

12-19-2022

The Impact Of Covid-19 On Domestic Violence And Digital Abuse: Addressing The Problem Through A National Action Plan

Kayla Bokzam

University of Miami School of Law

Follow this and additional works at: <https://repository.law.miami.edu/umiclr>



Part of the [Comparative and Foreign Law Commons](#)

Recommended Citation

Kayla Bokzam, *The Impact Of Covid-19 On Domestic Violence And Digital Abuse: Addressing The Problem Through A National Action Plan*, 30 U. MIA Int'l & Comp. L. Rev. 185 ()

Available at: <https://repository.law.miami.edu/umiclr/vol30/iss1/7>

This Note is brought to you for free and open access by the Journals at University of Miami School of Law Institutional Repository. It has been accepted for inclusion in University of Miami International and Comparative Law Review by an authorized editor of University of Miami School of Law Institutional Repository. For more information, please contact library@law.miami.edu.

THE IMPACT OF COVID-19 ON DOMESTIC VIOLENCE AND DIGITAL ABUSE: ADDRESSING THE PROBLEM THROUGH A NATIONAL ACTION PLAN

*Kayla Bokzam**

ABSTRACT

This Article discusses the impact of COVID-19 on domestic violence and digital abuse around the world, with a focus on the United States. Violence against women has increased since the start of the pandemic largely due to lockdown restrictions and other measures taken by governments to slow the spread of the virus. Further, with an increase in the use of technology throughout our daily lives, digital abuse has become more prevalent and particularly impacts women and girls. This paper analyzes the national action plans on gender-based violence in Australia and South Africa and explores how the United States can create an effective national action plan to combat these issues.

ABSTRACT	185
INTRODUCTION.....	186
I. AN INTRODUCTION TO DOMESTIC VIOLENCE AND DIGITAL ABUSE...188	
A. WHAT IS DOMESTIC VIOLENCE?.....	188
B. WHO IS IMPACTED BY DOMESTIC VIOLENCE AND DIGITAL ABUSE?	190
C. DOMESTIC VIOLENCE AND DIGITAL ABUSE: THE LEGAL FRAMEWORK	192
D. SOLUTIONS FROM AROUND THE WORLD.....	196
1. TASK FORCES	196
2. NATIONAL ACTION PLANS	199
II. THE STATE OF DOMESTIC VIOLENCE AND DIGITAL ABUSE PRIOR TO THE PANDEMIC.....	200
A. RECOGNIZING THE PROBLEM IN THE LATE 20TH CENTURY	200

* J.D. Candidate, Class of 2023. University of Miami School of Law. Editor-in-Chief, *International and Comparative Law Review*. Thank you to Professors Caroline Bettinger-López and Tamar Ezer for their guidance in writing this Article and their mentorship throughout law school. Thank you to my family for their love and support.

B. RATES OF DOMESTIC VIOLENCE PRE-PANDEMIC.....	200
C. A HISTORY OF DOMESTIC VIOLENCE IN CRISES.....	201
III. THE IMPACT OF COVID-19 ON DOMESTIC VIOLENCE	203
A. DIGITAL ABUSE IN THE PANDEMIC	203
B. OTHER INSTANCES OF DOMESTIC VIOLENCE DURING THE PANDEMIC.....	204
C. ESCAPING MADE MORE DIFFICULT.....	206
IV. HOW THE UNITED STATES SHOULD RESPOND.....	206
A. NATIONAL ACTION PLANS.....	207
1. AUSTRALIA'S NATIONAL ACTION PLAN.....	207
2. SOUTH AFRICA'S NATIONAL ACTION PLAN.....	210
3. THE UNITED STATES' NATIONAL ACTION PLAN.....	211
CONCLUSION	216

INTRODUCTION

Thanks to constantly evolving technology that extends to nearly every part of our lives, the world is changing at a rapid pace. Every day, new technology is being created, and while the benefits of these advancements are great, the dangers they introduce often go unchecked. Governments must be held responsible for ensuring that their citizens are not unduly burdened by these new inventions and the dangers they present and they must make an effort to solve pre-existing issues that plague their communities. If left unresolved, these problems will be exacerbated by new technology. Take for example, domestic violence.¹ Due to technological advancements, a new form of domestic violence has appeared. Digital abuse, or technology-facilitated abuse, has increased in prevalence and danger as our society has become more and more technologically immersed.² According to

¹ See *What Is Domestic Abuse?*, UNITED NATIONS, <https://www.un.org/en/coronavirus/what-is-domestic-abuse> (last visited Oct. 4, 2021); Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19, ¶ 14, U.N. Doc. CEDAW/C/GC/35 (July 14, 2017) [hereinafter CEDAW General Recommendation No. 35].

² See *Online Harassment 2017*, PEW RSCH. CTR. (July 11, 2017), <https://www.pewresearch.org/internet/2017/07/11/online-harassment-2017>; *The State of*

a Nielsen Company Audience 2019 Report, American adults spend an average of eleven hours and forty-five minutes using technology and consuming various types of media daily.³ While domestic violence and digital abuse have long been a problem, these issues have been on the rise since the start of the COVID-19 pandemic,⁴ so much so that the United Nations Women has labeled the increase in violence as the “Shadow Pandemic.”⁵ This increase can be attributed to lockdown restrictions and other measures put in place by governments to slow the spread of the virus,⁶ forcing women to stay home with their abusers and disrupting social safety nets.⁷ The restrictions further exacerbated digital abuse by increasing society’s reliance on technology throughout our daily lives as more people began working and attending school from home.⁸ Faced with no alternative in the

Online Harassment, PEW RSCH. CTR. (Jan. 13, 2021), <https://www.pewresearch.org/internet/2021/01/13/the-state-of-online-harassment>.

³ *The Nielsen Total Audience Report: September 2019*, NIELSEN (Oct. 2, 2019), <https://www.nielsen.com/us/en/insights/report/2019/the-nielsen-total-audience-report-september-2019>.

⁴ María-Noel Vaeza, *Addressing the Impact of the COVID-19 Pandemic on Violence Against Women and Girls*, UNITED NATIONS (Nov. 27, 2020), <https://www.un.org/en/addressing-impact-covid-19-pandemic-violence-against-women-and-girls>.

⁵ *The Shadow Pandemic: Violence against women during COVID-19*, UNITED NATIONS WOMEN, <https://www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-covid-19-response/violence-against-women-during-covid-19> (last visited Oct. 24, 2021).

⁶ Vaeza, *supra* note 4.

⁷ See Press Release, United Nations Human Rights Office of the High Commissioner, States must combat domestic violence in the context of COVID-19 lockdowns – UN rights expert (Mar. 27, 2020) (The United Nations Special Rapporteur on violence against women, Dubravka Simonovic, said “[t]he risk [of domestic violence] is aggravated in a time when there are no or fewer shelters and help services available for victims; when it is difficult to access those that are still open; and when there is less community support; fewer police interventions and less access to justice as many courts are closed.”).

⁸ See MICHAEL BURROWS ET AL., U.S. CENSUS BUREAU, COMMUTING BY PUBLIC TRANSPORTATION IN THE UNITED STATES: 2019: AMERICAN COMMUNITY SURVEY REPORTS 1-2 (2021), <https://www.census.gov/content/dam/Census/library/publications/2021/acs/acs-48.pdf> (reporting that 5.7% of people in the U.S. worked from home in 2019); *Supplemental data measuring the effects of the coronavirus (COVID-19) pandemic on the labor market*, U.S. BUREAU OF LAB. STATISTICS (Oct. 14, 2022), <https://www.bls.gov/cps/effects-of-the-coronavirus-covid-19-pandemic.htm> (reporting that 35% of employed people worked from home because of the

midst of the COVID-19 outbreak, many stayed home. The increase in social isolation led to dire consequences for women and children and created a second life-threatening pandemic, one that has yet to be addressed.

In Part I, this Article will introduce the issues of domestic violence and digital abuse and discuss who is impacted, as well as any laws or safeguards in place to protect victims. Part II will give an overview of the state of domestic violence and digital abuse prior to the COVID-19 pandemic. Then, Part III will explore the impact of the pandemic on these issues. Lastly, Part IV will discuss how the United States (U.S.) should respond to this problem and government obligations under international human rights standards. This last Part will analyze Australia's and South Africa's national action plans to end gender-based violence and recommend how the U.S. can create a national action plan that encompasses all aspects of gender-based violence, including domestic violence and digital abuse.

I. AN INTRODUCTION TO DOMESTIC VIOLENCE AND DIGITAL ABUSE

A. What is Domestic Violence?

The United Nations (UN) defines domestic violence as “a pattern of behavior in any relationship that is used to gain or maintain power and control over an intimate partner.”⁹ Domestic violence can be physical, sexual, emotional, economic, or psychological and can include threats of action or actual action against a person.¹⁰ This means that domestic violence comes in many forms.¹¹ While physical and sexual abuse are the most visible types of domestic violence, many other forms of domestic violence easily go unnoticed.¹² For example, emotional abuse involves name-calling, insults, jealous or possessive

COVID-19 pandemic in May 2020, not including those who worked from home prior to the pandemic).

⁹ UNITED NATIONS, *supra* note 1.

¹⁰ *Id.*; CEDAW General Recommendation No. 35, *supra* note 1.

¹¹ UNITED NATIONS, *supra* note 1.

¹² *Id.*

behavior, humiliation, and isolation from loved ones.¹³ It can also involve the exertion of control over a person's life including over their finances, career, and social life.¹⁴ Psychological abuse includes intimidation, threats to harm anyone including themselves or their partner, destroying property, or isolation from loved ones.¹⁵ Economic abuse includes causing or attempting to make someone dependent through control over their finances or by keeping them from working or going to school.¹⁶ Domestic violence can appear in many forms, and in a technologically advanced world, this includes digitally.

According to the Children's Hospital of Philadelphia Center for Injury Research and Prevention, digital abuse is a form of domestic violence that utilizes technology or social media "to gain or maintain power and control over an intimate partner."¹⁷ Digital abuse includes, but is not limited to, accessing or using someone else's social media account without their consent, sending unwanted sexual messages, pressuring someone into sending sexual pictures, monitoring online activity, stopping someone from talking to others, threatening or stalking someone with technology, and more.¹⁸ Additionally, 94% of victims of digital abuse were also physically, sexually, or emotionally abused by a partner.¹⁹ Another form of digital abuse is the use of deepfakes. Deepfakes are a form of technology that uses artificial intelligence.²⁰ Through the analysis of a person's photos, this technology can be used to make someone appear as though they were in a pornographic photo or video.²¹ Other forms of digital abuse include nonconsensual pornography, or distributing nude or sexually

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Katherine C. Obenschain & Gabriel Jackson, *Teen Dating Violence and Digital Abuse During the COVID-19 Pandemic*, CHILD.'S HOSP. OF PHILA. (Feb. 23, 2021), <https://injury.research.chop.edu/blog/posts/teen-dating-violence-and-digital-abuse-during-covid-19-pandemic>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ ADAM DODGE ET AL., CAL. P'SHIP TO END DOMESTIC VIOLENCE, USING FAKE VIDEO TECHNOLOGY TO PERPETUATE INTIMATE PARTNER ABUSE 1 (2018), https://www.cpedv.org/sites/main/files/webform/deepfake_domestic_violence_advisory.pdf.

²¹ *Id.*

explicit pictures of someone without their consent; doxing, or the nonconsensual release of someone's personal identifying information, like their home address; sextortion, or the online attack of a person's technology systems and the demand of sexual images or favors to end the attack; and swatting, or falsely reporting an emergency to force an emergency response, like deploying a SWAT team, to a location where there is no real emergency.²² These forms of digital abuse are all types of intimate partner violence that affect people from all backgrounds.

B. Who is Impacted by Domestic Violence and Digital Abuse?

Domestic violence can happen to anyone regardless of their race, age, gender, or socioeconomic background.²³ According to a special report by the U.S. Department of Justice, 82% of intimate partner violence was committed against women and girls.²⁴ In the U.S., more than one-third of women have experienced intimate partner violence including, rape, physical violence, and stalking.²⁵ But while domestic violence is more prevalent among women, men experience it too. More than one in four men in the U.S. have experienced intimate partner violence including rape, physical violence, and stalking, with the majority of these experiences being physical violence.²⁶ Furthermore, transgender individuals are more likely to experience domestic violence than cisgender people.²⁷ According to a report by the Williams Institute, 31.1% of transgender people and 20.4% of

²² *Ranking Needs for Fighting Digital Abuse: Sextortion, Swatting, Doxing, Cyberstalking and Nonconsensual Pornography*, NAT'L INST. OF JUST. (Nov. 20, 2020), <https://nij.ojp.gov/topics/articles/ranking-needs-fighting-digital-abuse-sextortion-swatting-doxing-cyberstalking>.

²³ UNITED NATIONS, *supra* note 1.

²⁴ JENNIFER L. TRUMAN, PH.D. & RACHEL E. MORGAN, PH.D., U.S. DEP'T OF JUST., *NONFATAL DOMESTIC VIOLENCE, 2003–2012* 6 (2014), <https://bjs.ojp.gov/content/pub/pdf/ndv0312.pdf>.

²⁵ CTRS. FOR DISEASE CONTROL & PREVENTION, NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 39 (2010), https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf [hereinafter CDC SUMMARY REPORT].

²⁶ *Id.*

²⁷ Megan Dottermusch, *Domestic Violence in the Transgender Community*, NO MORE (Apr. 29, 2016), <https://nomore.org/domestic-violence-transgender-community>.

cisgender people have experienced intimate partner or dating violence in their lifetimes.²⁸

Further, domestic violence impacts people from every race and ethnicity; however, in the U.S., some racial and ethnic groups experience it at a higher rate than others. For example, 34.6% of White women experienced intimate partner violence in their lifetimes, while 43.7% of Black women have.²⁹ However, this rate is even higher for American Indian or Alaska Native women, with 46% experiencing intimate partner violence at some point in their lives.³⁰ Finally, 37.1% of Hispanic women and 53.8% of Multiracial women experienced intimate partner violence in their lifetimes.³¹ Similarly, for men in the U.S., the three ethnic and racial groups with the highest rates of men that have experienced intimate partner violence in their lifetimes are non-Hispanic Black (38.6%), Multiracial (39.3%), and American Indian or Alaska Native (45.3%).³² It is important to pay attention to these statistics as women who experience multiple forms of discrimination based on age, race, disability, or refugee status are at greater risk of experiencing gender-based violence.³³

Additionally, intimate partner violence can happen to anyone regardless of their age. Among the women who have experienced domestic violence including rape, physical violence, or stalking, 47.1% experienced it for the first time between the ages of eighteen and twenty-four and 22.4% experienced it for the first time between eleven and seventeen.³⁴ In fact, one in three teenagers in the U.S. experience teen dating violence.³⁵ Specifically, teenagers are often the victims of

²⁸ TAYLOR N.T. BROWN & JODY L. HERMAN, THE WILLIAMS INSTITUTE, INTIMATE PARTNER VIOLENCE AND SEXUAL ABUSE AMONG LGBT PEOPLE: A REVIEW OF EXISTING RESEARCH 3 (2015), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/IPV-Sexual-Abuse-Among-LGBT-Nov-2015.pdf>.

²⁹ CDC SUMMARY REPORT, *supra* note 25, at 40.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* (stating that 26.6% of Hispanic men and 28.2% of White men reported experiencing intimate partner violence in their lifetimes).

³³ MIAMI LAW HUMAN RIGHTS CLINIC, IMPROVING LAW ENFORCEMENT RESPONSES TO GENDER-BASED VIOLENCE: A HUMAN RIGHTS ANALYSIS 1 (2022).

³⁴ CDC SUMMARY REPORT, *supra* note 25, at 49 (reporting that 15% of men who experienced domestic violence experienced it for the first time between the ages of eleven and seventeen and 38.6% between eighteen and twenty-four).

³⁵ Obenschain & Jackson, *supra* note 17.

digital abuse with 28% of teenagers saying they had experienced it in the past.³⁶ Of those teenagers, 81% were also victims of other forms of domestic violence.³⁷

Domestic violence can happen to anyone regardless of their age, gender, race, or ethnicity. Therefore, it is important for countries to have laws in place that effectively address this issue.

C. Domestic Violence and Digital Abuse: The Legal Framework

While there are some laws in the U.S. pertaining to domestic violence and digital abuse, reform is needed to better protect women from these harms. One of the most notable laws created to protect victims of domestic violence is the Violence Against Women Act (VAWA) passed by Congress in 1994.³⁸ While VAWA recognizes domestic violence as a national crime, most cases continue to be handled by state and local authorities.³⁹ Additionally, Title IX, which applies to all federally funded educational institutions and programs, prohibits discrimination on the basis of sex⁴⁰ and provides legal protection to victims of sexual harassment, including intimate partner violence.⁴¹

On the other hand, Section 230 of the Communications Decency Act of 1996 protects internet platforms from civil liability for the content posted on their sites by users.⁴² With Section 230 immunity,

³⁶ Gisele Galoustian, *Many Teens are Digital Dating Abuse Victims; Boys Get the Brunt of it*, FLA. ATL. UNIV. NEWS DESK (Feb. 12, 2020), <https://www.fau.edu/newsdesk/articles/digital-dating-abuse.php> (citing Sameer Hinduja, Ph.D. & Justin W. Patchin, Ph.D., *Digital Dating Abuse Among a National Sample of U.S. Youth*, J. INTERPERSONAL VIOLENCE (2020)).

³⁷ *Id.*

³⁸ *Federal Domestic Violence Laws*, U.S. DEP'T OF JUST., <https://www.justice.gov/usao-wdtn/victim-witness-program/federal-domestic-violence-laws> (last visited Oct. 24, 2021).

³⁹ *Id.*

⁴⁰ *Title IX*, U.S. DEP'T OF JUST., <https://www.justice.gov/crt/title-ix> (last visited Oct. 24, 2021).

⁴¹ *Policy*, U.S. DEP'T OF EDUC., <https://sites.ed.gov/titleix/policy> (last visited Oct. 24, 2021).

⁴² Communications Decency Act of 1996, 47 U.S.C. § 230; U.S. DEP'T OF JUST., SECTION 230 — NURTURING INNOVATION OR FOSTERING UNACCOUNTABILITY?: KEY

online platforms have no incentive to police illegal or harmful activity on their sites, all the while permitting them to completely control legal content.⁴³ Since various forms of digital abuse are carried out via online platforms, such as nonconsensual pornography, the pressure is on Congress to reform Section 230.⁴⁴ In fact, Congress has already considered numerous proposals.⁴⁵ One of those proposals, the SAFE TECH Act proposed by Senators Warner, Hirono, and Klobuchar, would allow victims of cyberstalking, harassment, and other types of abuse to hold these platforms liable for enabling this activity.⁴⁶ Reforming Section 230 to hold internet platforms accountable for the harmful activity committed on their sites by their users is integral to combatting digital abuse. Civil liability for these platforms would create a large incentive for them to monitor the dangerous content on their sites more thoroughly. As noted by the United Nations Women, after experiencing online harassment, some women choose to leave online platforms.⁴⁷ By reforming Section 230 to hold internet platforms liable, the U.S. would be fostering a safe online environment for women where they can actively participate in civil discussions without fear of harassment, ensuring their voices are heard in all levels of society.

When VAWA was being considered for reauthorization, it included the Stopping Harmful Image Exploitation and Limiting

TAKEAWAYS AND RECOMMENDATIONS 1 (2020), <https://www.justice.gov/file/1286331/download> [hereinafter DOJ SECTION 230 TAKEAWAYS].

⁴³ DOJ SECTION 230 TAKEAWAYS, *supra* note 42.

⁴⁴ Abbey Stemler, *What is Section 230? An expert on internet law and regulation explains the legislation that paved the way for Facebook, Google and Twitter*, CONVERSATION (Aug. 2, 2021), <https://theconversation.com/what-is-section-230-an-expert-on-internet-law-and-regulation-explains-the-legislation-that-paved-the-way-for-facebook-google-and-twitter-164993>.

⁴⁵ *Id.*

⁴⁶ Press Release, Mark R. Warner: Press Releases, Warner, Hirono, Klobuchar Announce the SAFE TECH Act to Reform Section 230 (Feb. 5, 2021), <https://www.warner.senate.gov/public/index.cfm/pressreleases?ID=55514DD4-7824-40A9-A482-64121A033266>.

⁴⁷ Cecilia Mwende Maundu, *Take five: Why we should take online violence against women and girls seriously during and beyond COVID-19*, UNITED NATIONS WOMEN (July 21, 2020), <https://www.unwomen.org/en/news/stories/2020/7/take-five-cecilia-mwende-maundu-online-violence>.

Distribution Act of 2021, or the SHIELD Act.⁴⁸ The SHIELD Act penalizes the nonconsensual distribution of intimate photos whether or not they are modified, meaning it includes anything from images intended only for an intimate partner to deepfakes created using artificial intelligence.⁴⁹ This act would impose a criminal penalty on nonconsensual pornography with a fine and potential jailtime.⁵⁰ While most states and the District of Columbia have existing nonconsensual pornography laws, they are not consistent with each other.⁵¹ Some states have more restrictive “revenge porn” laws than others. For example, Maryland’s law requires that prosecutors prove that the abuser intended to harm or harass the victim and that the victim “had a reasonable expectation that the image would remain private.”⁵² Passing the VAWA Reauthorization Act with the SHIELD Act would have provided for more consistent enforcement of these laws and created a path for courts to impose liability on abusers through the federal criminal justice system.⁵³

While providing victims with additional avenues to seek justice is undoubtedly important, some worry about the negative impacts of creating new crimes, which is exactly what the SHIELD Act

⁴⁸ Violence Against Women Act Reauthorization Act of 2021, H.R. 1620, 117th Cong. § 1413 (2021).

⁴⁹ *Id.*

⁵⁰ Asia A. Eaton, *SHIELD Act Would Be First Federal Law on Intimate Image Abuse*, WOMEN’S MEDIA CTR. (May 26, 2021), <https://womensmediacenter.com/news-features/shield-act-would-be-first-federal-law-on-intimate-image-abuse>.

⁵¹ Press Release, Congresswoman Jackie Speier: Press Releases, Speier and Katko Amendment to Address Online Exploitation of Private Images Included in Violence Against Women Reauthorization Act (Mar. 17, 2021), <https://speier.house.gov/2021/3/speier-and-katko-amendment-to-address-online-exploitation-of-private-images-included-in-violence-against-women-reauthorization-act> [hereinafter Speier Press Release].

⁵² *Leister v. Leister*, No. 1061, 2021 WL 5358856, at *3 (Md. Ct. Spec. App. Nov. 17, 2021) (“We agree with appellant on two counts: the circuit court expressly found that he did not possess the requisite intent to harm or harass appellee, and the court failed to make an express finding regarding appellee’s reasonable expectation of privacy.”); MD. CODE ANN., CRIM. LAW § 3-809(c) (West 2020); see Amanda Holpuch, *Maryland Mayor Is Charged in ‘Revenge Porn’ Case*, N.Y. TIMES (Nov. 16, 2021), <https://www.nytimes.com/2021/11/16/us/revenge-porn-andrew-bradshaw-mayor.html>.

⁵³ Speier Press Release, *supra* note 51.

would have done. According to the Sentencing Project, the U.S. has the highest rate of incarceration per 100,000 people.⁵⁴ With over two million people incarcerated in the U.S., this rate has increased by 500% in forty years.⁵⁵ Moreover, mass incarceration and overcriminalization have disproportionate racial impacts. Black men are six times more likely to be incarcerated than white men and Latino men are 2.5 times more likely.⁵⁶ Further, while representing just 12% of U.S. residents, Black people make up 38% of the country's incarcerated population.⁵⁷ With these facts in mind, it is clear why some people would oppose the creation of new crimes, especially since they disproportionately impact people of color. However, it is important to provide women with a strong course of action to seek justice against their abusers. Without the SHIELD Act, the enforcement of laws prohibiting nonconsensual pornography are inconsistent. It is extremely important that the U.S. does not leave gaps in the legal framework of this issue since it is a problem that is constantly increasing in prevalence and danger.⁵⁸ However, the government missed this opportunity when VAWA was reauthorized through the Consolidated Appropriations Act of 2022 without the SHIELD Act or any other criminal penalty for the nonconsensual distribution of intimate images.⁵⁹

⁵⁴ *Criminal Justice Facts*, THE SENT'G PROJECT, <https://www.sentencingproject.org/criminal-justice-facts> (last visited Nov. 21, 2021).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2022*, PRISON POL'Y INITIATIVE (Mar. 14, 2022), <https://www.prisonpolicy.org/reports/pie2022.html>.

⁵⁸ See Óscar F. Civieta & Jeevan Ravindran, *FBI warns of the rise of 'deepfakes' in coming months and explains how to spot them easily*, BUS. INSIDER (Mar. 29, 2021, 11:02 AM), <https://www.businessinsider.com/fbi-investigation-generated-computer-ai-artificial-intelligence-abuse-misinformation-porn-2021-3> ("Deepfakes have now entered popular culture and are easier than ever to make, becoming the subject of online memes but also of misinformation and abuse, particularly in the form of revenge porn. . . . the number [of deepfakes] looks set to grow.").

⁵⁹ See Consolidated Appropriations Act, 2022, Pub. L. No. 117-103.

D. Solutions from Around the World

In addition to laws protecting victims from domestic violence and digital abuse, countries and organizations around the globe have created national action plans and task forces to aid in the fight against gender-based violence. By creating these plans and task forces, countries show their dedication to protecting their citizens and provide guidance to law enforcement, policymakers, and other government officials on how to properly prevent and respond to these problems.

1. Task Forces

In an executive order, President Biden ordered the development of the National Action Plan to End Gender-Based Violence.⁶⁰ The White House Gender Policy Council, established by the President's executive order, will create a plan to address gender-based violence through the creation of a government-wide strategy.⁶¹ President Biden also discussed plans to create a National Task Force on Online Harassment and Abuse,⁶² which officially launched on June 16, 2022.⁶³ According to his campaign website, the task force will consist of "federal agencies, state leaders, advocates, law enforcement, and technology experts" and will study "online sexual harassment, stalking, and threats, including revenge porn, deepfakes, and the connection between this harassment, mass shootings, extremism and violence against women."⁶⁴ The Task Force will develop approaches and guidance for governments, social media companies, schools, and other institutions to combat online abuse.⁶⁵ As the U.S. works on its

⁶⁰ Exec. Order No. 14020, 86 Fed. Reg. 13797 (Mar. 8, 2021).

⁶¹ *Id.*

⁶² *The Biden Plan to End Violence Against Women*, BIDEN HARRIS, <https://joebiden.com/vawa> (last visited Nov. 19, 2021).

⁶³ *Readout of the White House Task Force to Address Online Harassment and Abuse Launch*, THE WHITE HOUSE (June 17, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/17/readout-of-the-white-house-task-force-to-address-online-harassment-and-abuse-launch>.

⁶⁴ *The Biden Plan to End Violence Against Women*, *supra* note 62.

⁶⁵ *Id.*

National Action Plan, it should look towards other national plans and task forces across the globe to guide its work.

Similarly, in 2016, New York City Mayor Bill de Blasio created the New York City Task Force on Domestic Violence (DVTF).⁶⁶ The DVTF has four goals: (1) prevent violence or abuse before it starts; (2) increase early reporting by victims; (3) improve the criminal justice system's response; and (4) strategize for a long-term reduction of violence.⁶⁷ The DVTF is comprised of experts "including service providers, lawyers, academics, law enforcement agencies, policy makers and survivors."⁶⁸ This task force works to reform the city's response to domestic violence, increase accountability for abusers, and provide survivors with avenues to safety.⁶⁹ In its most recent annual report, the DVTF highlights the Coordinated Approach to Preventing Stalking (CAPS) program, aimed at increasing the law enforcement response to intimate partner stalking through specialized training, which includes "recogniz[ing] the use of technology in a stalking context. . . ."⁷⁰

Additionally, in November 2017, the UN System Chief Executives Board created a task force on this issue called the CEB Task Force on Addressing Sexual Harassment within the Organizations of the UN System (CEB Task Force).⁷¹ The CEB Task Force developed various initiatives in four areas: policy, accountability, support and outreach, and strengthening investigations.⁷² First, the policy initiatives include establishing a uniform definition of sexual harassment and developing best practices, creating a model policy on

⁶⁶ *NYC Domestic Violence Task Force*, N.Y.C.: MAYOR'S OFF. TO END DOMESTIC & GENDER-BASED VIOLENCE, <https://www1.nyc.gov/site/ocdv/programs/dv-task-force.page> (last visited Nov. 21, 2021).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ N.Y.C.: MAYOR'S OFF. TO END DOMESTIC & GENDER-BASED VIOLENCE, *THE DOMESTIC VIOLENCE TASK FORCE: 2018 REPORT 6* (2018), <https://www1.nyc.gov/assets/ocdv/downloads/pdf/DV-Task-Force-2nd-Annual-Report-2018.pdf>.

⁷¹ *CEB Task Force on Addressing Sexual Harassment within the Organizations of the UN System: Initiatives and Progress Factsheet*, UNITED NATIONS SYS. CHIEF EXECS. BD. FOR COORDINATION 1, 1 (2021), https://unsceb.org/sites/default/files/2021-07/Factsheet_CEB%20Task%20Force%20Sexual%20Harassment_April%202021.pdf.

⁷² *Id.* at 1-4.

sexual harassment, monitoring the implementation of the model policy, and promoting a consistent understanding of a victim-centered approach.⁷³ Second, the accountability initiatives include launching a database to prevent people from being rehired if their previous work relationship ended due to them committing sexual harassment or if allegations are pending, and administering a questionnaire on the sexual harassment reporting in the UN.⁷⁴ Third, the support and outreach initiatives include creating guidelines for managers to prevent and respond to sexual harassment, creating hotlines and helplines, providing support to sexual harassment campaigns, and staff training on sexual harassment.⁷⁵ Fourth, strengthening investigations initiatives include prioritizing sexual harassment investigations, recruiting specialized sexual harassment investigators, developing training for investigators, and developing guidelines for investigations and disciplinary timelines.⁷⁶

Furthermore, the CEB Task Force recognizes the impact of the COVID-19 pandemic on sexual harassment, stating that the pandemic “has brought additional questions related to abuse of authority and harassment in the context of widescale teleworking, remote working, and blended office arrangements. This raises a variety of questions including the boundaries of workplace misconduct and potential difficulties for victims to access assistance and support through their employer.”⁷⁷ Further, the Task Force held a meeting on June 17, 2021, to discuss online sexual harassment in the wake of the pandemic.⁷⁸ The objective of the meeting was “to collect recommendations and reflections to implement impactful change throughout the UN and better prevent and respond to online sexual harassment.”⁷⁹

⁷³ *Id.* at 1-2.

⁷⁴ *Id.* at 2.

⁷⁵ *Id.* at 2-3.

⁷⁶ *Id.* at 3-4.

⁷⁷ *CEB Task Force on Addressing Sexual Harassment within the Organizations of the United Nations System: Workplan 2020-2021*, UNITED NATIONS SYS. CHIEF EXECS. BD. FOR COORDINATION 1, 2 (2021), <https://unsceb.org/sites/default/files/2020-12/Workplan%20Sexual%20Harassment%20Task%20Force%202020-2021.pdf>.

⁷⁸ UNITED NATIONS SYS. CHIEF EXECS. BD. FOR COORDINATION ET AL., EVENT REPORT SUMMARY: MAKING ZERO TOLERANCE A REALITY: PREVENTING AND ELIMINATING SEXUAL HARASSMENT ONLINE 1 (2021).

⁷⁹ *Id.*

2. National Action Plans

Multiple countries have adopted national action plans to tackle gender-based violence, including Australia and South Africa. Australia's *National Plan to Reduce Violence against Women and their Children 2010-2022* comes in four parts.⁸⁰ The first plan created a foundation for long-term change including "the establishment of national-level infrastructure to inform future policy and service delivery and to engage the community in reducing violence against women and their children."⁸¹ The second plan focused on a national prevention campaign, a research plan, a prevention framework, and National Outcome Standards for Perpetrator Interventions.⁸² The third plan worked to enhance evidence and data collection to aid in the development of early intervention approaches and crisis response.⁸³ Finally, the fourth and most recent plan focuses on improving already in-place initiatives, addressing gaps in the previous plans, and creating a policy platform to reduce domestic and sexual violence.⁸⁴ The national action plan recognizes that online harassment is a concern as new forms of technology become more widely available.⁸⁵

Moreover, South Africa has a national action plan called the *National Strategic Plan on Gender-Based Violence and Femicide*.⁸⁶ The plan focuses on five key areas: (1) urgent response to victims and survivors; (2) access to justice; (3) changing social norms; (4) strengthening existing structures and accountability; and (5) increasing economic opportunities for low-income women.⁸⁷ The plan also highlights the

⁸⁰ COMMONWEALTH OF AUSTRALIA, *FOURTH ACTION PLAN: NATIONAL PLAN TO REDUCE VIOLENCE AGAINST WOMEN AND THEIR CHILDREN 2010-2022* (2019), https://www.dss.gov.au/sites/default/files/documents/08_2019/fourth_action-plan.pdf [Hereinafter AUSTL. FOURTH ACTION PLAN].

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 34.

⁸⁶ REP. S. AFR., *NATIONAL STRATEGIC PLAN ON GENDER-BASED VIOLENCE & FEMICIDE: HUMAN DIGNITY AND HEALING, SAFETY, FREEDOM & EQUALITY IN OUR LIFETIME* (2020), <https://www.justice.gov.za/vg/gbv/NSP-GBVF-FINAL-DOC-04-05.pdf> [hereinafter S. AFR. NATIONAL STRATEGIC PLAN].

⁸⁷ *Id.* at 3.

dangers of online violence and its disproportionate effect on young women.⁸⁸ This Article will analyze the national action plans of South Africa and Australia further in Part IV.

II. THE STATE OF DOMESTIC VIOLENCE AND DIGITAL ABUSE PRIOR TO THE PANDEMIC

A. Recognizing the Problem in the Late 20th Century

Before the late 20th century, domestic violence was considered a private matter. In the 1970s, women began speaking out about the violence they experienced, giving rise to the “battered women’s movement.”⁸⁹ Economic inequality, gender norms, and a criminal justice system that failed to hold men accountable for abusing women were three of the factors that contributed to violence against women.⁹⁰ Throughout the 70s and into the 80s, programs and shelters for abused women emerged and the U.S. legal framework began allowing women to hold their abusers accountable.⁹¹ Reform and recognition of the dangers of violence against women continued well into the 1990s, when stalking was first recognized as a crime and the Surgeon General listed domestic violence as a leading cause of injury to women between the ages of fifteen and forty-four.⁹²

B. Rates of Domestic Violence Pre-Pandemic

Towards the end of the 20th century, rates of intimate partner violence were decreasing for all women regardless of their age.⁹³ This was true up until the year 2000, when rates of domestic violence for women aged thirty-five to forty-nine and women aged fifty and over

⁸⁸ *Id.* at 47.

⁸⁹ *Domestic Violence Timeline*, UNIV. PITTSBURGH: PA. CHILD WELFARE RES. CTR. 2, <http://www.pacwrc.pitt.edu/Curriculum/310DomesticViolenceIssuesAnIntroductionforChildWelfareProfessionals/Handouts/HO3DomesticViolenceTimeline.pdf> (last visited Nov. 25, 2021).

⁹⁰ *Id.*

⁹¹ *Id.* at 2-3.

⁹² *Id.* at 3.

⁹³ SHANNON CATALANO, PH.D., U.S. DEP’T OF JUST., INTIMATE PARTNER VIOLENCE, 1993-2010 4 (2012), <https://bjs.ojp.gov/content/pub/pdf/ipv9310.pdf>.

remained stable, instead of decreasing like all other age groups.⁹⁴ Then, between 2005 and 2010, rates of domestic violence climbed for women aged thirty-five to forty-nine.⁹⁵ While experiencing stable rates between 2000 and 2005, women who were fifty or older experienced the lowest rate of domestic violence in 2010.⁹⁶ Additionally, women between the ages of eighteen and twenty-four experienced declining rates of intimate partner violence from 1994 to 2010 with a 71% decrease.⁹⁷

In 1994, White, Black, and Hispanic women experienced the highest rates of domestic violence compared to American Indian, Alaska Native, Native Hawaiian, Asian, Pacific Islander, and Multiracial women.⁹⁸ While White, Black, and Hispanic women experienced declining rates of intimate partner violence from 1994 to 2000, White women were the only racial group that experienced declining rates from 2000 to 2005.⁹⁹ In that time period, the rates of victimization for Black and Hispanic women stabilized.¹⁰⁰

In analyzing the marital status of abused women, the Department of Justice found that women who were separated from their partners experienced the highest rate of domestic violence between 1994 and 2010.¹⁰¹ Divorced or widowed, never married, and married women experienced far lower rates of intimate partner violence than separated women.¹⁰² Married women experienced the lowest rate of victimization, with a rate about thirty times less than separated women.¹⁰³

C. A History of Domestic Violence in Crises

The phenomenon of domestic violence rates increasing during national or global crises is nothing new. For instance, the 2008

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* at 5.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 6.

¹⁰² *Id.*

¹⁰³ *Id.*

recession led to an increase in rates of domestic violence.¹⁰⁴ A study conducted by the University of California, Davis (UC Davis) found that emergency room visits for domestic violence “more than tripled” in California during the Great Recession.¹⁰⁵ The study also determined that the increase in domestic violence caused by the financial crisis disproportionately impacted Black and Native American people.¹⁰⁶ The study notes that while there was such a large increase in domestic violence rates, women remained the victims the majority of the time.¹⁰⁷ Women were the victims of domestic violence 80.1% of the time prior to the recession and 80.9% of the time during and after the recession, showing that women remained disproportionately impacted by this violence.¹⁰⁸ In addition to the dramatic increase in emergency room visits, the number of hospitalizations for domestic violence increased during this period as well.¹⁰⁹

One of the authors of the study, Alvaro Medel-Herrero, highlighted the fact that domestic violence is severely under-reported.¹¹⁰ Because of this, the number of emergency room visits and hospitalizations caused by domestic violence do not represent all of the instances of domestic violence around the country.¹¹¹ The study makes the connection that financial stress and domestic violence are greatly related.¹¹² The fear of increased rates of domestic violence, similar to those seen in the Great Recession, are justified by the findings of that study. Due to the financial effects of the COVID-19 Pandemic, Medel-Herrero emphasized the need for a focus on and response to domestic violence during this global crisis.¹¹³

¹⁰⁴ Karen Nikos-Rose, *Domestic Violence Increased in the Great Recession: UC Davis Study Suggests Preparing for Similar Issues in COVID-19 Financial Crisis*, UNIV. OF CAL. DAVIS (Jul. 13, 2020), <https://www.ucdavis.edu/curiosity/news/domestic-violence-increased-great-recession>.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Alvaro Medel-Herrero et al., *The impact of the Great Recession on California domestic violence events, and related hospitalizations and emergency service visits*, 139 PREVENTIVE MED. 1, 4 (2020).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Nikos-Rose, *supra* note 104.

¹¹¹ *Id.*

¹¹² Medel-Herrero et al., *supra* note 107, at 1.

¹¹³ Nikos-Rose, *supra* note 104.

III. THE IMPACT OF COVID-19 ON DOMESTIC VIOLENCE

The findings of the UC Davis study eerily foreshadowed some of the problems countries would begin facing during the COVID-19 Pandemic. The financial stress imposed on the public caused by job lay-offs and business closures increased rates of domestic violence during the pandemic.¹¹⁴ In addition to financial pressure, lockdown measures implemented to slow the spread of the virus forced many people to stay home, specifically forcing women to be locked indoors with their abusers.¹¹⁵ These safety measures were likely exploited by abusers who realized that they could use the situation to gain control over their partners.¹¹⁶

A. Digital Abuse in the Pandemic

The pandemic and its accompanying lockdown measures pushed the world even more online than ever before. Since the beginning of the pandemic, internet usage has risen between 50% and 70%.¹¹⁷ More people began to work from home, attend classes from home, or hang out with friends from home. This was all made possible by technology and various video-conferencing applications like Zoom, which saw a 1000% increase in usage.¹¹⁸

The National Domestic Violence Hotline (the Hotline) saw a 101% increase in reports of digital abuse from 2019 to 2020.¹¹⁹ Sixty days into the pandemic, 16% of victims who contacted the Hotline

¹¹⁴ See Tatiana Stoianova et al., *COVID-19: Pandemic of Domestic Violence*, 9 IUS HUMANI 111, 120 (2020).

¹¹⁵ See *id.*

¹¹⁶ NAT'L DOMESTIC VIOLENCE HOTLINE, COVID-19 YEAR IN REVIEW 1 (2021) [hereinafter NDVH COVID-19 YEAR IN REVIEW].

¹¹⁷ Mark Beech, *COVID-19 Pushes Up Internet Use 70% And Streaming More Than 12%, First Figures Reveal*, FORBES (Mar. 25, 2020, 3:49PM), <https://www.forbes.com/sites/markbeech/2020/03/25/covid-19-pushes-up-internet-use-70-streaming-more-than-12-first-figures-reveal/?sh=7fc65fb13104>.

¹¹⁸ Rahul De' et al., *Impact of digital surge during Covid-19 pandemic: A viewpoint on research and practice*, 55 INT'L J. INFO. MGMT. 1, 1 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7280123/pdf/main.pdf>.

¹¹⁹ Obenschain & Jackson, *supra* note 17.

reported experiencing digital abuse.¹²⁰ Overall in 2020, over 33,000 reports received by the Hotline involved some form of digital abuse.¹²¹ One person who contacted the Hotline reported that their abusive partner was monitoring them on all of their digital devices.¹²² COVID-19 caused all their local libraries to close, so the survivor did not have access to another computer.¹²³ In addition to the digital monitoring, the abuser spammed the victim's devices with text messages and calls, leaving them unable to focus on work.¹²⁴ Finally, when trying to visit a friend, the abuser followed the victim with a GPS application installed on the survivor's phone.¹²⁵

B. Other Instances of Domestic Violence During the Pandemic

While the Hotline did not experience an increase in calls at the beginning of the pandemic, it suspected that the reason behind this was that victims were unable to safely contact the Hotline.¹²⁶ For example, the Hotline reported an incident where a victim could no longer see their counselor in person and had to speak to their counselor through telemedicine.¹²⁷ This victim reported feeling that they could not speak freely because their abuser was close by.¹²⁸ Another report received by the Hotline described an abuser who became increasingly hostile with their partner and five children, periodically shutting off their Wi-Fi so the family was unable to "reach out for help or create a safety plan."¹²⁹

The Hotline received over 6,000 contacts citing COVID-19 in the first sixty days of the pandemic alone.¹³⁰ Of those contacts, 90%

¹²⁰ NAT'L DOMESTIC VIOLENCE HOTLINE, COVID-19 SPECIAL REPORT 2 (n.d.) [hereinafter NDVH COVID-19 SPECIAL REPORT].

¹²¹ NAT'L DOMESTIC VIOLENCE HOTLINE, 2020: A YEAR OF IMPACT 2 (n.d.) [hereinafter NDVH 2020: A YEAR OF IMPACT].

¹²² NAT'L DOMESTIC VIOLENCE HOTLINE, THE HOTLINE HAPPENINGS: FALL 2021 2 (2021).

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ NDVH COVID-19 YEAR IN REVIEW, *supra* note 116.

¹²⁷ *Id.* at 2.

¹²⁸ *Id.* at 2.

¹²⁹ *Id.* at 4.

¹³⁰ NDVH COVID-19 SPECIAL REPORT, *supra* note 120, at 1.

experienced emotional and verbal abuse, 61% experienced physical violence, and 11% experienced sexual abuse.¹³¹ In all of 2020, the Hotline received over 180,000 reports of emotional and verbal abuse, with 96% of contacts reporting that they were experiencing this type of harm.¹³² Further, 64% of reports involved physical violence, adding up to over 120,000 contacts, and 12% reported sexual abuse, accounting for more than 23,000 of the Hotline's reports.¹³³

Further, in the first sixty days of the pandemic, 24% of the Hotline's contacts reported experiencing economic and financial abuse.¹³⁴ In total, 27% of reports involved economic and financial abuse, making up over 51,000 reports.¹³⁵ Moreover, reported instances of financial abuse increased from 27% prior to the pandemic to 35% after the start of the pandemic.¹³⁶ The Hotline reported, for example, a contact involving a disabled person who lost their job due to COVID-19 who reported that their partner stole their medication and their disability check.¹³⁷ Furthermore, some victims of domestic violence never actually received their stimulus checks because the money ended up with their abusers.¹³⁸ One person stated that their ex-husband falsely claimed them as a dependent on their tax returns, leaving them ineligible for the stimulus check and unable to afford a new home.¹³⁹ Another victim reported that their abuser tried to deceive them by saying that \$60 was half of the stimulus check.¹⁴⁰

¹³¹ *Id.* at 2.

¹³² NDVH 2020: A YEAR OF IMPACT, *supra* note 121.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ NDVH COVID-19 YEAR IN REVIEW, *supra* note 116, at 3.

¹³⁷ *Id.*

¹³⁸ Meera Jagannathan & Andrew Keshner, *Domestic abusers are taking survivors' stimulus checks — and lawmakers want the IRS to do something about it*, MARKETWATCH (Aug. 4, 2020, 5:25 AM), <https://www.marketwatch.com/story/my-abusive-soon-to-be-ex-husband-is-withholding-my-half-of-the-stimulus-check-why-some-domestic-violence-survivors-still-havent-gotten-relief-payments-2020-07-23>.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

C. Escaping Made More Difficult

Moreover, attempting to seek help or escape from abusers was made even more difficult by the pandemic. One person reported that they were afraid to go to a shelter to leave their abuser because they did not want to contract COVID-19.¹⁴¹ While this person eventually decided to leave, they were unable to go to a shelter because all of the local shelters were either closed down or completely full due to COVID-19.¹⁴² Another caller reported being unable to remove the abuser from their home because courts were closed down due to the pandemic.¹⁴³ Many victims were “forced to move back in with their abusers after finding themselves having to choose between being abused or being homeless.”¹⁴⁴ In addition, the pandemic caused education and job opportunities to become less accessible and closed childcare facilities, so victims had a harder time finding the means to be able to leave their abusers.¹⁴⁵ Overall, the pandemic made it even more difficult for victims to escape, especially because social isolation separated victims from family and friends.¹⁴⁶

IV. HOW THE UNITED STATES SHOULD RESPOND

Domestic violence and online abuse have long been issues in the U.S., but the COVID-19 pandemic has exacerbated them. The U.S. must take action to combat the Shadow Pandemic and protect women across the nation. In fact, the U.S. is obligated to fight this issue under international human rights law due to its ratification of multiple international human rights treaties.¹⁴⁷

¹⁴¹ NDVH COVID-19 YEAR IN REVIEW, *supra* note 116, at 5.

¹⁴² *Id.*

¹⁴³ NDVH COVID-19 SPECIAL REPORT, *supra* note 120.

¹⁴⁴ Alaa Elassar, *The coronavirus is making it harder for domestic violence victims to find a place to live, a study shows*, CNN (Sept. 22, 2020, 12:03 PM), <https://www.cnn.com/2020/09/22/us/domestic-violence-victims-homeless-coronavirus-scen-trnd/index.html>.

¹⁴⁵ *See id.*

¹⁴⁶ *Id.*

¹⁴⁷ *See* International Convention on Civil and Political Rights, *ratified* June 8, 1992, 1996, 999 U.N.T.S. 171 (Article 3 states that “The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of

A. National Action Plans

The U.S. President has discussed plans to create a national action plan to end domestic violence and online harassment. Multiple countries already have national action plans in place to address this issue, including Australia and South Africa. In order to create a comprehensive national action plan, the U.S. should draw upon the work of those two countries.

1. Australia's National Action Plan

Australia created the *National Plan to Reduce Violence against Women and their Children 2010-2022*, a four-part plan that establishes a course of action to tackle domestic violence over the course of twelve years.¹⁴⁸ The first part of the plan, called the “First Action Plan: Building a Strong Foundation 2010-2013”, established “national-level infrastructure to inform future policy and service delivery” and community engagement to reduce domestic violence.¹⁴⁹ The “Second Action Plan: Moving Ahead 2013-2016”, involved jurisdictions committing to violence prevention through the national prevention campaign, called Stop it at the Start, and through the creation of a prevention framework to create a cohesive understanding of violence prevention.¹⁵⁰ The Second Action Plan also focused on expanding the nation’s research plan and the National Outcome Standards for

all civil and political rights set forth in the present Covenant.” Among many other relevant articles, Article 7 states, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *ratified* Oct. 21, 1994, 1465 U.N.T.S. 85. *See also* Convention on the Elimination of All Forms of Discrimination Against Women, *signed* July 17, 1980, 1249 U.N.T.S. 13 which has been signed but not ratified by the United States meaning the country must refrain from acting in a way that would defeat the object and purpose of the treaty. *See What is the difference between signing, ratification and accession of UN treaties?*, DAM HAMMARSKJÖLD LIBR., ask.un.org/faq/14594 (last visited Sept. 30, 2021).

¹⁴⁸ COUNCIL AUSTRALIAN GOV'TS, NATIONAL PLAN TO REDUCE VIOLENCE AGAINST WOMEN AND THEIR CHILDREN: INCLUDING THE FIRST THREE-YEAR ACTION PLAN, at foreword (n.d.), https://www.dss.gov.au/sites/default/files/documents/08_2014/national_plan1.pdf.

¹⁴⁹ AUSTR. FOURTH ACTION PLAN, *supra* note 80.

¹⁵⁰ *Id.*

Perpetrator Interventions.¹⁵¹ The third part of Australia's action plan, the "Third Action Plan: Promising Results 2016-2019", focused on improving the nation's evidence base and data collections and crisis responses.¹⁵² Finally, the "Fourth Action Plan: Turning the Corner 2019-2022", aimed to improve the country's initiatives, address any gaps caused by the previous plans, and provide a foundation for policies to reduce domestic violence.¹⁵³

Through breaking up the National Plan into four parts, Australia creates a clear plan with a tangible course of action for the reduction of domestic violence. The country focuses on numerous aspects of decreasing domestic violence, specifically prevention, response and support services, and accountability.¹⁵⁴ Further, the Nation Plan makes a point to prioritize supporting the country's minority groups, particularly, Aboriginal and Torres Strait Islander Women and their children.¹⁵⁵ The National Plan has made substantial progress in Australia. Some of the plan's achievements include the establishment of Australia's National Research Organisation for Women's Safety, an independent organization that provides research and evidence to policymakers and practitioners; the implementation of school programs teaching children about healthy and respectful relationships; the increased support and efforts of men in initiatives that reduce violence against women and children; and the improvement of data and analysis to enhance the understanding of the experiences of hard-to-reach and marginalized women.¹⁵⁶

Australia's National Plan recognizes that the online world can be a place where women and children experience violence.¹⁵⁷ The Fourth Action Plan prioritizes responding to sexual violence and sexual harassment and aims to "[s]trengthen the capacity of all sectors to address sexual harassment to ensure women are safe at work, while studying, in public and online."¹⁵⁸ Further, the plan highlights

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 5-6.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 8.

¹⁵⁷ *Id.* at 6.

¹⁵⁸ *Id.*

technology-facilitated abuse as an area of concern, stating that the advancement of technology has led to increased risks for women and children.¹⁵⁹ The plan mentions the dangers of new forms of domestic violence including image-based abuse and stalking.¹⁶⁰ The Third Action Plan lays out important steps to improving the country's response to the unauthorized distribution of intimate material.¹⁶¹ First, the plan calls for the development of "a national portal" that will help women remove "intimate images that are distributed online without their consent."¹⁶² Second, the plan includes the need to work with internet intermediaries to "facilitate consistent and responsive approaches" to removing intimate material.¹⁶³ Third, the country will review its criminal laws to determine their adequacy regarding the unauthorized distribution of intimate materials.¹⁶⁴ Finally, the country plans to raise awareness by providing people with information regarding "the impacts and consequences of distributing intimate material."¹⁶⁵

The Third Plan also established a working group to address sexual violence that included "government and community representatives, academics and service providers."¹⁶⁶ The working group's goal is to determine how well Australia's "services, policies and legislation support victims of sexual violence" and "provide advice on the development of the community initiative and national portal."¹⁶⁷

¹⁵⁹ *Id.* at 34.

¹⁶⁰ *Id.*

¹⁶¹ COMMONWEALTH OF AUSTRALIA, THIRD ACTION PLAN 2016-2019: OF THE NATIONAL PLAN TO REDUCE VIOLENCE AGAINST WOMEN AND THEIR CHILDREN 2010-2022 25 (2016), https://www.dss.gov.au/sites/default/files/documents/10_2016/third_action_plan.pdf [Hereinafter AUSTL. THIRD ACTION PLAN].

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 26.

¹⁶⁷ *Id.*

2. South Africa's National Action Plan

Another country with a national action plan on domestic violence is South Africa. The *National Strategic Plan on Gender-Based Violence and Femicide* focuses on five actions the country plans to implement.¹⁶⁸ The five key interventions include: (1) urgent response; (2) improved access to justice; (3) awareness and prevention campaigns; (4) accountability; and (5) creation of economic opportunities for women who are at an increased risk of experiencing abuse because of poverty.¹⁶⁹ The plan focuses on numerous issues including “the alarming lack of accountability for perpetration of GBVF [(gender-based violence and femicide)] by individuals, by the state and society overall; . . . ineffective and insensitive response to the needs of survivors and those working to support them;” individual and collective trauma that feeds “the normative levels of violence;” an emphasis on comprehensively responding to the “social norms, inequalities and structural drivers that result in the high levels of GBVF the country is facing;” and facilitating a higher level of understanding of GBVF and improving data systems to help effectively implement and understand the impact of the National Strategic Plan.¹⁷⁰

In its national plan, South Africa lives up to its promise of accountability at the highest level by calling out the actions of the government that have harmed women in the fight against domestic violence.¹⁷¹ Further, by recognizing the role of societal norms and collective trauma that impact rates of gender-based violence, South Africa takes aim at the root of the problem with an effective way to prevent violence, rather than just focusing on response. The country’s plan focuses on “women, children, and LGBTQIA+ persons”¹⁷² with specific target groups that encompass a wide array of vulnerable

¹⁶⁸ S. AFR. NATIONAL STRATEGIC PLAN, *supra* note 86, at 3.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 36.

¹⁷¹ *See id.* (“[T]he alarming lack of accountability for perpetration of GBVF by individuals, *by the state and society overall*”) (emphasis added). Here, the National Strategic Plan highlights the shortcomings of the government by mentioning its failure to hold perpetrators accountable.

¹⁷² *Id.* at 38.

people including women of all ages; workers, including domestic, farm, and sex workers; disabled women; transgender women and men; gay men; migrant women who face multiple kinds of violence including from xenophobia; sex trafficking victims; and girls, who face many forms of violence including cyber violence.¹⁷³

South Africa's National Strategic Plan introduces concrete ways to reduce digital abuse. This includes "fast tracking" the Cybercrimes Bill and including cyber violence in the bill to address online violence, adopting zero tolerance policies on cyber violence, and creating a social media accountability framework.¹⁷⁴ Additionally, the plan features desired outcomes for the next decade that stem from these actions. These include website owners adopting zero tolerance cyber violence policies and "interven[ing] and immediately tak[ing] firm action, including moderating comments, publicly condemning perpetrators, reporting them to authorities, or banning such users" who commit acts of digital abuse; "[t]echnology intermediaries adher[ing] to human rights standards to protect women's rights on online platforms and new technologies;" the creation and implementation of cyber-awareness programs; and improving the ability of police, prosecutors, and the judiciary to respond to cyber violence and enforce the relevant laws.¹⁷⁵ South Africa's extensive list of desired outcomes and specific course of action designed to combat cyber violence set a good example for the emphasis that the U.S. should place on digital abuse when creating its National Action Plan.

3. The United States' National Action Plan

In his March 8, 2021 Executive Order, President Biden established the White House Gender Policy Council which will work to "(i) combat systemic biases and discrimination, including sexual harassment . . . (viii) prevent and respond to all forms of gender-based violence; [and] (ix) address responses to the effects of the coronavirus disease 2019 (COVID-19) on women and girls, especially those related to . . . gender-based violence . . ."¹⁷⁶ In addition to those enumerated

¹⁷³ *Id.* at 38-39.

¹⁷⁴ *Id.* at 49, 67, 73.

¹⁷⁵ *Id.* at 89-90, 92.

¹⁷⁶ Exec. Order No. 14020, 86 Fed. Reg. 13797 (Mar. 8, 2021).

objectives, the Council will also create a government-wide National Action Plan to End Gender-Based Violence.¹⁷⁷

Since this is the U.S.'s first national action plan on the issue, the U.S. should learn from the practices of other countries and use their national plans for guidance in order to create strategies that are effective and comprehensive. Australia's and South Africa's national plans against gender-based violence provide the U.S. with adequate blueprints to create its own plan that encompasses women and other affected persons from all backgrounds and abuses of all types.

Both Australia and South Africa's national plans recognize the dangers of technology and the risks it creates for women and children and detail concrete steps that each country plans to take in minimizing this risk.¹⁷⁸ It is integral that the U.S. incorporates a similar course of action in their plan to better hold the government accountable and to provide concrete steps to accomplish the goals of decreasing digital abuse and other forms of domestic violence within the country. For example, Australia's plan calls for a legislative review of criminal laws pertaining to the distribution of intimate material.¹⁷⁹ South Africa's plan suggests "fast tracking of proposed amendments to legislation . . . including the . . . Cybercrimes Bill. . . ."¹⁸⁰ Similarly, the U.S.'s National Action Plan should propose reviewing criminal laws pertaining to digital abuse as well as fast tracking and approving any amendments to Section 230 that would allow online intermediaries to be held accountable for content posted on their sites. Additionally, although the SHIELD Act did not pass, criminalizing the nonconsensual distribution of intimate photos to create more consistent enforcement of nonconsensual pornography laws across the U.S. is an important recommendation that should be highlighted in the plan.

Moreover, the UN Special Rapporteur on violence against women, its causes and consequences has relevant recommendations that support those suggestions. The Special Rapporteur stated that "[s]tates should, in accordance with the principle of due diligence,

¹⁷⁷ *Id.*

¹⁷⁸ AUSTRALIAN FOURTH ACTION PLAN, *supra* note 80, at 34; S. AFR. NATIONAL STRATEGIC PLAN, *supra* note 86, at 12.

¹⁷⁹ AUSTRALIAN THIRD ACTION PLAN, *supra* note 161.

¹⁸⁰ S. AFR. NATIONAL STRATEGIC PLAN, *supra* note 86, at 49.

enact new laws and measures to prohibit new emerging forms of online gender-based violence.”¹⁸¹ It also stated that “[s]tates should ensure that effective measures are taken to prevent the publication of harmful material that comprises gender-based violence against women, and for their removal on an urgent basis. States should adopt, or adapt (as appropriate) their criminal and civil causes of action to hold perpetrators liable.”¹⁸² It even recommends that these laws apply to threats to release “harmful information or content online.”¹⁸³ In its following recommendation, the Special Rapporteur specifically states that “the non-consensual distribution of intimate images, online harassment and stalking” should all be criminalized and these laws “should encompass all elements of this type of abuse, including subsequent ‘re-sharing’ of harmful content.”¹⁸⁴

As mentioned in Australia’s Third Action Plan, it is vital that countries aim to work with internet intermediaries such as social media platforms to quickly remove private materials posted without consent.¹⁸⁵ Likewise, one of the desired outcomes of South Africa’s plan was a “[p]ublic commitment made by technology intermediaries” to “adhere to human rights standards to protect women’s rights on online platforms and new technologies.”¹⁸⁶ In the same manner, the U.S.’s plan should aim to collaborate with online intermediaries, including social media platforms, to monitor the content published on their sites and hold them accountable for any failures to protect women’s rights and privacy.

A crucial aspect of fighting domestic violence is improving law enforcement responses to reports of violence against women and particularly to those reports involving technology-facilitated abuse. One of the goals of South Africa’s plan is to “[s]upport capacity development” of government organizations including law enforcement to properly implement the country’s strategic plan.¹⁸⁷

¹⁸¹ Dubravka Šimonović (Special Rapporteur on violence against women, its causes and consequences), *Online violence against women and girls from a human rights perspective*, ¶ 95, U.N. Doc. A/HRC/38/47 (June 18, 2018).

¹⁸² *Id.* at ¶ 100.

¹⁸³ *Id.*

¹⁸⁴ *Id.* at ¶ 101.

¹⁸⁵ See AUSTL. THIRD ACTION PLAN, *supra* note 161.

¹⁸⁶ S. AFR. NATIONAL STRATEGIC PLAN, *supra* note 86, at 90.

¹⁸⁷ *Id.* at 61.

Australia's plan also mentions the important role that law enforcement plays in combatting violence against women.¹⁸⁸ To that point, the U.S.'s National Action Plan should include strategies, including specialized training, that will help law enforcement adequately respond to instances of online violence. The Special Rapporteur recommends that states "develop specialized, clear, efficient and transparent internal and external protocols and codes of conduct for its law enforcement officials addressing online violence against women to enable them to better understand that online violence . . . warrants a serious, trauma-informed response."¹⁸⁹

Australia and South Africa both dedicated portions of their national plans to discussing and fighting the dangers of violence that minorities face.¹⁹⁰ In fact, Australia dedicates a whole portion of its Third Action Plan to Aboriginal and Torres Strait Islander women and children,¹⁹¹ while South Africa's plan focuses equally on violence against women, children, and LGBTQIA+ people.¹⁹² Furthermore, the Special Rapporteur said that women's "access to technology is also affected by intersectional forms of discrimination based on a number of other factors, such as race, ethnicity, caste, sexual orientation, gender identity and expression, abilities, age, class, income, culture, religion, and urban or rural setting."¹⁹³ The Special Rapporteur highlights that "[w]omen who have multiple identities are often targeted online on the basis of a combination of these factors . . . and women from marginalized groups are particularly targeted by [information and communications technology]-facilitated violence."¹⁹⁴ In the U.S., intersectional discrimination can compound to increase the harm women face. Different minority groups experience domestic violence at alarmingly disproportionate rates. For example, 56% of American Indian and Alaska Native women have experienced sexual

¹⁸⁸ AUSTL. FOURTH ACTION PLAN, *supra* note 80, at 33, 35.

¹⁸⁹ Šimonović, *supra* note 181, ¶ 106.

¹⁹⁰ See AUSTL. THIRD ACTION PLAN, *supra* note 161, at 14; S. AFR.'S NATIONAL STRATEGIC PLAN, *supra* note 86, at 37.

¹⁹¹ AUSTL. THIRD ACTION PLAN, *supra* note 161, at 14.

¹⁹² S. AFR. NATIONAL STRATEGIC PLAN, *supra* note 86, at 17, 37.

¹⁹³ Šimonović, *supra* note 181, ¶ 28 (citing Hum. Rts. Council, Promotion, protection and enjoyment of human rights on the Internet: ways to bridge the gender digital divide from a human rights perspective, ¶ 36, U.N. Doc. A/HRC/35/9 (2017)).

¹⁹⁴ *Id.*

violence in their lifetime and 55% have experienced physical violence.¹⁹⁵ Further, Black and Indigenous women experience the highest rates of homicide and half of all homicides are related to intimate partner violence.¹⁹⁶ Therefore, it is important for the U.S. to incorporate strategies to lessen the impact of violence against women who are members of other minority groups. Much like Australia, the U.S. should work on establishing trauma-informed responses as well as culturally appropriate support programs for minority women who have experienced violence.¹⁹⁷ In attempting to reduce the disproportionate rates experienced by these minority groups, the U.S. should focus on primary prevention strategies including changing social norms and promoting healthy relationships, involving men in initiatives to reduce violence against women, and improving data collection mechanisms to better understand the impact of gender-based violence, and particularly technology-facilitated gender-based violence, on marginalized populations.

Finally, in light of the global pandemic, the U.S. has the opportunity to usher in crisis-specific prevention and response tactics to address the heightened risk of gender-based violence in times of crisis. The UN Secretary General has called for all countries to incorporate gender-based violence prevention into their COVID-19 response plans.¹⁹⁸ Considering the pandemic and its effect on domestic violence, it is crucial for the U.S. to incorporate crisis-specific strategies into its National Action Plan. Training disaster responders to provide trauma-informed care and improving research mechanisms on the impacts of crises on domestic violence are important considerations. Further, the Secretary General mentions many strategies for countries

¹⁹⁵ André B. Rosay, *Violence Against American Indian and Alaska Native Women and Men*, NAT'L INST. JUST. J. 38, 39 (2016), <https://www.ojp.gov/pdffiles1/nij/249822.pdf>.

¹⁹⁶ Emiko Petrosky et al., *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence — United States, 2003–2014*, 66 MORBIDITY & MORTALITY WKLY. REP. 741 (2017).

¹⁹⁷ See AUSTL. THIRD ACTION PLAN, *supra* note 161, at 7, 14-15 (“Aboriginal and Torres Strait Islander communities require trauma-informed responses to violence.”).

¹⁹⁸ António Guterres, “*Make the prevention and redress of violence against women a key part of national response plans for COVID-19*”, UNITED NATIONS, <https://www.un.org/en/un-coronavirus-communications-team/make-prevention-and-redress-violence-against-women-key-part> (last visited Jan. 21, 2022).

to combat this issue including by providing increased investment to online services and civil society organizations, ensuring the continued prosecution of abusers by the judicial system, and broadening the definition of essential services to include shelters.¹⁹⁹

CONCLUSION

Domestic violence has long been an issue that women face, but with the rise in our use of technology and the pandemic's lockdown restrictions, women are more vulnerable to violence than ever before. New forms of technology create new risks for women's rights and make the online world an increasingly dangerous one. The U.S. has a chance to respond with its National Action Plan to End Gender-Based Violence. By learning from the experiences of two countries with extensive national plans to combat violence against women—Australia and South Africa—the U.S. can create a comprehensive plan that recognizes the dangers created by the pandemic and by technological advancements. The U.S. should focus on amending existing legislation to be more consistent across the nation, holding technology intermediaries accountable for failing to create a safe space for women, improving law enforcement techniques and responses, and taking into account the experiences and heightened risks of minority women.

¹⁹⁹ *Id.*