection of many manifestations of discrimination such as sexism, racism and classism. This discrimination might also be exacerbated by immigrant women's low education, language and literacy skills or economic status. Therefore, when facing violence and abuse, many immigrant women are often unaware of the protections available to them, and they are fearful that they or their family members will be deported, or will suffer criminal consequences as a result of reporting violence to the police.

### 3. Native-American women

62. The Special Rapporteur received numerous reports on the prevalence of domestic violence and sexual assault against Native-American women and how violence against them exceeds that of any other population in the country. According to congressional findings, 34% of Indian and Alaska Native women will be raped in their lifetimes and 39% of them will be subject to domestic violence.<sup>78</sup> The rate of violent victimization of American Indian women is more than double that among other women.<sup>79</sup> They experience 7/1,000 sexual assaults, compared with 4/1,000 among African-American, 3/1,000 among white, and 2/1,000 among Hispanic women.<sup>80</sup> With regards to battering, Native-American women experience this crime at a rate of 23.2/1,000, compared with 8/1,000 among Caucasian women.<sup>81</sup> Between 1992 and 2001, white or African-American offenders committed 88% of all violent victimizations against Native-Americans.<sup>82</sup> With regard to rape or sexual assault, 86% of American Indian/Alaska Native survivors reported that perpetrators were white or African-American.<sup>83</sup>

63. The prevalence of violence within Indian territories is strongly linked to the poverty and exclusion that Native-Americans have historically endured. In his 2009 mission report, the Special Rapporteur on Racism made special reference to the situation of Native-Americans and historical discrimination. He highlighted the dire socio-economic conditions they face and the difficulties in preserving their cultural heritage. In 2007, 25.3% of American Indian and Alaskan Natives lived below the poverty level and they faced an unemployment rate of 12.6%.<sup>84</sup>

64. Another fundamental cause of these high levels of violence are the jurisdictional restrictions faced by Indian tribes stemming from legislation such as: 1) the

<sup>77</sup> The Immigrant Women Power and Control Wheel.

<http://www.endabuse.org/content/features/detail/778/>.

<sup>78</sup> Tribal Law and Order Act of 2010, PL 111-211.

<sup>79</sup> Perry S., American Indians and Crime, BJS, December 2004, p.v.

[http://www.justice.gov/otj/pdf/american\\_indians\\_and\\_crime.pdf](http://www.justice.gov/otj/pdf/american_indians_and_crime.pdf).

<sup>80</sup> "Violence Against Women and Department of Justice Reauthorization Act of 2005". P.L. No. 109-162 § 901 (2006).

<sup>81</sup> Ibid.

<sup>82</sup> Perry op. cit. p.9.

<sup>83</sup> Ibid.

<sup>84</sup> A/HRC/11/36/Add.3, para, 66 & 88.

Major Crimes Act of 1885, by which Indian nations have to share criminal jurisdiction with the federal government to prosecute certain crimes committed by Indians, including rape and murder; 2) Public Law 53-280 of 1953, by which some state governments obtained criminal jurisdiction to prosecute crimes committed on Indian lands; and 3) the Indian Civil Rights Act of 1968, which limits tribal sentencing authority over Indian perpetrators on their own lands. Reportedly, this complex jurisdictional arrangement causes confusion over who has the authority to respond to, investigate, and prosecute violence against Indian women. This results in many violent crimes never being prosecuted.

65. Furthermore, tribal criminal jurisdiction over crimes committed by non-Indians is denied due to a limitation imposed by the United States Supreme Court in the 1978 *Oliphant v. Suquamish Tribe* decision.<sup>85</sup> The *Oliphant* decision removed the ability of tribal governments to prosecute and impose criminal sanctions on non-Indians for crimes such as domestic and sexual violence. The de facto consequence is that Indian tribes can detain a perpetrator, but must then transfer him to a state or federal law enforcement agency. If this agency refuses to take custody or prosecute, the offender will be released. This has a particularly negative effect on Native women's access to justice - given that the great majority of perpetrators of violence against Native-American women are non-Native.

66. Coupled with the jurisdictional restrictions, is the failure of federal and state authorities to effectively police and prosecute violent crimes. According to a 2010 report by the Government Accountability Office, U.S. attorneys declined 50% of cases from Indian reservations from 2005 through 2009.<sup>86</sup> Furthermore, declination rates tended to be higher for violent crimes (declined 52% of the time), than for non-violent crimes (declined 40% of the time). In relation to sexual abuse, U.S. attorneys declined to prosecute 67% of cases that were referred.<sup>87</sup>

### III. State response to violence against women

#### A. Developments and challenges in the legislative framework

##### 1. The Violence against Women Act (VAWA)

67. In recognition of the severity of the crimes associated with domestic violence, sexual assault and stalking in the United States, and following a 1993 U.S. Senate finding that "gender-based crimes and fear of gender-based crimes restricts movement, reduces employment opportunities, increases health expenditures, and reduces consumer spending, all of which affect interstate commerce and the national economy"<sup>88</sup>, the Violence Against Women Act (VAWA) was passed in 1994. Enacted as part of the Violent Crime Control and Law Enforcement Act<sup>89</sup>, VAWA significantly strengthened the criminal justice system's response to issues of violence against women by, among other things, creating new felonies, compelling state and munici-

<sup>85</sup> *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978).

<sup>86</sup> GAO, U.S. Department of Justice Declinations of Indian Country Criminal Matters, December 2010, p.3  
<http://www.gao.gov/new.items/d11167r.pdf>.

<sup>87</sup> *Ibid.*

<sup>88</sup> See S. Rep. No. 103-38 (1993). See also, Crimes of Violence Motivated by Gender: Hearing Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 103rd Cong. 4 (1993).

<sup>89</sup> 42 U.S.C. § 13701 et seq.

pal jurisdictions to enforce protection orders, and helping undocumented immigrants who rely on abusers to obtain lawful immigration status.<sup>90</sup> VAWA programs are funded through annual appropriations for both the Departments of Justice (DOJ) and the Department of Health and Human Services (HHS).<sup>91</sup> At inception, it has included \$1.6 billion in federal funding to improve law enforcement, victim services, research, and other programs related to issues of violence against women.

68. The reauthorization of VAWA in 2000 improved protections for battered immigrants, sexual assault survivors, and victims of dating violence; enabled victims that flee across state lines to obtain custody orders without returning to their jurisdictions and improved the enforcement of protection orders across state and tribal lines. The 2005 reauthorization of VAWA, created new programs on court training and child witnesses, as well as culturally specific programs. It also introduced housing provisions to protect victims of IPV from evictions.<sup>92</sup>

69. VAWA aims to address the high incidence of violence against women. It has steadily expanded funding to address domestic violence and with each reauthorization has included historically underserved groups, such as Native-American women. Although VAWA's intentions are laudable there is little in terms of actual Federal substantive protection or prevention for domestic violence. This has been further exacerbated by jurisprudence emanating from cases such as *DeShaney*, *Morrison* and *Town of Castle Rock*.

70. The 1994 version of VAWA authorized lawsuits in federal courts against those who committed gender based violence, providing battered women with a federal remedy against perpetrators of violence. Unfortunately, in 2000 the Supreme Court invalidated this portion of VAWA in *United States v. Morrison*, holding that Congress did not have the authority to create such a cause of action as part of its power to regulate interstate commerce under the United States Constitution or its general police power.<sup>93</sup> In 2005, in *Town of Castle Rock v. Gonzalez*, the Supreme Court also ruled that the United States Constitution provides no remedy for a state's failure to enforce a domestic violence restraining order, and thus protect victims of gender-based violence.<sup>94</sup> *Castle Rock* was preceded by *DeShaney v. Winnebago Dep't of Soc. Servs.*, where the Supreme Court found that the Due Process Clause of the Fourteenth Amendment does not provide a remedy when state actors fail to take reasonable measures to protect and ensure a citizen's rights against violations by private actors.<sup>95</sup>

<sup>90</sup> Robert F. Friedman, "Protecting Victims From Themselves, But Not Necessarily From Abusers: Issuing a No-Contact order Over the Objection of the Victim-Spouse," 19 Wm. & Mary Bill Rts. J. 235, 239 (October 2010).

<sup>91</sup> Laney, Garrine P., CRS Report for Congress RL 30871, VAWA: History and Federal Funding, Feb. 6, 2010, <http://www.ilw.com/immigrationdaily/news/2010,0525-crs.pdf>.

<sup>92</sup> OVAW: <http://www.ovw.usdoj.gov/ovw-fs.htm>.

<sup>93</sup> *United States v. Morrison*, 529 U.S. 598 (2000).

<sup>94</sup> *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005). This case was subsequently filed before the Inter-American Commission on Human Rights (*Jessica Gonzales v. United States*), claiming human rights violations by the local police for failing to protect the victims, and human rights violations by the U.S. courts, for failing to provide remedy. A decision from the Commission is expected in 2011.

<sup>95</sup> 489 U.S. 189 (1989).

71. The effect of these cases is that even where local and state police are grossly negligent in their duties to protect women's right to physical security, and even where they fail to respond to an urgent call, there is no federal level constitutional or statutory remedy. It has been argued that without any solid and binding national scheme at the federal level, mandating legislation and also training programs, there is little protection afforded for domestic violence victims in various jurisdictions, and many women in different parts of the country continue to suffer from inadequate protection.<sup>96</sup>

## **2. The Tribal Law and Order Act (TLOA)**

72. In terms of violence against Native-American women, Congress recently enacted the Tribal Law and Order Act, which attempts to establish federal accountability for the investigation and prosecution of crimes committed on tribal lands and which provides tribes with additional tools to combat crime locally. The act increases from one to three years the sentencing limitation imposed upon tribal courts through the Indian Civil Rights Act of 1968. This Act has the potential to decrease violence against Native-American women, not only by allowing increased sentencing authority over Native perpetrators, but also by requiring federal prosecutors to share information on declinations of Indian country cases, where the perpetrator is non-Native. TLOA also requires more cooperation among tribal, state, and federal agencies.

## **3. The Prison Rape Elimination Act (PREA) and the Prison Litigation Reform Act (PLRA)**

73. The Prison Rape Elimination Act of 2003 (PREA) aims to reduce prison rape through a "zero-tolerance" policy, as well as through enhanced research and information gathering. It requires yearly surveys of sexual assault in correctional settings across the country, creates a national clearing house with information and assistance to authorities about prevention, investigation and prosecution, and provides substantive funding yearly for policy improvement at the State level.<sup>97</sup>

74. PREA established the National Prison Rape Elimination Commission (NPREC) to carry out a comprehensive study of the penological, physical, mental, medical, social, and economic impacts of prison rape and to recommend national standards for improvement. The Commission released its recommendations in June 2009 and the Department of Justice has subsequently drawn on them to develop national standards for combating sexual abuse in confinement settings. The Department's national standards were released for public comment in January 2011.<sup>98</sup>

75. Despite the positive aim of PREA, the Act is limited as it does not create a private action that can be enforced in courts. Rape and sexual assault cases mentioning PREA have been summarily dismissed on the 'no private right of action' ground.<sup>99</sup> This lack of remedy from the courts or any direct sanctions, except perhaps decreases in federal funding, highlights the limitations of PREA as an instrument to

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<sup>96</sup> Brandt-Young, Chrsitine and Buel, Sarah M., *Amici Curiae Brief in Support of Jessica Gonzales (o the VAWA)*. Oct 17, 2008.

<sup>97</sup> The statute requires the U.S. Attorney General to adopt a final rule creating national standards based on these recommendations; the rule will be automatically binding on the BOP, and each state will be required to comply with the rule or risk losing 5% of federal funding designated for criminal justice activities.

<sup>98</sup> Department of Justice, 28 CFR Part 115, Docket No. OAG Order No. RIN 1105-AB34: National Standards to Prevent, Detect, and Respond to Prison Rape.

<sup>99</sup> *Chao v. Ballista*, 630 F. Supp. 2d 170, 178 (D. Mass. 2009).

prevent and protect against acts of rape and sexual assault in custodial settings and to address root causes of the problem.

76. Furthermore, PREA prohibits the establishment of national standards that would impose substantial additional costs to Federal, State and local authorities.<sup>100</sup> This restriction may hinder the allocation of resources to programs aimed at detecting, preventing, reducing and punishing rape and sexual abuse in confinement settings. A 2010 study commissioned by the Department of Justice emphasized both the economic and the non-quantifiable benefits to be gained by eliminating rape and sexual abuse in custodial settings, and suggested that both should be considered in finalizing national standards for prison rape elimination.<sup>101</sup>

77. Reportedly, incarcerated women also face persistent obstacles due to the Prison Litigation Reform Act (PLRA) of 1995. The Act limits the possibility of prisoners to receive redress for instances of sexual abuse and impedes their right to file a claim for acts of sexual assault and abuse perpetrated against them. The Act denies equal access to the courts to the more than 2.3 million incarcerated persons.<sup>102</sup>

78. The provisions of the Act that are most restrictive are those that require the inmate to exhaust all internal prison grievance systems prior to submitting a claim to court and also to prove physical injuries. The exhaustion requirement forces victims to report up the chain of command and possibly even to the person who is victimizing them, thus creating an obvious fear of retaliation and a reluctance to report abuse. Additionally, victims must file complaints within a very short period of time following the injury, as specified by the internal regulations of prisons.<sup>103</sup> The physical injury requirement places a bar on claims for non-physical injury such as sexual harassment, threats of assault or groping.<sup>104</sup> Furthermore, the PLRA caps attorney's fees in prison litigation. This is a disincentive for competent attorneys who would like to take on such cases.<sup>105</sup>

79. The Special Rapporteur is aware that several attempts have been made to amend the PLRA, most recently through the 2007 proposed bill to enact the Prison Abuse Remedies Act. The Act would have eliminated the three main bars to bringing a claim under PLRA as discussed above.<sup>106</sup>

## **B. Developments in the institutional and policy framework**

### **1. Investigation and prosecution of domestic violence**

80. Domestic violence has increasingly been recognized as an issue that goes beyond the private sphere and that requires the intervention of the State. Therefore, legislation has been developed at federal, state, and local level to offer certain legal remedies to victims of domestic violence and to introduce mechanisms for adequate police response in domestic violence emergencies. Most of these provisions have been provided at the state and local level, through measures such as civil protection

<sup>100</sup> DoJ, 28 CFR Part 115, Docket No. OAG Order No. RIN 1105-AB34: National Standards to Prevent, Detect, and Respond to Prison Rape.

<sup>101</sup> NPREC Report, June 2009.

<sup>102</sup> HRW, 'No Equal Justice: The Prison Litigation Reform Act in the United States', June 2009.

<sup>103</sup> NPREC Report, June 2009.

<sup>104</sup> Buchanan K., 'Impunity: sexual abuse in Women's prisons', 42 Harvard C.R.-C.L. L. Rev. 45, 73 2007.

<sup>105</sup> 18 United States Code (U.S.C.) sec. 1997 e(b) (3).

<sup>106</sup> HRW, In Support of the Prison Abuse Remedies Act of 2007, April 2007.

orders, mandatory arrest policies, mandatory prosecution policies, and treatment programs for abusive partners.

81. Civil protection (or restraining) orders are generally available on an emergency basis through a simple application to a court, and can be obtained without the help of an attorney. Civil protection orders can include provisions relating to contact with the victim, exclusion of the perpetrator from the home, and custody, visitation and child support obligations, if relevant. A violation can result in civil and/or criminal penalties.

82. Some States have enacted mandatory arrest (or pro-arrest) laws, requires police officers to make an arrest when someone has engaged in a domestic violence crime or has violated a protection order. The Special Rapporteur was informed that these measures, which are intended to reduce police discretion in responding to domestic violence, were in many cases adopted to comply with some of the grant conditions applicable to VAWA.

83. Mandatory criminal prosecution of abusers constitutes another measure to provide safety to victims of domestic violence and to ensure that cases of domestic violence are not dismissed. The implementation of mandatory prosecution policies has led to increases in guilty pleas and convictions, as the law allows for prosecutions even when a victim is unwilling to participate in court processes. The Special Rapporteur received reports indicating that many domestic violence cases do not result in the conviction of the abuser but are plea-bargained i.e. charges are dismissed if batterers comply with some minimal restrictions, which can include entering into treatment programs.

84. The Special Rapporteur visited the Hennepin County Domestic Abuse Service Center in Minnesota, which offers services to victims of domestic violence. An innovative feature of this center is that it houses, in the same building, several state and non-state agencies that help victims during the entire judicial process. Advocates at the Center not only help victims complete the necessary paperwork to request a Protection Order and explain the civil and criminal court process, but they also accompany victims to court, help them create safety plans for themselves and their families, assist in finding shelter or temporary housing, and refer them to other resources and service providers.

## **2. Addressing sexual violence in the military**

85. In 1964 the Equal Opportunity complaint system was introduced, allowing service members to submit complaints about discrimination and sexual harassment. The findings of the 2004 DoD Care for Victims of Sexual Assault Task Force<sup>107</sup>, led to the creation of the Sexual Assault Prevention and Response Office (SAPRO) in 2005, and the establishment of new policies (DoD Directive 6495.01, Sexual Assault Prevention and Response (SAPR) Program and DoD Instruction 6495.02, Sexual Assault Prevention and Response Program Procedures), with the aim of preventing sexual assault, improving the responsiveness to such crimes, and ensuring system accountability.<sup>108</sup>

86. SAPRO provides for the establishment of Sexual Assault Response Coordinators (SARCs) and Victim Advocates (VAs) who are responsible for ensuring that medical, counseling and legal support services are available for victims of sexual as-

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<sup>107</sup> Task Force assembled in 2004 to review the Department's process for treatment and care of victims of sexual assault.

<sup>108</sup> <http://www.sapr.mil/index.php/law-and-dod-policies/directive-and-instruction>.

sault. As part of the SAPR Policy, reports on sexual assault in the Military Services and on sexual harassment and violence at the US Military Academies are presented annually before Congress. Furthermore, in 2009 the Department initiated the development of the Defense Sexual Assault Incident Database (DSAID) to improve data collection, analysis, and case management.<sup>109</sup>

87. Within the Department of Veteran Affairs (DVA), the MST Support Team is an advisory group established to conduct national monitoring of MST screening and MST-related treatment, to coordinate national MST-related education and training, and to promote best practices in the field. MST-related treatment is delivered across all Veteran Health Administration (VHA) facilities in a range of clinics and settings and by a variety of mental and physical health providers. For example, in FY 2009, 14,194 mental health professionals provided a total of 470,238 MST-related mental health care visits to Veterans with positive MST screens.

88. Every Veterans Integrated Service Network (VISN) has a designated MST Point of Contact who monitors and ensures that national and VISN-level policies related to MST are implemented at facilities within the VISN. Furthermore, all VA Medical Centers have a designated MST Coordinator who serves as a local point person for MST issues and ensures implementation of national and VISN-level policies related to MST.

89. The DVA mandates MST universal screening for all patients and in 2009, 21.9% of women veterans and 1.1% of men veterans who chose to seek DVA health-care services screened positive for MST.<sup>110</sup>

90. The process of claiming benefits for service related injuries or conditions is cumbersome and does not consistently take into account MST, given the difficulties of substantiating such experiences. Veterans interviewed noted that while DVA health services are provided without having to substantiate MST, the quality of the services is a concern. Also they suffer further sexual harassment and face a general hostile environment when seeking to utilize those services. Although the number of women Veterans using these medical services is rapidly growing, currently only 16% of veteran women use these medical services.<sup>111</sup> Interviewed veterans claimed that women prefer to access the private medical sector when possible.

### **3. Addressing women's conditions in custodial settings**

91. While much work remains to ensure greater protection of the rights of women in prisons and detention facilities, the Special Rapporteur noted some initiatives to create safe and productive conditions of confinement. The work program in Dublin, particularly the telemarketing training facility, could be considered a model program to equip inmates with marketable skills for reintegration into society. The mother-child and the drug rehabilitation programs are also forward-looking initiatives to allow mothers to continue to have positive interactions with their children while serving their sentences and to help women address their trauma and addiction concerns. Furthermore, the athletic and gardening programs were seen as positive in restoring the health and well-being of the inmates.

92. The Special Rapporteur was also informed of three BOP programs which support the mental health needs of female detainees: 1) The Resolve Programs for female offenders include evidence-based psycho-educational and cognitive-

<sup>109</sup> DoD Report on Sexual Assault in the Military. March 2010, p.3.

<sup>110</sup> Data provided by the DVA during meetings (power point presentations).

<sup>111</sup> Ibid.

behavioural treatment groups for female offenders suffering from trauma-related mental illnesses; 2) the FCI Danbury, CT, has a specialized residential mental health program which targets the needs of seriously mentally ill female offenders and 3) the Dual Diagnosis Residential Drug Abuse Program is designed for inmates who have a substance abuse diagnosis and a major mental illness or serious medical condition. Additionally, basic outpatient mental health services are available in all Federal female institutions and one inpatient mental health services is available at the Federal Medical Center (FMC) Carswell in Texas.

93. The Special Rapporteur welcomed the positive achievements introduced at CCWF since the visit of her predecessor in 1998 including the gender-responsive rehabilitation initiatives outlined in the State Master Plan for Female Offenders, the inmate appeals process to foster accountability and respond to allegations of abuse, and a number of educational and vocational training programs introduced to reduce recidivism. The latter allow female inmates to go through a classification process which identifies the programs that will best suit them to ensure they have the opportunity to attain the marketable skills for reintegration into society. The Rapporteur was also informed of the Community Prisoner Mother Program (CPMP), which is run by the California Department of Corrections and Rehabilitation (CDCR).

94. The Special Rapporteur found fewer rehabilitative programs in the Glades County Detention Centre, which is used primarily as a temporary housing for federal immigration detainees, with an average stay of 30 days.

#### **4. Addressing violence against African-American women**

95. In 2003, the Safe Return Initiative (SRI)<sup>112</sup> was created by the Department of Justice Office on Violence against Women in conjunction with the Institute on Domestic Violence in the African-American Community (IDVAAC).<sup>113</sup> The program provides domestic violence services and support for African-American families who have an intimate partner returning home from prison.<sup>114</sup> Some of the services provided are training law enforcement, church leaders, employment specialists, domestic violence workers etc on domestic violence in the African-American community; encouraging a community-based approach to combating domestic violence; giving help to professional groups to assist them in recognizing their own roles in domestic violence; and finding ways for SRI grantee recipients to share their work with other grantees.<sup>115</sup>

#### **5. Remedies available for undocumented and immigrant women victims of violence**

96. Currently, three protective avenues exist for immigrant women who are victims of violence. Victims of domestic violence who are the child, parent, or current/former spouse of a United States citizen or a permanent resident and are abused by that person may be eligible to apply for a green card without needing the abuser to file for immigration benefits on their behalf. VAWA created this self-petitioning provision of the law. VAWA also created the T nonimmigrant visa and U nonimmi-

<sup>112</sup> Institute on Domestic Violence in the African-American Community, Safe Return Initiative. <http://www.idvaac.org/sri/resources.html>.

<sup>113</sup> Oliver Williams, Safe Return: Phase I Report 2003-2005, Institute on Domestic Violence in the African-American Community. <http://www.dvinstitute.org/media/publications/SAFE%20RETURN%20Booklet2007.pdf>

<sup>114</sup> Institute on Domestic Violence in the African-American Community, SRI Overview. <http://www.dvinstitute.org/current/initiative.htm#>.

<sup>115</sup> Ibid.



grant visa. The T visa is a form of immigration relief that provides status to victims of human trafficking, enabling them to live and work in the United States as well as bring certain family members to the country. In order to be eligible for a T visa, a victim must show cooperation with law enforcement requests for assistance in the investigation or prosecution. Minor victims and victims who have suffered severe trauma are exempted from this requirement. The U visa is a nonimmigrant status that affords protection to undocumented victims of certain crimes. It was created to facilitate the reporting of crime to law enforcement by a population known to underreport crime victimization due to immigration issues. The discretionary granting of such a visa does not require that a victim or perpetrator be in legal immigration status. The applicant must be a victim of qualifying criminal activity and have suffered substantial physical or mental abuse as a result of the crime, possess credible and reliable information about the qualifying criminal activity, and be helpful to the investigation and/or prosecution of that qualifying criminal activity. Domestic violence is one of these qualifying criminal activities and reportedly, one of the top crimes immigrants petition for.

97. Advocates reported that even when women manage to get a self-petitioned visa process under VAWA approved, they still might have to wait for years before receiving their legal permanent residency. According to the DHS, this wait is due to the physical presence period that is required by law prior to an adjustment of status to lawful permanent residency and to statutory annual quotas for becoming an immigrant. The possibility of applying for a U-visa is a positive step forward to address these cases, but there are still challenges relating to implementation, and also raising awareness among individuals who might be eligible, including undocumented immigrant women.

98. Another concern that was consistently shared by survivors and advocates was the negative effect that initiatives such as the Secure Communities Program have had on immigrant women. The Secure Communities Program requires local governments and police to share information with the federal government and the Department of Homeland Security (DHS). According to advocates, this information exchange enables the DHS to target undocumented immigrants or resident immigrants who are not yet citizens, and make them deportable for committing minor offenses. This is as a result of new legislation that increased the types of criminal offenses for which immigrants can be deported. Such initiatives make immigrant women more vulnerable to abuse, as attempts to stand up for their rights, are countered by threats to report them to immigration.

99. Advocates argue that certain policies and programs have been fuelled by racial profiling, leading to the criminalization of people that do not pose a real threat to the security of the communities. This was confirmed during interviews in detention centers where the Special Rapporteur heard accounts of women who had been tricked or coerced into keeping or carrying drugs and are now serving sentences prior to their deportation.

## **6. Addressing violence against Native-American women**

100. While visiting the Eastern Band of Cherokee Indians, the Special Rapporteur observed an example of the infrastructure that some tribal justice systems have developed to provide safety to women within their jurisdiction, including dedicated codes to address domestic violence.<sup>116</sup> They have supported training of personnel of

<sup>116</sup> For example, the Navajo Nation Domestic Abuse Protection Act, IX Navajho Tribe Code & 1601 et seq (1993).

tribal law enforcement authorities, tribal courts, prosecutors and probation officers. Tribal courts have also ordered that offenders enrol in re-education programs and tribes have supported programs to encourage boys and young men to respect women.

101. Lacking the necessary criminal authority to prosecute non-native offenders, tribal courts have used civil laws and remedies to respond to cases of violence against women. These include civil contempt proceedings, banishment, suspension of certain tribal benefits, and issuance of tribal protection orders, monetary penalties, community service, and restitution, among others. Furthermore, Indian nations regularly issue civil protection orders to prevent future violence and award temporary custody of children, to both native and non-native women in their jurisdiction. Tribal authorities enforce these protection orders on their land, but once women leave tribal land, they must rely on other jurisdictions, mainly at the state level, for their enforcement. The Special Rapporteur was informed that many States do not recognize or enforce tribal protection orders.

102. Numerous tribes such as the Eastern Band of Cherokee Indians maintain and continue the practice of excluding batterers and rapists from their tribal jurisdictional boundaries. Unlike state and federal authorities, tribes have the power to restrict perpetrators of such crimes from entering their borders. Banishment prevents women and their children from being forced to flee their community and home due to violence. This is a serious community sanction which cuts off perpetrators from the tribe and sends a strong message about the protection of women and children in the community.

103. Unfortunately, efforts made by Indian nations to address the problem of violence against women are diluted by a lack of essential resources. The Special Rapporteur is well aware that the tribe she visited is a privileged one, in which resources are available to implement innovative policies and programs. Interviewees indicated that in many tribal communities, Indian women are disadvantaged by a lack of basic services and personnel to assist victims of sexual and physical violence. Many Indian nations have only a few police officers to cover their vast territories. For example, within the state of Alaska, at least eighty Alaska Native Villages have no law enforcement presence in the village.<sup>117</sup>

104. In 2010 the Federal Attorney General announced additional resources to hire 33 new Assistant US Attorneys, as well as additional victim specialists, to improve collaboration between federal and tribal prosecution and law enforcement efforts in the prosecution of violent crimes in Indian Country.

105. In January 2011, the Attorney General announced the formation of the Violence against Women Federal and Tribal Prosecution Task Force, comprising US Attorneys, representatives from tribal governments and advisors from OVAW, health care professionals and law enforcement officials. Within a year of convening, the Task Force is directed to produce a trial practice manual on the federal prosecution of violence against women offenses in Indian Country.

## **7. Dedicated initiatives at the federal level**

106. Commitment toward the elimination of violence against women has been shown at the highest level of the Executive with the appointment of a White House Advisor on domestic violence and sexual assault issues, and a White House Council on Women and Girls. These offices liaise closely with the advocacy community, as well as with various government departments. The Special Rapporteur notes with

<sup>117</sup> Information provided in interviews at Cherokee.

appreciation the high levels of interagency coordination between the Department of Justice and other government departments in charge of implementing policies and programs to address violence against women, including the Departments of Housing, Homeland Security, Health, Labor and Veteran Affairs.

107. Within the Department of Justice, The Office on Violence against Women (OVW) was created specifically to implement the VAWA and other relevant legislation. The OVW administers financial and technical assistance aimed at 1) reducing domestic violence, dating violence, sexual assault and stalking, 2) strengthening services for victims and 3) improving criminal justice responses to these crimes. Since its inception in 1995, OVW has awarded nearly \$4.5 billion in grants.<sup>118</sup>

108. Apart from the 911 emergency services, there are four free national hotlines for victims of violence to receive counseling and to be referred to service providers in their locations. These include: the National Domestic Violence Hotline, the National Sexual Assault Hotline, the National Teen Dating Abuse Helpline, and the National Stalking Resource Center.

109. Other crucial services for victims are provided through the Family Violence Prevention and Services Act (FVPSA) which provides federal funding dedicated directly to domestic violence shelters and programs. FVPSA is administered by the Department of Health and Human Services, and funds essential services such as emergency shelters, hotlines, counselling and advocacy, and primary and secondary prevention. FVPSA also supports services provided by more than 200 Indian tribes.

110. Advocates noted that many of these programs report critical shortages of funds and staff to provide emergency shelter, housing, child care and legal representation. The National Census for Domestic Violence Services found that in one day in 2010, over 70,648 adults and children received services at 1,746 domestic violence programs nationwide. Yet, on that same day, over 9,541 requests for services went unmet due to a lack of resources.<sup>119</sup>

111. In relation to housing provisions for women victims of violence, in 2005 the Violence Against Women Act created an exemption to federal one-strike policies in public and voucher assisted housing for victims of domestic violence, dating violence, and stalking, and provided other housing protections for victims. Currently, Federal law prohibits the eviction or denial of housing to victims because of the violence committed against them. The Rapporteur was also informed that in October 2010, the current administration issued new rules providing guidance to public housing authorities on implementation of the VAWA housing provisions. Nevertheless, some interlocutors claimed that these housing protections only apply to public housing and voucher housing and do not cover other federally subsidized housing. Such programs do not apply to victims of sexual assault, and do not include provisions allowing for early lease termination and/or relocation to tenants who must flee violence. Furthermore, State laws do not consistently meet these Federal standards.

<sup>118</sup> Fact sheet shared by the OVW.

<sup>119</sup> NNEDV, Domestic Violence Counts 2010: A 24-Hour Census of Domestic Violence Shelters and Services, p.3.

[http://www.nnedv.org/docs/Census/DVCounts2010/DVCounts10\\_Report\\_BW.pdf](http://www.nnedv.org/docs/Census/DVCounts2010/DVCounts10_Report_BW.pdf).

In this regards, the Special Rapporteur was pleased to receive post-mission information indicating that the FY2012 budget proposal from the Executive includes a \$135 million increase in services for victims.

## **IV. Conclusions and recommendations**

112. The government has taken positive legislative and policy initiatives to reduce the prevalence of violence against women, including the enactment and subsequent reauthorizations of the Violence against Women Act, and the establishment of dedicated offices on violence against women at the highest level of the Executive. The government has also allocated substantial resources which are beneficial to advocates and service providers, particularly at the grassroots level.

113. Nevertheless, the lack of substantive protective legislation at federal and state levels, and the inadequate implementation of current laws, policies and programs, has resulted in the continued prevalence of violence against women and the discriminatory treatment of victims, with particularly detrimental effects on poor, minority, and immigrant women.

114. It is clear that multiple forms of discrimination against certain groups of women not only makes them more vulnerable, but also exacerbates the negative consequences that violence has upon them. Thus the implementation of current policy and programmatic initiatives must address the persistent structural challenges which are often both the causes and consequences of violence against women.

115. In light of the information received, the Special Rapporteur would like to make the following recommendations to the Government:

### **A. Remedies for victims of domestic violence, sexual assault and stalking**

(a) Explore more uniform remedies for victims of domestic violence, sexual assault and stalking. Expanding federal causes of action under VAWA, where possible, would mitigate current discrimination, and increase uniformity and accountability at the state and local levels.

(b) Review and more effectively address the disproportionate impact that violence has on poor, minority, and immigrant women.

(c) Re-evaluate existing mechanisms at federal, state, local and tribal levels for protecting victims and punishing offenders, given that calls for help often do not result in either arrests or successful prosecutions.

(d) Establish meaningful standards for enforcement of protection orders and impose consequences for a failure to enforce.

(e) Initiate local and national dialogues with relevant stakeholders to consider the effectiveness, in theory and application, of expedited proceedings, mandatory arrest policies, mandatory prosecution policies, and batterer's programs. This dialogue is necessary in light of the skepticism regarding the state's response to domestic violence, and also the de facto disparate impact of such measures.

(f) Initiate more public education campaigns that condemn all forms of violence, both public and private.

(g) Enhance gun control measures, by ensuring an adequate background check system to capture all relevant elements that determine an individual's suitability for gun ownership. Background checks for licensed individuals

should be revisited periodically to determine continued suitability. States should have clear gun removal policies when intervening in domestic violence cases, including the possibility of removal of guns after the first notification of domestic disputes. Gun dealers should be penalized for illegally selling guns and also for failure to report stolen guns which are subsequently used to commit crimes.

(h) Ensure effective implementation, regulation, monitoring and evaluation of VAWA's housing provisions, including making available more affordable, secure housing options for those fleeing domestic violence. Federal and state housing policies should not discriminate against victims of domestic violence, sexual assault, and stalking - by excluding them as applicants or evicting them based on their histories of abuse.

(i) Reform Federal and State labor laws to prohibit discrimination against survivors of domestic violence, sexual assault, and stalking; and provide for emergency leave when employees need time off to address safety, health, housing, and legal concerns.

(j) All courts should order safe and appropriate parenting arrangements, including considering any history of domestic violence, prior orders of protection and domestic violence criminal convictions when determining custody, visitations and mediation issues. Furthermore, "failure to protect" statutes should not be used to unjustly remove children from non-offending caregivers.

## **B. Military violence**

(a) Ensure the effective implementation of a no-tolerance policy for rape, sexual assault and sexual harassments in the military, ensure adequate investigation of all allegations by an independent authority and allow victims to bring claims against the military when damages arise out of negligent or wrongful acts.

(b) Ensure the effective implementation of training for all SAPRO employees, including Victim Advocates, SARC's, investigators and health professionals. Furthermore, the role and authority of the SARC's should be strengthened beyond their current advisory role.

(c) Enable more female-only and service specific in-patient PTSD and MST programs within the VA, to ensure victims a safe place to privately seek assistance without threats of further harassing behavior. Furthermore, mandatory and routine training on the specific issues facing women veterans should be instituted for all VA staff. The VA should also extend evidentiary relief to victims claiming in-service sexual assault and accept their testimony as main proof to support a diagnosis of PTSD.

## **C. Violence against women in detention**

(a) Adopt international legal standards and norms for the protection of prisoners and detainees through the implementation of laws, policies and programmes at the Federal, State and local levels.

(b) Explore and address the root causes, including the multiple and intersectional challenges, which lead to the increasing number of immigrant and African-American women in prisons and detention facilities.

(c) Consider alternatives to incarceration, particularly for women detainees who are primary care-givers of their children, given the non-violent nature of many of the crimes for which women are incarcerated, and also in light of laws relating to loss of parental rights.

(d) Consider amendments to the ASFA with a view to ensure that women in custodial settings do not easily or arbitrarily lose their parental rights. States should be encouraged to take a balanced approach when assessing the interest of the child's welfare and the parental rights of incarcerated or detained mothers.

(e) Ensure that sentencing policies reflect an understanding of women's levels of culpability and control with drug offenses. Review laws that hold women responsible for their association with people involved in drug activities, and which punish them for activities of drug operations they may have little or no knowledge.

(f) Emulate current programs to equip inmates with marketable skills for reintegration into society in all federal and state prisons, and ensure access to all women prisoners, regardless of their immigration status.

(g) Adopt policies at the federal and state level to ensure that women in prisons receive the highest attainable level of physical and mental health care. In particular, women's prisons should provide comprehensive reproductive health services and gender-sensitive mental health and drug treatment programs. Women should not be punished, through administrative segregation or otherwise, for behavior associated with their mental illness. Adequate independent oversight processes should be instituted to improve minimum standards of health services and to ensure that costs do not prohibit inmates from accessing health care.

(h) Adopt legislation banning the use of restraints on pregnant women, including during labor or delivery, unless there are overwhelming security concerns that cannot be handled by any other method.

(i) Enact laws criminalizing sexual abuse and other misconduct towards prisoners, covering not only guards and correctional officers, but also all individuals who work in prisons including volunteers and government contractors. The National Standards to Prevent, Detect, and Respond to Prison Rape should reflect the substantive issues indicated in the NPREC report of 2009. As articulated in the NPREC's finding number five, victim's health and safety should remain the focus, reporting procedures should be improved and responsive, and accountability should be the norm rather than the exception. Compliance with these laws should be monitored through an independent mechanism through which prisoners can file grievances directly. Furthermore, prosecutors should receive specialized training on sexual abuse cases, to enable more responsive prosecutions in prison contexts.

(j) Strengthen institutional oversight to ensure a comprehensive approach in preventing and responding to rape and sexual abuse in prisons, including through more accessible and transparent grievance procedures.

(k) Amend the prison Litigation Reform Act to ensure women prisoners and detainees equal protection before the law, thereby addressing the numerous complaints noted above.

(l) Eliminate cross-gender searches and provide for supervision in private spaces within all women's prisons, in line with international standards re-

garding the treatment of prisoners. The National Standards should include NPREC recommendations that cross-gender pat searching be done only in the case of an emergency and not on a routine basis. Unnecessarily invasive and degrading strip search procedures should also be eliminated.

(m) Improve and adopt national standards to transform the country's immigration detention system into a truly civil model, thus avoiding the custody of immigrant detainees with convicted individuals. These standards should be made legally binding in all detention facilities, including those run by state, local, or private contractors.

(n) Locate immigration detention facilities closer to urban centers where legal services and family members are more accessible.

#### **D. Violence against native-American women**

(a) Prioritize public safety on Indian land by fully implementing and funding the Violence against Women and Tribal Law and Order Acts.

(b) Assist tribal authorities in their efforts to respond to violence against women, including by allowing these law enforcement agencies to access federal criminal databases and by establishing, in consultation and cooperation with Indian nations, a national reporting system to investigate and prosecute cases of missing and murdered Native-American women.

(c) Establish federal and state accountability for the investigation and prosecution of violent crimes against Native-American women. The government should also ensure that state authorities recognize and effectively enforce tribal court protection orders.

(d) Increase resource allocation to Indian tribes and tribal non-profit organizations providing services to women to develop comprehensive services for survivors of sexual and domestic violence.

(e) Consider restoring, in consultation with Native-American tribes, tribal authority to enforce tribal law over all perpetrators, both native and non-native, who commit acts of sexual and domestic violence within their jurisdiction.

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