

CUNY Law Review Footnote Forum

December 6, 2014

Recommended citation:

Deborah M. Weissman, *VAWA @ 20: The Politics of Pretext: VAWA Goes Global*, 18 CUNY L. REV. F. 37 (2014), <http://www.cunylawreview.org/vawa-20-building-the-knowledge-base-research-funding-through-vawa/> [<https://perma.cc/73LA-SUKA>].

VAWA @ 20: THE POLITICS OF PRETEXT: VAWA GOES GLOBAL

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The twentieth anniversary of the Violence Against Women Act (VAWA) provides an opportunity to assess the meaning and consequences of the Act. VAWA and its subsequent Congressional reauthorizations represent efforts to protect women from gender-based violence in the realm of domestic politics. But with the introduction of a new bill, VAWA International (I-VAWA), Congress has signaled its intent to expand U.S. influence in the realm of violence against women as a matter of foreign policy. First introduced in 2007, and subsequently re-introduced in each succeeding session of Congress, I-VAWA seeks to “prevent and respond to violence against women and girls around the world, as a matter of basic human rights as well as to promote gender equality, economic growth, and improved public health.”¹ It proposes to “systematically integrate and coordinate” foreign policy and foreign aid programs in order to mitigate the harm caused by violence against women in the world at large.² I-VAWA creates a new office of Global Women’s Issues within the Department of State and establishes the position of Ambassador-at-Large within the U.S. Agency for International Aid (USAID) responsible for global assistance programs. It derives much of its programmatic initiatives from a 2012 document created by USAID entitled “United States Strategy to Prevent and Respond to Gender-Based Violence Globally” (hereinafter 2012 Strategy) which articulates U.S. interests in assuming leadership in efforts to end violence against women: promoting global market economies,

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¹ International Violence Against Women Act of 2013, H.R. 3571, S. 2307, 113th Cong. (2013).

² *Id.*

strengthening national security and defense, and assuring that such form of violence is recognized as a criminal and not cultural act.³

I-VAWA has been touted for its ambitious and holistic approach to a global phenomenon based on a vision of improved status for women and gender equality. Amnesty International and other advocacy groups support the bill for having proclaimed the end of violence against women and girls as a priority of diplomatic and foreign assistance policies.⁴

In fact, I-VAWA is not the first such effort. Rather it represents a continuation of U.S. efforts to mainstream the protection and advancement of women's rights as a facet of foreign policy initiatives. Prior efforts, however, should serve as a cautionary tale: I-VAWA arrives in its current form possessed of a history which has often invoked the condition of women as pretext for interventionist policies.⁵ The call to end gender violence around the world—a goal that people of good will cannot but be sympathetic—is a complex matter, and must be assessed through a historical and critical lens.

Efforts to transplant legal standards from developed countries to less developed countries have been the subject of long-standing critique. Indeed, such transfers are found to have questionable relevance to recipient countries. Legal systems are foundational to the integrity of the nation state and cannot obtain legitimacy except through political consensus and historical continuities.⁶ Although there is no one set of best practices to end gender-based violence, most U.S. initiatives take the form of unilateral directives and treat all women as though they are similarly situated.⁷

Many requirements are impractical to implement and ignore mitigating circumstances, including local customs and cultural practices. Shelter programs, counseling, and the proliferation of criminal sanctions have often been rejected as unsuitable for many victims and may interfere with other systems that have the potential to provide protection against violence.

³ USAID, *United States Strategy to Prevent and Respond to Gender-Based Violence Globally* (2012), <http://www.state.gov/documents/organization/196468.pdf>.

⁴ See *Support the International Violence Against Women Act (I-VAWA)*, AMNESTY INT'L, <http://www.amnestyusa.org/our-work/issues/women-s-rights/violence-against-women/international-violence-against-women-act>.

⁵ See generally Deborah M. Weissman, *The Human Rights Dilemma: Rethinking the Humanitarian Project*, 35 COLUM. HUM. RTS. L. REV. 259 (2004); KRISTIN L. HOGANSON, *FIGHTING FOR AMERICAN MANHOOD* (1998).

⁶ See Deborah M. Weissman, *Remaking Mexico: Law Reform As Foreign Policy*, 35 CARDOZO L. REV. 1471, 1495 (2104).

⁷ *Id.*; see also Leigh Goodmark, *Exporting Without License: The American Attempt to End Intimate Partner Abuse Worldwide*, COMPARATIVE PERSPECTIVES ON DOMESTIC VIOLENCE: LESSONS FROM EFFORTS WORLDWIDE (Rashmi Goel & Leigh Goodmark, eds. Oxford University Press, publication forthcoming 2015).

This essay contributes to the critical analysis by considering concerns specific to I-VAWA. First, it critiques the role of USAID as the principal implementing agency. Next, it assesses those provisions of the bill that impose policies and practices abroad that are not observed at home. To make the larger point: the United States is neither capable nor deserving of its self-appointed global leadership on the issue of violence against women.

USAID was established through the Foreign Assistance Act of 1961 to “strengthen friendly foreign countries by encouraging the development of their free economic institutions, productive capabilities, and by eliminating barriers to the flow of private investment capital.”⁸ In addition to promoting “free market economies,” USAID has worked to advance other foreign policy objectives related to national security, military intervention, and geopolitical interests.⁹ USAID has engaged in covert operations, particularly in Latin America; its employees have been expelled for efforts at subverting governments out of favor with the United States.¹⁰ The agency works primarily through U.S.-based firms with which it contracts through no-bid processes that lack transparency and often cost more than if the tasks had been allocated to local agents in the countries where they establish aid programs.¹¹

I-VAWA is not USAID’s first foray into directing assistance programs targeting women. USAID has focused on women in development and has asserted that its programs promote gender equality. However, USAID has been criticized for promoting women’s economic endeavors in ways consistent with U.S. neoliberal economic needs rather than supporting fundamental structural change and improvement in the lives of most women.¹² It has pursued “family planning” initiatives in poor countries by funding and promoting birth control methods described as racialized interventions through coercive and duplicitous means.¹³ It has required foreign recipients of USAID funds to agree not to provide abortions, refer clients to abortion services, or seek to liberalize abortion laws with any

⁸ H.R. REP. NO. 87-1088, SEC. 102 (1961) (Conf. Rep.), available at http://www.cgdev.org/doc/Rethinking%20Aid/foreign_assistance_act_of_1961.pdf.

⁹ See Weissman, *supra* note 6, at 1489-91 (reviewing U.S. aid initiatives in Latin America).

¹⁰ See, e.g., William Neuman, *U.S. Agency is Expelled from Bolivia*, N.Y. TIMES, May 2, 2013, at A8.

¹¹ See Roger Bate, *The Trouble With USAID*, AEI (May 24, 2006), <http://www.aei.org/article/health/the-trouble-with-usaid/>.

¹² Jane L. Parpart, *Who is the ‘Other’?: A Postmodern Feminist Critique of Women and Development Theory and Practice*, 24 DEVELOPMENT AND CHANGE 439, 449 (1993).

¹³ See Kalpana Wilson, RACE, RACISM, AND DEVELOPMENT 84-85 (2012) (describing the relationship between U.S. global population control efforts and U.S. corporate capital).

funds including non-USAID resources.¹⁴ It has compelled recipients to adopt policies opposing sex work, notwithstanding evidence that sex workers are central to efforts to prevent HIV.¹⁵ Moreover, USAID has misappropriated the skills and co-opted the resources of local/foreign NGOs with whom it partners. In Iraq, for example, USAID declared that local women's NGOs were a part of the U.S. "combat team" and an arm of the U.S. government, thus requiring such groups to align themselves with U.S. national security policies rather than the needs of the constituent population.¹⁶ As a result, as one researcher has written, "[l]ocal people trained in the servicing of the aid industry have been rendered unsuitable to work for their own governments."¹⁷

I-VAWA's provisions act to exacerbate these problems. Politicians justify support for the Act as a means to minimize the opportunity for terrorist "breeding grounds."¹⁸ Indeed, the 2012 Strategy document is embedded in U.S. national security strategy. Specific provisions of I-VAWA promote enhanced militarization as an approach to ending violence against women.¹⁹ The 2012 Strategy document emphasizes criminalization initiatives as the principal feature of legal reform, notwithstanding the well-documented failures of the U.S. criminal justice system to respond to women, particularly poor women and women of color.²⁰ Policy decisions are crafted in Washington, presumptively the center of "expertise and capacity to prevent and respond to gender-based violence globally."²¹ I-VAWA requires the implementation of programs in low-income countries, and continues the practice of treating poor women and poor countries as without capacity.²² No less troubling, the U.S. government will monitor the performance of recipients, and thus intervene in local and state governance issues in problematic ways.

¹⁴ Global Gag Rule, POPULATION ACTION INT'L (Dec. 5, 2014), <http://populationaction.org/topics/global-gag-rule/>. The Rule has been imposed and rescinded a number of times and its future dependent on U.S. presidential politics.

¹⁵ See Aziza Ahmed, *Feminism, Power, and Sex Work in the Context of HIV/AIDS: Consequences for Women's Health*, 34 HARV. J.L. & GENDER 225, 249 (2011).

¹⁶ HAIFA ZANGANA, *CITY OF WINDOWS: AN IRAQI WOMAN'S ACCOUNT OF WAR AND RESISTANCE* 82 (2007).

¹⁷ Ruth Mandel, *Seeding Civil Society*, in POSTSOCIALISM: IDEALS, IDEOLOGIES AND PRACTICES IN EURASIA 279, 287 (C.M. 40anne d., 2002).

¹⁸ *Members of House and Senate Stand in Support of Landmark Legislation to Combat Violence Against Women*, TOM HARKIN (Feb. 4, 2010), <http://www.harkin.senate.gov/press/release.cfm?i=322101>.

¹⁹ H.R. 3571, 113th Cong. § 3(7); S. 2307 113th § 3(7).

²⁰ See 2012 Strategy Document, *supra* note 3, at 26 (four of the five recommendations for legal reform pertains to the criminal justice system).

²¹ *Id.* at 14.

²² H.R. 3571, 113th Cong. § 111(e); S. 2307 113th § 111(e).

I-VAWA and the 2012 Strategy are informed with the premise that the United States is uniquely situated to provide global leadership on the issue on violence against women. In fact, the United States is an exceptional outlier on the very issues about which it claims moral authority. On gender matters generally, the United States is one of a few countries that has failed to ratify the international Convention to End Discrimination Against Women and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women. While I-VAWA promises to disrupt the relationship between poverty and gender violence, Washington has failed to ratify the Covenant on Economic, Social, and Cultural Rights which specifies the obligations of state parties to attend to such issues, particularly for poor women. Nor does the U.S. Constitution provide for economic rights or embrace equality for women. A comparison of U.S. court decisions with decisions from the European Court of Human Rights demonstrates the way in which U.S. law falls short of protecting women from violence.²³ I-VAWA further pledges attention to the needs of persons with disabilities and refugees although the United States has declined to ratify the Convention on the Rights to Persons With Disabilities. Compared with other countries, the United States has failed to protect women seeking asylum based on the claims of domestic violence.²⁴ The United States has not signed the Rome Treaty which has recognized that sexual violence may constitute a war crime or a crime against humanity. It thus becomes impossible to reconcile U.S. claims that it possesses “expertise and capacity to prevent and respond to gender-based violence globally” with U.S. actions.

Well-meaning observers may be loath to criticize programs designed to provide relief to women as victims. But U.S. foreign policy endeavors in the name of saving women and I-VAWA’s problematic provisions cannot but raise concerns about well-intended efforts and the inclination to support them. U.S. national interests are often incompatible with prevention of the harms the United States professes to remedy. Foreign assistance programs such as I-VAWA often obscure structural problems and frequently ignore the fact that violence against women may be exacerbated by market economies and prototypical criminal justice responses.

There are alternative models of global efforts to address violence against women. Multilateral approaches, for example, allow for greater opportunity to adopt and adapt best practices from around the world at

²³ See generally Benedetta Faedi Duramy, *Judicial Developments in the Application of International Law to Domestic Violence*, 21 AM. U. J. GENDER SOC. POL’Y & L. 413 (2012).

²⁴ See Karen Musalo, *Revisiting Social Group and Nexus in Gender Asylum Claims: A Unifying Rationale for Evolving Jurisprudence*, 52 DEPAUL L. REV. 777 (2003).

large. Transnational networks also provide a means for global democratic participation in the development of remedies for victims of violence.²⁵ International efforts and transborder networks are more likely to create socio-culturally relevant practices through which to end violence against women.

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²⁵ Nancy Fraser, *Reframing Justice in a Globalized World*, 36 NEW LEFT REVIEW 69, 70–87 (2005). The Encuentros in Latin America provide an example of feminist transborder organizing and participatory framing. See Sonia Alvarez et al., *Encountering Latin American and Caribbean Feminisms*, 28 SIGNS 537, 538 (2003).