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The Laws in the United States Addressing Violence Against Women

Let me start by offering my congratulations to the Doha International Institute for Family Studies and Development and the Supreme Council for Family Affairs, and Ms. Amina Mesdoua in particular. The conference has been fascinating and very well organized, and I appreciate the opportunity to participate in it.

I have been asked to share with you some of the legal measures that have been adopted in the United States to help address violence against women. Given the amount of time I have for this presentation, I will speak primarily about the laws that address intimate partner violence, by which I mean domestic violence, sexual assault, and stalking between spouses, cohabitants, or those in a dating relationship. Because of time, I am not focusing on legal initiatives directed at women's economic, social, cultural, civil and political rights more broadly defined, although those rights affect rates of violence and acts of violence affect those rights.

In the United States, there has been tremendous legal change over the last thirty years with respect to this type of violence. This legal change has been instrumental in not only holding perpetrators accountable and making victims safer, but in changing the social norms in my country. It was not too long ago that people joked about wife abuse in the U.S., even in polite company. In fact, there was a famous television show called the Honeymooners where Jackie Gleason would put up his fist as if to punch his wife, and say, "To the moon Alice," and this would get great laughs. For most people, wife abuse is no longer considered a joke, and today such a depiction on TV would be considered in bad taste. The breadth and depth of laws addressing intimate partner violence have helped cause this change in attitude.

You may know that the United States is a federal system. Consequently, the laws addressing violence against women exist at both the state and federal levels. I will talk first about the laws on the state level, and by states, I mean places like California, New York, and Oregon. All fifty states in the United States have their own individual set of laws that address domestic violence. Although there are differences among the states in the details of the law, there is also a remarkable amount of commonality. Then I will turn to some of the federal initiatives. My goal is to convey a sense that the legal response in the United States has been very broad – with domestic violence being addressed through criminal law, family law, immigration law, public benefit law, and employment law, to name just a few. Yet the abundance of laws addressing this topic has arisen only within the last thirty years, with many of the advances coming in the last fifteen years.

In the U.S., at the state level, all states have enacted statutes providing restraining orders for domestic violence victims. These orders typically provide that the batterer must stay away from the victim and not assault her. They also provide for a variety of other relief, including requiring a batterer to vacate a shared home, obtain batterer's treatment, give the victim custody of any children, pay child support, as well as other relief. If the abuser violates the order, he can be punished criminally. Forms exist at the courthouse for petitioners, making it very possible for women to obtain a protection order, without a lawyer, at least at the ex parte stage.

Although many question the efficacy of a "piece of paper," restraining orders have proven to be very effective for some victims. Approximately 40% of these orders are not violated. For other women, sometimes the violations are not that serious

or the police respond to them. Most women report feeling safer after obtaining one, although admittedly for some victims the violence can increase after they receive one.

In addition, all states today consider domestic violence to be relevant to child custody determinations. A substantial number of states (at least seventeen states and Washington D.C.) have laws that create a rebuttable presumption against awarding joint or sole custody to batterers. These laws are important because one of the major reasons women have had a hard time leaving abusive relationships is the fear of losing custody of their children. The law now makes it harder for batterers to use custody of the children as a way to maintain power and control over their victims.

Relatedly, many states now require a court to find adequate provisions exist for the safety of the child and victim-parent before awarding visitation to a batterer. To help insure women's safety, courts are ordering the exchange of the children in protected settings, requiring the parent to complete batterers' intervention programs and parenting classes before visitation resumes, and insisting on supervised visitation. Most states today have supervised visitation centers that can monitor a batterer during visitation, although I don't want to overstate the availability of these centers for there is still a shortage of them in my country.

The criminal law at the state level has also become more responsive to the problem of intimate partner violence. Before the 1970s, police, courts, and prosecutors often refused to protect women against violence in their homes because it was considered a private matter. Today states have enacted mandatory arrest laws that require police officers to make an arrest when responding to domestic violence calls, if the officer has probable cause to believe that a misdemeanor domestic violence crime has occurred, without needing to get a warrant. In addition, various states require police to arrest the abuser if there is probable cause to believe that the person violated a protection order.

There have also been changes in prosecution policies. Historically, prosecutors did not prosecute when the victims recanted their stories or refused to show up to court to testify, even though the victims often recanted or refused to show up because they were afraid. The work of domestic violence advocates has produced many new prosecution policies, including special units for prosecuting these cases (with victim assistance and advocacy) as well as evidence-based prosecution. Evidence-based prosecution means that the victim's testimony is no longer the primary source or only source of evidence, but rather the police build a case so that the prosecution can go forward in case the victim doesn't testify. Some jurisdictions also have No-Drop Policies. These policies require prosecutors to pursue charges where there is sufficient evidence and not drop charges at the victim's request.

Some states, like my own state of Oregon, have enacted special criminal laws to address the problem. For example, committing domestic violence in the presence of a child is punished even more harshly than other domestic violence.

There have also been legal reforms to facilitate tort actions by victims against their perpetrators. These reforms have included offering attorney's fees to a successful plaintiff (because normally litigants pay their own attorney's fees in the United States) and lengthening the time victims have to sue their perpetrators.

States have also started implementing measures that provide victims with job-related protection and benefits related to their victimization. Such laws were necessary because studies suggested that victims who are employed, and who are economically independent, were more likely to end their abusive relationship than those who financially dependent on their abusers. Also, the workplace can be a vital place of support for victims, especially if they are isolated from their friends and family. Generally, the legislation gives domestic violence victims the right to take time off from work without the risk of getting fired in order to pursue legal remedies. The victim can generally also take time off of work to obtain medical care, find a new home, etc. Unfortunately, however, very few states provide paid leave to victims who need time off. Several states have also passed antidiscrimination laws that prohibit discrimination or retaliation against any employee based on her status as a domestic violence victim. A few states (Illinois and New York City) have adopted legislation that requires employers to "reasonably accommodate" domestic violence victims in the workplace. This means employers may be obligated to change a telephone number, seating assignment, and install locks or other safety precautions if they can do so reasonably. Finally, many states have amended their unemployment insurance provisions to allow victims who are forced to leave their jobs because of domestic violence to receive unemployment compensation.

States have also passed laws to address the effects of domestic violence in the area of housing. In many places, it is now illegal for landlords to discriminate against tenants or tenant applicants on the basis of their status as victims of domestic violence. Additionally, some states prohibit landlords from evicting the victim because of the abuser's behavior, although the landlord can still evict the abuser. In some states, victims are allowed to break their leases without penalties by providing their landlords with written notice and substantiating their victimization.



Before turning to the federal law, let me mention just one more example of a state law that addresses violence against women: laws that establish confidentiality programs. A victim of domestic violence sometimes tries to change her identity or go into hiding to protect herself from her abuser. Many states have created a system whereby a victim can keep her address confidential with the help of the state. The state provides a central address that all victims enrolled in the program can use as their mailing address for all purposes, including such things as voter registration and service of process. The state then forwards the victim's mail to the victim's actual address, but keeps the actual address confidential.

Many of the advances that have occurred at the state level have been the result of the persistent efforts of domestic violence advocates and also, importantly, funding by the federal government. So now I would like to talk, albeit briefly, about the federal Violence Against Women Act (VAWA) because it has been so important to these efforts. In addition, VAWA has its own provisions that are, in many instances, unparalleled on the state level.

The federal government became involved in combating violence against women in 1994, when the U.S. Congress passed the Violence Against Women Act. VAWA is remarkable for its breadth. It includes funding initiatives to increase services for victims, training initiatives, criminal law initiatives, and reforms to a number of federal laws to make them more responsive to victims' needs.

The original act is 756 pages, its 2000 reauthorization is 85 pages, and the 2005 reauthorization is 176 pages. The law's length gives you a sense of its breadth, but it also suggests that I am just skimming the surface of the law in this presentation.

I first want to emphasize one of the most notable aspects of this legislation: It promotes a coordinated community response to the problem. The Act emphasizes the importance of coordination and cooperation among the various people and agencies in order to have a seamless and effective system to hold perpetrators accountable, assist victims, and prevent violence. The Act encourages jurisdictions to bring these various constituencies together to share information and to use their distinct roles to improve community responses.

The Violence Against Women Act has many provisions that address services to victims. Since 1964, Congress has authorized over \$6 billion to combat violence against women. For example, one grant program supported with VAWA dollars is the national toll-free telephone crisis line from which victims can receive immediate crisis intervention assistance, information about local resources throughout the country, and safety planning. Since its inception in 1996, the National Domestic Violence Hotline has received over 2 million calls. Its average number of calls per month in 2007 was 19,500.

The Act funds programs that go beyond crisis intervention, however. For example, there are funding programs for supervised visitation and safe exchange programs as well as for victims with housing needs. VAWA has a Transitional Housing Assistance Grants Program that provides funding for transitional housing projects that assist victims that need transitional housing or other housing assistance when emergency shelter services are unavailable or not sufficient.

One of my favorite programs is the Legal Assistance for Victims Grant Program that provides funding for victims that need civil legal assistance. It provides lawyers for victims. This is an important program because economists have documented that access to legal services is one of the primary factors that caused a 21 percent decrease nationally in the reported incidence of domestic violence between 1993 and 1998. The researchers concluded, «the provision of legal services significantly lowers the incidence of domestic violence.» In fact, legal services is the only service that decreased the likelihood that women will be battered. Shelters, hotlines and counseling programs for battered women had no significant impact on the likelihood of domestic abuse, although they are vitally important crisis-intervention services. However, «the availability of legal services in the county of residence has a significant, negative effect» on the overall incidence of domestic violence. Legal services decrease the likelihood of abuse because lawyers help domestic violence survivors obtain protective orders, custody of their children, child support, divorce, and sometimes public assistance, thereby helping women achieve physical safety and economic power so that they can leave their abusers or threaten to leave them if the abuse does not stop.

On a personal note, I can attest to VAWA's success in encouraging communities to develop and implement long-term partnerships to combat violence against women. I started a domestic violence legal clinic at my law school, where students represent low-income victims in civil matters related to their safety, and the federal government has been the major funder of that initiative. Our program is a partnership of the UO Law School, the local battered women's shelter, a sexual assault support program, and the local legal aid office. We would not exist without these funds.

Many VAWA funds are directed toward training individuals in the courts (such as clerks and judges) and criminal justice

system (such as police and prosecutors) to help these people identify victims of intimate partner violence and provide appropriate responses. Yet the training has extended beyond personnel in the justice system. VAWA funds have been used to train health care providers to detect domestic violence better and to intervene more effectively. Congress found that only ten percent of physicians were routinely screening for domestic violence during the first visit and only nine percent during routine visits. Consequently VAWA attempts to strengthen the healthcare system's response to violence against women through, among other things, training and educating health care professionals in medical schools on domestic and sexual violence, including issues related to the victim's safety and confidentiality.

Let me mention special populations because a significant portion of the reauthorization funds have targeted special populations. Congress's intent was to enhance law enforcement responses, victim services, and prevention programs for particular populations. These populations include younger women, American Indian women, women with disabilities, elderly victims, rural victims, and immigrant victims. Each of these populations were not adequately served initially, and the reauthorization acts try to adjust the law and funding to better serve these populations.

VAWA has also focused on the criminal justice system. It federalized certain crimes, thereby allowing the power of the U.S. Attorney's Office and federal law enforcement to address the problem. VAWA and subsequent legislation created new federal crimes for interstate domestic violence, interstate violation of a protection order, and interstate stalking. It also prohibited firearm possession by those who are convicted of a misdemeanor crime of domestic violence or who have a restraining order entered against them.

In my opinion, one of the most important criminal law reforms was the last one mentioned: the amendment of the Gun Control Act of 1968 to create a new federal offense that bars certain domestic violence offenders from owning, possessing, transporting, shipping or receiving firearms and/or ammunition. Firearms are very dangerous for domestic violence victims. Nationally, firearms are the most common method for killing an intimate partner. Firearms are particularly lethal because they cause severe wounds. A study published in the Journal of the American Medical Association demonstrated that firearms are twelve times more likely to result in the death of an intimate partner than an assault with bodily force, a knife, or other noncutting/nonfirearm weapon. Firearms—even if not used to kill or maim the victim—are an integral part of domestic violence. Firearms are often used to intimidate victims psychologically, both through overt threats and through creating an atmosphere of fear. The federal law is aimed at disarming batterers and that is a good thing.

Overall, the approach in the United States has focused on trying to be comprehensive and coordinated, and eliminating the gaps that exist for special populations. This approach is being implemented within the context of our federal system.

