

# DOMESTIC VIOLENCE IN GHANA: THE OPEN SECRET

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*Just two weeks ago a woman came outside the church to sell charcoal. I saw that she wasn't looking her best. I asked what was wrong. She said she sold some charcoal on credit. Her husband beat her mercilessly. You could see from her look that she was suffering. I asked her, does she cook for the man? She said yes, she has to. She has to cook because if something happens, they ask what the woman did. So her rule after a beating is that she prepares the food. We believe that no matter what is going on, for the sake of [the marriage], women [must] endure so many cruelties from men. So I told her she should be praying for her husband.<sup>1</sup>*

—Religious Leader

## I. INTRODUCTION

Domestic violence is a worldwide problem that is increasingly drawing the attention of citizens, states, and the international community. Recent measures taken by the United Nations to address violence against women, including the adoption of the Declaration on the Elimination of Violence Against Women (DEVAW) and the creation of a U.N. Special Rapporteur on Violence Against Women, demonstrate the growing global understanding that the international community recognizes that systemic domestic violence constitutes a violation of women's human rights. DEVAW affirms that "violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms."<sup>2</sup> Similarly, the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW Committee) has asserted that under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), "[t]he definition of discrimination [against women] includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women

1. Interview with Religious Leader, (Mar. 12, 2003).

2. Declaration on the Elimination of Violence against Women, G.A. Res. 48/104, 48 U.N. GAOR, Supp. (No. 49) at 217, U.N. Doc. A/48/49 (Dec. 20, 1993) [hereinafter DEVAW].

disproportionately.”<sup>3</sup>

Ghana is not excepted from the global problem of widespread domestic violence. An in-depth study on violence against women conducted by The Gender Studies and Human Rights Documentation Centre (Gender Centre) determined that one in three Ghanaian women suffer from physical violence at the hands of a past or current partner.<sup>4</sup> In addition, three in ten Ghanaian women admit to having been forced to have sex by their male partner,<sup>5</sup> and twenty-seven percent of women have experienced psychological abuse, including threats, insults, and destruction of property.<sup>6</sup>

Ghanaian women face powerful obstacles to reporting violence, which stem from cultural beliefs that domestic violence is a private, family matter that should be addressed outside of the criminal justice system. Despite these obstacles, women continue to report incidents of domestic violence to the newly created Women and Juvenile Unit (WAJU) of the Ghanaian police force in record numbers.<sup>7</sup> Notwithstanding the increasing openness about domestic violence in Ghanaian society, many Ghanaians continue to believe that cases of domestic violence must be resolved within the family, and Ghana’s criminal justice system continues to treat crimes of domestic abuse less seriously than other violent crimes.

Due to the determined efforts of Ghanaian women’s rights advocates, who have worked to increase public awareness about domestic violence through initiatives such as the “16 Days of Activism” in 2002, speaking engagements on radio and television programs, and national advertising campaigns, Ghana is beginning to recognize that domestic violence is a serious problem. In collaboration with the NGO, Leadership and Advocacy for Women in Africa— Ghana Alumnae, Inc. (LAWA-Ghana), and students from the University of Ghana Law School, a group of students, faculty, and human rights experts from the Georgetown University International Women’s Human Rights Clinic conducted a fact-finding mission to investigate the problem of domestic violence in Ghana during March 2003. The delegation conducted interviews with numerous public officials and private individuals, including police officers, medical professionals, judges, prosecutors, religious and community leaders, women’s rights advocates, and others. The group collected information about the governmental response to domestic violence and analyzed the current state of Ghanaian law, international

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3. Convention on the Elimination of All Forms of Discrimination against Women, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, General Recommendation 19, Violence against Women (11th Sess., 1992), U.N. Doc. HRI/GEN/1/Rev.1 (1992), available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19> (last visited Feb. 1, 2006) [hereinafter CEDAW General Recommendation 19].

4. DORCAS COKER-APPIAH & KATHY CUSACK, VIOLENCE AGAINST WOMEN AND CHILDREN IN GHANA: REPORT OF A NATIONAL STUDY ON VIOLENCE 65 (1999).

5. *Id.*

6. *Id.*

7. Interview with WAJU Investigator, in Accra, Ghana (Mar. 11, 2003).

law, and the laws of numerous countries in Africa, Europe, Asia, and North and South America.

The timing of this fact-finding mission coincided with a critical moment in Ghana. The Parliament was considering and continues to consider, a proposed Domestic Violence Bill,<sup>8</sup> which would institute new criminal sanctions for perpetrators and civil remedies for domestic violence victims, as well as significantly improve Ghana's compliance with its international human rights obligations. In its research and analysis, the delegation used the proposed bill's definition of domestic violence. Accordingly, in this report, the term "domestic violence" encompasses acts or threats of physical, sexual, economic or psychological abuse, when such acts or threats occur within the context of a previous or existing domestic relationship.<sup>9</sup> Although the Domestic Violence Bill characterizes domestic violence as occurring within a broad range of intimate and familial relationships, the delegation focused on violence between spouses, co-habitants, and other couples in romantic relationships, recognizing that the majority of domestic violence incidents involve violence between spouses or those involved in romantic relationships.

#### A. SUMMARY OF FINDINGS

Domestic violence is a pervasive problem the Ghanaian government has only begun to acknowledge and address. A comprehensive nation-wide study found that one in three Ghanaian women have suffered from physical violence at the hands of a past or current partner.<sup>10</sup> During the fact-finding investigation, interviewees repeatedly confirmed the dramatic scope of the problem of domestic violence in Ghana.

Under international human rights law, the Ghanaian government is obligated to prevent, investigate, and punish domestic violence.<sup>11</sup> As the government has begun to recognize the widespread nature of domestic violence in Ghana, it has taken some important first steps towards meeting those obligations. Most importantly, it has created the specialized Women and Juvenile Unit (WAJU) within its police force and equipped WAJU officers with training on domestic violence and related matters.

Nonetheless, Ghana has a long way to go to fully address domestic abuse. Pressing problems include: deficiencies in the Criminal Code; under- or discriminatory enforcement of existing laws; the influence of traditional attitudes about domestic violence on state officials such as police, judges and other government employees; and insufficient resources in the primary agencies

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8. For the text of the Proposed Domestic Violence Bill see Ghana Domestic Violence Act 2003, available at [http://www.wildaf-ao.org/eng/print.php3?id\\_article=406](http://www.wildaf-ao.org/eng/print.php3?id_article=406) [hereinafter Domestic Violence Bill].

9. *Id.* at §1.

10. COKER-APPIAH & CUSACK, *supra* note 4, at 65.

11. *See, e.g.*, DEVAW, *supra* note 2, art. 4(c).

charged with responding to domestic violence.

Presently, the Criminal Code and civil laws often fail to hold perpetrators accountable for their violence and deprive domestic violence victims of an effective legal remedy. Marital rape is legal under the Criminal Code. Other Criminal Code provisions applicable to acts of domestic violence are under-enforced or enforced in a manner that fails adequately to sanction men for domestic violence. Government officials often promote mediation of criminal domestic violence cases in lieu of resolution through formal legal mechanisms. This practice can deprive domestic violence victims of the opportunity to pursue state-sanctioned punishment for the crimes committed against them and risks placing victims in danger because most already have attempted to informally mediate their problems within families, churches, or traditional bodies and have come to the state because mediation has failed to end the violence. Moreover, civil law governing child maintenance fails to penalize men for acts of economic abuse, such as depriving a spouse of necessities like food and shelter, and civil law regulating divorce limits women's ability to leave abusive relationships.

Attitudinal problems among the officials responsible for law enforcement aggravate the current deficiencies in Ghanaian law. Consistent with traditional beliefs, judges and police officers often legitimize domestic violence by reinforcing unequal gender roles, for example by blaming women for their "role" in "provoking" violence. Furthermore, many officials insist that domestic violence is a private, family matter. Such beliefs lead some police and judges to pressure women to withdraw domestic violence complaints from the formal justice system and to encourage women to reconcile with their abusers.

Moreover, a resource shortage in the primary agencies responsible for addressing domestic violence also hinders the Ghanaian government's response. WAJU, the Commission on Human Rights and Administrative Justice (CHRAJ), the Department of Social Welfare, and state medical facilities are under-funded and overworked. NGOs fill critical gaps in services for domestic violence victims, but lack sufficient resources to meet the ever-growing demand.

Ghana is a party to the major international and applicable regional treaties concerning human rights, including the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW),<sup>12</sup> the International Covenant on Civil and Political Rights (ICCPR)<sup>13</sup> and its Optional Protocol,<sup>14</sup> the

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12. Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, art. 15 (Sept. 3, 1981) [hereinafter CEDAW]. Ghana signed CEDAW on July 7, 1980 and ratified it on January 2, 1986. CEDAW: State Parties, <http://www.un.org/womenwatch/daw/cedaw/states.htm>. Additionally, Ghana signed the Optional Protocol to CEDAW on February 24, 2000. CEDAW: Signatures to and Ratifications of the Optional Protocol, <http://www.un.org/womenwatch/daw/cedaw/protocol/sigop.htm>.

13. <http://www1.umn.edu/humanrts/instree/b3ccpr.htm>.

14. The Optional Protocol to the ICCPR, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966). Signed and ratified by Ghana on September 7, 2000, the Optional Protocol establishes an individual right of petition to the Human Rights Committee. Optional Protocol to

International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>15</sup> the Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (the “Convention Against Torture”),<sup>16</sup> and the African Charter on Human and People’s Rights (the “African Charter”).<sup>17</sup> Having ratified these treaties, Ghana has an affirmative obligation to prevent, investigate and punish human rights abuses occurring in the form of domestic violence. Ghana carries similar responsibilities under its own Constitution to respect and uphold women’s rights.<sup>18</sup> Ghana must act to redress the deficiencies in its law and the impediments to law enforcement in the context of domestic violence.

## B. RECOMMENDATIONS

To fulfill its obligations under international law and the Ghanaian Constitution, Ghana should take the following measures to protect domestic violence victims’ rights:

1. Ghana should join the global trend and pass the proposed Domestic Violence Bill. The Bill creates additional criminal and civil legal remedies for domestic violence, and provides for systematic police training and standard procedures for responding to reports of abuse.
2. Ghana should require police, CHRAJ, and other state entities to use a screening mechanism for mediation of domestic violence cases.
3. Ghana should enhance the ability of the state and the community to respond appropriately to domestic violence by building the capacity and resources of WAJU, the Department of Social Welfare, CHRAJ, state medical facilities, and NGOs, and expanding training programs and education campaigns.

## II. THE PARAMETERS OF THE PROBLEM: DOMESTIC VIOLENCE IN GHANA

Domestic violence plagues women throughout the world. To better understand the nature and scope of domestic violence in Ghana, the delegation explored with interviewees the societal causes and complicating factors contributing to the problem, as well as the ways in which the state,

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International Covenant on Civil and Political Rights, <http://www.ohchr.org/english/countries/ratification/5.htm>.

15. <http://www1.umn.edu/humanrts/instree/b2esc.htm>.

16. <http://www1.umn.edu/humanrts/instree/h2catoc.htm>.

17. African [Banjul] Charter on Human and Peoples’ Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (Oct. 21, 1986), available at <http://www.africa-union.org/> (click on “Documents,” then “Treaties, Conventions & Protocols,” then “African Charter on Human and Peoples’ Rights”) [hereinafter African Charter]. Ghana acceded to the African Charter on Jan. 24, 1989. *Id.* (click on “Documents,” then “Treaties, Conventions & Protocols,” then “African Charter on Human and Peoples’ Rights-Countries which have Signed, Ratified/Adhered”).

18. GHANA CONST. ch. V, art. 12.



private agencies, and individuals that frequently come into contact with domestic violence victims are responding to the problem. Interviewees revealed several areas in which progress is needed.

A. CAUSES AND COMPLICATING FACTORS OF DOMESTIC VIOLENCE IN GHANA:  
TRADITIONAL BELIEFS, ECONOMIC DEPENDENCE, AND CUSTOMARY PRACTICES  
PERPETUATE DOMESTIC VIOLENCE

*Many times people are living together but there is no peace in the relationship. Violence is intimidation of women. Sometimes men use violence to make you shut up and let them do whatever. Others want to kick you out so they can bring another in. The third kind have psychological issues: perceptions of male superiority and women's inferiority.*

—Women's Rights Advocate<sup>19</sup>

Any discussion of domestic violence within a particular society must address the factors that contribute to and complicate the problem. Conversations with interviewees revealed that certain factors are particularly relevant in Ghana, including gender roles, the traditional attitude that domestic violence is a private family matter, economic dependence, and infidelity.

1. Widespread Acceptance of Stereotypical Gender Roles Perpetuates Domestic Violence by Discouraging Reporting and Trivializing Abuse

*These human rights issues were not issues for Ghanaian people until recently. We were all victims—I had been a victim and didn't know. I had been brought up as a woman and thought this was the way it is.*

—Member of Parliament<sup>20</sup>

Widely shared perceptions that women are inferior to men and are obligated to submit to and remain subordinate to men perpetuate domestic violence in Ghana. As the UN Special Rapporteur on Violence Against Women has explained, gender role stereotyping is used to justify domestic violence based on constructions of sexual identity:

Masculinity gives a man power to control the lives of those around him, especially women. The construction of femininity . . . requires women to be passive and submissive, to accept violence as part of women's

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19. Interview with Women's Rights Advocate #6, in Accra, Ghana (Mar. 11, 2003). Because the delegation interviewed many women's rights advocates, all of whom are generically referred to as "Women's Rights Advocate" to preserve anonymity, each interviewee in this category has been assigned a number to distinguish one from another. Numbering has not been done with any other category of interviewee.

20. Interview with Member of Parliament, in Accra, Ghana (Mar. 14, 2003).

estate . . . [and to link their] identity and self-esteem to [their] relationship to [their] husband[s], father[s] or son[s].<sup>21</sup>

According to the 1991 and 2005 reports submitted by Ghana to the CEDAW Committee, women are considered inferior to men within all ethnic groups in Ghana.<sup>22</sup> Moreover, it is widely accepted in Ghanaian society that husbands may “discipline” their wives,<sup>23</sup> and that women “provoke” violence by “nagging” and acting in other stereotypically female ways. As a result of these beliefs, women and the community at large often accept violence and make women victims feel embarrassed to discuss violence because beatings demonstrate that a woman has been a bad wife. These attitudes impair the government’s ability to acknowledge and address domestic violence because they discourage women from reporting violence or seeking help, and result in inadequate responses by government authorities and community members when women do report abuse.

*a. The Acceptance of Stereotypical Gender Roles Justifies Violence: Men Are Entitled to Control Women, and Women Must Submit to Men*

*Some people think that, well, she is my wife, she needs to be corrected.*  
—CHRAJ Official<sup>24</sup>

*Some of the women [victims] are very troublesome.*  
—WAJU Investigator<sup>25</sup>

Ghanaians’ common acceptance of stereotypical gender roles, rooted in inequality, normalizes domestic violence as an appropriate mechanism for controlling and protecting women. In Ghana, women are perceived to be inferior and “in need of protection,”<sup>26</sup> and therefore are placed “under authority and control of someone, usually male, throughout [their] li[ves].”<sup>27</sup> Male privilege includes the right to “discipline” or “chastise” women under a male’s control, and

21. Preliminary Report Submitted by the Special Rapporteur on Violence Against Women, Its Causes and Consequences, para. 64, (Nov. 22, 1994), at <http://www.unhcr.ch/Huridocda/Huridoca.nsf/> (click on “By Symbol,” then “Search by Symbol Number,” then enter E/CN.4/1995/42) [hereinafter Preliminary Report].

22. Ghana’s Combined Third, Fourth and Fifth Periodic Country Reports, Submitted Under Article 18 of CEDAW, U.N. Doc. CEDAW/C/GHA/3-5, at 13 (2005) [hereinafter Ghana’s Combined CEDAW Report]; Ghana’s Initial and Second Periodic Country Reports, Submitted Under Article 18 of CEDAW, U.N. Doc. CEDAW/C/GHA/1-2, at 56 (1991); *see also* Report of the Committee on the Elimination of Discrimination Against Women: Consideration of Ghana’s Combined Initial and Second Periodic Reports, U.N. Doc. A/47/38, at 34 (1992) [hereinafter Ghana’s CEDAW Report].

23. COKER-APPIAH & CUSACK, *supra* note 4, at 120.

24. Interview with CHRAJ Official, in Accra, Ghana (Mar. 10, 2003).

25. Interview with WAJU Investigator, *supra* note 7.

26. Ghana’s Combined CEDAW Report, *supra* note 22, at 13; Ghana’s CEDAW Report, *supra* note 22, at 10.

27. Ghana’s CEDAW Report, *supra* note 22, at 10.

Ghanaians often view beating as an acceptable way to “train . . . and bring . . . [women] to order.”<sup>28</sup> Because of the “discipline” concept, domestic violence is often completely invisible. In its study of domestic violence in Ghana, the Gender Centre notes that “[t]he right to chastise, correct or discipline [is] contested by very few . . . [and] [f]or some, this also mean[s] that there [is] no such thing as violence against women and children.”<sup>29</sup>

Often, Ghanaians understand “disobedience” to mean a woman’s failure to fulfill her gender role. If a woman fails to perform her household duties, to be sexually available to her husband, or to seek her husband’s permission to undertake an activity, her failure is grounds for a beating.<sup>30</sup> A woman may also be considered to “provoke” violence by acting-out of her gender role in ways including: asking for money,<sup>31</sup> nagging,<sup>32</sup> using abusive or insulting words like “he’s a stupid man,”<sup>33</sup> “a foolish man,”<sup>34</sup> “a useless man,”<sup>35</sup> or “an irresponsible man,”<sup>36</sup> initiating physical contact,<sup>37</sup> having generally “bad behavior and attitude,”<sup>38</sup> unreasonably refusing to do housework,<sup>39</sup> not cooking the husband’s food on time,<sup>40</sup> not responding appropriately to a co-wife coming to her house,<sup>41</sup> refusing sex,<sup>42</sup> belonging to a different church from the man,<sup>43</sup> singing insinuating songs,<sup>44</sup> engaging in jealousy, unfaithfulness, disrespect, or laziness, or complaining about the same characteristics in her husband.<sup>45</sup>

Women also are perceived to “provoke” abuse by being too independent and threatening their husbands’ superiority. This is true even if a woman’s independence is born of her need to supplement her husband’s inadequate income. A community leader articulated the conflict between the demands of financial need and gender role conformity as follows:

[Women] who do their own trading create conflicts. Some men are not able to earn as much as can cater adequately to the home. The wife then feels that she has to supplement the man’s earnings and begins trading

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28. COKER-APPIAH & CUSACK, *supra* note 4, at 15.

29. *Id.*

30. *Id.*

31. Interview with Women’s Rights Advocate #5, in Accra, Ghana (Mar. 11, 2003).

32. Interview with District Court Judge, in Accra, Ghana (Mar. 13, 2003).

33. Interview with Religious Leaders, in Ho, Ghana (Mar. 12, 2003).

34. Interview with Circuit Court Judge, in Ho, Ghana (Mar. 12, 2003).

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. Interview with Traditional Healer, in Ho, Ghana (Mar. 12, 2003).

41. *Id.*

42. Interview with WAJU Investigator, *supra* note 7.

43. Interview with Religious Leaders, *supra* note 33.

44. Interview with Religious Leader, in Accra, Ghana (Mar. 13, 2003).

45. *Id.*

or earning money by other means. Often the woman will leave home early and come back late and this causes problems.<sup>46</sup>

In these ways and others, gender role stereotyping is used to justify domestic violence in Ghana as an appropriate mechanism of male control over women.

*b. The Acceptance of Stereotypical Gender Roles Discourages Victims from Reporting Abuse and Inhibits the Response of the Community and the State to Domestic Violence*

*Women are embarrassed to talk about domestic violence. Instead they discuss other problems like maintenance and mistresses.*

—Women’s Rights Advocate<sup>47</sup>

*For peace to prevail, the woman must submit.*

—Religious Leader<sup>48</sup>

The widespread acceptance of gender roles and the corresponding belief in women’s duty to submit discourages victims from reporting abuse and inhibits community and state responses to reports of abuse because violence is viewed as “normal.” The common understanding that domestic violence is “provoked” by a woman’s failure to fulfill her gender role and be submissive discourages victims from seeking help from government institutions because they view violence as deserved or shameful.<sup>49</sup> Many victims believe they have brought the violence on themselves by failing to live up to community expectations of what is required of a “good wife.” Moreover, the social stigma surrounding domestic violence is so strong that the experience of abuse often causes a victim to feel “embarrassment in being a ‘bad’ wife, according to her husband’s standards . . . .”<sup>50</sup> As a result, victims may modify their own conduct in an attempt to prevent or stop the violence, when instead the batterers should be changing their improper and illegal behavior.<sup>51</sup>

Concomitantly, community expectations about gender roles and women’s duty to submit prevents women from obtaining help with abuse because community members and state actors often trivialize reports of domestic violence and dissuade victims from taking action in response to abuse. According to a women’s rights advocate, “Usually, if you talk to your family, they will tell you to

46. Interview with Chiefs, in Ho, Ghana (Mar. 12, 2003).

47. Interview with Women’s Rights Advocate #6, *supra* note 19.

48. Interview with Religious Leaders, *supra* note 33.

49. COKER-APPIAH & CUSACK, *supra* note 4, at 79.

50. See Rosemary Ofeibe Ofei-Aboagye, *Domestic Violence in Ghana: An Initial Step*, 4 COLUM. J. GENDER & L. 1, 3 (1994).

51. COKER-APPIAH & CUSACK, *supra* note 4, at 142.

submit.”<sup>52</sup> A family member’s dismissal of a victim’s report of violence as inconsequential can discourage the victim from seeking help from the justice system. In one case described by an interviewee:

A man was living with a woman. He was always beating her, to the point where she had lost all her teeth. She did not want to see the man. The mere sound of his voice put her off. She went to her parents time and time again. They always told her, “That is your husband. Go back to him. You have children.” Nobody was standing behind her and the man took advantage of that situation.<sup>53</sup>

In addition, community leaders such as Queen Mothers, church officials, and traditional healers often respond to reports of abuse by investigating women’s compliance with community expectations regarding gender roles and pressuring women to conform their behavior to community standards. A Queen Mother explained:

Even if you are a professor, and your husband is something less, you must be submissive. If a woman is more capable of maintaining the home and owning property than the man, the authority of the man is slightly broken. When men don’t get respect [violence] happens.<sup>54</sup>

Similarly, a female traditional healer counsels women victims that domestic violence will stop when there is “submission on the part of both [husband and wife], but the woman first.”<sup>55</sup>

Moreover, if a police officer or a judge believes that a victim “provoked” violence by acting too assertively, she may be unable to receive assistance from the justice system even when she attempts to solicit state aid. In extreme cases, police officers themselves may directly inflict violence upon women who have come to a police station:

In one case, a woman was beaten up by six boys on the street. Three boys were arrested, jailed, and released. They continued to harass her. The woman complained to the police again. The desk officer said that the woman complained too much, and beat her up. Other policemen watched and did not help the woman. They eventually picked her up and took her to the hospital.<sup>56</sup>

Community perceptions of proper gender roles constitute serious barriers to

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52. Interview with Women’s Rights Advocate #1, in Accra, Ghana (Mar. 9, 2003).

53. Interview with WAJU Prosecutor, in Accra, Ghana (Mar. 14, 2003).

54. Interview with Queen Mothers, in Ho, Ghana (Mar. 12, 2003).

55. Interview with Traditional Healer, *supra* note 40.

56. Interview with Women’s Rights Advocate #3, in Accra, Ghana (Mar. 10, 2003).

the Ghanaian government's ability to address domestic violence effectively. The expectation that women will submit and the acceptance of violence as appropriate punishment for women's failure to submit, deter women victims from seeking help and prevent community members and state officials from offering assistance with alleviating violence.

## 2. The Widespread Belief that Domestic Violence Is a Private Family Matter Deters and Sometimes Forcibly Precludes Victims from Seeking Outside Assistance with Abuse

*It is better to resolve the issue in the family. Our cultural system is based on the extended family system. Relationships have a ripple effect throughout the family. It is not good for society to go to law enforcement. The family is used to fulfill God's purpose. That is why we do everything to salvage the family.*

—Religious Leader<sup>57</sup>

*People are not aware that domestic violence is an offense that can go to court. They see it as a family matter. It is very hard for a woman to have the guts to send her husband to court.*

—Circuit Court Judge<sup>58</sup>

The widespread belief that domestic violence is a private, family matter often discourages Ghanaian women from reporting domestic violence to the justice system and prevents women from obtaining effective relief from the justice system when they report abuse. Interviewees repeatedly stressed that domestic violence is widely considered a family matter in Ghana.<sup>59</sup> Women face enormous pressure to “settle” domestic violence matters within the family and keep them out of the justice system.<sup>60</sup>

The reasons for this pressure are varied. Interviewees stated that the family is considered paramount in Ghanaian society, and that reporting domestic violence to the justice system often creates tensions within the extended

57. Interview with Religious Leader, *supra* note 44.

58. Interview with Circuit Court Judge *supra* note 34.

59. Interview with Police Officer, in Accra, Ghana (Mar. 10, 2003); Interview with Women's Rights Advocate #4, in Accra, Ghana (Mar. 11, 2003); Interview with WAJU Official, in Accra, Ghana (Mar. 11, 2003); Interview with Nurse, in Accra, Ghana (Mar. 13, 2003); Interview with Religious Leader, *supra* note 44; *see also* COKER-APPIAH & CUSACK, *supra* note 4, at 121 (presenting a range of evidence indicating a general belief on the part of Ghanaians that domestic violence is a private matter).

60. Interview with Women's Rights Advocate #10, in Accra, Ghana (Mar. 11, 2003); Interview with WAJU Officer, in Accra, Ghana (Mar. 11, 2003); Interview with Queen Mother, in Accra, Ghana (Mar. 11, 2003); Interview with District Court Judge, *supra* note 32; Interview with WAJU Prosecutor, *supra* note 53; Interview with Police Investigator, in Accra, Ghana (Mar. 14, 2003); Interview with Police Officer, in Accra, Ghana (Mar. 14, 2003).

family.<sup>61</sup> Church and traditional leaders reported that they never encourage married women to report abuse to the police because doing so would end the marriage.<sup>62</sup>

Several police officers and judges expressed a similar reluctance to intervene in instances of domestic abuse. When questioned about police responses to domestic violence, a non-WAJU officer stated, “Because of the extended family system there is always an avenue for reconciliation in the case of husbands and wives.”<sup>63</sup> Similarly, a district court judge explained:

Some ministers come to my court and want to settle spousal assault cases [outside of court]. When a minister comes and tells me that an offender is a church member, I always adjourn and talk to the victim to see what she wants to do. If the spouses’ life together is fairly normal, and it was only a small beating, then I encourage her to settle the case.<sup>64</sup>

Due to these overwhelming pressures, most women do not report incidents of domestic violence to the police.<sup>65</sup> According to interviewees, the few victims who pursue relief in the justice system resist the pressure to settle explicitly because they want the state to punish their abusers.<sup>66</sup>

Yet, even when women involve the justice system, the pressure to settle the matter privately continues. One police official in Ho estimated that the Ho police prosecute less than ten percent of reported domestic violence cases, and stated that virtually no cases within that ten percent remain in the system until sentencing because families persuade victims to settle their claims out of court.<sup>67</sup> Moreover, interviewees reported that families and religious and traditional leaders often intervene directly in the criminal justice process and withdraw reported cases from the police and the court.<sup>68</sup> And, even when cases remain in court, judges’ beliefs that the courts should not interfere in domestic violence matters and their desires to preserve the family may mitigate the punishments imposed on perpetrators:

Judges [are] cautious in sentencing men to jail terms, because in relationships, where two love birds are in a conflict, [in our culture] we

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61. Interview with Religious Leader, *supra* note 44; Interview with Circuit Court Judge, *supra* note 34.

62. Interview with Religious Leader, *supra* note 1; Interview with Traditional Healer, *supra* note 40.

63. Interview with Police Officer, *supra* note 59.

64. Interview with District Court Judge, *supra* note 32.

65. Interview with Police Officer, in Ho, Ghana (Mar. 12, 2003).

66. Interview with WAJU Official, *supra* note 59; Interview with Religious Leaders, *supra* note 33; Interview with WAJU Prosecutor, *supra* note 53; Interview with WAJU Investigator, in Accra, Ghana (March 14, 2003).

67. Interview with Police Officer, *supra* note 65.

68. Interview with Religious Leader, *supra* note 44; Interview with Chiefs, *supra* note 46.

don't take it so seriously. There are relatives who can talk to the woman and can get the case resolved. If a couple are husband and wife, judges are very careful not to split the marriage, so the punishment is not so severe as for outside domestic violence.<sup>69</sup>

In these ways, the widespread belief that domestic violence is a private family matter presents a substantial obstacle to women's ability to obtain effective relief from abuse: it generates immense pressure on victims to settle domestic violence matters privately and weakens the response of the criminal justice system.

### 3. The Economic Dependence of Women on Men Perpetuates Domestic Abuse

*The [women] who are basically dependent on their husbands are the [women] constantly getting beaten.*

—CHRAJ Official<sup>70</sup>

*We hate to put men in jail. They are the breadwinners. They provide maintenance. The cycle of poverty and lack of opportunity is vicious. We must be circumspect.*

—District Court Judge<sup>71</sup>

The economic dependence of Ghanaian women on their husbands and male partners contributes to and complicates domestic violence in several ways. First, anxiety about money and resources can result in violence. Many interviewees reported that quarrels over maintenance (money that spouses must provide for life necessities such as food and clothing) led men to abuse their wives.<sup>72</sup> Women may be seen as “provoking” abuse by objecting to their husbands’ failure to provide sufficient maintenance.<sup>73</sup> A religious leader described one such case:

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69. Interview with WAJU Prosecutor, *supra* note 53. Ghana contains a bifurcated prosecutorial system. The Attorney General's Office handles all criminal cases that are tried in the High Court, namely first degree felony offenses such as rape or murder. Misdemeanors and uncomplicated second degree felony offenses, such as assault or causing harm, that are tried in district courts and circuit courts are handled by police prosecutors. More complicated second degree felonies may be referred to the Attorney General's Office or may be dealt with by police prosecutors based on advice from Attorney General's Office prosecutors. Unlike all prosecutors at the Attorney General's Office, police prosecutors in Ghana are not lawyers. Interview with Senior Attorney General's Office Attorney, in Ho, Ghana (Mar. 12, 2003); Interview with Attorney General's Office Prosecutor, in Accra, Ghana (Mar. 13, 2003).

70. Interview with CHRAJ Official, *supra* note 24.

71. Interview with District Court Judge, *supra* note 32.

72. Interview with WAJU Investigator, *supra* note 66; Interview with WAJU Prosecutor, *supra* note 53; Interview with Doctor, in Accra, Ghana (Mar. 13, 2003); Interview with Circuit Court Judge, *supra* note 34.

73. Interview with Religious Leader, *supra* note 44; Interview with Women's Rights Advocate #5, *supra* note 31.



The woman [was] a trader. Since the birth of her last child the woman had to stay home. She couldn't trade. Meanwhile, the level of support from the man had been cut down. The man couldn't offer support as required. This became a point of contention. He slapped her because she complained . . . [T]he remote cause was money.<sup>74</sup>

Second, the deprivation of money, food or other necessities can constitute a form of abuse. The prevalence of maintenance cases in Ghana, as described by interviewees, suggests that economic abuse is widespread.<sup>75</sup>

Third, financial dependence on an abuser can keep a woman from seeking help or leaving her husband because she lacks an independent means of support. Interviewees described situations in which women's fear that they would lose their husband's support represented a key reason why they refused to report the violence. In one case:

A man beat his wife mercilessly, and a third party reported it to the police. The woman went to the court and said it is not true. [Since] she had fresh wounds as well as scars all over her body, they asked her what happened, and she said that at the farm, she carried firewood, and it fell on her. I asked her why [she did not tell the truth] and she said, 'Will the police look after me and the kids?''<sup>76</sup>

Finally, economic dependence can preclude women from accessing effective relief from the state. To successfully prosecute a case, victims must produce medical evidence documenting their injuries.<sup>77</sup> Obtaining this evidence is expensive. Victims must pay doctors at least 50,000 *cedis* to fill out medical forms verifying their injuries.<sup>78</sup> If a victim lacks the resources to pay the fee, she often has no recourse and must drop the case.<sup>79</sup> Moreover, prosecutors and judges may seek and impose reduced penalties in domestic violence cases because of their concern that jailing a man for a significant period of time or imposing a substantial fine would deprive his family of its livelihood.<sup>80</sup> In all of these ways, the economic dependence of women on men perpetuates domestic violence.

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74. Interview with Religious Leader, *supra* note 44.

75. Interview with WAJU Investigator, *supra* note 66; Interview with WAJU Prosecutor, *supra* note 53; Interview with Doctor, *supra* note 72; Interview with Circuit Court Judge, *supra* note 34.

76. Interview with Religious Leaders, *supra* note 33.

77. Interview with Police Officer, *supra* note 65; Interview with Traditional Healer, *supra* note 40; Interview with Women's Rights Advocate #10, *supra* note 60.

78. Interview with Women's Rights Advocate #10, *supra* note 60; *see also infra* text accompanying note 151.

79. Interview with Police Officer, *supra* note 65.

80. Interview with District Court Judge, *supra* note 32; Interview with WAJU Official, *supra* note 59.

#### 4. Infidelity, Polygamy, and Other Marriage Practices Are Used to Justify Abuse, and May Contribute to or Constitute Abuse

Interviewees often cited infidelity and related marriage practices as causes of domestic violence. In general, infidelity contributes to domestic violence in two ways: either because a man suspects his wife of being unfaithful and uses her supposed infidelity as an excuse to beat or kill her, or because a woman objects to her husband having an extramarital affair or polygamous relationship and gets beaten for her complaints. Polygamy may also contribute to domestic violence by augmenting the unequal distribution of power between husbands and wives and by exacerbating competition and animosity between the wives. Finally, certain other marriage practices are themselves violent in nature.

##### *a. Men's Suspicions of Women's Infidelity Are Used to Justify Abuse*

*Last year, a man suspected his wife of flirting. The woman had moved out. One morning she was summoned by her husband who said he wanted to settle it amicably. When she went in, her husband shot her. The wife died.*  
—Nurse<sup>81</sup>

*One boyfriend suspected his girlfriend of flirting so he splashed acid on her face . . . . She was here [in the hospital] for a long time. She had severe burns on her head and face, and she lost most of her hair permanently. The last I heard she was blind.*  
—Nurse<sup>82</sup>

In many of the worst cases of domestic violence described by interviewees, perpetrators attempted to excuse their behavior by citing suspicions of infidelity on the part of their wives and female partners. Interviewees mentioned one murder,<sup>83</sup> two attempted murders,<sup>84</sup> two cases of acid throwing,<sup>85</sup> and several severe beatings<sup>86</sup> by men who purportedly suspected their wives or girlfriends of infidelity. In addition, perpetrators often justified marital rape on the basis of suspicions of infidelity. Two interviewees spoke of men who beat and raped their wives because they interpreted the wife's lack of interest in sex as an indication that she was having an affair.<sup>87</sup> In both cases, the women were pregnant.<sup>88</sup>

81. Interview with Nurse, *supra* note 59.

82. *Id.*

83. *Id.*

84. Interview with WAJU Prosecutor, *supra* note 53; Interview with Attorney General's Office Prosecutor, *supra* note 69.

85. Interview with WAJU Prosecutor, *supra* note 53; Interview with Police Prosecutor, in Ho, Ghana (Mar. 12, 2003).

86. Interview with Religious Leader, *supra* note 44; Interview with Traditional Healer, *supra* note 40; Interview with WAJU Official, in Ho, Ghana (Mar. 12, 2003).

87. Interview with Women's Rights Advocate #11, in Accra, Ghana (Mar. 14, 2003); Interview with CHRAJ Official, *supra* note 24.

88. *Id.*

*b. Women's Complaints about Men's Infidelity Are Considered to "Provoke" Abuse*

*The man tried to strangle his wife and raped her forcibly after she refused to have sex because he had a mistress. A church elder reported the problem to the police. They must have thought that she was going to die since they reported it.*

—Women's Rights Advocate<sup>89</sup>

Perpetrators often allege that they beat and raped a woman in response to the woman's discovery of her husband's or partner's infidelity. Interviewees discussed several circumstances in which a woman's reaction to a man's infidelity led to her being beaten and/or raped: when she refused to have sex with him because he had a mistress,<sup>90</sup> when she asked him not to spend time with his mistress,<sup>91</sup> and when she confronted him and complained about his infidelity.<sup>92</sup>

*c. Polygamy and Other Marriage Practices Contribute to and May Constitute Abuse*

*I supervised, in the Western Region, a problem between a husband and wife. They had been married for a while. The man had a girlfriend, and moved temporarily away from the marital home and went to the girlfriend's. The wife felt abandoned and went looking for him and caught him at his mistress's place. There was a fight between the wife and the mistress. The husband took the side of the mistress and beat his wife because he felt he had to rescue his mistress from his wife. He ended up beating his wife! (Laughing).*

—Police Officer<sup>93</sup>

As with infidelity, the negative reactions of wives or partners to men's polygamy are used as excuses for abusing them. Specific consequences of polygamy for Ghanaian women include sexual and emotional neglect,<sup>94</sup> violence between rival wives, or abuse at the hands of the husband who takes sides between rivals.<sup>95</sup> Other marriage practices, such as forced marriage, are in themselves forms of domestic violence. The U.N. Special Rapporteur on Violence Against Women describes forced marriage as "a marriage conducted

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89. Interview with Women's Rights Advocate #1, *supra* note 52.

90. *Id.*

91. Interview with Women's Rights Advocate #3, *supra* note 56.

92. Interview with Traditional Healer, *supra* note 40; Interview with Women's Rights Advocate #6, *supra* note 19.

93. Interview with Police Officer, *supra* note 59.

94. COKER-APPIAH & CUSACK, *supra* note 4, at 24; *accord* Interview with Women's Rights Advocate #2, in Accra, Ghana (Mar. 10, 2003).

95. Interview with Traditional Healer, *supra* note 40; Interview with Police Officer, *supra* note 59.

without the valid consent of both parties, where duress is a factor . . . . [The] more extreme forms can involve threatening behaviour, abduction, imprisonment, physical violence, rape, and in some cases, murder.”<sup>96</sup> A women’s rights advocate interviewee described such a practice in Ghana, called “elopement”: “If a man likes you and wants to marry you, he can abduct you, have his way with you, and when you come back to the community, you’re considered married. To me, this is spousal violence even if upside down. Marriage begins with a rape.”<sup>97</sup>

##### 5. Several Causes and Complicating Factors Often Interrelate to Amplify or Perpetuate Domestic Violence

In addition to addressing each of these causes and complicating factors individually, interviewees emphasized the ways in which various causes and complicating factors often interrelate in the context of an individual’s experience of abuse. A women’s rights advocate related one woman’s experience:

In one case, [a man was beating a woman]. He hit her anywhere. Sometimes, he pushed her, and she would fall to the ground. Every time he wanted to have sex with her, but she did not want it, when she refused, he would beat her. He would think she was seeing someone else. He verbally abused her often. She got pregnant. Every time she wanted money to go to the hospital, he beat her. She did not want the family involved because she was embarrassed to tell them that she was pregnant with a man that could not take care of her. At seven months, she came here because she had not seen a doctor. She looked weak. The doctors had to operate on her to deliver before the due date. One of her twins died.<sup>98</sup>

Each victim’s experience of domestic violence is unique and defined by her individual circumstances. Victims may suffer from physical, sexual, economic, or psychological abuse, or from any combination of the above. Similarly, one or more factors may contribute to violence in a relationship and may influence a victim’s willingness or ability to seek help from the community or from government institutions. The woman described above, for example, suffered from continual physical, sexual, economic, and psychological abuse. She felt too ashamed to solicit outside support, however, because of her partner’s failure to fulfill his gender role as breadwinner. Furthermore, had the woman reported the violence, the community and government officials might have declined to penalize her abuser on the grounds that she “provoked” the abuse as a result of her alleged infidelity and requests for maintenance. Because each victim’s

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96. Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Cultural practices in the family that are violent towards women, U.N. Doc. E/CN.4/2002/83 at 19 (2002) [hereinafter Cultural Practices Report].

97. Interview with Women’s Rights Advocate #2, *supra* note 94.

98. Interview with Women’s Rights Advocate #11, *supra* note 87.

experience of abuse is unique and defined by her individual circumstances, to be effective, Ghana's response to domestic violence must be sufficiently broad in scope to address the numerous forms of violence suffered by victims and the many factors that complicate and contribute to domestic violence in Ghanaian society.

B. THE RESPONSE OF THE STATE AND THE COMMUNITY TO DOMESTIC VIOLENCE IS INADEQUATE AND ACTUALLY IMPEDES RELIEF

*Wife battering is checked mainly by our traditional system.*

—*Religious Leader*<sup>99</sup>

The Ghanaian government has begun to recognize the systemic nature of domestic violence in Ghana and has taken some important first steps to address the problem—most importantly, creating the specialized Women and Juvenile Unit within the criminal justice system. Nonetheless, more progress is needed within the agencies charged with providing services to domestic violence victims, including the criminal justice system, and the Commission on Human Rights and Administrative Justice.

To date, community leaders have taken few steps to address domestic violence in Ghana. Many domestic violence victims seek help from community leaders because community leaders historically have served as peacekeepers and problem solvers. Traditional attitudes about gender roles often lead community leaders to advise women to endure domestic violence without complaint. Moreover, because community leaders are often primarily concerned that the community is without public disturbance, many community leaders work to ensure domestic violence is addressed outside of the public sphere.

1. The Criminal Justice System Response to Domestic Violence: Attitudes Impede Access to Legal Relief

*“Why did you marry him?” “He only slapped you? Go home!” “It’s been a long day, come back tomorrow.”*

—*Women’s Rights Advocate* (describing non-WAJU officer responses to complaints from women victims)<sup>100</sup>

Today, some police officers and judges in Ghana are beginning to take domestic violence seriously.<sup>101</sup> Nevertheless, as discussed above, gender stereotypes and cultural beliefs characterizing domestic violence as a family matter continue to prevent victims from accessing the criminal justice system and result in the imposition of lenient punishments when cases make it to court.

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99. Interview with Religious Leader, *supra* note 44.

100. Interview with Women’s Rights Advocate #4, in Accra, Ghana (Mar. 11, 2003).

101. *See, e.g.*, Interview with Women’s Rights Advocate #4, *supra* note 100; Interview with Police Officer, *supra* note 65.

The establishment of WAJU in 1998 represented a defining moment for police policy toward domestic violence. One women's rights advocate extolled, "WAJU is a blessing. I don't know what we would have done if that unit had not been set up."<sup>102</sup> In stark contrast to the utter lack of domestic violence reporting in the past, today WAJU is "absolutely overwhelmed" with complaints of domestic violence.<sup>103</sup> Although all WAJU officers, in all regions, have purportedly been educated about domestic violence,<sup>104</sup> women in most of the country continue to deal with non-WAJU police because WAJU positions currently exist in only fifteen of the 110 districts in Ghana.<sup>105</sup>

Moreover, even within WAJU, some officers expressed attitudes unsympathetic to victims' experiences with domestic violence. One WAJU officer laughed while describing one case:

This man was sleeping with the woman. There was a chamber-pot in the room. He wanted the woman to empty it. Instead of emptying the chamber-pot herself, the woman told the eldest daughter to empty it. Upset that she had not emptied it herself, the man beat the woman severely with a cane, stripped her naked and threw her out of the house. The medical report was very bad.<sup>106</sup>

In addition, the frequency with which WAJU officers apparently refer domestic violence cases for counseling rather than prosecution<sup>107</sup> undermines WAJU's asserted commitment to send all assault cases to court,<sup>108</sup> since "if [the matter] is revoked in counseling, there may not be prosecution."<sup>109</sup> In one case:

A man had two wives. The first wife and he had a sick son. Their church raised money for treatment for the son. The man was keeping the money and would not give it to his wife, which resulted in a quarrel. He beat her and she lost two teeth. We were going to send the case to court, but because [the couple was] married a long time, we sent it to the clinical psychologist [for counseling]. We saw this as a marital problem that could be solved.<sup>110</sup>

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102. Interview with Women's Rights Advocate #2, *supra* note 94.

103. Interview with Women's Rights Advocate #4, *supra* note 100.

104. Interview with WAJU Official, *supra* note 59.

105. Interview with Women's Rights Advocate #13, in Accra, Ghana (Mar. 14, 2003).

106. Interview with WAJU Official, *supra* note 59.

107. Interview with WAJU Official in Ho, *supra* note 86; Interview with WAJU Investigator, *supra* note 7.

108. Interview with WAJU Official, *supra* note 59.

109. Interview with WAJU Investigator, *supra* note 7.

110. *Id.*

Although counseling may be helpful as a supplement to prosecution, using counseling as a substitute for prosecution defeats the victim's effort to escape from abuse and may even worsen her situation by demonstrating to the perpetrator that the police pose an empty threat.<sup>111</sup>

Furthermore, it is impossible to evaluate the effectiveness of counseling and settlement when there is no follow-up with victims afterward. Many interviewees assumed that when victims do not come back to the police, courts, or other institutions, this means that settlement processes had achieved the goal of stopping the violence.<sup>112</sup> However, interviewees also pointed to evidence that many women report and seek help repeatedly when mediation has not worked, but did not seem to consider this to be an indication that reconciliation was unsuccessful or that they should follow up in such cases. A WAJU investigator, for instance, told us that:

We had a case where a woman came in [to WAJU], and we talked to [the couple]. She came back four days later and said that he was doing it again. We talked to her and told her to reconsider. She hasn't been back since. I think they are getting along well.<sup>113</sup>

Although the investigator's conclusion about what happened in this case could be accurate, it is also likely that the victim decided not to return to a state system that was not protecting her or fulfilling her needs. Without any follow-up with the victim herself, it is impossible to tell.

It is commonly understood that "if you go to WAJU, your chances of dealing with [sympathetic] police are very high, but otherwise your chances are one in ten or maybe zero."<sup>114</sup> Many interviewees attributed the continued disregard of domestic violence cases by some non-WAJU police officers and judges to deficiencies in training.<sup>115</sup> According to one NGO's estimates, only one percent of police officers nationwide have received domestic violence training.<sup>116</sup> Untrained officers remain notorious for frustrating victims' efforts to report violence. In one case:

[A] victim was a married woman with three children. She had been continually abused by her husband. When she reported the abuse to the officer in charge at her local police station, he blamed her for the abuse. He told her she should 'keep quiet' and 'not worry' her husband. The officer kept sending her away and telling her to come back. Each time,

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111. Interview with WAJU Official, *supra* note 59.

112. Interview with WAJU Official in Ho, *supra* note 86.

113. Interview with WAJU Investigator, *supra* note 7.

114. Interview with Women's Rights Advocate #4, *supra* note 100.

115. *See, e.g.*, Interview with Women's Rights Advocate #13, *supra* note 105; Interview with WAJU Official, *supra* note 59; Interview with Women's Rights Advocate #4, *supra* note 100.

116. Interview with Women's Rights Advocate #13, *supra* note 105.

he told her he could file a report only after she came back once more. Eventually she gave up because the trips were too costly.<sup>117</sup>

Often, judges share the stereotypical attitudes demonstrated by many police. Because judges exercise broad discretion in sentencing, such attitudes impact the sanctions imposed for crimes of domestic violence. For example, judges sometimes assume that the man is the breadwinner, which often deters judges from imposing jail time for crimes of domestic violence.<sup>118</sup> In addition, some judges may mitigate an abuser's sentence on the grounds that a woman "provoked" the violence.<sup>119</sup> Acts commonly classified as "provocation" often reflect gender roles, and may include insulting one's husband,<sup>120</sup> asking for maintenance money,<sup>121</sup> and refusing to perform household duties without reason.<sup>122</sup>

Furthermore, by encouraging settlement, giving minimal punishments, and permitting third parties to withdraw criminal cases from the state, judges convey that domestic violence represents a family matter, which deserves less judicial attention than other violent crimes. According to one judge, "the idea of being brought to Court [in domestic violence cases] is punishment enough, regardless of the outcome."<sup>123</sup> Many judges also share the impression that settlement and minimal punishments, like bonds of good behavior, work to resolve domestic violence situations, although the courts do not follow-up with victims to determine the effectiveness of these remedies. One judge stated, "In four years, no one has come back [to court], so I think it [the court's disposition—usually a fine] works."<sup>124</sup> Judges routinely allow third parties such as chiefs, queen mothers and religious leaders to intervene in domestic violence cases and withdraw them from the criminal justice system. As a result, judicial attitudes pose another significant barrier that victims must surmount to secure effective remedies for domestic violence.

## 2. The Commission on Human Rights and Administrative Justice Response to Domestic Violence: Encouraging Informal Mediation

*We are here to settle cases, we don't antagonize the situation. We try to do some damage repair. We try to keep the people together.*

—CHRAJ Official<sup>125</sup>

117. Interview with Women's Rights Advocate #11, *supra* note 87.

118. Interview with District Court Judge, *supra* note 32.

119. Interview with District Court Judge, in Accra, Ghana (Mar. 14, 2003).

120. *Id.*; Interview with Circuit Court Judge, *supra* note 34.

121. Interview with District Court Judge, *supra* note 119.

122. Interview with Circuit Court Judge, *supra* note 34. *But see* Interview with District Court Judge, *supra* note 32 (denying that a woman's failure to complete household chores would constitute provocation).

123. Interview with District Court Judge, *supra* note 119.

124. *Id.*

125. Interview with CHRAJ Official, in Accra, Ghana (Mar. 11, 2003).



CHRAJ is a constitutionally-established arm of the government charged with upholding the human rights guaranteed by the Constitution and redressing grievances through a complaint procedure. Unlike with other human rights violations, in most cases of domestic violence, CHRAJ uses non-binding mediation to resolve the complaint. In the mediation process, CHRAJ invites both parties to talk out their issues in front of a CHRAJ official. CHRAJ's model assumes that a neutral facilitator will assist parties of equal bargaining power to negotiate a mutually beneficial agreement and to compromise on their individual positions to find an acceptable middle ground. An agreement is drawn up according to the settlement, but the contract is not legally enforceable, and as a result, a party can violate the agreement with no legal consequences.<sup>126</sup> Although CHRAJ views this as a "win-win situation," even representatives of CHRAJ admit that the resolutions sometimes fail: "We have cases where women say it gets worse. Then we send them to WAJU."<sup>127</sup>

### 3. The Response of Religious Leaders to Domestic Violence: Encouraging Informal Settlement Within the Family

*Our priests do not preside over a breakdown of marriage but only over reconciliation.*

—*Religious Leader*<sup>128</sup>

In a deeply religious country such as Ghana, pastors and other religious leaders exercise significant influence in communities and often provide counsel to both church members and non-practitioners regarding personal matters, including domestic violence.<sup>129</sup> Religious leaders often have traditional beliefs about women and marriage, which strongly influence the kind of advice that religious leaders give to victims of domestic violence. Many believe that women must keep their husbands happy, and if they do not, they are guilty of "provoking" their husbands to violence.<sup>130</sup> Religious leaders frequently counsel victims to be more submissive and endure the violence in their relationships. Interviewees universally rejected the possibility of advising victims to divorce absent the most dire of circumstances. They also expressed their reluctance to refer abused women to the police. One Christian leader described a case:

The woman was not the type who had patience. She talks. The man

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126. *Id.* When parties are not satisfied with the outcome, they can request a hearing. The panel moderating the hearing is comprised of an attorney, to impose legal standards, and two other officials. Both parties are sworn in and make statements before a panel. Some prefer this method over more costly litigation; however, if the offender violates the settlement post-hearing, the contractual arrangement is not legally enforceable. *Id.*

127. *Id.*

128. *Id.*

129. Interview with Religious Leader, *supra* note 44.

130. *Id.*

believed she did not respect him. Once, he broke the window in the house and handled a gun. He tried to beat her when she was pregnant. The violence continued everyday. We counsel that being the woman, she must submit. We never advised her to go to the police [because] that's the end of the marriage.<sup>131</sup>

Not only do religious leaders regularly frown upon reporting to police, they often intervene when a victim has already reported the abuse. Religious leaders seek to withdraw cases during the initial police investigation, prosecutors' pre-trial preparation, and even during trial.<sup>132</sup> Due to over-crowded dockets, a lack of resources, and judicial attitudes towards domestic violence, the courts often will permit and even encourage settlement when a third party intervenes.<sup>133</sup> This practice denies victims the prerogative to pursue criminal punishment of perpetrators for the harms victims have suffered.

#### 4. The Response of Traditional Leaders to Domestic Violence: Encouraging Informal Settlement Through Traditional Proceedings

*If the woman had gone to the police the man would be charged with causing harm. He would be imprisoned. It may have lead to several journeys back and forth to the police station. There is an economic aspect . . . we as chiefs try to settle things quickly so women and men can get back to their chores, to avoid inconveniences and waste of money, to preserve the economy of the home.*

—Chief<sup>134</sup>

Customary leaders work to resolve incidents of domestic violence through traditional proceedings and according to traditional values. Ghanaian Chiefs and Queen Mothers handle cases by “listening to both sides of the story,” determining who is at fault and fining one or both parties.<sup>135</sup> Although the traditional process is meant to be one of fair, private adjudication, all the leaders interviewed stated their firm belief in the need for women to be subservient to men, for women to “endure” even abusive conduct, and the need for women to refrain from “provoking” the man to violence.<sup>136</sup> One Queen Mother even explained how educated and economically-independent wives bring domestic violence upon themselves: “Violence can happen because the husband thinks the wife is independent of him. Some women leave at dawn or travel late at night to sell commodities. He thinks she is having an affair. This brings suspicion.”<sup>137</sup>

131. Interview with Religious Leaders, *supra* note 33.

132. *Id.*

133. Interview with District Court Judge, *supra* note 32.

134. Interview with Chiefs, *supra* note 46.

135. *Id.* Traditionally payment is made in gin or schnapps. *Id.*

136. Interview with Queen Mothers, *supra* note 54; Interview with Chiefs, *supra* note 46.

137. Interview with Queen Mothers, *supra* note 54.

Because traditional proceedings operate under the presumption that women are inferior to men, it is unlikely that women can receive a “fair” hearing with regard to a spousal dispute.

Although the Chiefs that were interviewed asserted that they would refer domestic violence cases to the police if physical harm has occurred, they later recounted cases settled by Chiefs that involved serious injuries.<sup>138</sup> According to one Chief:

A customer brought her corn to this woman’s husband to have it milled. The customer came to the husband’s store to pick up the milled corn. The store was closed, and the husband refused to open it for the [customer]. The woman told her husband to give the customer her milled corn so she could make dinner for her family. The husband picked up a hammer and struck his wife in the jaw with the hammer. I thanked the woman for bringing the case to me as the couple had children. I told the husband that if the case had gone to the police and been prosecuted, he would have gone to jail for [the crime of] causing harm. I fined the husband three bottles of gin, a harsher punishment than normally given because he used a weapon.<sup>139</sup>

Even when victims attempt to circumvent the traditional system in favor of the criminal justice system, Chiefs and Queen Mothers often seek to withdraw reported cases on their own initiative, with or without the victim’s consent.<sup>140</sup> Because the remedies available through traditional mechanisms are not legally binding and typically result in payments of liquor to Chiefs rather than payments to the victim, settlement through traditional mechanisms may deprive victims of the opportunity to receive adequate compensation for injuries caused by physical abuse and fail to protect them from further violence.

##### 5. The Response of Traditional Healers to Domestic Violence: Counseling Women to Endure

*I have [on average] five clients per month. Three of them will come for injuries from spousal violence.*

—*Traditional Healer (Bonesetter)*<sup>141</sup>

Traditional healers often treat broken bones and other injuries suffered by victims of abuse and are consulted for advice on how to deal with domestic violence. Traditional healers also serve as custodians of traditional cultural beliefs. Women often turn to traditional healers for treatment of injuries resulting from abuse because they charge less than hospitals and women

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138. Interview with Chiefs, *supra* note 46.

139. *Id.*

140. *Id.*; Interview with Queen Mothers, *supra* note 54.

141. Interview with Traditional Healer, *supra* note 40.

commonly believe that healers provide a greater degree of confidentiality.

One traditional healer regularly sees extreme cases of abuse:

The woman's mother called me. The man had beaten his wife because she did not cook the food on time. He used his foot and kicked her on the ground. She had injuries in her elbow, leg, and rib. The rib took a month to heal. This was the third time he beat her. The first beating was also for not cooking on time, and the second because she did not come home on time after visiting her parents.<sup>142</sup>

Despite the severity of injury she sees, the traditional healer espouses traditional views of gender roles and encourages women to endure abuse and modify their behavior in an attempt to avoid the violence.<sup>143</sup> She generally advises victims to "correct" the behavior that she sees as causing the violence, and she follows up on patients to see if they have rectified their behavior.<sup>144</sup> She has never recommended that a woman leave her abuser.<sup>145</sup>

#### 6. The Response of the Medical Community to Domestic Violence: Providing Critical Support to Those with Sufficient Means

*The woman has to prove beyond a reasonable doubt that it happened.  
The medical report is the strongest evidence that you have.*

—WAJU Official<sup>146</sup>

*The medical form is a big problem. The women who go to the hospital for treatment, but cannot afford the fee, never come back to the police station.*

—WAJU Official<sup>147</sup>

The medical community plays a critical role in treating injuries suffered by victims of abuse and, where a victim has sufficient resources, in prosecuting cases of domestic violence. Once a victim lodges a domestic violence complaint with the police, the victim must obtain a form from the hospital certifying her injuries.<sup>148</sup> Without medical evidence, which the medical certification form provides, "the judge is not going to believe the woman, so WAJU refers her to counseling instead."<sup>149</sup> Despite that for many Ghanaians medical fees are prohibitively expensive, hospitals never waive fees associated with certified

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142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. Interview with WAJU Official, *supra* note 59.

147. Interview with WAJU Official in Ho, *supra* note 86.

148. *Id.*

149. Interview with WAJU Official, *supra* note 59.

medical evidence forms.<sup>150</sup> Consequently, the fee requirement constitutes an obstacle to prosecution for many victims:

Women use health services, but they often do not have money to pay the medical form fee. In order to get the form completed, she must pay the hospital a fee of 50,000 *cedis*, which is a quarter of the monthly income of a rural family. Furthermore, hospitals are raising user fees because doctors are being called in to give evidence.<sup>151</sup>

Doctors may testify regarding medical forms at trial in serious cases. Although police prosecutors routinely obtain medical documentation, however, they do not always introduce medical testimony at trial. According to a prosecutor with the Attorney General's Office, "in many cases the absence of testimony can result in less compelling, unusable or even damaging evidence,"<sup>152</sup> because once the trial court seals the factual record, the state cannot introduce medical testimony at the appellate level. Significantly, the possibility of requiring doctors to testify more frequently raises a dilemma: if the state regularly compels doctors to testify at trial, hospitals must charge more for medical certification. Yet, the more hospitals charge for certification, the less likely victims will be able to afford prosecution.

#### C. THE RESPONSE OF NGOS TO DOMESTIC VIOLENCE: EDUCATING THE PUBLIC AND THE STATE AND PROVIDING CRITICAL SERVICES TO SURVIVORS OF ABUSE

NGOs play a critical role in combating domestic violence in Ghana by educating the community about domestic violence and providing critical services and support to domestic violence victims, who often cannot rely on their families or communities to help them free themselves from the abuse. NGOs have made marked strides in educating both public officials and the general public about domestic violence.<sup>153</sup> Their efforts are successfully changing the way the community perceives domestic violence: more Ghanaians now view domestic violence as a crime against women and a human rights violation. NGOs also are active in policy and lobbying efforts. NGOs have been instrumental, for example, in drafting and lobbying for the passage of, and educating the public about the Domestic Violence Bill.<sup>154</sup>

NGOs additionally provide critical support and assistance to victims of abuse.

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150. *Id.*

151. Interview with Women's Rights Advocate #10, *supra* note 60.

152. Interview with Attorney General's Office Prosecutor, *supra* note 69. On appeal, the record is sealed except for new evidence not introduced below. "In a case, there was an appeal, the age of the girl was six. When we prosecute, we make the doctors come. They give evidence in the report. The police try the case with only the statement of the doctors. In this one case, the doctor wrote one word, 'mistriction.' The defense counsel cross examines the girl. He asked her if she was six years old and menstruating? He capitalized on the illegible word. The word was 'mistriction' which means problems urinating." *Id.*

153. Interview with Women's Rights Advocate #2, *supra* note 94.

154. *Id.*

NGOs assist victims to escape the immediate abuse, formulate long-term plans to free themselves from the cycle of violence, and provide crucial services to victims, including counseling, financial assistance, medical care, legal assistance and housing.<sup>155</sup> NGOs also support victims who choose to pursue prosecution<sup>156</sup> by, for example, leveraging established relationships with law enforcement to make certain that victims are not prevented from seeking legal relief by unsympathetic police or other untrained government officials.<sup>157</sup> A women's rights advocate described one case in which:

A woman was beaten up by six boys on the street. The woman complained, and the policeman at the desk said that the woman complained too much and beat her up. Other policemen watched and did not help the woman. A social worker helped her and went to WAJU. WAJU didn't want to go too far because a fellow police officer was involved. The social worker sent the woman to my NGO. I wrote a petition to the public affairs police officer and that got a favorable response. Now they seem to be doing something. It is possible that the police will charge him or reprimand him.<sup>158</sup>

Often NGOs work to empower victims to make decisions to end domestic violence in their lives.<sup>159</sup> In doing so, these NGOs do not encourage private settlement in lieu of the court system; however, at least one prominent NGO routinely encourages private settlement in domestic violence cases and disfavors divorce as a means to escape the abusive relationship. This organization believes that mediation changes behavior, and that perpetrators are persuaded to discontinue their abuse and comply with the non-binding agreements that result from mediation. This belief remains unsubstantiated; advocates at the NGO had no evidence to support their conclusion that mediation stops abuse. One advocate explained, "We know it works because they don't come back here to complain . . . Although we do not follow up, we believe our clients must be satisfied because we get referrals from some of them."<sup>160</sup> Furthermore, although women are observed to be scared when they come to the organization because "they know that, if the man knows she told, he will beat her again,"<sup>161</sup> some advocates

155. Given the prevalence of domestic violence and significant educational efforts, it was perplexing to learn that few victims actually inhabited the shelters. In fact, one women's rights advocate stated that over a period of several years, the shelter had never experienced overflow—not one person had to be turned away. The explanation for this perplexing situation was again family and community leader intervention. Interview with Women's Rights Advocate #4, *supra* note 100.

156. Interview with Women's Rights Advocate #2, *supra* note 94; Interview with Women's Rights Advocate #4, *supra* note 100; Interview with Women's Rights Advocate #13, *supra* note 105.

157. Interview with Women's Rights Advocate #3, *supra* note 56.

158. *Id.*

159. Interview with Women's Rights Advocate #5, *supra* note 31.

160. Interview with Women's Rights Advocate #8, in Accra, Ghana (Mar. 11, 2003).

161. Interview with Women's Rights Advocate #7, in Accra, Ghana (Mar. 11, 2003).

refuse to recommend divorce as an option even for recurrent abuse.<sup>162</sup>

In addition to the unique contribution each NGO makes to the effort to eradicate domestic violence in Ghana, many NGOs also pool their resources and collaborate in their effort to support victims. The Gender Violence Survivors Support Network (GVSSN) is one such effort. Members of the network share their resources and contacts with other member organizations, and the network utilizes this pool of resources to best address the needs of individual victims.<sup>163</sup>

### III. GHANA'S CURRENT STATUTORY REGIME FAILS TO ADEQUATELY ADDRESS THE PROBLEMS OF DOMESTIC VIOLENCE

During the past twenty years, the Ghanaian Criminal Code has been amended several times to increase protections for women, including the criminalization of widow rites,<sup>164</sup> female genital mutilation,<sup>165</sup> indecent assault,<sup>166</sup> spousal economic violence,<sup>167</sup> and the institution of increased penalties for rape<sup>168</sup> and defilement.<sup>169</sup> The trend in Ghanaian law toward criminalizing traditional practices harmful to women parallels trends in international law and accords with Ghana's constitutional and international mandates to uphold fundamental human rights and freedoms. The progress made to date, however, is insufficient to redress the serious and enduring violation of women's human rights caused by domestic violence. The Ghanaian legal system currently fails to hold men fully accountable for physical, psychological, and economic abuses they inflict on their spouses or domestic partners. Ghana continues to ignore the harm inflicted by marital rape and to impose only minimal punishments for domestic crimes of assault, causing harm, and non-maintenance. This response is especially problematic in light of the pervasive influence of cultural norms, which inhibit women from approaching the criminal justice system until violence has reached a crisis point. The systematic failure to impose any meaningful criminal sanction for domestic offenses reinforces the notion that crimes committed against married women are less serious than crimes committed against others, a view clearly inconsistent with Ghana's constitutional and international legal obligations.

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162. Instead the organization only recommends temporary separation or counseling for the abuser. Interview with Women's Rights Advocate #8, *supra* note 160.

163. Interview with Women's Rights Advocate #4, *supra* note 100.

164. Criminal Code (Act 29) (1960), § 88A (as amended by Criminal Code (Amendment) Law, 1984 (PNDCL 90) (Ghana)).

165. § 69A (as amended by Criminal Code (Amendment) Act, 1994 (Act 484)).

166. § 103 (as amended by Criminal Code (Amendment) Act, 1998 (Act 554)).

167. § 79 (as amended by Criminal Code (Amendment) Act, 1998 (Act 554)).

168. § 97 (as amended by Criminal Code (Amendment) Act, 1998 (Act 554)).

169. § 101 (as amended by Criminal Code (Amendment) Act, 1998 (Act 554)).

A. THE CRIMINAL JUSTICE SYSTEM FAILS TO ADEQUATELY PUNISH PERPETRATORS  
AND PROTECT VICTIMS OF DOMESTIC VIOLENCE

1. The Criminal Code Legalizes Rape within Marriage

*If you are my wife and you refuse me sex, then there will be fighting.*  
—WAJU Investigator<sup>170</sup>

Ghana's Criminal Code explicitly sanctions rape in marriage and penalizes married women for exercising control over their bodies. Under the Criminal Code a man can never rape his wife, because a wife is always deemed to have consented to sex with her husband by virtue of her marital status. The Code states:

A person may revoke any consent which he has given to the use of force against him, and his consent when so revoked shall have no effect for justifying force; save that the consent given by a husband or wife at marriage, for the purposes of marriage, cannot be revoked until the parties are divorced or separated by a judgment or decree of a competent Court.<sup>171</sup>

The marital consent provision of the Criminal Code belies the reality that rape can, and often does occur within marriage. As a result of the marital consent provision, the state may only prosecute minor offenses such as “causing harm” or “assault”—that is, they may only prosecute for the *injuries resulting from* forced sex. However, these offenses carry a much lesser penalty than rape.<sup>172</sup> Even with the availability of this minimal criminal remedy for marital rape, women rarely report marital rape to the police because of cultural norms.<sup>173</sup> According to one WAJU officer, the police would laugh at any woman who came to report that her husband raped her.<sup>174</sup>

The marital rape provision implies that a woman's needs and desires, sexual

170. Interview with WAJU Investigator, *supra* note 7.

171. Criminal Code (Act 29) (1960), § 42(g) (Ghana). Notably, by its terms, the marital consent provision could be construed to apply to offenses such as causing harm and assault, which also are defined by a victim's lack of consent. However, this interpretation of the statute is not accepted by Ghanaians. As one leading women's rights advocate explained, “The consent provision has never been interpreted for violence issues because nobody will agree that bad violence can happen, but in terms of sex people don't consider that it can happen and be an offense.” Interview with Women's Rights Advocate #13 (Mar. 14, 2003).

172. Rape is a first degree felony punishable by a minimum of five and a maximum twenty five years imprisonment. Criminal Code (Act 29) (1960), § 97 (Ghana). By contrast, causing harm is a second degree felony punishable by a maximum of ten years imprisonment, and assault is a misdemeanor punishable by a maximum of three years imprisonment. *See* §§ 69, 84; Criminal Procedure Code (Act 30) (1960), § 296.

173. Interview with WAJU Official, *supra* note 59; Interview with Prosecutor, Attorney General's Office, *supra* note 69.

174. Interview with WAJU Official in Ho, *supra* note 86.



and otherwise, are always subordinate to her husband's. The idea that rape cannot exist in marriage is based on a view of women as the property of their husbands—like all other forms of personal property, a man may do to his wife what he wishes. As one WAJU official explained: “When a man marries you, you are his property. You have no right to deny him sex.”<sup>175</sup> The harmful view that women are property, as reinforced by the Criminal code, is demonstrated by the story of one woman who refused to submit to her husband's requests for sex:

Two people were married under the marriage ordinance two years ago. According to the man, the wife has joined a spiritual group and is denying him sex. The woman says she does not want to have sex, because she does not want to have children. The man came here to report her conduct because he was worried that he would assault her and be charged. So tomorrow, I have invited the woman and her pastor to come and listen to evidence. If there is evidence, I will charge the woman with offensive conduct resulting in a breach of the peace.<sup>176</sup>

The current Criminal Code not only entitles a man to unfettered sexual access to his wife, but it subjects women to criminal liability for attempting to exercise control over their bodies. As in the above case, the Criminal Code can create a situation in which a woman who is assaulted for refusing sexual access to her body will be charged with criminal conduct instead of the perpetrator. For all of these reasons, the marital consent provision of the Criminal Code reinforces women's inequality within the family and under law, denies women full control of their bodies, and fails to recognize women's autonomous sexual needs and desires.

## 2. Criminal Code Provisions Applicable to Domestic Violence Are Under-Enforced

*The Constable said, 'If I had to arrest everyone who beats, then jails would be full. And I would be jailed too, because I beat my wife this morning.'* (Laughing)

—District Court Judge<sup>177</sup>

Although instances of physical violence between spouses are punishable as causing harm<sup>178</sup> and assault,<sup>179</sup> crimes involving domestic violence are rarely

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175. Interview with WAJU Official, *supra* note 59.

176. Interview with WAJU Investigator, *supra* note 7.

177. Interview with District Court Judge, *supra* note 32 (describing a Constable's behavior).

178. Criminal Code (Act 29) (1960), § 69 (Ghana). Causing harm is distinguished from assault by the infliction of serious injury, such as a cut or a permanent scar. *See* Interview with WAJU Prosecutor, *supra* note 53.

179. Criminal Code (Act 29) (1960), §§ 84-86. Assault is a misdemeanor, punishable by up to three years imprisonment, a fine, a payment of compensation, or some combination of the above. *Id.*

prosecuted in Ghana, because the criminal justice system rarely enforces these provisions in the context of spousal violence.<sup>180</sup> “Women are afraid of using the state because it is taboo to take marital issues outside of the immediate or extended family.”<sup>181</sup> As a result, when women do attempt to access the criminal justice system, it is typically because they have exhausted all other options.<sup>182</sup> “Before a woman would ever report [abuse], it means she has been living with it for years.”<sup>183</sup> Therefore, lack of enforcement denies victims their last resort and protection from violence.

Familial and community pressures deter and sometimes prevent women who report violence from fully pursuing their claims. One women’s rights advocate described the story of a woman:

She asked her husband for maintenance. She was beaten, and she collapsed and was sent to the hospital. She had blood stains in her eyes. She had pains in her ears as well. She was at a temporary shelter for seven days, and then she was referred to a long-term shelter. She had to return because the investigators wanted to know more about the case. We arranged for her to stay with her uncle. Then she couldn’t decide whether to pursue the case. She dropped the case after the second session with her husband at the police station. Her uncle influenced her to drop the case.<sup>184</sup>

Family members, pastors, chiefs, queen mothers, and even battered women themselves, often withdraw complaints filed at the police station against their husbands.<sup>185</sup> Typically, it is only when women have decided to seek a divorce

180. Although reports of physical abuse constitute roughly seventy-five percent of the WAJU caseload, out of the sixty convictions secured by WAJU last year, only one involved physical spousal abuse. Interview with WAJU Investigator, *supra* note 7; Interview with WAJU Official, *supra* note 59. Similarly, no cases involving spousal physical abuse have been prosecuted in Ho during the past two years. Interview with Police Officer, *supra* note 65. One police prosecutor reported that out of the two hundred cases of spousal assault and causing harm that he has prosecuted, all have settled. Interview with Police Prosecutor, in Accra, Ghana (Mar. 14, 2003). As a result, only five cases of assault or causing harm between spouses reached one magistrate’s court during the past six years. Interview with District Court Judge, in Ho, Ghana (Mar. 12, 2003).

181. Interview with Women’s Rights Advocate #10, *supra* note 60. This conclusion was asserted by numerous interviewees. *See, e.g.*, Interview with CHRAJ Officer, *supra* note 24; Interview with WAJU Official, *supra* note 59; Interview with WAJU Official in Ho, *supra* note 86; Interview with Queen Mothers, *supra* note 54; Interview with Chiefs, *supra* note 46; Interview with Religious Leaders, *supra* note 33; Interview with Religious Leader *supra* note 44; Interview with WAJU Prosecutor, *supra* note 53.

182. Interview with WAJU Official, *supra* note 59.

183. Interview with Women’s Rights Advocate #13, *supra* note 105.

184. Interview with Women’s Rights Advocate #5, *supra* note 31.

185. Interview with Women’s Rights Advocate #8, *supra* note 160; Interview with WAJU Official, *supra* note 59; Interview with Queen Mothers, *supra* note 54; Interview with Chiefs, *supra* note 46; Interview with Police Officer (Mar. 12, 2003); Interview with WAJU Prosecutor, in Accra, Ghana (Mar. 13, 2003); Interview with District Court Judge, *supra* note 32; Interview with WAJU Prosecutor, *supra* note 53; Interview with Police Investigator, *supra* note 60; Interview with Police Officer, *supra* note 60.

that they will permit a case to continue to conviction.<sup>186</sup>

Even when women resist familial and community pressures and attempt to pursue charges against their husbands, they often face major obstacles within the criminal justice system that prevent them from obtaining a remedy. Although the establishment of WAJU is generally said to have improved women's access to police services, women who live outside of Accra and the regional capitals must continue to deal with "non-sensitized" general police desk officers, who are notorious for denying women aid when domestic violence is at issue.<sup>187</sup> When women report domestic assault, police often refer cases to social workers instead of prosecutors if an incident is deemed "not serious,"<sup>188</sup> if a woman has only been assaulted once,<sup>189</sup> if a couple has been married for a long time,<sup>190</sup> or if a case lacks sufficient evidence for prosecution.<sup>191</sup>

In the rare event that a spousal assault case makes it to court, judges often encourage women to settle because of overcrowded dockets and the belief that saving a marriage is more important than penalizing a perpetrator for domestic violence.<sup>192</sup> Moreover, if a case proceeds to trial, police prosecutors' lack of legal training as compared to typical defense counsel often disadvantages victims.<sup>193</sup> Finally, in the exceptional case that proceeds to conviction, judges typically impose negligible sanctions. Because of the perceived impact of such sanctions on a man's ability to maintain his family, judges rarely mandate imprisonment or fines of any significant amount.<sup>194</sup> As one District Court Judge explained, "we hate to put men in jail. They are the breadwinners."<sup>195</sup>

### 3. Women May Be Punished for Their "Role" in Domestic Violence

*Women behave in so many ways which can provoke a man.*

—*Religious Leader*<sup>196</sup>

At times, a woman's decision to seek recourse from the criminal justice system may leave her with a criminal record. Police investigators emphasize the

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186. Interview with WAJU Official, *supra* note 59; Interview with Religious Leaders, *supra* note 33; Interview with WAJU Prosecutor, *supra* note 53; Interview with WAJU Investigator, *supra* note 66.

187. Interview with Women's Rights Advocate #4, *supra* note 100.

188. Interview with WAJU Investigator, *supra* note 7.

189. Interview with Police Officer, in Accra, Ghana (Mar. 10, 2003).

190. Interview with WAJU Investigator, *supra* note 7.

191. Interview with WAJU Official in Ho, *supra* note 86.

192. Interview with District Court Judge, *supra* note 32.

193. Interview with WAJU Prosecutor, *supra* note 185; Interview with Attorney General's Office Prosecutor, *supra* note 69.

194. Interview with District Court Judge, *supra* note 32. During the past six years, the district court judge has jailed a perpetrator of domestic assault only once. A Circuit Court judge stated that during his many years as a magistrate and later a Circuit Court judge he has never imprisoned a man as punishment for spousal assault. Interview with Circuit Court Judge, *supra* note 34.

195. Interview with District Court Judge, *supra* note 32.

196. Interview with Religious Leader, *supra* note 44.

importance of hearing the man's side of the story in cases of domestic dispute. If the police find that a woman hit her husband during a violent incident, they may charge both the husband and wife with assault even if the woman acted in self defense.<sup>197</sup> Similarly, if the police determine that a woman "provoked" her husband, they may charge her with offensive conduct conducive to breach of the peace, a misdemeanor punishable by up to three years imprisonment,<sup>198</sup> and/or a fine.<sup>199</sup> Thus, police prosecutors may utilize the offensive conduct provision to punish women viewed to have acted out and violated stereotypical gender roles of submissiveness.

Even if police do not charge a woman with a crime for her actions during an abusive episode, a judge may consider her conduct to constitute provocation, a mitigating factor justifying the imposition of a lighter sentence upon the perpetrator of domestic violence.<sup>200</sup> Judges explained that provocation may include verbal assault, such as calling a man "foolish," "useless," or "irresponsible," physical contact initiated by the woman, or the general behavior and attitude of the woman, such as her unwillingness to perform household duties.<sup>201</sup>

The levying of criminal charges against women for their "role" in incidents of spousal abuse fundamentally misunderstands the domestic violence phenomenon. The implication that a woman "caused" an incident of domestic violence ignores the physical and psychological power imbalance at the heart of domestic violence and fails to hold perpetrators fully responsible for their crimes. Finally, the doctrine of provocation may deny women the ability to defend themselves because of the threat of prosecution.

#### 4. The Sanctions Imposed for Domestic Violence Are Ineffective

*Coming to court is punishment enough, because men fear the system.*  
—District Court Judge<sup>202</sup>

Often in lieu of prosecution, and in nearly all cases of conviction, police stations and courts require accused batterers to sign a bond of good behavior—essentially a contractual obligation to refrain from repeating certain behavior in the future.<sup>203</sup> Although in theory the threat of imprisonment or future prosecution

197. Interview with WAJU Investigator, *supra* note 7; Interview with Police Officer, in Ho, Ghana (Mar. 12, 2003).

198. Act 30 of Criminal Procedure Code (1960), § 296(4) (Ghana).

199. § 297(1).

200. Interview with Circuit Court Judge, *supra* note 34; Interview with District Court Judge, *supra* note 32.

201. Interview with Circuit Court Judge, *supra* note 34; Interview with District Court Judge, *supra* note 32.

202. Interview with District Court Judge, *supra* note 119.

203. Interview with Circuit Court Judge, *supra* note 34; Interview with District Court Judge, *supra* note 32; Interview with WAJU Prosecutor, *supra* note 53. Court bonds are directly enforceable and breach results in a term of imprisonment specified by the bond. By contrast, police bonds are enforceable only indirectly, resulting in guaranteed prosecution of any subsequent offenses and serving as a factor

inflicted by a bond or a warning letter may deter perpetrators of domestic violence from future assault, in practice, courts and police never enforce bonds. No judges, prosecutors, or police inspectors with whom the delegation spoke could recall a case in which an offender allegedly breached a bond imposed in a case of spousal abuse, yet many acknowledged the recurring nature of domestic violence.<sup>204</sup> This trend may stem from the difficulties inherent in reporting. A woman has little incentive to report a bond violation when in her previous experience the police did not punish the perpetrator. Moreover, if a woman reports she risks retaliation and/or that the report of a breach will result in a guaranteed jail term or prosecution, which deprives her of economic support and incites the condemnation of the community. Because women rarely report violations, court and police bonds amount to toothless sanctions carrying little or no threat of actual punishment.

#### B. THE MAINTENANCE REGIME FAILS TO PENALIZE MEN FOR ECONOMIC ABUSE

*Minor cases, like failing to pay the house, are not prosecuted.*

—Waju Officer<sup>205</sup>

Although women are more willing to solicit government or other intervention to redress economic abuse, here, too, Ghana fails to hold men accountable for abusive conduct by not imposing any sort of penal sanction. The Criminal Code<sup>206</sup> and the Children's Act<sup>207</sup> require individuals to provide "the necessities of health and life,"<sup>208</sup> including food, clothing, shelter, medical treatment, and basic education, to their spouses and their children. Despite the provisions in both the Criminal Code<sup>209</sup> and the Children's Act<sup>210</sup> that penalize non-maintenance by

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considered by judges in sentencing. In less serious cases, courts "caution and discharge," and police issue warning letters. Judges may use past "caution and discharge" rulings and warning letters as factors in future sentencing, but unlike court and police bonds, caution and discharge rulings and warning letters do not guarantee prosecution of future charges. Only the issuance of a court bond represents a conviction for an offense. Police bonds represent promises not to prosecute in return for an accused's promise to never engage in violent behavior again. Both police bonds and warning letters may be used by judges as factors in sentencing for future convictions. Interview with Circuit Court Judge, *supra* note 34; Interview with Waju Prosecutor, *supra* note 53. Court bonds closely resemble civil protection orders, under which judges may order perpetrators to refrain from certain conduct and may restrict a perpetrator's access to the complainant, his home, and any shared property. Many countries have instituted civil protection orders specifically to address the problem of domestic violence. *See infra* Part V. Civil Protection Orders would be instituted in Ghana under the proposed Domestic Violence Bill. *See* Domestic Violence Bill, *supra* note 8, §§ 10-21.

204. Interview with Circuit Court Judge, *supra* note 34; Interview with District Court Judge, *supra* note 32; Interview with District Court Judge, *supra* note 119; Interview with Waju Prosecutor, *supra* note 53.

205. Interview with Waju Official, *supra* note 59.

206. Criminal Code (Act 29) (1960), §§ 79(1)(a), (b) (Ghana).

207. Children's Act (Act 560) (1998), § 47 (Ghana).

208. Criminal Code (Act 29) (1960), § 79(8) (Ghana); Children's Act (Act 560) (1998), § 47 (Ghana).

209. Criminal Code (Act 29) (1960), §§ 69, 77, 78, 79 (Ghana). The failure to pay maintenance is the crime of causing harm by omission, a second degree felony punishable by up to ten years imprisonment,

the imposition of a fine and/or imprisonment, social workers routinely mediate maintenance cases, even when women report the cases to WAJU.<sup>211</sup>

The greater willingness of women to come forward with problems of non-maintenance may stem from cultural norms. In Ghana, a man traditionally is responsible for financially supporting his family.<sup>212</sup> Without the possibility of imprisonment and with the cultural understanding that a man's failure to maintain his family is a community issue, women may seek outside help to resolve the problem without fear of reprobation by their families and the community. Although the maintenance regime provides women with some forum to redress economic abuse, the system's failure to do anything but force men to fulfill their pre-existing support obligations contributes to the cultural tolerance of domestic abuse.

### C. THE MATRIMONIAL CAUSES ACT, COMMUNITY CUSTOMS, AND WOMEN'S SOCIAL STATUS MAKE DIVORCE AN UNWORKABLE REMEDY FOR MOST WOMEN

*No matter what is going on, for the sake of the children, women must endure.*

—*Religious Leader*<sup>213</sup>

Because of the unresponsiveness of the Ghanaian criminal justice system to spousal assault, divorce represents one of the few available mechanisms by which battered women can attempt to free themselves from domestic violence. Ghanaians married under both customary law and the Marriage Ordinance may petition for divorce under the Matrimonial Causes Act.<sup>214</sup> In order to receive a divorce, a spouse must demonstrate that the marriage has “broken down beyond reconciliation”<sup>215</sup> by proving one of six grounds, including that “the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.”<sup>216</sup> Regular beatings and emotional abuse may constitute grounds for divorce under this standard.<sup>217</sup>

Although some battered women have legal grounds to divorce their husbands, divorce may not represent a viable option. Most women in Ghana today remain economically dependent upon men.<sup>218</sup> Generally, women do not

the payment of a fine, the payment of compensation, or a combination of the above. Criminal Procedure Code (Act 30) (1960), §§ 296-97 (Ghana).

210. Children's Act (Act 560) (1998), § 59 (Ghana). The failure to provide the necessities of health, life, education, and reasonable shelter is an offense punishable by a maximum fine of two million *cedis*, up to six months, imprisonment, or both.

211. Interview with WAJU Official, *supra* note 59.

212. Interview with Queen Mothers, *supra* note 54; Interview with Chiefs, *supra* note 46.

213. Interview with Religious Leader, *supra* note 1.

214. Matrimonial Causes Act (Act 367) (1971), § 41 (Ghana).

215. Matrimonial Causes Act § 1(2).

216. Matrimonial Causes Act § 2(1)(b).

217. Mensah v. Mensah, [1972] 2 GLR 198.

218. Ghana's CEDAW Report, *supra* note 22.

own property and have no access to credit.<sup>219</sup> Divorce would deprive many women of a means of livelihood and a place to live, and many women cannot afford the legal fees necessary to employ counsel for divorce proceedings.<sup>220</sup> In addition, divorce remains controversial in Ghana. As a result, women may experience difficulty locating an organization willing to help them pursue divorce.<sup>221</sup> The undesirability and infeasibility of divorce for most Ghanaian women makes the need to redress the problem of domestic abuse even more critical. Until Ghana amends its Criminal Code to criminalize harms inflicted by rape within marriage and to provide victims of spousal abuse with an effective remedy, Ghana remains in breach of its constitutional and international obligations to uphold women's fundamental human rights and freedoms.

#### IV. GHANA HAS AN OBLIGATION TO COMBAT DOMESTIC VIOLENCE BECAUSE IT DENIES WOMEN THE ABILITY TO EXERCISE FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS GUARANTEED BY THE CONSTITUTION AND GHANA'S INTERNATIONAL OBLIGATIONS

Domestic violence denies women numerous fundamental human rights guaranteed by the Ghanaian Constitution and Ghana's international obligations including CEDAW, the ICCPR, the ICESCR, the Torture Convention, and the African Charter. Under its Constitution, as a signatory to these international treaties and as a member of the United Nations,<sup>222</sup> Ghana has an affirmative obligation to prevent, investigate, and punish human rights abuses occurring in the form of domestic violence. The Constitution is "the supreme law of Ghana,"<sup>223</sup> and any law "inconsistent with any provision of [the] Constitution . . . [is] void."<sup>224</sup> Moreover, "[e]very treaty in force is binding upon [Ghana] and must be performed by [Ghana] in good faith."<sup>225</sup> The State "may not invoke the provisions of its internal law as justification for its failure to perform a treaty."<sup>226</sup> Ghana's Constitution and international legal

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219. *Id.*

220. Interview with Women's Rights Advocate #10, *supra* note 60.

221. Interview with Women's Rights Advocate #8, *supra* note 160.

222. As a member of the United Nations, Ghana has made a moral commitment to adhere to the human rights principles embodied in the Universal Declaration of Human Rights (UDHR), DEVAW, the Beijing Declaration and the recommendations of the Special Rapporteur on Violence against Women. Together, these persuasive authorities express the seriousness with which the international community views violence against women, including domestic violence, and give clear guidance as to the nature of the problem and the ways States can seek to address it.

223. GHANA CONST. ch. I, art. 1.

224. *Id.*

225. Vienna Convention on the Law of Treaties, art. 26, 1155 U.N.T.S. 331, *entered into force* Jan. 27, 1980. Ghana has ratified all major international and applicable regional treaties concerning human rights, including CEDAW, the ICCPR and its Optional Protocol, the ICESCR, the Convention Against Torture, and the African Charter.

226. *Id.* art. 27.

obligations guarantee an expansive range of fundamental human rights and freedoms that are violated by domestic violence and require Ghana to take action to combat the problem.

The well-established international legal standard of “due diligence” obligates Ghana to address domestic violence perpetrated by public and private actors alike. The Inter-American Court of Human Rights set out and explained the due diligence standard in the case of *Velasquez Rodriguez*.<sup>227</sup> In that case, the Inter-American Court held the government of Honduras liable for the disappearance of individuals without direct evidence of government involvement in those disappearances. The court reasoned that:

An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person . . . ) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention . . . . What is decisive is whether a violation . . . has occurred with the support or acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible . . . . [Accordingly,] [t]he State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.<sup>228</sup>

Manifestations of the due diligence standard have been adopted by numerous international courts and bodies, including the U.N. Human Rights Committee, whose decisions are binding on Ghana. Although decisions of the Inter-American Court of Human Rights are not binding on Ghana, the court’s declaration that states have an affirmative duty to protect individuals from human rights violations has become an international human rights norm. In the case of *Delgado Paez v. Colombia*, the U.N. Human Rights Committee stated that “allow[ing] a State party to ignore threats to the personal security of non-detained persons within its jurisdiction would render totally ineffective the guarantees of the Covenant.”<sup>229</sup>

Under *Delgado Paez*, states have an obligation to act with due diligence to prevent, investigate, and punish human rights violations threatened or inflicted by

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227. *Velasquez Rodriguez Case*, Inter-Am. C. H.R., Report No. 1, Ser.C, paras. 172-73 (1988).

228. *Id.* paras. 172-74; see also DEVAW, *supra* note 2, art. 4(c) (requiring that states “[e]xercise 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.”).

229. Human Rights Committee, *Delgado Paez v. Colombia*, para. 5.5, Comm. No. 195/1985, U.N. GAOR, 39th Sess., U.N. Doc. CCPR/C/39/D/195/1985 (1990).



both state officials and private actors. For these reasons, Ghana may not simply ignore domestic violence, but must take reasonable and appropriate measures to protect women from the human rights violations caused by abuse.

A. DOMESTIC VIOLENCE VIOLATES WOMEN'S RIGHTS TO NON-DISCRIMINATION AND EQUAL PROTECTION BEFORE THE LAW

Because domestic violence stems from traditional norms mandating women's subordination and disproportionately affects women, a State that does not seek to eliminate domestic violence is violating women's right to non-discrimination. The United Nations has recognized that violence against women is simultaneously "one of the crucial social mechanisms by which women are forced into a subordinate position compared with men,"<sup>230</sup> and "a manifestation of the historically unequal power relations between men and women."<sup>231</sup> Consequently, to allow systemic domestic violence is "to give different treatment to different persons attributable only or mainly to their respective descriptions by . . . gender."<sup>232</sup> This constitutes unlawful discrimination under Article 17 of the Constitution. Similarly, under Article 1 of CEDAW, "[t]he definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately."<sup>233</sup> Domestic violence clearly fits within this definition.

Moreover, the government's affirmation of cultural norms, which pressure women to deal with domestic violence matters outside the criminal justice system, denies women equal protection of the law, a fundamental right guaranteed by the Constitution and numerous binding international human rights treaties.<sup>234</sup> The international community has expressed its consensus that "[a]cts or threats of violence, whether occurring within the home or in the community, or perpetrated or condoned by the State, instill fear and insecurity in women's lives and are obstacles to the achievement of equality . . ."<sup>235</sup> Domestic violence prevents women from realizing equal standing in the community.

230. Beijing Declaration and Platform for Action, Fourth World Conference on Women, Sept. 15, 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995), art. 117 [hereinafter Beijing Declaration].

231. *Id.* art. 118.

232. GHANA CONST. ch. V, art. 17.

233. CEDAW General Recommendation 19, *supra* note 3, para. 6.

234. GHANA CONST. ch. V, art. 17; U.N. Charter ch. 1, art. 1, para.3 [hereinafter U.N. Charter]; CEDAW, *supra* note 12, art. 15; African Charter, *supra* note 17, art. 3; ICCPR, *supra* note 13, art. 26; *see also* Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (Dec. 12, 1948), pmbl., arts. 2, 7 [hereinafter UDHR]. While not a binding treaty, the Universal Declaration of Human Rights is considered binding customary law.

235. Beijing Declaration, *supra* note 230, art. 117.

B. DOMESTIC VIOLENCE ARBITRARILY PUTS WOMEN'S RIGHT TO LIFE AT RISK  
AND DENIES WOMEN THE RIGHT TO LIBERTY AND SECURITY OF THE PERSON

As recognized by CEDAW General Recommendation 19, domestic violence “nullifies the enjoyment by women of human rights,”<sup>236</sup> including “the right to life.”<sup>237</sup> The right to life is one of the most accepted and basic human rights and is secured by the Constitution,<sup>238</sup> numerous treaties to which Ghana is a party,<sup>239</sup> and other highly persuasive expressions of international consensus.<sup>240</sup> In its most virulent forms, domestic violence can arbitrarily deprive a victim of her right to life through such violent practices as spousal murder or the spread of HIV/AIDS through rape and sexual abuse.

Furthermore, the Constitution<sup>241</sup> the ICCPR, the African Charter, and the Universal Declaration of Human Rights<sup>242</sup> explicitly recognize and guarantee a woman's right to liberty and security of person. Domestic violence deprives women of these rights by creating a perpetual state of insecurity and subjugation. Because domestic violence often presents itself in a repeated pattern,<sup>243</sup> Ghanaian women subjected to domestic abuse face a constant threat of physical assault or emotional or psychological abuse. This constant threat of harm constrains women's choices and actions as they must constantly monitor and make provisions for their safety. By permitting this state of perpetual insecurity, Ghana violates its duty to ensure enjoyment of the right to liberty and security of person under international law.

C. DOMESTIC VIOLENCE INHIBITS WOMEN FROM EXERCISING THEIR RIGHT TO  
ENJOY THE BEST ATTAINABLE STATE OF PHYSICAL AND MENTAL HEALTH

By inflicting serious physical injuries and psychological trauma, domestic violence denies women's right to enjoy the best attainable state of physical and mental health, which Ghana has pledged to guarantee under the African Charter and the ICESCR.<sup>244</sup> Domestic violence inflicts physical wounds such as bruises, broken bones, injuries resulting from rape such as painful intercourse and vaginal

236. CEDAW General Recommendation 19, *supra* note 3, para. 7.

237. *Id.*

238. GHANA CONST. ch. V., art. 13.

239. African Charter, *supra* note 17, art. 4; ICCPR, *supra* note 13, art. 6.

240. UDHR, *supra* note 234, art. 3; CEDAW General Recommendation 19, *supra* note 3, para 7; DEVAW, *supra* note 2, art. 3.

241. GHANA CONST. ch. V, art. 14.

242. See ICCPR, *supra* note 13, art. 9; African Charter, *supra* note 17, art. 6; UDHR, *supra* note 234, art. 3.

243. See, e.g., National Coalition Against Domestic Violence, *The Problem: What is Battering?*, [http://www.ncadv.org/learn/TheProblem\\_100.html](http://www.ncadv.org/learn/TheProblem_100.html) [hereinafter NCADV, *The Problem*].

244. African Charter, *supra* note 17, art. 16 (“Every individual shall have the right to enjoy the best attainable state of physical and mental health. State parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.”); ICESCR, *supra* note 15, art. 12 (“The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”).

or anal bleeding, miscarriage, and death, as well as psychological consequences such as fear, depression, aversion to sex, post-traumatic stress disorders and suicidal tendencies.

The international community has explicitly recognized that violence against women, including domestic violence, puts women's health and lives at risk,<sup>245</sup> and has encouraged States to take action, for example, by directing States to work to ensure that women subjected to violence have specialized assistance, including health services,<sup>246</sup> and by providing support services for victims, including specially-trained health workers and counseling.<sup>247</sup> Ghana must take action to ensure that domestic violence does not deprive women of the ability to enjoy the best attainable state of health.

#### D. DOMESTIC VIOLENCE ABROGATES WOMEN'S RIGHT TO BE FREE FROM TORTURE

Domestic violence in Ghana violates women's right to be free from torture; it inflicts suffering on women because it is committed with the acquiescence of the state. A person's right to be free from torture is protected by the Constitution<sup>248</sup> and represents one of the most firmly embedded principles of international law.<sup>249</sup> The Torture Convention defines torture as:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for . . . any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.<sup>250</sup>

Domestic violence in Ghana fits the definition of torture as set forth in the Convention. Its repeated nature results in severe pain or suffering due to the serious physical and psychological injuries.<sup>251</sup> When Ghanaian men engage in violence and marital rape to demonstrate control over women, they intentionally abuse those women, and these actions are based upon the discriminatory view that the woman is inferior to the man.<sup>252</sup> Ghana has no effective mechanisms in place that would enable public officials to prevent or combat domestic violence, and, therefore, Ghana is effectively acquiescing in the perpetration of these acts. Ghana must end this acquiescence and systematically protect women's right to

245. CEDAW General Recommendation 19, *supra* note 3, paras. 19-20.

246. DEVAW, *supra* note 2, art. 4.

247. *Id.*; see also CEDAW General Recommendation 19, *supra* note 3, para. 24.

248. GHANA CONST. ch. V, art. 15.

249. Torture Convention, *supra* note 16, at arts. 2, 4; ICCPR, *supra* note 13, art. 7; African Charter, *supra* note 17, at art. 5; UDHR, *supra* note 234, at art. 5.

250. Torture Convention, *supra* note 16, at art. 1.

251. See NCADV, *The Problem*, *supra* note 243.

252. See generally Ofei-Aboagye, *supra* note 50.

freedom from torture, and cruel, inhuman, or degrading treatment.<sup>253</sup>

#### E. DOMESTIC VIOLENCE DEPRIVES WOMEN OF THEIR RIGHT TO DIGNITY

Domestic violence erodes the dignity of domestic violence victims by attacking their self-esteem. The right to dignity is a fundamental feature of human rights law and is explicitly protected by the Ghanaian Constitution<sup>254</sup> and Ghana's international obligations.<sup>255</sup> The repeated threats and incidents of physical, verbal, sexual, and economic abuse suffered by victims of domestic violence diminish victim's self-worth, confidence, and self-respect. By allowing this erosion of dignity, Ghana violates its duty to ensure the right to dignity under the Constitution and international law.

#### F. DOMESTIC VIOLENCE PREVENTS A WOMAN FROM REALIZING HER RIGHT TO EQUALITY IN THE FAMILY

By reinforcing unequal power relationships, acts of domestic violence impair women's enjoyment of the right to equality in the family.<sup>256</sup> Ghanaian women are entitled to enjoy "on a basis of equality of men and women . . . the same right to enter into marriage,"<sup>257</sup> and "the same rights and responsibilities during marriage and at its dissolution."<sup>258</sup> Ghana may simultaneously safeguard women's right to equality in the family and uphold its constitutional and international obligations to respect the right to privacy in the home<sup>259</sup> and to protect the family from arbitrary interference.<sup>260</sup> Article 18 of the Constitution guarantees the individual's right to privacy in the home, subject to the state's prerogative to intervene in domestic affairs for reasons of public safety, the economic well-being of the country, the protection of health or morals, the prevention of disorder or crime, and the protection of the rights or freedoms of others.<sup>261</sup> Ghana may act to combat domestic violence consistent with its obligation to "protect the family." State intervention in domestic violence is not "arbitrary interference with-

253. It is argued that domestic violence involves the elements that constitute torture. See UNICEF Children's Fund, Innocenti Research Center, *Domestic Violence Against Women and Girls*, INNOCENTI DIG., June 2000, at 10, <http://www.unicef-icdc.org/publications/pdf/digest6e.pdf> [hereinafter Innocenti Research].

254. GHANA CONST. ch. V, art. 15.

255. ICCPR, *supra* note 13, art. 5; African Charter, *supra* note 17, art. 5; U.N. Charter, *supra* note 234, pmbl.; UDHR, *supra* note 234, pmbl.

256. CEDAW General Recommendation 19, *supra* note 3, para. 7.

257. CEDAW, *supra* note 12, art. 16(1)(a).

258. *Id.* arts. 16(1)(c)-(g); see also UDHR, *supra* note 234, art. 16; ICCPR, *supra* note 13, art. 23(4). The U.N. Human Rights Committee has confirmed that ICCPR Article 23(4), "implies that husband and wife should participate equally in responsibility and authority within the family." Human Rights Committee General Comment 28, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000), para. 25 [hereinafter Human Rights Committee, General Comment 28].

259. GHANA CONST. ch. V, art. 18; UDHR, *supra* note 234, art. 12.

260. African Charter, *supra* note 17, art. 18; ICCPR, *supra* note 13, art. 23; ICESCR, *supra* note 15, art. 10; CEDAW, *supra* note 12, art. 16; UDHR, *supra* note 234, art. 12.

261. GHANA CONST. ch. V, art. 18.

. . . [the] family” as prohibited by the Constitution and international obligations, but reasonable and necessary to protect women from harm.<sup>262</sup> More importantly, protection of family rights must coexist with and cannot abrogate other rights, particularly the right to non-discrimination in the enjoyment of rights on the basis of sex.<sup>263</sup> As a result, Ghana can and must exercise state power to restore women’s rights to equality in the family.

#### G. GHANAIAN VICTIMS OF DOMESTIC VIOLENCE ARE PRECLUDED FROM EXERCISING THEIR RIGHT TO AN EFFECTIVE REMEDY

As a result of the criminal justice system’s reluctance to enforce Criminal Code provisions in the context of domestic violence and impose meaningful sanctions on batterers, Ghana has failed to provide domestic violence victims an effective remedy. International law recognizes the duty of the State to take the necessary steps to ensure that all persons whose rights have been violated have access to an effective remedy.<sup>264</sup> The above discussion establishes that domestic violence violates numerous human rights. To ensure domestic violence victims enjoy the right to an effective remedy, Ghana must provide them with a means to redress violations of their rights.

#### V. TO FULFILL ITS CONSTITUTIONAL AND INTERNATIONAL OBLIGATIONS TO REMEDY DOMESTIC VIOLENCE, GHANA SHOULD TAKE EFFECTIVE MEASURES TO PROTECT DOMESTIC VIOLENCE VICTIMS’ RIGHTS

Without state action to protect and enforce fundamental human rights, the rights guaranteed by the Constitution and Ghana’s international obligations exist only in theory and cannot be fully enjoyed and exercised by Ghanaian women. Under constitutional and international law, Ghana must adopt legislative or other measures necessary to give effect to the rights recognized in the Constitution and international covenants to which it is a party. Article 12(1) of the Constitution, ICCPR Articles 2(2) and 2(3),<sup>265</sup> CEDAW Article 2(b), Article 1 of the African Charter, and DEVAW Article 4 require state parties to enact legislation or other measures to give effect to the fundamental rights guaranteed in the documents. Furthermore, the Constitution mandates that all fundamental human rights and freedoms guaranteed by the Constitution “shall be respected and upheld by the Executive, the Legislature, the Judiciary, all other organs of government and its

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262. UDHR, *supra* note 234, art. 12.

263. *See* African Charter, *supra* note 17, art. 2; ICCPR, *supra* note 13, art. 2; ICESCR, *supra* note 15, art. 2; UDHR, *supra* note 234, art. 2.

264. ICCPR, *supra* note 13, art. 2.

265. This obligation has been more explicitly defined by the U.N. Human Rights Committee, which has declared that State parties “must not only adopt measures of protection, but also positive measures in all areas so as to achieve the effective and equal empowerment of women,” and required that States “put an end to discriminatory actions, both in the public and private sector which impair the equal enjoyment of rights.” Human Rights Committee, General Comment 28, *supra* note 258, paras. 3, 4.

agencies, and all natural and legal persons in Ghana.”<sup>266</sup> As discussed above, many rights enumerated in these instruments encompass the right to be free from domestic violence. Accordingly, Ghana is under an affirmative obligation to adopt legislation such as the proposed Domestic Violence Bill and take other measures to provide redress to domestic violence victims.<sup>267</sup>

A. GHANA SHOULD REQUIRE THE CRIMINAL JUSTICE SYSTEM, CHRAJ AND  
OTHER STATE ENTITIES TO USE A SCREENING MECHANISM FOR MEDIATION OF  
DOMESTIC VIOLENCE CASES

*The chiefs adopted the man’s proposal, all of it—they were not  
mediating or negotiating [any more].*

—Women’s Rights Advocate<sup>268</sup>

*In mediation, we try to get the two to come to their own conclusion. We  
are neutral. We listen to both sides. We try to draw out what the issues  
are. We guide them to come to a realization of what the problems  
are . . . . Then we try to get them to compromise so no one goes away  
feeling a loser.*

—CHRAJ Official<sup>269</sup>

Lack of mandated mediation screening rules to govern the use of mediation in cases of domestic violence jeopardizes the safety and well-being of domestic violence victims who are unable to fully advocate for their interests. Mediation, or alternative dispute resolution (ADR), is a widespread method of responding to domestic violence in every sector of Ghanaian society where a victim might go for redress, including the extended family, the church, local community leaders (chiefs and queen mothers), traditional healers, NGOs, and state agencies such as the police, CHRAJ, and the courts. Mediation plays an important role in traditional culture, as it facilitates the peaceful resolution of community problems within the community. In the context of domestic violence, mediation is inappropriate absent certain precautions because extreme power imbalances can exist between victims and their abusers. Such an imbalance is incompatible with the prerequisites for a successful mediation, in which a neutral facilitator assists parties of equal bargaining power to negotiate a mutually beneficial agreement by compromising on their individual positions to find an acceptable middle ground.

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266. GHANA CONST. ch. V, art. 12.

267. ICCPR Article 2(2) states, “Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps . . . to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.” ICCPR, *supra* note 13, art. 2(2). The African Charter also states that Member States of the OAU “shall undertake to adopt legislative or other measures to give effect to them.” African Charter, *supra* note 17, art. 1.

268. Interview with Women’s Rights Advocate #10, *supra* note 60.

269. Interview with CHRAJ Official, *supra* note 24.

It is doubtful whether a domestic violence victim can exercise bargaining power equal to that of her abuser, which makes it unlikely that a mediation agreement will adequately provide for the victim's interests and ensure her safety.<sup>270</sup> One women's rights advocate's experience is illustrative. While working with a pilot project on using alternative dispute resolution to address domestic violence, the advocate observed:

We did work with traditional leaders who had been trained [in domestic violence issues] and agreed to community sanctioning. We sent in a test case: [a woman] who wanted compensation (200,000 *cedis* and 3 pieces of best quality cloth) and a public apology. She [spoke to the chiefs and left]. [The man] came in. The chief told him what she wanted. The man said he couldn't afford it. He cut down the compensation to 20,000 *cedis*, 1 piece of cheaper cloth and a private apology. The chiefs adopted the man's proposal, all of it—they were not mediating or negotiating [any more]. The traditional leaders put so much pressure on her.<sup>271</sup>

Despite having undergone domestic violence training, the Chiefs often failed to consider the victim's wishes and simply adopted the abuser's perspective and proposal and pressured the woman to accept it. The women's rights advocate's experience with the pilot project corresponded with the experiences of interviewees who themselves mediate cases.<sup>272</sup> Interviewees collectively described how mediators regularly encourage a woman to submit to the man, usually because

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270. In a review of the U.S. literature dealing with the use of mediation in domestic violence cases, Linda Perry mentions several areas of concern expressed by critics. First, critics worry that "mediation decriminalizes wife abuse [and] subverts the legal rights and protections of women offered by the justice system." Second, they assert that "factors such as fear and 'learned helplessness' make it unlikely that a victim can face her abuser and negotiate an agreement that meets her needs. The abuser typically has tremendous power over his victim, making it difficult, and sometimes dangerous, for the victim to say anything that might displease him." Third, they argue that "sex-role expectations can put women at a disadvantage in mediation . . . women who conform to the traditional female role might . . . give their own needs and interests a lower priority to those of other family members. This can undermine a woman's bargaining power in a negotiation process." Fourth, critics are concerned "that mediation permits abusers to avoid accepting responsibility for their behavior and holds victims partly responsible for the abuse." Fifth, "mediation discourages the expression of anger or minimizes anger . . . [whereas] the expression of anger can have a powerful liberating effect on a woman . . . [seeking] to break free of an oppressive relationship." Sixth, mediation may not provide "protection from future abuse . . . . Because agreements are not always enforceable by the courts, a victim might not have legal recourse if the abuser fails to comply with the agreement." Seventh, "the private nature of the process . . . perpetuates the idea that wife abuse is a private family matter rather than a public problem . . . [and] the private sessions are not subject to public scrutiny, which is important to ensure integrity and consistency in the way mediators handle the cases." Finally, mediators may have "only a minimal amount of training . . . [and] large case-loads." Linda Perry, *Mediation and Wife Abuse: A Review of the Literature*, 11 *MEDIATION Q.* 313, 313-15 (1994).

271. Interview with Women's Rights Advocate #10, *supra* note 60.

272. Interview with Traditional Healer, *supra* note 40; Interview with Religious Leaders, *supra* note 33; Interview with Chiefs, *supra* note 46; Interview with Queen Mothers, *supra* note 54.

submission is seen as part of her gender role, and counsel a woman to accept whatever the man offers.<sup>273</sup>

State mediation of domestic violence cases can be especially problematic because victims generally approach the state only when they desire formal legal relief. Ghanaian women often report abuse to the state only as a last resort after mediation in other venues has failed.<sup>274</sup> Thus, when victims approach the state, they have “been through mediation ad nauseum,” and are interested in prosecution and punitive state intervention, not in further mediation.<sup>275</sup>

For these reasons, state agencies such as the police, CHRAJ, and the courts must be extremely careful about the cases they allow to be mediated. Systematically requiring victims to mediate domestic violence cases endangers them and denies their rights to access formal legal relief. State agencies must thoroughly screen cases before requiring mediation to determine whether domestic violence is at issue, and should mediate cases where domestic violence is at issue only with precautions in place to ensure that the interests and safety of the victim are protected. The government should also encourage non-government mediators to screen for domestic violence and take steps to ensure that victims are safeguarded.

#### B. GHANA SHOULD BUILD THE CAPACITY AND RESOURCES OF STATE AGENCIES AND NGOS TO RESPOND EFFECTIVELY TO DOMESTIC VIOLENCE

For Ghana to successfully combat domestic violence, WAJU, the Department of Social Welfare, and state medical facilities must have the capacity to effectively meet the growing demand for assistance; state officials and community members must be trained to respond appropriately to domestic violence cases; and, NGOs must have the resources to continue to offer critical services to victims of abuse. According to interviewees, Accra’s WAJU office is overflowing with cases, with long lines every day and not enough people or resources to respond to the constant demand.<sup>276</sup> Moreover, the number of WAJU desks, which has already grown to some extent, needs to be expanded even further, particularly in rural areas.<sup>277</sup> The Department of Social Welfare is also under-staffed and under-resourced, and lacks the capacity to handle the large number of cases involving economic abuse and ‘failure to maintain’ claims.<sup>278</sup> Similarly, because medical evidence is required to successfully prosecute domestic violence, state medical facilities must have sufficient resources to permit medical personnel to

273. Interview with Traditional Healer, *supra* note 40; Interview with Religious Leaders, *supra* note 33; Interview with Chiefs, *supra* note 46; Interview with Queen Mothers, *supra* note 54.

274. Interview with Traditional Healer, *supra* note 40; Interview with District Court Judge, *supra* note 119; Interview with WAJU Prosecutor, *supra* note 53; Interview with Religious Leaders, *supra* note 33.

275. Interview with Women’s Rights Advocate #10, *supra* note 60.

276. Interview with WAJU Investigator, *supra* note 7; Interview with Women’s Rights Advocate #4, *supra* note 100.

277. Interview with Women’s Rights Advocate #13, *supra* note 105.

278. Interview with Women’s Rights Advocate #4, *supra* note 100.



take the time to testify to and be cross-examined about medical evidence at trial.<sup>279</sup>

Relatedly, Ghana should require state agencies to compile statistics on the prevalence and nature of domestic violence to facilitate a better understanding of the true scope and nature of domestic violence in Ghana and the current state response to the problem. Interviewees were often unable to provide statistics on numbers of cases reported, prosecuted and convicted. WAJU was the only entity able to provide statistics, and even these statistics lacked details such as the number of cases prosecuted, the sex of victims and perpetrators, and the outcomes of cases. Without data reflecting the extent of the problem and the state's response, it is difficult to know whether certain state actions are more effective than others or to understand how the state response could be improved.

Presently, the majority of both state officials and influential, non-state actors are not yet receiving effective training on how to respond to domestic violence cases. Non-WAJU police retain a reputation for insensitivity to domestic violence matters.<sup>280</sup> Furthermore, because families, church leaders, queen mothers, chiefs, traditional healers, and other non-state actors handle the overwhelming number of domestic violence cases, it is necessary to instill a greater understanding of domestic violence at the grassroots level.<sup>281</sup> Therefore, Ghana should work with the NGOs already training WAJU police and others to train more non-WAJU and WAJU state officials and community members.

Ghana should also build on the success of past public education campaigns on domestic violence to continue to enhance the state and community understanding of and response to domestic violence. Particularly in Accra, the location of the largest WAJU unit, public education has had an extraordinary impact. Many people attribute the recent startling increase in reported domestic violence cases to public education campaigns and increased awareness by women of their legal rights.<sup>282</sup> The government should promote this positive trend by expanding its educational campaigns on domestic abuse.

Finally, NGOs are already doing a lot of excellent work around the issue of domestic violence. The government should support NGO efforts in training, researching, educating, creating shelters,<sup>283</sup> and forming coordinated response networks so that these organizations can continue to contribute their expertise to eradicating the problem.

### C. GHANA SHOULD JOIN THE TREND AMONG COUNTRIES OF THE WORLD AND PASS THE PROPOSED DOMESTIC VIOLENCE BILL

*It's a delicate issue, victims suffer in the quiet. If legislation defining*

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279. Interview with District Court Judge, *supra* note 119.

280. *See, e.g.*, Interview with WAJU Investigator, *supra* note 7.

281. *See, e.g.*, Interview with Queen Mothers, *supra* note 54.

282. Interview with District Court Judge, *supra* note 119.

283. *Id.*; Interview with Women's Rights Advocate #4, *supra* note 100.

*domestic violence is passed, defining sanctions, it will be in the interest of victims.*

—Circuit Court Judge<sup>284</sup>

Ghana should enact the Domestic Violence Bill currently under consideration in the Cabinet because it offers a comprehensive mechanism to redress the problem of domestic violence. The Bill criminalizes physical, sexual, economic, and psychological abuse between spouses, articulates basic procedures for responding to complaints of domestic violence, and establishes a civil remedy for victims in the form of a civil protection order. Passage of the Bill will permit Ghana to join an increasing number of the world's developing and developed nations that have enacted new legislation to combat domestic violence.

Interviewees who addressed the proposed bill overwhelmingly agreed that such a bill would make the state's prevention and response to domestic violence easier and more efficient. Specific improvements mentioned by interviewees included the suggestions that the Bill provide a specific domestic violence definition, enhanced protection for victims, and more serious sanctions for perpetrators.<sup>285</sup> WAJU police were particularly supportive of the Bill and agreed that its passage would make their tasks much easier.<sup>286</sup>

#### 1. The Domestic Violence Bill Enhances Protections for Victims by Criminalizing Rape within Marriage and Other Acts of Domestic Violence

The Domestic Violence Bill increases protections for victims of abuse by criminalizing a wide range of violent conduct that is presently legal within domestic relationships. Most importantly, the Bill repeals Section 42(g) of the Criminal Code, which currently provides that the consent to sexual intercourse given for the purposes of marriage is irrevocable until divorce.<sup>287</sup> This change ensures that a woman will no longer be deemed to consent to her husband's acts of sexual violence by virtue of marriage alone, and that men who rape their wives may be held criminally accountable. The repeal of Section 42(g) also eliminates the currently confusing application of the provision: although the language of 42(g) seems to apply both to acts of sexual and physical abuse, it is interpreted to define marital rape and other spousal sexual abuse as non-criminal, but to define spousal assault and other physical abuse as criminal.<sup>288</sup> Finally, the Bill establishes a new offense of "domestic violence," which penalizes a range of abusive behaviors commit-

284. Interview with Circuit Court Judge, *supra* note 34.

285. *Id.*; Interview with District Court Judge, *supra* note 119; Interview with CHRAJ Official, *supra* note 24.

286. Interview with WAJU Prosecutor, *supra* note 53.

287. See Domestic Violence Bill, *supra* note 8, § 28.

288. Interview with Women's Rights Advocate #13, *supra* note 105.

ted within a domestic relationship<sup>289</sup> and makes clear that domestic violence is unacceptable conduct that is subject to sanction by the state.

## 2. The Domestic Violence Bill Improves Women's Ability to Obtain Relief from Abuse by Establishing a Civil Remedy for Domestic Violence Victims

The Domestic Violence Bill's establishment of a civil remedy for domestic violence victims enables victims to obtain immediate relief from abuse, resolve problems related to their abuse in one proceeding, and access legal relief without pursuing criminal prosecution. Currently, victims seeking relief from domestic violence and related problems are required to initiate several distinct and often lengthy legal proceedings. A woman who was physically abused and deprived of maintenance money by her spouse, for example, would be required to initiate one proceeding to punish the assault and a separate proceeding to recover maintenance.<sup>290</sup> The inefficiency of the current system exposes victims to the risk of further violence and other forms of control by their abusers while their legal proceedings are pending.

For many reasons, victims often do not want to pursue criminal charges against their abusers. Victims often fear that pursuing criminal prosecution will put their safety at greater risk and often do not want their abuser to be imprisoned; they just want the abuse to stop. Because criminal prosecution is a victim's only avenue for securing legal relief from abuse under the current system, many victims are deterred from soliciting the state's aid in ending abuse.

The Domestic Violence Bill remedies the deficiencies in the current system by granting domestic violence victims the right to petition for civil protection orders and interim protection orders, which address the causes and consequences of domestic violence and offer immediate and longer-term relief from abuse without requiring criminal prosecution. Protection orders deter the commission or threat of further acts of domestic violence by prohibiting a perpetrator from engaging in conduct including abusing, harassing, or contacting the victim, and ordering a perpetrator to stay away from a victim.<sup>291</sup> Moreover, protection orders prohibit a range of behaviors not currently subject to legal restriction, including "any act (of the perpetrator) which the Court considers is not in the best interest of the [victim]."<sup>292</sup> Protection orders also can address contributing factors to and secondary effects of domestic violence by imposing conditions upon respondents, including: requirements to exercise good behavior, seek counseling, move out of a shared home, pay maintenance, relinquish property to the victim, and compensate the victim for damages.<sup>293</sup>

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289. See Domestic Violence Bill, *supra* note 8, § 3(1).

290. Interview with District Judge, *supra* note 119; Interview with Women's Rights Advocate #3, *supra* note 56.

291. See Domestic Violence Bill, *supra* note 8, §§ 13-15.

292. *Id.* §15(r).

293. *Id.* §16.

### 3. The Domestic Violence Bill Enhances the State Response to Domestic Violence by Implementing Basic Procedures for Addressing Reports of Abuse

Enactment of the Domestic Violence Bill will help to ensure that the state will consistently and appropriately respond to domestic violence. The Bill institutes mandatory police response and investigative procedures,<sup>294</sup> free medical treatment for victims,<sup>295</sup> and warrantless arrest provisions.<sup>296</sup> The Bill also confers authority on the Ministry of Justice to institute and regulate police training programs and social services related to abuse.<sup>297</sup> Such provisions will improve the present state response significantly, as currently: the vast majority of non-WAJU police regularly disregard domestic violence cases entirely,<sup>298</sup> many officers, even within WAJU, still need significant training on domestic violence,<sup>299</sup> and the cost of obtaining medical evidence prevents many domestic violence victims from accessing legal relief from abuse.<sup>300</sup>

It is important to note that passage of the Domestic Violence Bill alone will not make its provisions effective. Without administrative procedures for filing protection orders and detailed police procedures to guide and standardize police responses to reports of domestic abuse, the Domestic Violence Bill's protections will be meaningless. The Ministry of Justice should be prepared to rapidly produce protection order forms and issue police procedures to ensure effective implementation of the Domestic Violence Bill upon its enactment.

### 4. Passage of the Domestic Violence Bill Will Enable Ghana to Remain in Step with the International Community and a Growing Global Trend to Enact National Legislation to Address Domestic Abuse

Enactment of the Domestic Violence Bill will help Ghana to remain in step with the global community and to demonstrate its commitment to combating domestic abuse. Several trends in national laws reflect the international consensus about the need to improve states' response to domestic violence and provide for the needs of victims of abuse. First, the countries of the world increasingly are abolishing long-standing provisions that exempt marital rape from criminal punishment and criminalizing rape without regard to the relationship between the perpetrator and the victim.<sup>301</sup> Second, states are enacting comprehensive laws

294. *Id.* §7.

295. *Id.*

296. *Id.* §§ 8, 9.

297. *Id.* § 28.

298. Interview with WAJU Investigator, *supra* note 7; Interview with Women's Rights Advocate #4, *supra* note 100.

299. Interview with WAJU Investigator, *supra* note 7.

300. Interview with Women's Rights Advocate #10, *supra* note 60; Interview with WAJU Investigator, *supra* note 7; Interview with WAJU Prosecutor, *supra* note 53; Interview with District Court Judge, *supra* note 119.

301. The following states have begun legislating against marital rape as of 2000: Australia, Austria, Barbados, Canada, Cyprus, Denmark, the Dominican Republic, Ecuador, Finland, France, Germany,

addressing domestic violence that, among other things, create a civil legal remedy for abuse in the form of civil protection orders and designate domestic violence as a separate criminal act.<sup>302</sup> Finally, some states have enshrined the right to protection from domestic violence in constitutional provisions.<sup>303</sup> Colombia's Constitution, for example, provides that "violence in the family is destructive to the harmony and unity of the family and will therefore be penalized by law."<sup>304</sup> Moreover, the Constitution of Ethiopia "guarantees women the right to protection by the state from harmful customs, and prohibits laws, customs and practices that oppress women or cause them bodily or mental harm."<sup>305</sup> By enacting the Domestic Violence Bill, Ghana would join the collective effort made by numerous states in the global community to undertake a comprehensive approach to combating domestic violence around the world.

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Ireland, Mexico, Namibia, New Zealand, Norway, the Philippines, Poland, Russia, South Africa, Spain, Sweden, Trinidad & Tobago, the United Kingdom and the United States of America. See Innocenti Research, *supra* note 253, at 4.

302. See, e.g., Protection Against Familial Violence, No. 24.417 (1994) (Argentina); Family Law Reform Act 1995, No. 167 or 1995 (Australia); Sexual Offenses and Domestic Violence Act (1991) (Bahamas); Cruelty to Women (Deterrent Punishment) (Amendment) Act No. 37, (1988) (Bangladesh); Domestic Violence (Protection Orders) Act (1992) (Barbados); Domestic Violence Act 2000, ch. 178 (Belize); Protection Against Family Violence Act (1998) (Alberta, Canada); Domestic Violence and Stalking Prevention, Protection and Compensation Act (1998) (Manitoba, Canada); Victims of Family Violence Act (1996) (Prince Edward Island, Canada); Victims of Domestic Violence Act (1995) (Saskatchewan, Canada); Family Violence Prevention Act (1997) (Yukon Territory, Canada); Summary Jurisdiction (Domestic Violence) Law, 1992, Law 20 (1992) (Cayman Islands); Law on Intrafamilial Violence, No. 19.325 (1994) (Chile); Violence in the Family (Prevention and Protection of Victims) Law (1994) (Cyprus); Law Against Violence Against Women and the Family, Official Registration No. 839, (1995) (Ecuador); Domestic Violence Act (1996) (Guyana); Prevention of Violence in the Family Law (1991) (Israel); Domestic Violence Act (1994) (Malaysia); Protection from Domestic Violence Act (1997) (Mauritius); Domestic Protection Act (1982) (New Zealand); Domestic Violence Act (1998) (South Africa); Domestic Violence Act (1999) (Trinidad and Tobago); Family Law Act (1996) (United Kingdom).

303. WOMEN, LAW & DEVELOPMENT INTERNATIONAL, STATES RESPONSES TO DOMESTIC VIOLENCE: CURRENT STATUS AND NEEDED IMPROVEMENTS 66 (1996).

304. COLOMBIA CONST. art. 42(5).

305. *Id.*; see also ETHIOPIA CONST. art.35(4).

APPENDIX A:  
MEDIATION SCREENING RULES, 2003<sup>306</sup>

**Rule 1: Conditions to Order, Refer or Engage in ADR in cases involving a criminal charge of domestic or family violence.**

A state official shall not order, refer or engage in alternative dispute resolution (ADR) in cases involving a criminal charge of domestic violence unless:

1. ADR is requested by the victim of the alleged violence;
2. ADR is provided according to the procedures specified in Rule 6 by a state official trained in domestic and family violence according to Rule 8; and
3. The state official informs the victim of the dangers of proceeding with ADR if any of the characteristics described in Rule 4, Subsection 4 are present.

**Rule 2: Duty of State Officials to Screen for Existence and Severity of Domestic Violence.**

1. Any state official, before facilitating any type of ADR between those in a domestic relationship, shall screen the parties and their dispute for the existence and severity of domestic violence in their relationship by use of the screening tool provided in Rule 3.
2. The state official shall screen the parties and the dispute according to Rule 3 regardless of whether the parties have requested that the state official facilitate the ADR proceeding.
3. The state official shall administer the process specified in Rule 3 separately and confidentially with each of the parties.
4. During the screening and ADR process, the state official should assume that any party, particularly if she is a woman, could be a victim of abuse, should pay careful attention to the party's body language, voice, hesitations and any changes in them around the party's partner or the other party, should listen for and follow-up on clues that the party is afraid, and should avoid victim-blaming statements.
5. If at any time during the screening and ADR process the state official believes that the party is fearful of her/his spouse or partner or of any other party involved in the ADR process, the state official shall stop the screening and any ADR and refer the party to an advocate or other support services.

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306. This proposed Legislative Instrument was created using the following models and sources from the United States: ABA FAMILY LAW SECTION TASK FORCE, REVISED STANDARDS OF PRACTICE FOR DIVORCE AND FAMILY MEDIATION (1997); NATIONAL COUNCIL OF JUVENILE & FAMILY COURT JUDGES, FAMILY VIOLENCE: A MODEL STATE CODE; BATTERED WOMEN'S LEGAL ADVOCACY PROJECT, DOMESTIC VIOLENCE SCREENING TOOL FOR MEDIATORS AND THEIR SCREENERS (1995); Linda Perry, *Mediation and Wife Abuse: A Review of the Literature*, 11 MEDIATION Q. 313 (1994); Karla Fischer et al, *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 SMU L. REV. (1993); Linda K. Girdner, *Mediation Triage: Screening for Spouse Abuse in Divorce Mediation*, MEDIATION Q., 7(4) (1990).

6. If at any time during the screening and ADR process a party, particularly a victim of domestic violence, requests suspension or termination of the process, the state official shall stop the screening and any ADR and refer the victim to an advocate or other support services.

**Rule 3: Screening Tool.**

1. The state official shall begin by introducing the ADR process, including the following points in the introduction:
  - a. The screening process is an opportunity for the party to tell the official about her/his concerns about the mediation and her/his situation.
  - b. The state official will be asking direct questions about the domestic relationship in order to determine if ADR is the correct approach to solving the dispute.
  - c. Any information shared in the screening process is confidential and will not be shared with the other party unless the state official has the permission of the party.
2. The state official shall ask the party if she/he has any questions or anything she/he would like to tell the state official before the screening process continues. If the party says she/he has nothing to say at that point, the state official shall assure her/him that she/he can interrupt at any point to ask a question or make a comment.
3. The state official shall begin questioning with an open question related to the particular dispute. This question will vary depending upon the matter that has brought the parties before the state official.
4. The state official shall continue with questions designed to identify the parties' methods of making decisions because these will indicate where power and control lies in the relationship. The state official shall look for whether one party controls most of the decisions and money in the relationship, or if both parties are involved in decision-making, can initiate the decision-making process, and/or are financially independent.
  - a. Specific questions the official shall ask are:
    - i. How are/were decisions made in your relationship? Give me an example.
    - ii. Are/were there other ways in which decisions were made? Give me an example.
    - iii. What happens when you don't agree with a decision your partner makes? Give me an example.
    - iv. How would you like for decisions to be made in the ADR process? What would you and the other party need to do to make that happen?
  - b. Other questions the official may ask include those regarding specific decisions and areas of control within the relationship:
    - i. How many family members are employed?
    - ii. Who pays the bills in your family? Who buys the groceries?

- iii. Do you have your own money or immediate access to joint moneys?
  - iv. Does your family have a bank account? Whose name(s) is (are) on it?
  - v. Do you need your partner (or the other party's) permission to leave the house and travel to the market, to visit others, to work, etc.?
  - vi. How do members of your family travel to the market, to work, or to school? (If the answer indicates ownership of a car, bike or other form of transportation: who owns the (car, bike, other)? Can you (drive, ride, etc)?)
  - vii. Who does the cooking and cleaning in your household?
  - viii. Who looks after the children?
  - ix. Who decides whether the children can go to school?
  - x. Who decides whether to have children?
  - xi. Who decides when to have sex?
5. The state official shall continue with questions designed to identify the parties' methods of managing conflict and expressing anger because these may demonstrate imbalances in power or abusive behaviors. Specific questions the official shall ask are:
- a. What happens when the two of you disagree/fight/have a conflict or dispute about something? Tell me about a time when the two of you had a disagreement/fight/conflict/dispute.
  - b. Tell me about your worst disagreement/fight/conflict/dispute.
  - c. What things do you disagree/fight/have a conflict or dispute about?
  - d. What do you think you might disagree/fight/have a conflict or dispute about during the ADR process?
  - e. How would you like to resolve disagreements during ADR? What would need to change for that to be possible?
  - f. How do you and your partner/the other party act when angry?
  - g. Describe an occasion when you were angry. What did you do? What did your partner/the other party do?
  - h. Describe an occasion when your partner/the other party was angry. What did your partner/the other party do? What did you do?
  - i. What types of things make you or your partner/the other party angry?
  - j. How would I know if your partner/the other party is angry during the ADR process? How would I know if you are angry?
6. The state official shall continue with questions designed to identify specific abusive behaviors, explaining to the party that these are things some people do when angry and the party should think back over the entire relationship and tell the state official whether they have ever happened. Specific questions the state official shall ask are:
- a. Have either of you ever had physical contact with the other when the person initiating the contact was angry?
  - b. Has there ever been any shoving or pushing? Choking, biting, hitting or kicking?



- c. Have either of you ever prevented the other from leaving a room or situation?
  - d. Have either of you ever damaged the other's property, the furniture or the home?
  - e. Have either of you ever forced the other to do anything against her/his will (for instance, sexual acts)?
  - f. Does either of you control the other's daily activities?
  - g. Has either of you been violently or constantly jealous of the other?
  - h. Are you being hurt by anyone in your life?
  - i. Have either of you ever threatened the other with something bad if the person didn't do what he/she was told?
  - j. Have either of you ever threatened to or actually used a knife or other weapon to harm the other or anyone else?
  - k. Have either of you ever threatened, contemplated or attempted suicide?
  - l. Have either of you had a drinking or drug problem? Has anyone ever complained about your or your partner's/the other party's drug or alcohol use? How might this problem effect your or your partner's/the other party's ability to participate in the ADR process and follow through on any agreements reached?
  - m. Have any of the children ever been abused physically, sexually or psychologically?
  - n. Have you experienced any problems with your landlord or neighbors? Please describe. How was it solved?
  - o. Are you ever afraid of your partner/the other party when he/she gets angry?
7. The state official shall close the questioning by focusing on the present and the future with the following questions:
- a. Do you have any questions for me about the ADR process?
  - b. What most concerns you about engaging in ADR with your partner/the other party?
  - c. What are you afraid that your partner/the other party might do to undermine the ADR process?
  - d. What might your partner/the other party think you would do to undermine the ADR process?
  - e. What do you want as an outcome of the ADR process?
  - f. What might your partner/the other party want as an outcome of the ADR process?
  - g. Is there anything else you want to tell me?
  - h. Is there anything that you have told me that you would not want me to tell your spouse?
8. The state official shall end the screening session by letting the party know that he/she can contact the state official at any time with anything she/he forgot to mention during the screening session.

9. The state official may seek information outside the parties, subject to the requirement of confidentiality, to determine whether domestic violence is present.

**Rule 4: Determination of Appropriate Form of ADR.**

After screening the parties and their dispute, the state official shall use the parties' answers to the questions of Rule 3 to determine whether ADR can be used to resolve the dispute and, if so, what form of ADR should be used by the official.

1. The state official shall apply the typical method of ADR, described in Rule 5, if the parties manifest the following relationship characteristics:
  - a. The disputing parties are non abusive and non-controlling, with equal or equivalent power;
  - b. The disputing parties are mutually emotionally hurtful to one another, trading insults, name-calling, put-downs and emotional or sexual withholding; or
  - c. The disputing parties have experienced one or two incidents involving non-injurious physical confrontations, after which the aggressor decided not to act this way and has not, and the other party did not change and become more submissive or accommodating.
2. If the disputing parties manifest any behavior associated with a pattern of one partner controlling the other, physically or non-physically, or if either party is presently fearful of the other, the state official shall not apply the method of ADR described in Rule 5.
3. The state official shall apply the specialized method of ADR described in Rule 6, if the parties' relationship and the state official's skills manifest the following characteristics:
  - a. An abusive relationship has existed but both parties are capable of negotiation and the abusive party is not capable of seriously injuring or killing the other party.
  - b. The characteristics, described in Subsection 4 of this rule, of relationships that must be excluded from ADR, do not exist.
  - c. The state official has the requisite training, is knowledgeable about domestic violence and has a network of community resources.
4. The state official shall not proceed with any ADR but shall assist the parties with information and referrals according to Rule 7 if the parties manifest any of the following relationship characteristics:
  - a. One or both parties are unable to negotiate.
  - b. The abusive party is capable of seriously injuring or killing the other party.
  - c. The abused party identifies the abuser's needs as primary and necessary for the abused party's survival.
  - d. The abusing party continues to have a need to control the abused party.

- e. The abusing party is easily frustrated by the prospect of not getting everything he wants.
  - f. The abusing party accepts no responsibility for the abuse.
  - g. The abusing party has obtained, plans to obtain, or has used a weapon against another person in the past.
  - h. The abusing party has been convicted of assaulting someone
  - i. The abusing party is violently or constantly jealous
  - j. The abusing party has threatened to, attempted to or has fantasies of killing the abused party or their children, or of committing suicide.
  - k. If the abused party discloses the abuse but does not want the disclosure revealed to the abuser.
5. The state official shall document the reasons for their determination as to which form of ADR is appropriate in the case. The documentation shall be reviewed by an appropriate supervisor.
  6. If the state official has any doubt as to whether ADR is appropriate, the state official shall not order ADR in the case.

**Rule 5: Use of Typical ADR.**

If the state official determines, based on the guidelines of Rule 4, Subsection 1 that typical ADR methods are appropriate and safe to use with the disputing parties, the state official shall act as an impartial third party who assists the parties to arrive at a mutual agreement according to the usual rules and standards.

**Rule 6: Use of Specialized ADR.**

If the state official determines, based on the guidelines of Rule 4, Subsection 3 that specialized ADR methods are appropriate and safe to use with the disputing parties, the state official shall proceed with ADR by taking the following steps:

1. Working with the parties in defining the terms of the process, including acknowledgement of past abuse, encouragement of the abused spouse to pursue law enforcement remedies, requiring and monitoring attendance at therapy for the abuser and domestic violence support services or therapy for the abused party;
2. Developing a safety plan with the abused spouse so the abused spouse has a plan for how to respond to a dangerous situation and enlisting the abuser's agreement to the plan through a process/behavior contract (if the abuser is not willing to commit to the terms of the plan, ADR must be terminated);
3. Holding separate sessions with the parties, even if they do not all agree;
4. Encouraging the parties to be represented by counsel and appointing counsel or a companion to the abused party if the abuser has counsel;
5. Allowing the abused party to be accompanied during the ADR process by a friend, representative, attorney or advocate;

6. Referring the parties to appropriate community resources; and
7. Taking any other steps deemed necessary by the state official to protect the victim from intimidation by the abusive party.

**Rule 7: Referrals to Private Mediators.**

State officials shall not refer cases to private parties for ADR or allow third parties to withdraw cases from state disposition for such purposes. A private party is anyone not included in the definition of state official, and third parties are any parties other than the parties to the rule.

**Rule 8: Duty of State Official to Provide Information and Referrals in Cases Where ADR Prohibited.**

If the state official determines, based on the guidelines of Rule 4, Subsection 4 that ADR is inappropriate and prohibited, the state official should address the abused party's needs, including acknowledgement of the violence, consideration of a safety plan for the abused party, access to information and resources that can address the needs of the abused party, an explanation of why ADR is dangerous in this case, and encouragement to the abused party to use an attorney or similar advocate.

**Rule 9: Training.**

All state officials who are in a position where they might practice ADR in domestic violence cases shall receive at least eight hours of training on domestic violence issues. That training shall include training from a victim's advocate.

**Rule 10: Interpretation.**

1. "Alternative Dispute Resolution" or "ADR" means mediation, victim-offender mediation, family group conferencing, or similar forms of facilitated negotiations seeking to settle a case.
2. "Confidentiality" means that the state official shall not disclose any matter that a party expects to remain confidential unless given permission by all parties or unless required by law or other public policy. State officials shall discuss and agree upon confidentiality guidelines with the parties prior to engaging in ADR. State officials may disclose a party's continuing violence or threat of violence against another party when it is likely to result in death or substantial bodily harm.
3. "Court official" includes, but is not limited to, judges, magistrates, prosecutors and public defenders.
4. "Criminal charge of domestic violence" includes any charge under the Criminal Code that is made by a party to a domestic relationship against another party to that relationship.
5. "Domestic relationship" means a family relationship, a relationship akin to a family relationship or a relationship in a domestic situation that exists or has

existed between disputing parties, including a marriage, a separation or divorce, cohabitation, an engagement, a dating relationship, sharing a child, or relation by consanguinity, affinity, adoption or law.

6. "State Official" includes, but is not limited to, all state employees, elected or appointed public officials, court officials, police, CHRAJ staff and commission members and anyone else deemed by a court to be a state actor.

APPENDIX B:  
PROPOSED POLICE PROCEDURES FOR DOMESTIC  
VIOLENCE IN GHANA

INTRODUCTION

These directives are for the purpose of establishing guidelines for police action in response to calls of domestic violence. The guidelines are pursuant to the Domestic Violence Bill (hereinafter “Bill”) and should be modified accordingly if any amendments are made to the Bill.<sup>307</sup>

I. DEFINITIONS

- A. “Domestic Violence” means the occurrence of any act that falls under the definition of domestic violence under § 1 of the Bill. It includes one or more of the following offenses within the context of a previous or existing domestic relationship:
1. Any act under the Criminal Code 1960 (Act 29) which constitutes a threat or harm to a person under that Act;
  2. Specific acts, or threats to commit, or acts likely to result in
    - a. Physical abuse: physical assault or any use of physical force against another person;
    - b. Sexual abuse: forceful engagement of another person in any sexual contact whether married or not;
    - c. Economic abuse: deprivation or threatened deprivation of another person’s financial and economic resources; or
    - d. Emotional, verbal or psychological abuse;
  3. Intimidation and harassment; or
  4. Torture or other cruel, inhuman, degrading treatment or punishment.
- B. “Domestic relationship” means a family relationship or a relationship that is similar to a family relationship. It includes:
1. marriage;
  2. living together (like a married couple, as co-tenants or as a domestic servant);
  3. being engaged to each other;
  4. a romantic, intimate or cordial relationship which doesn’t have to be sexual;
  5. having or being the foster parents of a child together;

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307. The following procedures have been based on existing police guidelines. In particular, Section II, Procedures for Communications Personnel and Officers’ Response, is from the Will County, Illinois police protocol. Provisions from the New Jersey Guidelines on Police Response Procedures in Domestic Violence Cases, the California Marin County Protocols and the Wisconsin Model Domestic Violence Policies and Procedures have been noted and used in their original or modified forms.

6. family members; or
  7. A relationship that a court finds to be a domestic relationship.
- C. Note that the Domestic Violence Bill does not define a victim of domestic violence by age, physical or psychological condition or sex.

## II. PROCEDURES FOR EMERGENCY COMMUNICATIONS PERSONNEL AND LAW ENFORCEMENT OFFICERS' RESPONSE

- A. Communications: The safety of domestic violence victims, whether the threat of violence is immediate or remote, should be the primary concern of all operators. Line operators shall advise the victim to insure his or her safety in any way possible, whether this includes waiting for officers at a friend's house, leaving the residence, locking herself in a room, or staying put. Communications personnel, upon receipt of a call for service involving domestic violence, shall assess the situation as thoroughly as possible and dispatch the necessary units.
1. Information: Communications personnel should obtain, whenever possible, at least the following information from the caller:
    - a. The victim and suspect's identities (if the call is made by a third party, the caller's identity);
    - b. The exact location of the caller and the parties (street, house or apartment number or other landmarks);
    - c. The nature of the call (e.g. physical assault, assault-in-progress, assault with a weapon);
    - d. A description of any and all injuries;
    - e. The description and type of any weapons involved;
    - f. A description of the suspect;
    - g. If the suspect has left the scene, the likely/possible whereabouts of the suspect; and
    - h. The presence, and/or identity of the assailant at the scene. Communications personnel should check the name and address reported in the call against any available cross-referenced information to determine whether there are previously reported incidents involving the same parties and/or same address. From such a check, the probable danger involved in responding to the call should be determined.
  2. Other procedures
    - a. If possible, operators should call-back all hang-ups;
    - b. If an operator answers a call and hears dead-air, they should dispatch a squad immediately;
    - c. Operators should not cancel any domestic violence calls, even at a victim's request (they should tell the caller that, by policy, they must dispatch an officer); and
    - d. Domestic violence calls should receive a high priority by policy.

- B. Officers' Response. Officers will respond to and investigate complaints of persons who are victims of domestic violence in a safe and expeditious manner. All such calls should be regarded as potentially 'high risk' calls for police service.

### III. DOMESTIC VIOLENCE COMPLAINT AND INVESTIGATION

- A. The victim of domestic violence or any person with information about domestic violence may file a complaint:
1. Where the offender resides;
  2. Where the victim resides;
  3. Where the alleged act of domestic violence occurred or is occurring;  
or
  4. Where the victim is taking shelter if the victim has left his or her normal place of abode.
- B. Police Response: A police officer shall respond to a request for assistance from domestic violence and offer protection even when the person reporting is not the victim of the domestic violence.
- C. Investigation: The following steps should be included in an officer's investigation and subsequent report:
1. The officer shall exercise reasonable care for the safety of officer and parties involved;
  2. Arrival at the scene. Upon arrival the officer shall:
    - a. Determine location and condition of victim;
    - b. Determine if suspect is still at scene;
    - c. Determine what, if any, crime has occurred;
    - d. Summon an ambulance if injuries require; and
    - e. Separate victim, suspect, and witnesses.
  3. Preliminary investigation:
    - a. Note victim's and witnesses' first statements to officer upon arrival; and
    - b. Interview victim, suspect, and witness separately (to the extent the officer safety concerns allow).
    - c. Interviewing the victim:
      - i. Inquire about previous domestic incidents, prior threats / offenses (violent or otherwise) against victim by suspect, prior restraining orders or incidents of stalking;
      - ii. Ask detailed questions about previous incidents of verbal, physical and sexual abuse in the home and relationship;
      - iii. Inquire if there are any civil protection orders;
      - iv. Inquire when and where victim can be safely contacted, such as at place of work;



- v. Record names, addresses, and phone numbers of two relatives or friends of the victim who will know victim's whereabouts in 6-12 months; and
  - vi. Create well-drawn diagrams of the scene in addition to photographs, ask victim to mark the diagram where the events occurred.
- d. Interview children:
- i. Identify and interview all children in the home and document where they were during the incident;
  - ii. All verbal children should be interviewed alone and in an age appropriate manner;
  - iii. Ask children about the current incident and any prior incidents of abuse; and
  - iv. Determine if there is a history of physical, sexual or serious emotional abuse of the child or anyone in the home.
- e. Determine whether either or both parties committed an assault or other crime;
- f. Determine whether either party used force in self-defense;
- g. If both parties used force, and neither party used force in self-defense, determine which party is the predominant<sup>308</sup> aggressor. Factors to consider include:
- i. size of the parties;
  - ii. use of weapons;
  - iii. is one party stronger than the other;
  - iv. who is afraid;
  - v. the severity of injuries and fear inflicted in this incident by each party;
  - vi. the use of force and intimidation used in this incident by each party;
  - vii. location and nature of injuries (Offensive vs. Defensive);
  - viii. history of abuse (is one person usually the aggressor);
  - ix. existence of court protective orders;
  - x. the likelihood of each suspect to cause future injury;
  - xi. each person's fear of being injured by the other;
  - xii. demeanor of the parties;
  - xiii. use of alcohol and other drugs;
  - xiv. existence of corroborating evidence or witnesses;
  - xv. criminal history; and
  - xvi. other legal defenses.
- h. Indicators of defensive injuries include:

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308. The predominant aggressor is the person determined to be the most significant, rather than the first, aggressor.

- i. wounds on victim's palm(s) of hand(s);
    - ii. bumps on the victim's head (especially the back);
    - iii. bite marks on perpetrator's chest, bicep, forearms;
    - iv. scratches on perpetrator's face, chest, neck (strangulation cases); and
    - v. bruising behind ears of victim (strangulation cases).
  - i. Note and photograph victim's condition, demeanor, smeared makeup;
  - j. Photograph damaged clothing while on person;
  - k. Seize torn or damaged clothing;
    - l. Note and photograph evidence of injury;
  - m. Record the complaint and provide a written copy to victim;
  - n. Assist victim in obtaining a safe refuge where necessary;
  - o. Advise the victim to preserve evidence;
  - p. Inform victim of his or her rights and any services which may be available;
    - i. If the victim has a protection order against suspect, obtain a copy of the order and valid proof of service. If not, inform the victim how to get an order.
    - ii. Advise victim regarding an interim protection order.
  - q. Protect the victim to enable the victim retrieve personal belongings;
4. Medical Treatment:
  - a. Assist victim in getting medical assistance where necessary, and
  - b. Document complaint of injuries.

#### IV. ARREST BY POLICE

- A. Warrantless Arrest: A warrantless arrest for domestic violence may be made in the following circumstances.
  1. The violence happens in the presence of the police officer;
  2. The police are obstructed by the person in the execution of their duties;
  3. The person has or attempts to escape from police custody;
  4. When there is reasonable suspicion that a person has or is about to commit an act of domestic violence;
  5. When there is reasonable suspicion that a person is obstructing police in the execution of their duties; or
  6. If there is good reason to believe a person has violated a civil protection order.
- B. How to determine whether an act of domestic violence has been committed:
  1. The victim exhibits signs of injury caused by an act of domestic violence (see above for interpretation of "exhibits"); or

2. Where the victim exhibits no visible sign of injury, but states that an injury has occurred, the officer should consider other relevant factors in determining whether there is probable cause to make an arrest.
- C. Determining which party to arrest:
1. In determining which party in a domestic violence incident is the victim where both parties exhibit signs of injury, the officer should consider:
    - a. the comparative extent of injuries suffered;
    - b. the history of domestic violence between the parties, if any; or
    - c. other relevant factors.
  2. Police shall follow standard procedures in rendering or summoning emergency treatment of the victim, if required.
- D. The following factors should NOT be considered when making an arrest:
1. Whether the victim will cooperate with prosecution;
  2. The relationship or marital status of the suspect and the victim, i.e. not married, separated, or pending divorce;
  3. The absence of visible indications of injury or impairment;
  4. Potential financial consequences of arrest; and
  5. Verbal assurance that violence will cease.

#### V. FOLLOW UP INVESTIGATION

- A. At a minimum, follow up investigation should include the following:
1. Verify the inclusion of all investigative steps described above regarding officer response/investigation;
  2. Obtain medical records, if not already obtained;
  3. Interview witnesses who may not have been available to the patrol officer at the time of the incident (e.g. neighbors);
  4. Re-interview witnesses as necessary; and
  5. Obtain subsequent photographs of injuries to the victim (particularly where there were no initial photos taken or the initial photos did not show injuries to the victim).
- B. An investigator should conduct a vigorous follow-up investigation, regardless of whether the victim has determined not to participate in the prosecution of the defendant.
- C. Investigators and prosecutors shall not dismiss a case because the victim is not willing to participate in the investigation or prosecution.