

I-VAWA as a Mechanism to Address Normative Gaps in Legal Frameworks on Violence Against Women

Around the globe, violence against women is an epidemic. Violence robs women and girls of their full potential and causes untold human suffering. Violence against women impedes economic development, threatens peace and prosperity, and inhibits full participation in civic life. For every woman who has been beaten in her own home, for the millions of women who have been raped as a weapon of war, for every girl who has been attacked on her way to school, for all of the children—girls and boys—who have witnessed this brutality, we must do better.

- Vice President Joe Biden, Statement on the Anniversary of the International Day for the Elimination of Violence Against Women, November 24, 2010

It is time for all of us to assume our responsibility to go beyond condemning this behavior, to taking concrete steps to end it, to make it socially unacceptable, to recognize it is not cultural; it is criminal.

- Secretary of State Hillary Clinton, Remarks on the Adoption of a United Nations Security Council Resolution to Combat Sexual Violence in Armed Conflict, United Nations Headquarters, New York, New York, September 30, 2009

The International Violence Against Women Act (I-VAWA)¹ has been introduced in the United States Congress multiple times since 2007 but has never been passed into law. It will be reintroduced in the 114th Congress during 2015. I-VAWA provides:

It is the policy of the United States . . . to systematically integrate and coordinate efforts to prevent and respond to violence against women and girls internationally into United States foreign policy and foreign assistance programs.

If adopted and appropriately implemented, I-VAWA could profoundly influence efforts to address normative gaps in legal frameworks on violence against women around the globe by tying US government policy and foreign aid to legal reform and essential services for victims of violence.

I-VAWA enumerates a panoply of findings on violence against women, regarding the prevalence of sexual violence and domestic violence, heightened risk of violence for women with disabilities, displaced and refugee women, women in conflict and natural disasters, early and forced marriage, and susceptibility to HIV/AIDS.

I-VAWA creates a permanent Office of Global Women’s Issues in the Department of State, headed by an Ambassador-at-Large for Global Women’s Issues.² The Ambassador-at-Large:

Shall direct activities, policies, programs, and funding relating to gender equality and the advancement of women and girls internationally, including those intended to prevent and respond to violence against women and girls.³

¹ See H.R. 3571(Nov. 21, 2013). <https://www.congress.gov/113/bills/hr3571/BILLS-113hr3571ih.pdf>.

² H.R. 3571, Sec. 101 (a).

³ H.R. 3571, Sec. 101 (c) (1)(A).

The duties of the Ambassador-at-Large also include promoting and advancing gender analysis into the programs of the Department of State and other federal agencies; directing US government resources; carrying out activities regarding prevention and response; conducting regular consultations with civil society; requiring rigorous monitoring and evaluation of programs; serving as the principle advisor to the Secretary of State on violence against women and girls as a foreign policy matter; and representing the US in diplomatic and multi-lateral fora.⁴ Thus, I-VAWA gives the Ambassador-at-Large the authority to set policy that could condition funding and other foreign policy decisions on adoption of best practices.

I-VAWA also creates a Senior Coordinator for Gender Equality and Women's Empowerment in the US Agency for International Development (USAID) with duties similar to those of the Ambassador-at-Large.⁵

I-VAWA directs the US government to create a comprehensive five-year strategy to reduce violence against women and girls in at least five low-income and lower-middle income countries where the problem is especially severe.⁶ Assistance to the selected countries must include at least two of five identified activities, one of which is "development and enforcement of civil and criminal legal and judicial sanctions, protections, trainings, and capacity."⁷ At least ten percent of assistance funding must be provided to community-based nongovernmental organizations, with priority given to organizations led by women.⁸ This program could be an instrument for requiring participating countries to address gaps in their civil and criminal legal frameworks on violence against women.

Although I-VAWA has not been passed into law, the Obama administration is nevertheless carrying out some of the activities set forth in I-VAWA. Catherine M. Russell was appointed Ambassador-at-Large for Global Women's Issues in 2013. Despite the fact that I-VAWA is not yet law, the Secretary's Office of Global Women's Issues, headed by Ambassador Russell, "seeks to ensure that women's issues are fully integrated in the formulation and conduct of U.S. foreign policy. The Office works to promote stability, peace, and development by empowering women politically, socially, and economically around the world."⁹

⁴ H.R. 3571, Sec. 101 (c)(1)(B) – (H).

⁵ H.R. 3571, Sec. 102.

⁶ H.R. 3571, Sec. 111 (e).

⁷ H.R. 3571, Sec. 112 (b)(4). The other activities are:

- (1) Development and implementation of programs to change social norms and attitudes. (Sec. 112 (b)(1))
- (2) Promotion of educational opportunities. (Sec. 112 (b)(2))
- (3) Promotion of economic opportunities. (Sec. 112 (b)(3))
- (4) Enhancement of the health sector response. (Sec. 112 (b)(5))

⁸ H.R. 3571, Sec. 112 (c).

⁹ US Department of State, Global Women's Issues, <http://www.state.gov/s/gwi/>.

Likewise, Susan Markham was appointed Senior Coordinator for Gender Equality and Women's Empowerment for USAID. USAID programs support prevention and response to gender-based violence by:

- Addressing the root causes of violence
- Improving prevention and protection services
- Responding to the health and economic needs of those affected by gender-based violence
- Supporting legislation and its enforcement against gender-based violence¹⁰

President Obama issued an executive order, Preventing and Responding to Violence Against Women and Girls Globally, on August 10, 2012. Based on that order, the administration released *The United States Strategy to Prevent and Respond to Gender-Based Violence Globally* (the *Strategy*).¹¹ The *Strategy* not only provides insight into how the current administration might implement I-VAWA if it were to become law, it indicates that I-VAWA may already be the *de facto* policy and practice of the US government. However, because I-VAWA has not been passed into law, the policy may not extend beyond the current administration. In fact, the *Strategy* is scheduled to expire in August 2015. Therefore, its potential for influencing normative gaps in the legal frameworks of other countries is likewise limited.

The objectives of the *Strategy*, a joint undertaking of the Department of State and USAID, for prevention and response efforts with regard to gender-based violence, are:

1. To increase coordination among US government agencies and with other stakeholders.
2. To enhance integration into existing US government work.
3. To improve collection, analysis, and use of data and research to enhance prevention and response efforts.
4. To enhance or expand US government programming.¹²

The guiding principles of the *Strategy*, consistent with human rights principles, are prevention, protection and accountability.¹³ The identified activities encompass both a humanitarian and a human rights focus. According to the *Strategy*, diplomatic focus and foreign aid directed at gender-based violence has increased since the 1990's due in part to the use of rape as a tactic of war. The scope of the US government's attention to gender-based violence has expanded beyond providing services to survivors to more

¹⁰ USAID, Gender-Based Violence, <http://www.usaid.gov/gender-based-violence>.

¹¹ *United States Strategy to Prevent and Respond to Gender Based Violence Globally*, United States Department of State and United States Agency for International Development, http://pdf.usaid.gov/pdf_docs/PDACT888.pdf.

¹² *Strategy*, p. 14 – 21.

¹³ *Strategy*, p. 13.

comprehensive programming that focuses on prevention.¹⁴ For FY2013, the Department of State and USAID requested \$147.1 million for programs addressing gender-based violence worldwide. Over half of the request was allocated to Global Health Programs.¹⁵

The *Strategy* describes how several bureaus and offices within the Department of State currently address gender-based violence. For example, the Office of Global Criminal Justice addresses the issue of accountability as a deterrent. The Bureau of Democracy, Human Rights and Labor funds programs that build capacity to investigate and prosecute gender-based violence cases, provide legal and psychological resources to victims, and educate communities. The bureau also supports the media and civil society to monitor and report on cases of gender-based violence.¹⁶

Among the new initiatives identified in the *Strategy*, perhaps most relevant to addressing normative gaps is the following plan of the Secretary's International Fund for Women and Girls and the Secretary's Office of Global Women's Issues to:

Advocate for development and implementation of laws and policies in other countries to monitor, prevent, and respond to gender-based violence. This includes work to strengthen institutions and support partner governments' efforts to develop appropriate legislation, harmonize laws and other provisions in the legal code, develop action plans for implementation and help train oversight of and advocacy for implementation of the laws.¹⁷

Although the *Strategy's* description of USAID's commitment to addressing gender-based violence does not explicitly reference normative gaps in legal frameworks, some of its programs may have that effect. Notably, among the agency's measures of success will be "number of laws, policies, or procedures drafted, proposed, or adopted" with United States government assistance aimed at improving prevention or response to gender-based violence at the regional, national or local level.¹⁸

As currently drafted, I-VAWA does not include specific standards for legal reform. It contains only broad outlines for integrating a response to violence against women into US foreign policy. By comparison, the Istanbul Convention,¹⁹ the most recent regional

¹⁴ *Strategy*, p. 8.

¹⁵ *Strategy* at p. 9. By comparison, the budget request for VAWA for FY2013 was \$412.5 million. "FY2013 Budget Request at a Glance," Office of Violence Against Women, <http://www.justice.gov/sites/default/files/jmd/legacy/2013/11/18/fy13-ovw-bud-summary.pdf>.

¹⁶ *Strategy*, p. 25.

¹⁷ *Strategy*, p. 31.

¹⁸ *Strategy*, p. 42.

¹⁹ Council of Europe Convention on preventing and combating violence against women and domestic violence, <http://www.conventions.coe.int/Treaty/EN/Treaties/Html/210.htm>.

legal standard on violence against women, supplies a comprehensive framework, policies and measures for preventing domestic violence, protecting victims and holding offenders accountable.²⁰ Thus, while I-VAWA has the potential to influence governments to address normative gaps on violence against women, it must do so through its implementation.

Likewise, unlike the United States' Violence Against Women Act (VAWA), I-VAWA does not create specific criteria for receipt of US government funding. VAWA, which funds violence against women in programs in the United States, requires that states, local governments and advocacy coalitions comply with many best practices to receive government grants. For example, recipients of one type of VAWA funding must develop and promote legislation and policies that enhance best practices for responding to domestic violence, dating violence, sexual assault, and stalking.²¹ Although the current I-VAWA draft does not include such specific language, it contains the basis for creating such requirements through the Office of Global Women's Issues.

Cindy Dyer, who was the Chief Prosecutor of the Dallas County District Attorney's Office Family Violence Division and later the director of the Office of Violence Against Women, which administers VAWA funds, attests to the power of conditioning funding on adopting best practices. According to Dyer, requiring criminal justice agencies to collaborate with NGO service providers changed the way the criminal justice system in the United States operates in addressing violence against women. The meaningful collaborations that resulted from the requirements for VAWA funding have lasted long after the grants ended. I-VAWA could incorporate such requirements through its implementation.

Conclusion

The United States has the potential take a leadership role in addressing normative gaps in legal frameworks on violence against women around the world. It has the resources to do so and I-VAWA provides an obvious mechanism for carrying out such leadership. However, to realize that potential the United States will have to muster the political will to pass I-VAWA. Once passed, it must establish specific standards based on recognized best practices for addressing violence against women and require international partners to adopt and implement best practices to receive foreign aid. The Istanbul Convention can serve as a model for establishing a framework of standards and VAWA can serve as a model for requiring implementation of best practices in return for funding.

²⁰ See, e.g. Chapter 5, Substantive Law. The Istanbul Convention requires member states to undertake specific legislative changes, where necessary, including providing adequate civil remedies for victims (Art. 29); and outlawing forced marriage (Art. 37), psychological violence (Art. 33), stalking (Art. 34), and sexual violence (Art. 36). It requires that member states apply criminal offenses regardless of the relationship between the parties (Art. 43).

²¹ Crystal Judson Domestic Violence Protocol Program, 42 USC §3796gg (b)(14).

