

## **Background Note**

# **Recognizing Freedom from Domestic Violence as a Fundamental Human Right**

**Prepared By:**

**The Advocacy Center of Tompkins County**

**The Avon Global Center for Women and Justice at Cornell Law School**

**The Cornell Law School Global Gender Justice Clinic**

**October 2014**

## **Introduction**

Domestic violence is pervasive around the world and in our own backyard. It can happen to anyone, no matter how much money they make, education they have, race or ethnicity they are, or religion they believe in.<sup>1</sup> Domestic violence is “a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person.”<sup>2</sup> Further, domestic violence can affect both men and women, and includes “victimizations committed by intimate partners (current or former spouse, boyfriends, or girlfriends), immediate family members (parents, children, or siblings), and other relatives.”<sup>3</sup> While most people recognize this type of abuse as “domestic violence,” domestic violence is not necessarily restricted to the home, but can also extend to individuals who are in relationships but do not live together. Thus, the terms “relationship violence” and “intimate partner violence” also fall under the “domestic violence” umbrella.

The Advocacy Center of Tompkins County, the Avon Global Center for Women and Justice, and the Cornell Law School Global Gender Justice Clinic are proposing a resolution at the County, Town, City, and Village levels that will recognize freedom from domestic violence as a fundamental human right. Through this resolution, Tompkins County can break the traditional notion of domestic violence as an issue relegated to the private sphere by acknowledging that it is a public, rights-based problem that requires a public, community-oriented solution. By passing this resolution, Tompkins County can become a New York State and national leader in addressing domestic violence in the United States.

## **Domestic Violence—Globally, Nationally, and Locally**

Domestic violence is a global problem affecting men, women, and children in every country of the world. At least one in three women worldwide will be beaten, raped, or otherwise abused by an intimate partner in her lifetime.<sup>4</sup> Women between the ages of 15 and 44 are more likely to experience rape or domestic violence than to be diagnosed with cancer or malaria or to experience a car accident or war.<sup>5</sup>

In the United States from 2003-2012 domestic violence accounted for 21% of all violent crime.<sup>6</sup> Every year, about 1.3 million women and 835,000 men are physically assaulted by an intimate partner.<sup>7</sup> Further, about 1 in 4 women and 1 in 7 men have experienced severe physical

violence by an intimate partner.<sup>8</sup> Domestic violence is also one of the most underreported crimes, with an estimated one-quarter of physical assaults, one-fifth of rapes, and half of stalking incidents by intimate partners being reported to the police.<sup>9</sup> Victims are afraid to report the crimes due to fear of repercussion and lack of faith in the police.<sup>10</sup> When domestic violence incidents are reported, the prosecution is typically lackluster, if it occurs at all.<sup>11</sup> In 2009, only 56% of intimate partner violence crimes were prosecuted to conviction, with only 18% of those resulting in a felony conviction.<sup>12</sup>

Domestic violence also has serious adverse consequences on children. Children who become victims of domestic violence by witnessing domestic violence are twice as likely to abuse their own children or partners when they become adults.<sup>13</sup> Further, children exposed to domestic violence are more likely to experience emotional and behavioral problems and to have their intellectual growth stunted.<sup>14</sup>

Domestic violence survivors also suffer from physical or mental problems that often persist long after the abuse ends. Individuals who are subjected to rape, stalking, or physical violence by an intimate partner are more likely to experience frequent headaches, chronic pain, difficulty sleeping, and poor physical and mental health than those individuals who have not experienced these forms of violence.<sup>15</sup> A 2008 UN Fact Sheet has found that the cost of intimate partner violence in the United States exceeds \$5.8 billion per year, which includes health care service costs as well as productivity losses.<sup>16</sup> Because of the violence committed against them, victims of domestic violence have lost almost 8 million days of work, which equals more than 32,000 full-time jobs and 5.6 million days of household productivity lost annually.<sup>17</sup>

In New York State, more than 2.5 million women and 2.4 million men will experience domestic violence in their lifetimes.<sup>18</sup> In 2013, law enforcement agencies outside of New York City responded to 189,152 domestic violence incidents and reported 31,106 assaults committed by intimate partners, 80% of which were perpetrated against women.<sup>19</sup> Eighty-seven women and men in New York State died as a result of intimate partner homicide in the same year.<sup>20</sup> Also in 2013, 22.4% of all homicide victims in New York had a domestic relationship with their murderers.<sup>21</sup> New York State courts issued 300,236 orders of protection in 2013, nearly 210,000 of which were required to be reported in New York's Domestic Violence Registry.<sup>22</sup>

In Tompkins County, despite its relatively small size, there has been an average of 147 reported cases of domestic violence each year between 2010 and 2013.<sup>23</sup> The number of

unreported cases is undoubtedly much higher. In 2013 alone, the Advocacy Center of Tompkins County answered 2,055 calls on its domestic violence and sexual assault hotline. It provided services to 212 new adult domestic violence clients, provided shelter for 37 adults and 25 children, and helped 72 individuals obtain final orders of protection from the courts.

Adopting a unified understanding of domestic violence and its consequences can improve survivors' health, reduce the costs this type of violence has on the State, and improve the safety of the community. Ithaca can join a growing number of communities across the country in leading the fight to end domestic violence by declaring that freedom from domestic violence is a fundamental human right.

### **Why Freedom from Domestic Violence Should Be Declared a Human Right**

Freedom from domestic violence is a human right to which all people are entitled. Although domestic violence has often been viewed as a private matter, international human rights standards recognize that it is a violation of fundamental rights, which governments at all levels, together with the communities they represent, have a responsibility to address.

In 1948, following World War II, the United Nations adopted the Universal Declaration of Human Rights.<sup>24</sup> It defined various human rights, including the rights to life, liberty, security of person, nondiscrimination, freedom from torture or cruel, inhuman or degrading treatment, and access to an effective remedy.<sup>25</sup> States later incorporated these provisions into binding international treaties.<sup>26</sup> Domestic violence negatively affects the realization of all of these rights.

In 1993, the United Nations adopted the Declaration on the Elimination of Violence against Women, which expressly recognized that domestic violence is a form of gender-based violence that violates women's human rights.<sup>27</sup> The declaration further affirmed that "States should pursue by all appropriate means and without delay a policy of eliminating violence against women."<sup>28</sup> It explained that this responsibility includes the duty to "exercise due diligence to prevent, investigate, and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons."<sup>29</sup>

In 2011, the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences visited the United States to examine the status of violence against women.<sup>30</sup> In her report, the Special Rapporteur found that "domestic violence is a pervasive problem that continues to affect women across the United States."<sup>31</sup> She urged the United States to "explore more uniform remedies for victims of domestic violence, . . . re-evaluate existing mechanisms at

federal, state, local, and tribal levels for protecting victims and punishing offenders, . . . establish meaningful standards for enforcement of protection orders[.]. . . and initiate more public education campaigns.”<sup>32</sup>

Declaring freedom from domestic violence a fundamental human right is a step towards fixing the systemic issues that exist. The importance of a human rights approach to the issue of domestic violence is illustrated by the case of Jessica Lenahan. In 1999, in Castle Rock, Colorado, Jessica separated from her abusive husband, Simon Gonzales, and filed for divorce. That May, she obtained a restraining order against him.<sup>33</sup> On June 22, 1999, Simon took their three daughters away without her permission, in violation of the restraining order.<sup>34</sup> Jessica called the police and provided them a copy of the order.<sup>35</sup> Throughout the night she called the police multiple times, gave them information about where her husband and children were, and even went to the police station to plead for assistance, but the police did not take any action to retrieve her children.<sup>36</sup> Later that night, Simon drove his truck to the police station and opened fire on police officers.<sup>37</sup> The police fired back and killed him. They then discovered the bodies of Jessica’s three daughters in the back of the truck.<sup>38</sup> Even though Jessica had a restraining order and had done everything possible to persuade the police to enforce it, the police made no effort at finding or bringing her children home.<sup>39</sup>

Jessica sued the town of Castle Rock for failing to enforce the restraining order against her ex-husband.<sup>40</sup> She argued that this failure violated the Due Process Clause of the Fourteenth Amendment of the United States Constitution.<sup>41</sup> Jessica’s case continued all the way to the Supreme Court.<sup>42</sup> The Supreme Court held that the police did not have a constitutional duty to enforce the restraining order.<sup>43</sup> Even though the deaths of Jessica’s children were directly related to the inaction of the police department, the Supreme Court ruled that Jessica did not have a property interest in police enforcement of the order and that her rights had not been violated.<sup>44</sup>

Following this ruling, Jessica brought her case to the Inter-American Commission on Human Rights (IACHR), a regional human rights tribunal.<sup>45</sup> Unlike the United States Supreme Court, the IACHR found that the failure of the United States to protect Jessica and her daughters from domestic violence was a violation of their human rights.<sup>46</sup> In its decision the IACHR found that “[t]he systemic failure of the United States to offer a coordinated and effective response to protect Jessica and her daughters from domestic violence” violated their rights to life, nondiscrimination, equal protection of the law, and judicial protection under the American

Declaration.<sup>47</sup> The decision concluded by recommending an investigation into the systemic failures related to the enforcement of the restraining order, reparations for Jessica, legislative reform making enforcement of restraining orders mandatory, adopting policies for education about domestic violence, and designing protocols relating to the investigation of missing children in the context of restraining order situations.<sup>48</sup>

Jessica Lenahan's situation is indicative of a systemic problem across the country. Local authorities need to understand the gravity of domestic violence and be prepared to effectively prevent and respond to it. If the police force of Castle Rock had the proper training, knowledge, and experience, Jessica's three daughters could have been alive today. Perhaps the police would have responded to her first call and begun searching for her children immediately, in time to prevent their tragic deaths.

By viewing the injustice that happened to Jessica Lenahan as a due process issue, the Supreme Court was unable to see that her basic human rights had been violated or to provide any remedy for that failure. By framing freedom from domestic violence as a human right, the IACHR was able to recognize that the police and the State had failed to protect Jessica and her children from domestic violence and had violated their human rights. Declaring freedom from domestic violence a fundamental human right helps to ensure that situations like the one that Jessica endured do not happen in the future.

### **Bringing a Human Rights Perspective to Domestic Violence Responses in Tompkins County**

Adopting a resolution that describes domestic violence in human rights terms is a powerful tool to combat this significant societal harm in Tompkins County. Recently, there has been a national momentum of local governments recognizing that freedom from domestic violence is a fundamental human right.<sup>49</sup> In September 2014, President Obama contributed to this movement by issuing a Presidential Proclamation that "reaffirm[ed] the basic human right to be free from violence and abuse."<sup>50</sup> Tompkins County is well positioned to be a leader in this movement, as it will be only the second local government in New York State and the first outside of a major city to pass such a resolution.<sup>51</sup> The Advocacy Center of Tompkins County and Cornell Law School's Avon Global Center for Women and Justice and Global Gender Justice Clinic are proposing a resolution at the Village, City, Town, and County levels that will serve to

reframe domestic violence as a human rights issue. Adopting this resolution will benefit our community both symbolically and practically.

Local governments in Albany, Austin, Baltimore, Boston, Chicago, Cincinnati, Jacksonville, Miami Springs, Miami-Dade County (Florida), Montgomery City and County (Alabama), Seattle, Travis County (Texas), and Washington, D.C. have all passed local resolutions that recognize freedom from domestic violence as a human right.<sup>52</sup> As evidence of this fast-growing momentum, all of these resolutions have been passed in the last three years. They have shone a light on the often-alienating matter of domestic violence, bringing it into the public forum. They have also served as a catalyst for collaboration between local government and communities and provided a model of unified protection and support for domestic violence survivors.

Adopting the proposed resolution in Tompkins County will have important symbolic benefits. First, the resolution will serve as a positive confirmation of government support for those members of our community who are survivors of domestic violence. These individuals will be assured that their local government has recognized the societal harm of domestic violence and is taking steps to protect them and prevent future acts of domestic violence. Further, this resolution can empower survivors, as the local government will be recognizing that they are not just victims with needs but also individuals with rights to which they are entitled. Second, reframing the harm as a human rights issue recognizes that domestic violence is a societal problem requiring a societal solution, the first important step in moving this issue from the private sphere. Third, the resolution establishes Tompkins County as a New York State leader in this movement to recognize that freedom from domestic violence is a fundamental human right. It may open doors to opportunities for shared strategies and collaboration across communities in the effort to eradicate this devastating human rights problem that is at once intensely local and deeply global.

Practically, the resolution will create a foundation for continually strengthening our community's response to domestic violence in Tompkins County. By passing the resolution affirming that freedom from domestic violence is a human right, the County will recognize the responsibility of local government, at all levels, to protect its citizens from domestic violence. Further, in realizing this responsibility, the government will collaborate with its citizens to support and protect its citizens.

Additionally, this resolution will provide the County with a unified approach to working with domestic violence survivors. Individual service provider employees may have different perspectives on domestic violence, and despite their best efforts, these views may not perfectly align with a human rights framework that fully captures the complexities of the harm. As a result, this divergence of perspectives frustrates cooperation between different service providers and facilitates a non-uniform standard of care. Once passed, the County will be able to point to the resolution and the human rights principles articulated therein as the official framework in responding to domestic violence situations. This ensures that all domestic violence survivors receive the same high standard of care from all Tompkins County service providers, whether they are governmental or non-governmental entities. Additionally, this resolution paves the way for local government and its citizens to develop, within this established framework, a comprehensive policy for preventing and responding to domestic violence.

Passing this resolution would thus have significant symbolic and practical benefits. It would represent an effective step forward in recognizing and combating domestic violence on a local scale, in ways that could also have an important impact at the state, national, and international levels. It would realize this powerful potential by recognizing and reframing the problem, engaging with citizens, and protecting and empowering the Tompkins County community.

## **Recommendations**

The resolution proposed in Tompkins County goes beyond simply declaring that freedom from domestic violence is a human right. Although a declaration is a significant first step, this resolution also includes a call to action. It seeks to enhance public understanding of domestic violence, provide better services to survivors, give law enforcement new tools to support their protection efforts, and ensure that the County's response to domestic violence takes into account survivors' voices and needs. By adopting this resolution, Tompkins County affirms that the government and the community must work together to eradicate domestic violence. Once adopted and implemented, this resolution will stand as an example to other communities, positioning Tompkins County as a regional leader in this national movement.

Therefore, we recommend that Tompkins County:

1. Adopt the proposed resolution and declare freedom from domestic violence to be a fundamental human right;



2. Recognize that state and local governments must continually work to secure this right for all of their citizens;
3. Incorporate the resolution's principles into the County's policies and practices and ensure that these policies and practices are informed by domestic violence survivors' voices and needs; and
4. Consider undertaking, together with community partners, a study of the causes of local domestic violence incidents and of the gaps and barriers in the County's service delivery to survivors of domestic violence, with the goals of preventing domestic violence, strengthening the County's response to such violence, and improving the provision of services to survivors.

## Endnotes

---

<sup>1</sup> Some recent domestic violence issues that have been reported in the media include the video of NFL player Ray Rice violently punching his wife. Jill Martin and Steve Almasy, *Ray Rice terminated by team, suspended by NFL after new violent video*, CNN, <http://www.cnn.com/2014/09/08/us/ray-rice-new-video/> (last updated: Sept. 16, 2014, 8:45 A.M.). In addition, Sarah Hyland of the sitcom “Modern Family” recently obtained a temporary restraining order against her ex-boyfriend, who verbally and physically abused her. Christie D’Zurilla, *Sarah Hyland gets restraining order against ex-boyfriend Matt Prokop*, L.A. TIMES, <http://www.latimes.com/entertainment/gossip/la-et-mg-sarah-hyland-restraining-order-matt-prokop-split-20140923-story.html> (last updated: Sept. 23, 2014, 6:50 P.M.).

<sup>2</sup> Domestic Violence, OFFICE OF VIOLENCE AGAINST WOMEN, U.S. DEP’T OF JUSTICE, <http://www.justice.gov/ovw/domestic-violence> (last visited Sept. 23, 2014).

<sup>3</sup> Jennifer L. Truman and Rachel E. Morgan, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Special Report: Nonfatal Domestic Violence 2003–2013*, 1 (Apr. 2014).

<sup>4</sup> *Facts and Figures: Ending Violence against Women*, UN WOMEN, <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>; *UNITE To End Violence Against Women: Fact Sheet*, United Nations Department of Public Information, DPI/2498 (Feb. 2008), at 1, available at <http://www.un.org/en/women/endviolence/pdf/VAW.pdf>; *Violence against Women: Intimate Partner and Sexual Violence Against Women*, World Health Organization (Oct. 2013), available at <http://www.who.int/mediacentre/factsheets/fs239/en/>. The complications include: homicide, suicide, injuries, unintended pregnancies, induced abortions, sexually transmitted infections, miscarriages and other problems in pregnancy, depression, eating disorders, sleep disorders, headaches, back pain, abdominal pain, fibromyalgia, gastrointestinal disorders, limited mobility, and can increase smoking, drug, and alcohol misuse. *Id.*

<sup>5</sup> *UNITE To End Violence Against Women: Fact Sheet*, *supra* note 4.

<sup>6</sup> Truman and Morgan, *supra* note 3.

<sup>7</sup> Patricia Tjaden and Nancy Thoennes, *Full Report of the Prevalence, Incidence, and Consequences of Intimate Partner Violence Against Women: Findings from the National Violence Against Women Survey*, U.S. Dep’t of Justice, at iv (2000).

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Domestic Violence Facts*, National Coalition Against Domestic Violence, available at <http://www.ncadv.org/files/DomesticViolenceFactSheet%28National%29.pdf> (last visited: Sept. 23, 2014).

<sup>10</sup> See Michele C. Black, Kathleen C. Basile, Matthew J. Breiding, Sharon G. Smith, Mikel L. Walters, Melissa T. Merrick, Jieru Chen & Mark R. Stevens, *The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report*, CENTERS FOR DISEASE CONTROL AND PREVENTION, 91 (Nov. 2011) [hereinafter *National Intimate Partner and Sexual Violence Survey*].

<sup>11</sup> Special Rapporteur on Violence Against Women, *Mission to the United States of America*, ¶ 6, U.N. Doc. A/HRC/17/26 (June 6, 2011).

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

<sup>13</sup> *Domestic Violence Facts*, *supra* note 9.

<sup>14</sup> See generally Karestan C. Koenen, Terrie E. Moffitt, Avshalom Caspi, Alan Taylor & Shaun Purcell, *Domestic Violence is Associated With Environmental Suppression of IQ In Young Children*, 15 DEV. AND PSYCHOPATHOLOGY 297, 302–307 (2003); WORLD HEALTH ORGANIZATION, WORLD REPORT ON VIOLENCE AND HEALTH 103 (2002).

<sup>15</sup> *National Intimate Partner and Sexual Violence Survey*, *supra* note 10, at 3.

<sup>16</sup> *UNITE To End Violence Against Women*, *supra* note 4.

<sup>17</sup> Centers for Disease Control and Protection, Department of Health and Human Services, *Costs of Intimate Partner Violence Against Women in the United States 1* (March 2003).

<sup>18</sup> See *National Intimate Partner and Sexual Violence Survey*, *supra* note 10, at 74–77.

<sup>19</sup> New York State Office for the Prevention of Domestic Violence, *Domestic Violence Annual Report (2013)*; *New York State: Domestic Violence Dashboard Project 2013 Data*, New York State Office for the Prevention of Domestic Violence, available at <http://www.opdv.state.ny.us/statistics/nydata/2013/nys2013data.pdf>.

---

<sup>20</sup> *Id.*

<sup>21</sup> See *National Intimate Partner and Sexual Violence Survey*, *supra* note 10, at 74–77.

<sup>22</sup> *New York State: Domestic Violence Dashboard Project 2013 Data*, *supra* note 19.

<sup>23</sup> *Id.*

<sup>24</sup> Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217 (III) (Dec. 10, 1948)

<sup>25</sup> *Id.* arts. 1, 3, 5, 7, 8.

<sup>26</sup> See International Covenant on Civil and Political Rights, U.N.T.S 171 (Dec 16, 1966), arts. 2, 6, 7, 9, 10, 26; Convention Against Torture, Convention on the Elimination of All Forms of Discrimination Against Women, art. 2.

<sup>27</sup> Declaration on the Elimination of Violence Against Women, G.A. Dec. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* art. 4.

<sup>30</sup> Report of the Special Rapporteur on Violence against Women, *supra* note 11, at 1.

<sup>31</sup> *Id.* at 5 ¶ 8.

<sup>32</sup> *Id.*

<sup>33</sup> *Town of Castle Rock, Colo. v. Gonzales*, 545 U.S. 748, 752 (2005).

<sup>34</sup> *Castle Rock*, 545 U.S. at 753.

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

<sup>36</sup> *Id.*

<sup>37</sup> *Castle Rock*, 545 U.S. at 754.

<sup>38</sup> *Id.*

<sup>39</sup> *Castle Rock*, 545 U.S. at 748.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Castle Rock*, 545 U.S. at 768.

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

<sup>45</sup> Jessica Lenahan (Gonzales) et al. United States, Case 12.626, Inter-Am. Comm’n H.R., Report No. 80/11 (2011).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 170.

<sup>48</sup> *Id.* at 201.

<sup>49</sup> Columbia Law School Human Rights Clinic and University of Miami School of Law Human Rights Clinic, *Recognizing Freedom from Domestic Violence and Violence Against Women as a Fundamental Human Right: Local Resolutions Across the United States*, Aug. 14, 2014, available at <http://www.law.miami.edu/human-rights-clinic/pdf/2014/local-resolutions-2014.pdf>.

<sup>50</sup> President of the United States of America, *Presidential Proclamation – 20<sup>th</sup> Anniversary of the Violence Against Women Act*, Sept. 9, 2014, <http://www.whitehouse.gov/the-press-office/2014/09/09/presidential-proclamation-twentieth-anniversary-violence-against-women-a> (last visited Sept. 25, 2014).

<sup>51</sup> The Albany, NY resolution can be found at: <http://www.law.miami.edu/human-rights-clinic/pdf/2014/local-resolutions-2014.pdf>

<sup>52</sup> A compilation of these resolutions can be found at Columbia Law School Human Rights Clinic and University of Miami Human Rights Clinic, *supra* note 49.