INTRODUCTION / METHODOLOGY

In preparing a briefing paper for the Roundtable on issues in the United States within the mandate of the U.N. Special Rapporteur on Violence Against Women, the International Human Rights Law Clinic at the University of Virginia School of Law wanted to ensure that the focus would reflect priorities of experts in the field, rather than our own conceptions of what might be interesting or important.

As such, we sought information from practitioners and academics working on a broad spectrum of issues that constitute violence against women. The Clinic students1 began the process of identifying experts by speaking with academic-practitioners, representatives from key organizations and personal and professional contacts of the clinic director. The students then asked these people to suggest additional experts. In all, the Clinic collected a database of over 125 advocates throughout the United States, and interviewed (by phone or email) around 30 individuals.

While these contacts elicited variety and depth within certain topical subfields, it tended not to produce details and contacts in other subfields, because people typically recommended other experts within their areas of focus. We tried to overcome these deficits by searching the Internet for members of under-represented communities /organizations and issue areas, and reaching out to friends-of-friends. This worked for some areas, but people were less likely to respond to our inquiries when there was no specific recommender that the individual knew.

Experts were asked five main questions:

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1 Numerous UVA Law students contributed to this project between September 2009 and February 2010 under the supervision of IHRL Clinic director, Professor Deena Hurwitz. Nilakshi Parndigamage ('10), Jamie Schoen ('10) and Thinn Nyunt (visiting student, Nottingham University 2009-2010) did the bulk of the work as students in the Clinic during the fall 2009 semester. The following pro bono students contributed significant time during their January break to completing interviews and drafting sections of the paper: Kara Allen ('10), Joseph D'Agostino ('12), Jessica Kelly ('12), Jessica Lee ('12), Natalie Morris ('12), Diane Rish ('12), Joel Sanderson ('12), Amy Stern ('12). In the first week of the spring 2010 Clinic, these students assisted in the final editing of the paper: Kara Allen ('10), Adrienne Boone ('10), Jenna Gallagher ('11), Elham Geranmayeh (LLM ’10), Caitlin Gregg ('11), Tim Nguyen ('10), David Smith ('10) and Ryan Vaughn ('10).
1) What are the most important issues of violence against women in the United States that the Special Rapporteur on VAW should address?
2) What are the main factors contributing to these problems?
3) What should the government be doing to address these issues?
4) What legal, policy, and/or advocacy avenues are currently available or being pursued to redress these problems?
5) What legal, policy, and/or advocacy avenues could or should be pursued?

The treatment of the issues in the briefing paper is necessarily superficial, and we were limited by time. Ultimately, we invited people to respond to our questions by email rather than only phone interviews. While fruitful results were drawn from email responses to the surveys, with a few notable exceptions (e.g., the report from NOW), these responses were not as in-depth.

Because this paper is entirely based on interviews and the sources the interviewees recommended, the sections vary in scope and length but reflect the priorities of the respondents. The Clinic makes no independent conclusions or recommendations. Rather, this paper presents the emphases and recommendations laid out by the experts. The Clinic did not undertake any significant independent research for the briefing paper. We relied upon references and documents provided to us in the interviews.

In sum, this briefing paper is intended to launch the Roundtable consultation by providing participants with some basic information about the problems and the legal contexts in which they are working. It is necessarily cursory and incomplete. It is our hope that the paper will engender a constructive inter-sectional dialogue that will lead ultimately to agreement, if not consensus, as to the two or three most critical issues on which the U.N. Special Rapporteur might have an impact through her mandate.

INTIMATE PARTNER VIOLENCE / CRIMINAL JUSTICE

Participant Experts:
Carrie Bettinger Lopez, Human Rights Institute, Columbia Law School
Jan Erickson, NOW Foundation
Nicole Mason, Women of Color Policy Network
Karen Czapanskiy, University of Maryland
Jacqueline Agtuca, Clan Star Inc.
Cheryl Thomas, Advocates for Human Rights
Sujatha Jesudason, Generations Ahead
Malika Saada Saar, Rebecca Project for Human Rights

Others Interviewed:
Daniel Webster, Johns Hopkins School for Public Health, Center for Gun Policy and Research
Jocelyn Getgen, Avon Center for Women and Justice, Cornell Law School
Ellen Pence, Court Mandated Perpetrator Programs (Duluth, MN)
Julie Goldscheid, CUNY Law School
Jody Raphael, Center for Impact Research, DePaul University
Intimate partner violence (IPV) is often under-reported because of economic and emotional dependence on abusers, and fear of reprisal. Studies show wide variations in incidence of IPV. Legal safeguards for victims of IPV often fail to protect the victims completely and are frequently subject to inconsistent enforcement.

**Problem:** Governments fail to adequately enforce protective orders, and longer response times are reported for emergency calls related to IPV than other violent crimes.

**Legal Context:** Under *Castle Rock v. Gonzales*, 545 U.S. 748 (2005), local police and government owe no duty of care to individual victims and therefore cannot be sued for failure to enforce a restraining order.

**Problem:** Extreme delays in police examination of “rape kits” discourage IPV victims in some areas from asserting rights under criminal law.

**Problem:** Despite evidence showing that female perpetrators of IPV often act in self defense, they receive harsher sentencing than males.


**Problem:** Prosecution rates and sentences for IPV perpetrators have been historically low.

**Legal Context:** DOJ has developed domestic violence research to improve prosecution.²

**Problem:** IPV victims are losing custody of their children to their violent partners, and victims’ and children’s safety is being compromised in family courts and through the divorce process.

**Legal Context:** Most states require that IPV be considered in custody hearings.³ Nevertheless, in child custody and divorce cases where domestic violence is present, courts are failing to investigate allegations of partner and child abuse. They are granting

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custody or unsupervised visitation to batterers who may have abused the children. Courts are discriminating against battered women by holding mothers to higher parenting and behavioral standards than their abusive ex-partners and not giving battered women adequate opportunity to tell their story. Courts are allowing batterers to continue abuse through the court system. State laws addressing the presumption of custody and ‘parental alienation syndrome’ have the potential of further harming battered women. See, e.g., Nicholson v. Scoppetta, 344 F.3d 154 (2d. Cir. 2003); Nicholson v. Williams, 203 F. Supp.2d 153 (E.D.N.Y 2002); In re Betty J.W., 371 S.E.2d 326 (W. Va. 1988).\(^5\)

**Problem:** TANF grant money is inadequate to fund safe and adequate housing for IPV victims with children, and can contribute to a victim’s inability to leave a situation of IPV, or make a return to such a situation necessary.

**Legal Context:** Beginning in 2000, VAWA mandated very low minimum state spending levels on housing and provides relatively little federal funding for the purpose. Some states choose to close this gap with state-funded housing assistance.\(^7\)

**Problem:** Immigrants are given less attention in their IPV cases, and culture is sometimes advanced as an excuse or mitigation for IPV.

**Legal Context:** The Battered Immigrant Women Protection Act mitigates the effect of some provisions of immigration law against battered women.\(^8\)

**Problem:** Violence against pregnant women may cause harm to the fetus and is a factor in maternal mortality. Health care screenings often fail to address IPV, despite this being a time when woman are most at risk.

**Legal Context:** The Unborn Victims of Violence Act, 18 U.S.C. § 1841 et seq. clarified federal law to allow for fetal injuries to be separately chargeable crimes. Guidance is available to clinicians\(^9\) and local health departments\(^10\) in dealing with women’s health


\(^6\) For comparison of VAWA 2000 and previous versions, see Violence Against Women’s Act of 2000, see [http://www.acadv.org/VAWAbillsummary.html](http://www.acadv.org/VAWAbillsummary.html).

\(^7\) See, e.g, Domestic Violence Prevention Act, N.Y. Code § 459-a et seq.

\(^8\) BIWPA was passed as part of the same enactment that constituted the VAWA 2000 amendments. See Victims of Trafficking and Violence Protection Act of 2000, H.R. 3244, Oct. 11, 2000. See also Zelda B. Harris, *The Predicament of the Immigrant Victim/Defendant: “VAWA Diversion” and Other Considerations in Support of Battered Women*, 14 HASTINGS WOMEN'S L.J. 1 (2003).

complications, but a legal gap exists as to violence against pregnant women as distinct from other victims.

**Problem:** LGBT IPV victims lack services and battle misconceptions about abuse, particularly regarding distinctions between heterosexual and LGBT abuse.

**Legal Context:** The problems of IPV among non-heterosexual couples is generally not understood or dealt with as distinct from heterosexual IPV.11

**Problem:** Many states draw a legal distinction between sexual violence within marriage and non-marital sexual violence.

**Legal Context:** Only seventeen states and the District of Columbia make no distinction between marital rape and other rape.

**Problem:** IPV victims frequently lose jobs and housing because of discrimination and employers or landlords not wanting to deal with these issues.

**Legal Context:** The federal Family Medical Leave Act, 29 U.S.C. § 2601, provides minimal rights to victims of IPV and their families. A proposed amendment to greatly expand those rights to cover medical and legal leave for IPV survivors has been proposed but not passed. State coverage varies greatly.

**Problem:** Adolescent victims of IPV are less likely to discuss the problem with authority figures, and more likely to discuss it with peers.

**Legal Context:** DOJ and HHS have provided a forum for academic research into similarities and differences between adolescent and adult IPV.12

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**NATIVE AMERICAN WOMEN**

**Participant Expert:** Jacqueline Agtuca, *Clan Star*

**Others Interviewed:** Kirsten Carlson, *Indian Law Resource Center*

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Native American women suffer far higher levels of violence than any other ethnic group of women and face unique challenges in addressing this violence. According to a DOJ report on violence against women, 34% of Native American women have been raped, 61% have been physically assaulted, and 17% have been stalked, compared to 18%, 52%, and 8%, respectively, of all women in the United States. Federal laws hinder tribal governments in their ability to prosecute crimes that take place on their own reservations, and federal and state prosecutors are often unwilling or unable to take on cases that have occurred on Indian land.

**Problem:** Tribes recognized by the federal government are considered sovereign, and are therefore able to operate their own criminal justice system, but federal law limits the ability of native governments to effectively prosecute crimes. Tribal courts only have jurisdiction to try cases where the perpetrator is a registered member of a Native American tribe.

**Legal Context:** Tribal authorities cannot prosecute non-Indians even for crimes committed on Indian lands, under the U.S. Supreme Court’s decision in *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). The Inter-American Commission for Human Rights noted that the federal government is not required to compensate for this limitation. However, DOJ statistics show that between 1992 and 2002, 88% of all violent crimes against Native American women were perpetrated by whites or blacks. Thus, the vast majority of violent offenders against Native American women are beyond the reach of the local tribal courts.

**Problem:** Under federal law, tribal courts have the power to impose only relatively small fines and short prison sentences for even violent crimes.

**Legal Context:** Under the Indian Civil Rights Act of 1968, even where tribal courts have jurisdiction, they may impose only a one-year sentence and/or a $5,000 fine, even for the most serious crimes. In a handful of states, Public Law 280 (PL-280) allows states to prosecute crimes that have taken place on Indian land, but in most areas states have no jurisdiction. Therefore, the authority to take a case depends on the ethnicity of the perpetrator and whether the crime took place on Indian land, creating jurisdictional confusion and delay on the part of law enforcement officers and prosecutors.

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**Problem:** The federal government prosecutes a low proportion of crimes reported on Indian lands, reducing deterrence of violence against women.

**Legal Context:** The federal government declines to prosecute 62% of all crimes reported occurring on Indian lands and 75% of sexual assaults against adults. Prosecutors’ offices suffer from a lack of resources, distance from Indian lands, and lack of witness cooperation. In January 2010, DOJ announced a new initiative to combat violence on Indian lands with a particular emphasis on protecting women and children. DOJ will now require U.S. attorneys with authority over Indian lands to engage in annual consultations with tribal governments together with other federal agencies, such as the Bureau of Indian Affairs. A total of $6 million will be spent on prosecutions in Indian country and new prosecutors will be hired to focus on crimes committed on Indian lands.

**Problem:** The inadequacy of the criminal justice system makes Native American women especially reliant on Personal Protection Orders (PPOs). However, citizens—whether Native or not—have no recourse against state officials who do not enforce PPOs.

**Legal Context:** The Supreme Court decided in *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005) that enforcement of PPOs by law enforcement officers was not mandatory. Tribal authorities do have the authority to enforce PPOs against even non-Native Americans, and the Violence Against Women Act (VAWA) of 1994 instituted Full Faith and Credit for PPOs, meaning that state and tribal jurisdictions must honor the PPOs of both state and tribal authorities.

**Problem:** Native American women tend to be more isolated and have less access to important social services than other American women, making them more vulnerable to violence.

**Legal Context:** The federal government and the states have funded below minimal level social services on rural Indian lands, and shelters for battered women are particularly scarce. Many Native women do not have an easy way to access medical care or rape kits.

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that could be used in prosecution.\textsuperscript{24} The VAWA provides grants to Native communities for the prevention of violence against women, and in 2006 funded $6.7 million in programs in 35 communities.\textsuperscript{25}

### VIOLENCE AGAINST WOMEN IN THE MILITARY

**Participant Experts:**
Anu Bhagwati, *Service Women’s Action Network*
Rachel Natelson, *Service Women’s Action Network*

Many female servicewomen report rape and sexual assault, and 70\% to 90\% have reported sexual harassment of some kind. According to the Government Accountability Office, victims do not report incidents for various reasons, including the belief that no action will be taken, fear of negative reaction from peers, and fear of punishment for related misconduct.

**Problem:** According to the Pentagon’s own estimates, only some 10\% of sexual assaults are reported (*NY Times*), in part because of a failure of the DOD to adequately fund its Sexual Assault Prevention and Response (SAPR) Program and because of inconsistent training.

**Legal Context:** DOD policy is articulated through the Sexual Assault Prevention and Response Office (SAPRO)—Department of Defense Directive 6495.01, Sexual Assault Prevention and Response (SAPR) Program (Oct. 6, 2005). As part of the Office of the Secretary of Defense, SAPRO does not receive its own funding. Therefore, funding for the program varied greatly from location to location, putting women based in under-funded locations at a disadvantage. “Commanders and their staffs frequently noted that sexual assault prevention and response was yet another unfunded program mandate to be resourced locally.” (Defense Task Force Report on Sexual Assault in the Military (Dec 2009)).

**Problem:** The DOD directives regarding SAPRO fail to recognize the realities of sexual assault during deployment, where commanders have to balance combat operations with pursuing sexual harassment complaints.


**Legal Context:** DOD Directive 6495.01, Sexual Assault Prevention and Response (SAPR) Program (Oct. 6, 2005) does not address the fact that in deployment situations, the geographic area covered by one SAPR director can be extremely large, making it difficult to respond quickly to sexual assault complaints.

**Problem:** Women are not permitted to serve in combat units, artillery, armored units, or Special Forces. This discriminatory policy gives authorities a reason to view women reporting sexual harassment as less important members who are destroying the morale of the unit.

**Legal Context:** DOD policy excludes women from direct ground combat (Memorandum from Secretary of Defense Les Aspin to the Secretaries of the Army, Navy, and Air Force et al., Direct Ground Combat Definition and Assignment Rule (Jan. 13, 1994); also *Assignment of Army and Marine Corps Women Under the New Definition of Ground Combat: Hearing Before the Subcomm. on Mil. Forces & Personnel of the H. Comm. on the Armed Servs.*, 103d Cong. (Oct. 6, 1994).)

**Problem:** The military does not track sexual abusers and tracking of sexual assaults in general is inconsistent.

**Legal Context:** Under Pub. L. No. 108-375, § 577 (DOD Policy and Procedures on Prevention and Response to Sexual Assaults Involving members of the Armed Forces, Oct. 2004\(^{26}\)), DOD is required to collect and report data on sexual assault annually. However, “SAPRO has not established a database or the necessary tools to accurately track the incidence, investigation, and prosecution of sexual assaults in the Armed Forces. The absence of this database and associated tracking tools precludes the ability of DOD and the Military Services to gain an accurate understanding of the pervasiveness and nature of military sexual assaults and impact on military readiness.” (Defense Task Force Report on Sexual assault in the Military (Dec 2009)).

**Problem:** Servicewomen do not have easy means of escape from the abusive environment. A transfer is at the discretion of the unit commander.

**Problem:** Women fear repercussions for reporting sexual assault. Anecdotal evidence includes being accused themselves of adultery or inappropriate relationships, and other charges that could potentially lead to the woman being discharged, negative impact on career advance, and being involuntarily forced out of the military.

**Problem:** There is no civil remedy for servicewomen who are victims of sexual violence.

**Legal Context:** Under *Chappell v. Wallace*, 462 U.S. 296 (1983), military personnel may not sue a superior officer for alleged constitutional violations. In *Feres v. United*
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States, 340 U.S. 135 (1950) the Supreme Court introduced the doctrine of intra-military immunity. The Feres doctrine, however, requires that the injury “arise out of activity incident to service.” In the civilian context at least, the Supreme Court held that sexual harassment is “not conduct within the scope of employment” (Burlington Industries v. Ellerth, 524 U.S. 742 (1998)).

Problem: Even as the wars in Iraq and Afghanistan are adding greater psychological strain on members of the military, preventing domestic violence among military families has fallen to a lower priority. Individuals convicted of domestic violence offenses or subject to a restraining order protecting an intimate partner or child of that partner have been deployed to war zones in violation of military regulations and federal laws, which prohibit domestic violence offenders from carrying firearms. The 2002 murders of five people by their intimate partners at Fort Bragg, N.C. highlighted the tragic consequences that the stresses of military life can cause.

Legal Context: 18 U.S.C. § 922(g)(9) prohibits individuals convicted of misdemeanor domestic violence offenses or subject to a restraining order protecting an intimate partner or child of that partner from owning or using a firearm. There is no exception for military personnel. The Department of Defense has extended this to anyone convicted of a domestic violence felony.27

VIOLENCE AGAINST INCARCERATED WOMEN

Participant Experts:
Robin Levi, Justice Now
Deborah LaBelle, attorney
Cindy Soohoo, Center for Reproductive Rights
Malika Saada Saar, Rebecca Project

Others Interviewed: Loretta Ross, SisterSong

When the government controls or removes a person’s liberty, it also acquires a heightened responsibility to protect her dignity and safety. Women, who make up roughly 7% of this country’s incarcerated population28, face unique challenges behind bars. They face significant difficulties retaining their parental rights, lack access to adequate reproductive health services, and are often victims of sexual assault. These problems are magnified by a justice system that has failed to provide adequate avenues for redress. The shackling of incarcerated women in labor is a significant issue that is also discussed in the next section on reproductive justice.

Problem: Incarcerated women are often left unprotected from sexual assault and rape. Although statistics vary greatly between jurisdictions, the most offending prisons on record have sexual assault rates of 25%. Assaults are often perpetrated by male corrections officers who have access to the women.\textsuperscript{29} For further examples, see the 1999 Report of the Special Rapporteur on VAW.\textsuperscript{30} The common practice of using the prison system to incarcerate women who have been convicted of nonviolent crimes such as low level drug dealing and prostitution, rather than rehabilitating and educating such offenders, contributes to these ills.

Legal Context: 18 U.S.C. § 2241 (making sexual intercourse by the use or threatened use of force a felony with the maximum penalty being life imprisonment); 18 U.S.C. § 2243 (prohibiting sexual contact, consensual or forced, between person in custodial role and inmate); National Prison Rape Elimination Act (NPREA, establishing a commission and future actions to reduce rates of rape and sexual assault); U.S. Const. amend. VIII (prohibiting cruel and unusual punishment).

In \textit{Farmer v. Brennan}, 511 U.S. 825 (1994), the Supreme Court found that guards can be held responsible under the Eighth Amendment if they ignore risks of substantial harm to inmates. See also \textit{Women Prisoners of the D.C. Dept' of Corrections v. District of Columbia}, 877 F.Supp. 634 (D.D.C. 1994).

In the Michigan case of \textit{Neal v. Michigan Department of Corrections} (MDOC), No. 96-6986-CZ (Washtenaw Co. Cir. Ct.), settled (July 15, 2009), successfully litigated by Deb LaBelle and others, the plaintiff class of approximately 500 women who had allegedly been sexually assaulted by male prison guards sought damages from MDOC; the case led to a 2009 settlement of $100 million.

Attorney General Eric Holder has been tasked by the NPREA with establishing rules for federal prisons by June 23, 2010. These regulations shall be implemented by states within one year, or 5% of federal funding will be withheld. It is widely believed that he will implement the recommendations of the NPREA, which will be a positive step in prevention of sexual abuse.\textsuperscript{31}

Problem: Women’s right to privacy is not enforced, and is often obstructed by prison officials. Many incarcerated women have reported that corrections officers—males in particular—

\textsuperscript{29} Just Detention International, \url{http://www.justdetention.org/}.
\textsuperscript{31} Melissa Rothstein and Lovisa Stannow, American Constitution Society for Law and Policy, Improving Prison Oversight to Address Sexual Violence in Detention (July 2009), available at \url{http://www.justdetention.org/pdf/ACSBrief.pdf}. 
constantly supervise them, including while showering, using the toilet, or being forced to remain nude.32

**Legal Context:** U.S. Const. amend. VIII (cruel and unusual punishment); U.S. Const. amend. IV (prohibition against unreasonable searches and seizures); 42 U.S.C. § 1983 (civil action for deprivation of rights); various state statutes.

In *Turner v. Safley*, 482 U.S. 78 (1987), the Supreme Court held that constitutional rights may not be infringed as a result of incarceration. In *Jordan v. Gardner*, 986 F.2d 1521 (9th Cir. 1993), the court found that pat searches on females by male prison guards constituted cruel and unusual punishment. However, in *Hill v. McKinley*, 311 F.3d 899 (8th Cir. 2002), a woman was forced to lie nude, shackled and in a spread-eagle position in front of men. The court considered this treatment a violation of privacy, yet the defendants received qualified immunity.

The 1997 Michigan case of *Nunn v. Michigan Department of Corrections* (MDOC), brought by Deb LaBelle, involved a class action by female prisoners alleging that the MDOC treated them wrongfully; the action led to a settlement by MDOC in 2000 ending cross-gender pat-downs and direct supervision of female inmates by male prison staff.

**Problem:** Current legislation and prison culture prevents incarcerated women from accessing courts and thereby gaining an effective remedy for violation of rights. Under current law, a prisoner seeking redress from courts must “exhaust” all possible grievance policies within the prison and corrections departments within a timely manner. This, along with the general culture of impunity for corrections officers, requires inmates to keep silent, or risk bodily harm and hostile living conditions in retaliation. Claims are often denied because inmates are hospitalized and unable to complete the filing within the statute of limitations.33

**Legal Context:** 42 U.S.C.§ 1997, the Prison Litigation Reform Act (requiring inmates to exhaust internal procedures before seeking help of a court, limiting the ability of the court to force a remedy on prisons, requiring that the injury in question be physical rather than mental, and providing a disincentive to seek legal redress by limiting lawyers’ fees).

In *Woodford v. Ngo*, 548 U.S. 81 (2006), the Supreme Court held that inmates forfeited their right to sue by missing a state correctional department’s deadline to file a grievance. *See also Amador v. Andrews*, No. 03 Civ. 0650 (S.D.N.Y.), First Amended Complaint, Sept. 5, 2003 (case unheard because of failure to “exhaust”).

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**Problem:** Inmates’ lack of access to their children is an impediment to maintaining family structure. Although many states have family visitation programs, others deny more than a cursory 15 minute visit behind glass. Pregnant women are forced to give their children to the state upon birth and, under certain circumstances, lose all parental rights instantly.

**Legal Context:** 42 U.S.C. § 1305, Adoption and Safe Families Act of 1997 (removing parental rights of children if mother is incarcerated more than 15 months after birth). In *Bazzetta v. McGinnis*, 902 F.Supp. 765 (E.D. Mich. 1995), the court held that there is no right to familial integrity, as incarceration by its nature is destructive to the family unit.

**Problem:** Prisons and other detention facilities fail to provide access to adequate medical care. Women have reported lack of access to pap smears, breast exams, and other standard screening. Depending on jurisdiction, women have reported forced abortions or lack of access to legal abortions. Pre- and post-natal care is often non-existent, and during labor, incarcerated women are often forced to have their legs shackled (see also infra section on Reproductive Justice). Mental health care for women suffering sexual abuse is not guaranteed.

Among doctors who treat incarcerated women, there is a common perception that inmates do not deserve the level of care owed to people in general. Women in detention facilities tend not to be tested as thoroughly for cancer and other deadly diseases, and inmates asking what their fetuses looked like during ultrasound have encountered such responses from medical practitioners as, “if you cared, you wouldn’t have gotten yourself into prison.” Some women in detention have been subjected to hysterectomies for relatively minor ailments, such as fibroids, and having their ovaries removed without explanation, evidencing a mindset on the part of doctors that they are “not deserving” of children. These incidents are particularly prevalent among incarcerated African American and immigrant women.

Pregnancy and childbirth among women in prison are often treated with indignity. Women have been shackled during childbirth, and prenatal appointments with doctors can be erratic. Inmates may also have bad diets and poor dental care, both of which can harm the fetus. In some cases, staples are not removed after childbirth, and tearing during childbirth is sometimes not repaired properly.

**Legal Context:** U.S. Const. Amend. VIII (cruel and unusual punishment); 42 U.S.C. § 1983 (civil action for deprivation of rights). California passed a law in 2005 prohibiting female inmates from being shackled during childbirth; four other states have passed similar laws. In 2008, the Federal Bureau of Prisons issued a policy statement to the effect that incarcerated women should not be shackled during childbirth without good reason.

In *Nelson v. Norris* (8th Cir. 2009), the court ruled that having legs shackled during childbirth is a violation of the Eighth Amendment. In *Smith v. Carpenter*, 316 F.3d 178

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(2d Cir. 2003), the court held that prison officials cannot exhibit deliberate indifference to inmates health needs under the Eighth Amendment. And in Coleman v. Rahija, 114 F.3d 778 (8th Cir. 1997), the court found an Eighth Amendment violation by nurses who failed to act when they were told an inmate was in labor.

### REPRODUCTIVE JUSTICE / HEALTH CARE

**Participant Experts:**
- Cindy Soohoo, *Center for Reproductive Rights*
- Malika Saada Saar, *Rebecca Project*
- Heidi Williamson, *SisterSong*
- Sujatha Jesudason, *Generations Ahead*
- Nicole Mason, *Women of Color Policy Network*
- Robin Levi, *Justice Now*

**Others Interviewed:** Loretta Ross, *SisterSong*

**Access to adequate healthcare remains a problem for women from low earning backgrounds and incarcerated women who are pregnant.**

**Problem:** Pregnant women in detention face a shortage of treatment and access to healthcare. Shackling pregnant women while detained has raised concerns as to the compatibility of this practice with human rights.

**Legal Context:** The Federal Bureau of Prisons issued a policy in 2008 prohibiting shackling “unless there are reasonable grounds to believe the inmate presents an immediate, serious threat” to herself or others, or “an immediate and credible risk” of escape. If restraints are used, “the lease restrictive restraints necessary” are to be used during labor and delivery. A few states have statutes that prohibit shackling of pregnant women during transportation, labor and delivery.

Shawanna Nelson, a 29 year old non-violent offender who was shackled while in delivery, sued the Arkansas Department of Corrections (ADOC) for violating her 8th Amendment rights against cruel and inhuman treatment. ADOC claimed qualified immunity. The district court held the case should go to jury trial; on appeal the Eighth Circuit found no constitutional violation. But in a re-hearing en banc, the full Eighth Circuit held in October 2009 that legal precedent clearly establishes the constitutional protections against shackling pregnant women in labor, paving the way for Nelson’s lawsuit to go to trial.

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Problem: Abortion services are not covered by Medicaid except in cases of rape, incest, or when a woman's life is in danger because of a physical problem.

Legal Context: The Hyde Amendment (Pub. L. No. 96-123 section 109, 93 Stat. 923 (1979) bars the use of federal funds to cover abortions through money allocated by the annual appropriations bill for Health and Human Services. In 1980, the Supreme Court in Harris v. McRae, 448 U.S. 297 (1980) held the Hyde Amendment was not unconstitutional.

In November 2009, the House of Representatives passed the Stupak-Pitts Amendment, which, according to Rep. Stupak, “applies the Hyde Amendment.” The Amendment prohibits use of funds authorized or obtained by the Affordable Health Care for America Act for abortions except in exceptional circumstances. Senate Majority Leader Harry Reid rejected the Stupak Amendment, and has presented another bill which would allow coverage of “any and all abortions.”

Problem: The right to access contraceptives or information on contraceptives is not realized for many women in the United States.

Legal Context: It is not illegal for employers to exempt coverage for contraceptives in employer-provided health insurance. The George W. Bush administration introduced the notion of “conscience clauses” allowing states to enact law providing for pharmacists and other health care providers to avoid having to treat patients with medicines that they believe are immoral. In December 2009, the administration enacted a regulation which denies federal funding to any state and local entities failing to accommodate healthcare employees who refuse to participate in care for moral reasons. Conscience clauses have been adopted by Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Pennsylvania, and South Dakota. The Obama administration stated an intent to initiate a ban on conscience clauses, but this has yet to be done. It has been suggested that, in light of the Catholic Church’s threat to close its hospitals, the administration has abandoned the endeavor.

38 “National Right to Life Committee Rejects Reid Abortion Funding Language as ‘Completely Unacceptable,’ Calls for Enactment of Stupak-Pitts Amendment,” National Right to Life, (Nov. 18, 2009).
Problem: An increase of harassment and attacks on abortion clinics, their employees and doctors as well as women seeking abortion.

Legal Context: Under the federal Freedom of Access to Clinic Entrances Act 1994 (FACE), access to abortion clinics is protected, but the law is not often enforced by states. Washington, New York and California have established their own version of FACE, imposing higher penalties for attacks on abortion clinics and their employees. A recent federal resolution expressed concern about violence in places of worship, but did not specifically mention providers. On January 29, 2010, Scott Roeder was convicted of murder for killing abortion doctor George Tiller in the foyer of his church. The Supreme Court in Scheidler v National Organization for Women, 537 U.S. 393 (2003), held that pro-life activists may not be prosecuted under the Hobbs Act (addressing economic damage caused by extortion), nor under the Racketeer Influence and Corrupt Organization Act.

Problem: Abstinence-only education does not provide young people with the information they need to make family planning decisions and learn about contraceptives.


Problem: Women are discriminated against in the health insurance industry. They can be denied coverage because of past pregnancies, c-sections or even past domestic abuse. Women are also more likely than men to work in jobs that do not offer insurance (part-time, small businesses).

Legal Context: Current healthcare reform may make the discrimination of pre-existing conditions illegal.

IMMIGRANT AND REFUGEE WOMEN

Participant Experts:
Karen Musalo, Center for Gender & Refugee Studies, Hastings School of Law
Cheryl Thomas, Advocates for Human Rights
Maya Raghu, Legal Momentum
Carrie Bettinger Lopez, Human Rights Institute, Columbia Law School
Cindy Soohoo, Center for Reproductive Rights
Sujatha Jesudason, Generations Ahead

Others Interviewed: Juhu Thukral, Opportunity Agenda
Foreign born women account for approximately 12% of the female population of the United States. Additionally many women attempt to seek refuge in the U.S. to escape sexual persecution. Upon arriving, many of them face continued or increased violence within their homes. Yet, without a social or economic safety net, they face significant hurdles to escape the abuser, or seek legal protection and criminal prosecution. Although improvements in immigration law have been made to protect these women, they fall short of the drastic need. Of the immigrant women in the U.S., an estimated 4.1 million are unauthorized to be in the country. Immigrants whose legal status is questioned—often mistakenly—are held in Immigration and Customs Enforcement (ICE) detention centers. These are part of a growing incarceration system where detainees are often held indefinitely and without knowledge of or access to fulfilling their rights. Problems of physical abuse and poor conditions are magnified by the operation of these detention centers outside of national corrections standards designed to provide adequate avenues for effective remedies.

Problem: In 1996, Health and Human Services requested that the Centers for Disease Control (CDC) conduct a study on female genital mutilation (FGM). The CDC found that in 1990 approximately 168,000 females residing in the United States had experienced, or were at risk for, female genital mutilation.

Legal Context: In 1996 Congress passed federal legislation criminalizing FGM in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Additionally, as of 2004, 16 states had adopted legislation aimed at the problem of FGM. The Center for Reproductive Rights suggests that the prevalence of the problem in the U.S. is not clear, however it stresses the need for awareness and education. Despite this legislation, some Circuit Courts continue to deny asylum to women who legitimately fear being subjected to such persecution upon being repatriated. See Gomis v. Holder, 571 F.3d 353 (4th Cir. 2009). However, the Ninth Circuit has found that FGM qualifies as “persecution” for the purpose of seeking asylum relief even if it has occurred already in the past. Benyamin v. Holder, 579 F.3d 970, 975 (9th Cir. 2009).

Problem: Failure to provide means of judicial redress for non-citizen victims of domestic abuse. Despite some improvements in legislation, many non-citizen women are unable or unwilling to

43 Id.
seek help for fear of disclosing their residency status, separating from partners on whose legal status they depend and/or fear of losing their children through deportation.

**Legal Context:** The Violence Against Women Acts of 1994, 2000, and 2005, specifically 8 U.S.C.S. § 1229b(b)(2)(A)(i)(I), allow victims of domestic violence to self-petition for citizenship. However, judicial circuits are currently split over defining a situation of “extreme cruelty” in the home, as well as determining the reviewability of such a determination.\(^{46}\) Compare Hernandez v. Ashcroft, 345 F.3d 824 (9th Cir. 2003), with Perales-Cumpean v. Gonzales, 429 F.3d 977, 983 (10th Cir. 2005) and Wilmore v. Gonzales, 455 F.3d 524 (5th Cir. 2006).

**Problem:** Failure to protect detained women against sexual assault and other physical abuse. Threats of violence or deportation are often used by ICE officers to coerce women into performing sex acts. Female prisoners note a lack of privacy while nude, showering, or using the toilet. Many report living in a climate of regular harassment.

**Legal Context:** According to 18 U.S.C. Sec. 2241, sexual intercourse by force or threat of force is a felony with a maximum penalty of life imprisonment. In Sevilla v. United States, 2007 U.S. Dist. LEXIS 40274, a woman was sexually assaulted during a naturalization interview. Her claims against the United States were dismissed because sexual assault in Georgia fell outside the officer’s scope of employment. Even more recently, a New York immigration agent was arrested for allegedly forcing a Columbian immigrant to perform oral sex in exchange for a green card.\(^{47}\) 18 U.S.C. Sec. 2243 prohibits sexual contact, consensual or forced, between a person in custodial role and an inmate. Additionally, The Prison Rape Elimination Act of 2003, 45 U.S.C. §15601 (2003) establishes a commission and national standards for handling and preventing rape and sexual assault within the prison system.

**Problem:** Failure to ensure proper access to medical care for women in detention. Women are unable to obtain care that meets the standards of prevailing medical practices. Inmates have reported difficulty in accessing pap smears, breast exams, pre-natal care, family planning services, abortions, and sanitary pads. Many women have their legs shackled during childbirth. When available, services are often provided without proper translation to establish informed consent, and are conducted without regards to privacy and/or confidentiality. Finally, since many detainees are survivors of rape and domestic violence (10% of detainee women are pregnant as a result of rape during their detention\(^{48}\)), mental health services are critical, yet usually not provided.


Legal Context: The Fifth Amendment prohibits infringements on life, liberty, and property, without due process of law and the U.S. Immigration and Customs Enforcement Residential Standard for Medical Care lays out the ICE healthcare policy for immigrants. Additionally, the U.S. Supreme Court has ruled that corrections officers cannot act with “deliberate indifference” to inmates with serious health needs. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). Finally, in *Norris*, (8th Cir. 2009) the Eighth Circuit ruled that having one’s legs shackled during childbirth violates the 8th Amendment.

There is a lingering debate on whether the Constitution applies in toto to immigrants illegally in this country, although the Fourth Amendment is considered applicable by most jurisdictions.

Problem: Failure to ensure proper access to a judicial means of redress for women in immigration detention. Current detention standards are not codified, but rely instead on ICE recommendations, which are not legally enforceable. These standards provide for the possibility of indefinite imprisonment, and fast-tracked deportations. Women in custody, often with limited language skills, find it difficult or impossible to file effective claims regarding their conditions or terms of detention. Seventy-eight percent of individuals in immigration detention have no legal counsel; as non-citizens, no attorney is appointed for them.


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49 As this detention is not considered punitive, it is governed by the 5th Amendment. See Detained and Dismissed; Women’s Struggles to Obtain Healthcare in United States Immigration Detention, Human Rights Watch, pg 74. Available at [http://www.hrw.org/sites/default/files/reports/wrd0309web_1.pdf](http://www.hrw.org/sites/default/files/reports/wrd0309web_1.pdf).


52 As conditions of imprisonment are monitored by recommendations of ICE, and these, “standards do not constitute formal federal administrative regulations, they are not legally enforceable” See Detained and Dismissed: Women’s Struggles to Obtain Healthcare in United States Immigration Detention, Human Rights Watch, pg 74. Available at: [http://www.hrw.org/sites/default/files/reports/wrd0309web_1.pdf](http://www.hrw.org/sites/default/files/reports/wrd0309web_1.pdf).

ECONOMIC INSECURITY

Participant Experts:
Maya Raghu, Legal Momentum
Rachel Natelson, Nat’l Law Center on Homelessness & Poverty
Jan Erickson, NOW Foundation
Karen Czapanskiy, University of Maryland

Others Interviewed:  Martha Davis, Northeastern University School of Law

Economic security is an essential concern for victims of domestic violence. Abuse makes it difficult to find and maintain work, as almost 50% of sexual assault survivors lose their jobs as a result of the assault. This means victims not only face substantial difficulty and discrimination in the workplace, but those that are economically dependent on their abuser often have nowhere to go. This leads to the perpetuation of vulnerability, abuse, and dependence for both the victim and the victim’s dependents.

Problem:  Victims of domestic violence who lack economic independence often end up homeless or dependent on their abusers because social services are inadequate for helping women develop economic stability. On the other hand, economic independence is one of the best predictors of a victim’s ability to avoid her abuser.

Legal Context:  The causes of economic dependency can be attributed to two common problems faced by victims of domestic violence: discrimination in the workplace and by insurers, and the actions of the abuser. However, the adaptation of existing laws facilitating work placement and training, like the Workforce Investment Act of 1998, to the specific needs of victims of domestic violence (like time needed to get to shelters or seek counseling) enhances the effectiveness of existing social programs.54  Similar state laws also are making it clear that securing economic independence is not mutually exclusive with making use of necessary services.55

Problem:  Violence and threats interfere with victim employment, e.g., physically injuring, preventing travel to and from work, limiting access to child care arrangements, harassment during work hours, and/or preventing access to cash or transportation.


55 See, infra note 58 and accompanying text.

**Problems:** Victims of domestic violence also frequently miss work due to injuries, court dates, and safety concerns requiring legal protection.

**Legal Context:** As of early 2009, only 11 states provided victims with leave from work to go to court, to the doctor, or to address their domestic violence issues, through legislation like Illinois’ Victims’ Economic Security and Safety Act (“VESSA”). To compound the problem, the cost and time needed for litigation of custody and separation results in women being less able to afford and take advantage of quality legal representation for necessary actions. In Illinois, under VESSA, victims working with qualifying employers may take leave for medical attention resulting from domestic violence, obtaining victim services, counseling, safety planning, or legal assistance. However, the extent of protection varies from state to state and no federal laws explicitly authorize victims to take leave from work for these reasons. While still in House committee, Title I of H.R. 739 Security and Financial Empowerment (SAFE) Act would federally authorize this type of limited leave.

**Problem:** Some IPV victims do not have specific discrimination protection and up to half of such victims lose their jobs because of the violence.

**Legal Context:** An increasing collection of state legislation supports making the workplace environment more conducive to the needs of victims of IPV. For employers of certain sizes, a number of states also forbid discrimination against employees who are victims of domestic violence or sexual assault because of the time they may need to take off from work to address the domestic violence in their lives.

As of early 2009, only Illinois prohibited employment discrimination against all victims of domestic violence, sexual assault or stalking. No federal law prohibits employment discrimination against actual or perceived victims of domestic violence, dating violence, sexual assault or stalking.

**Problem:** Victims have been subject to discriminatory practices by health, life, disability, property and casualty insurers, and employers who self-insure their own employee benefits.

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56 http://www.state.il.us/agency/idol/forms/PDFS/vessaout.pdf.
57 http://www.govtrack.us/congress/billtext.xpd?bill=h111-739 (Title I: Entitlement to Emergency Leave for Addressing Domestic Violence, Dating Violence, Sexual Assault, or Stalking).
**Legal Context:** Congressional findings for H.R. 739, Security and Financial Empowerment (SAFE) Act show that only 29 states and the District of Columbia explicitly require provision of unemployment insurance to domestic violence victims, and none of these explicitly cover victims of sexual assault or stalking. Federal law prevents states from interfering with employers who self-insure employee benefits and no federal law exists to prevent discrimination by these employers.

While cases like *Indigo Real Estate Services v. Ashlee Rousey* (WA Court of Appeals 2009) limit the extent to which insurers can disclose information about abuse and location of victims through their databases, such protections vary from state to state and no federal law or precedent currently forbids this disclosure.

**Problem:** Immigrants who are victims of domestic violence have difficulty obtaining independent status.

**Problem:** LGBT partners lack sufficient support structures and legal avenues to pursue economic disputes and security against former partners as traditional domestic violence programs may not have experience or resources to provide effective assistance.

**Legal Context:** The California LGBT Domestic Violence Programs Expansion Bill expanded funding for LGBT-specific domestic violence services. Massachusetts has a gender-neutral abuse prevention act.

**Problem:** Poor workplace conditions like lack of lighting, panic systems, or organizational safeguards like training and policies to enhance workplace safety result in greater domestic violence.

**Legal Context:** By June 2008, 10 states (Arizona, Arkansas, California, Colorado, Georgia, Indiana, Nevada, North Carolina, Rhode Island, and Tennessee) have implemented workplace restraining orders providing civil injunctive relief against abusers at work or while victim is conducting work-related business. Victims of workplace violence lack support as it is not given the same emphasis as IPV, and there is no national reporting system for violence in the workplace.

60 [http://www.govtrack.us/congress/billtext.xpd?bill=h111-739](http://www.govtrack.us/congress/billtext.xpd?bill=h111-739), Sec. 1(b)2.


TRAFFICKING

Participant Expert: Cheryl Thomas, Advocates for Human Rights

Others Interviewed:
Janie Chuang, American University Washington College of Law
Karina Vollmer, WEAVE

Forced prostitution remains the most common motive for the trafficking of women and girls into and within the United States.\(^{65}\) Currently however, increasing numbers are trafficked as domestic workers outside legal channels and thus live beyond legal protections for U.S. residents and workers. U.S. Department of Health and Human Services (HSS) reports that 14,500 to 17,500 people are involuntarily trafficked into the U.S. each year.\(^{66}\) Sometimes trafficking victims voluntarily come to the U.S., legally or illegally, but then are forced into slavery.\(^{67}\) Immigrants, minorities, and undocumented women and girls (particularly under 18) are most vulnerable to trafficking. Federal agencies spent “approximately $23 million in FY 2008 for domestic programs to boost anti-trafficking law enforcement efforts, identify and protect victims of trafficking, and raise awareness of trafficking as a means of preventing new incidents.”\(^{68}\)

Problem: T Visas are offered only to persons trafficked into the U.S., not those trafficked from their countries of origin into other countries who then seek refuge in America.

Legal Context: DHS’ Immigration and Customs Enforcement (ICE) agency is predominately in charge of trafficking enforcement. ICE allows two kinds of immigration relief as authorized by the Trafficking Victims Protection Act of 2000 (TVPA), last reauthorized by Congress in 2008: T visas and continued presence (CP) for trafficking victims who are potential witnesses to crimes. CP is often granted while T visa applications are pending.

In December 2008, the federal government promulgated the interim final rule that allows T-visa holders to eventually become permanent residents. In FY 2008, HHS certified 286 foreign adult victims, 55% of whom were female, a dramatic decrease from the 70%...
in FY 2007 and 94% in FY 2006. In FY 2008, leading countries of origin were Mexico (60), Thailand (56), the Philippines (46), and Korea (12). The same year, DHS gave 247 T visas to alien victims of trafficking and 171 to their immediate family members while approving 225 CP requests and extending 101 more.

The State Department’s Bureau of Population, Refugees, and Migration finances the Return, Reintegration, and Family Reunification Program for trafficking victims. In 2008, the program helped 105 people, two of whom were victims who decided to return to their countries of origin, and 103 of whom were family members reunited with victims in the United States.

Problem: Diplomats traffic domestic workers while taking advantage of the protections of diplomatic immunity.

Legal Context: A July 2008 GAO report found 42 cases of domestic worker abuse by diplomats over eight years. The TVPA cannot reach diplomats protected by diplomatic immunity, and consequently leaves a vacuum of accountability where such persons engage in trafficking domestic workers. However, reform in this area may be forthcoming. In June 2009, a federal judge in New York ruled that a Filipino diplomat could be sued by a former maid because her work benefitted his domestic affairs, not his diplomatic ones. The case is ongoing.

Problem: Though enforcement is increasing, charges are rarely brought, decreasing deterrence for offenders.

Legal Context: DOJ’s Office of Legal Policy is responsible for the coordination of the department’s efforts against trafficking, the criminal investigations of which are usually led by the FBI. In FY 2008, the DOJ charged 83 people and gained 77 convictions in 40 trafficking cases, 27 for sex trafficking and 13 for labor trafficking. The TVPA allows traffickers to be sentenced to a maximum of 20 years per victim, and allows for life imprisonment in aggravated circumstances. In FY 2008, the average prison sentence was 9.3 years. The DOJ’s Innocence Lost Initiative aimed at child prostitution produced 148 federal and state convictions and the rescue of 245 children. The TVPA also allows for civil remedies against perpetrators. “Data for the USA shows a rising trend in investigations, prosecutions, convictions and in the absolute number of criminal justice proceedings.” Under state regulation, by April 2009, 42 states had enacted criminal penalties for trafficking.

Problem: Minor girls are increasingly trafficked.

70 State Department, Trafficking in Persons Report 2009.
72 State Department, Trafficking in Persons Report 2009.
**Legal Context:** The average age at which girls in the U.S. (trafficked or not) become prostituted is 12-14.\(^{73}\) DOJ’s Child Exploitation and Obscenity Section estimates that “293,000 American youth are currently at risk of becoming victims of commercial sexual exploitation.” Approximately 55% of girls living on the street engage in formal prostitution, and 75% of those work for a pimp.

The TVPA has enhanced penalties for trafficking minors. HHS has a National Human Trafficking Resource Center that provides training and assistance. In FY 2008, HHS hired more staff, including a Child Protection Specialist, to promote child welfare best practices in the Office of Refugee Resettlement, especially in its Division of Unaccompanied Children’s Services.\(^{74}\)

Statutes 18 U.S.C. § 1591 and 18 U.S.C. §§ 2421-2423 criminalize the trafficking of minors for prostitution across state lines. Under 18 U.S.C. § 1591(c)(2), coercion is criminally punishable and is defined broadly to include “1) Actual threats of harm; 2) scheme intended to cause the victim to believe harm would result; or 3) threats of legal repercussions against the victim.” If no force, fraud, or coercion is used and the victim is 14 or over, 40 years imprisonment is the maximum. If force, fraud, or coercion can be shown or the victim is under 14, life imprisonment may be imposed.

The Prosecutional Remedies & Other Tools to End Exploitation of Children Today Act 2003, § 105(d) establishes penalties against sex tourism and provides for the prosecution of anyone who facilitates the travel of someone for the purpose of illicit sexual conduct.

**Problem:** Rather than being offered services and support, trafficking victims, including sexually exploited children, are being arrested under state laws that criminalize prostitution.

**Legal Context:** Most state laws criminalize prostitution. This presents a direct conflict with both state and federal laws that define some prostituted women as trafficking victims and assert that they should have access to remedies, support and services.

**Problem:** Police, social workers, and other government officials have been found to hold gender, racial, and other biases, and are often ignorant as to the context and nature of trafficking. Consequently, they fail to identify or assist victims of trafficking, and trafficked women have sometimes been prosecuted for violating anti-prostitution laws.

**Legal Context:** The TVPA allows federal authorities to grant protected status to trafficked women forced into prostitution.

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\(^{74}\) State Department, Trafficking in Persons Report 2009.
Problem: Trafficked victims with claims to asylum or refugee status can be detained for long periods and even separated from their children. Trafficked women’s circumstances, such as imprisonment, entrapment in violent situations, physical/psychological illness, and/or linguistic and cultural barriers, sometimes prevent timely asylum applications.

Legal Context: Asylum seekers have one year after entering the U.S. to file for asylum. A December 2009 administrative decision, Matter of R-A- (Rodi Alvarado) held that female victims of domestic violence can be a social group for purposes of asylum, making it easier for such women to gain asylum. The one-year limit remains.

Problem: The process for obtaining U visas, designed for victims of domestic abuse by U.S. citizens or Green Card holders, is lengthy and complex.

Legal Context: The Violence Against Women Act 1996 created U visas. There is also a battered spouse waiver for those with a two-year conditional Green Card.

Problem: Gender bias tending to label men as perpetrators can be barriers to effective enforcement. Female victims of trafficking may sometimes become perpetrators, typically targeting other women and girls. “[A] disproportionate number of women are involved as victims in human trafficking (which we knew), but also as traffickers (first documented here). Female offenders have a more prominent role in present-day slavery than in most other forms of crime.

Legal Context: These facts need to be addressed, especially cases in which former victims have become perpetrators. Unlike in many other countries, the U.S government does not provide a gender breakdown of perpetrators, making effective targeting of offenders less reliable.

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75 Center for Gender and Refugee Studies website.