

**The Government Response to Domestic Violence  
Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area:  
A Human Rights Report**

**December 10, 2004**

**A Publication of Minnesota Advocates for Human Rights**

650 Third Avenue South #550

Minneapolis, Minnesota 55402-1940, USA

Website: [www.mnadvocates.org](http://www.mnadvocates.org)

Authors:

Molly Beutz

Aviva Breen

Mary Ellingen

Robin Phillips

Christine Tefft

Cheryl Thomas

MINNESOTA



**ADVOCATES  
FOR HUMAN RIGHTS**

Copyright 2004 by Minnesota Advocates for Human Rights

Printed in the United States of America

All rights reserved.

**ISBN:** 0-929293-57-6

Minnesota Advocates for Human Rights is a volunteer-based, non-governmental, non-profit, 501(c)(3) organization. The mission of Minnesota Advocates for Human Rights is to implement international human rights standards to promote civil society and reinforce the rule of law. By involving volunteers in research, education, and advocacy, we build broad constituencies in the United States and selected global communities.

Founded in 1983, Minnesota Advocates is one of the largest Midwest-based non-governmental organizations engaged in international human rights work. Our organization has more than 4,000 members, including more than 600 active volunteers who contribute an estimated \$2.8 million annually of in-kind services. Minnesota Advocates also has Special Consultative Status with the United Nations.

Minnesota Advocates has received international recognition for a broad range of innovative programs to promote human rights and prevent the violation of those rights. Minnesota Advocates provides investigative fact-finding, direct legal representation, collaboration for education and training, and a broad distribution of publications. Minnesota Advocates has produced more than 50 reports documenting human rights practices in more than 20 countries; educated over 10,000 students and community members on human rights issues; and provided legal representation and assistance to over 3,000 disadvantaged individuals and families. Minnesota Advocates is governed by a 26-member Board of Directors, consisting of community leaders in academia, the arts, business, law, and policy, and providing strategic oversight of financial and programmatic decisions.

The Women's Human Rights Program at Minnesota Advocates works to improve the lives of women by using international human rights standards to advocate for women's rights in the United States and internationally through research, education and advocacy initiatives. Since 1993, the Women's Human Rights Program has partnered with organizations in Central and Eastern Europe, the Commonwealth of Independent States, Nepal, Mexico and Haiti, to document such violations of women's rights as domestic violence, rape, employment discrimination, sexual harassment in the workplace and trafficking in women and girls for commercial sexual exploitation.

## Acknowledgments:

Minnesota Advocates acknowledges with great appreciation the research and fieldwork carried out by volunteers Molly Beutz, Andrea Bond, Aviva Breen, Mary Ellingen, Judge Mary Louise Klas, Kristine Lizdas, Rebecca Palmer, and Malinda Schmiechen. Special thanks to interns Lilo Bayati, Elizabeth Braun, Teresa Jacobs, Elena Karadjova, Yuliya Kashaeva, Robyn Linde, Jenny Mojica, Annalise Nelson, Jennifer Nou, and Emma Quinn-Judge.

We appreciate Amy Beier, Min Chong, Margaret Chutich, Manpreet S. Dhanjal, Mary Hunt, Emma Kelty, Rosalyn Park, and Elizabeth Varro for their editing contributions.

Minnesota Advocates would like to acknowledge and thank the members of the Twin Cities' Immigrant and Refugee Battered Women's Task Force and the Steering Committee of government and non-profit professionals who reviewed and guided the drafting of this report. Members of the Steering Committee include Evangelina Aguilar, Ilean Her, Loan Huynh, Sharonna Lee, Nadifa Osman, Lolita Ulloa, Tsehai Wodajo, and Katrina Zabinski.

Minnesota Advocates would also like to thank the following organizations for generously providing the financial support necessary to conduct the research: Women's Foundation of Minnesota, The Jay and Rose Phillips Family Foundation, The Saint Paul Foundation, the Minnesota State Bar Foundation and the Minneapolis Foundation.

## TABLE OF CONTENTS

|              |   |            |
|--------------|---|------------|
| <b>I.</b>    | <b>PREFACE</b> .....  | <b>1</b>   |
| <b>II.</b>   | <b>EXECUTIVE SUMMARY</b> .....  | <b>2</b>   |
| A.           | REFUGEE AND IMMIGRANT WOMEN IN MINNESOTA: DIVERSE EXPERIENCES .....                 | 4          |
| B.           | PROJECT GOALS AND METHODOLOGY .....   | 7          |
| C.           | FINDINGS OF THIS DOCUMENTATION PROJECT .....  | 9          |
| <b>III.</b>  | <b>INTERNATIONAL HUMAN RIGHTS LAW OBLIGATIONS</b> .....                             | <b>28</b>  |
| A.           | OBLIGATIONS OF THE UNITED STATES .....  | 28         |
| B.           | RIGHT TO EQUAL PROTECTION OF THE LAWS.....  | 29         |
| C.           | RIGHTS TO LIFE, LIBERTY, SECURITY OF PERSON AND FREEDOM FROM TORTURE .....          | 31         |
| D.           | RIGHT TO AN EFFECTIVE REMEDY .....  | 35         |
| <b>IV.</b>   | <b>STATE AND LOCAL JUSTICE SYSTEMS</b> .....  | <b>37</b>  |
| A.           | LAW ENFORCEMENT AND JAILS.....  | 38         |
| B.           | PROSECUTION.....  | 45         |
| C.           | COURT INTERPRETATION.....   | 53         |
| D.           | CRIMINAL COURTS AND JUDICIAL RESPONSE.....  | 65         |
| E.           | CIVIL COURTS .....  | 72         |
| <b>V.</b>    | <b>THE CHILD PROTECTION SYSTEM</b> .....  | <b>81</b>  |
| A.           | INTRODUCTION .....  | 81         |
| B.           | EVALUATION OF CHILD ENDANGERMENT BY MANDATORY REPORTERS AND CPS INVESTIGATORS ..... | 84         |
| C.           | CHILD PROTECTION SERVICES CASE PLANS .....  | 91         |
| D.           | LACK OF COORDINATION BETWEEN COURT PROCEEDINGS .....                                | 96         |
| <b>VI.</b>   | <b>FEDERAL IMMIGRATION LAW AND AUTHORITIES</b> .....                                | <b>98</b>  |
| A.           | INTRODUCTION .....  | 98         |
| B.           | ELIGIBILITY FOR IMMIGRATION RELIEF.....   | 103        |
| C.           | ADJUDICATION OF IMMIGRATION RELIEF AND EMPLOYMENT AUTHORIZATION REQUIREMENTS .....  | 104        |
| D.           | IMPLEMENTATION OF IMMIGRATION RELIEF IN THE VIOLENCE AGAINST WOMEN ACT .....        | 106        |
| E.           | ADJUDICATION OR REVIEW CONDUCTED BY IMMIGRATION AUTHORITIES.....                    | 107        |
| F.           | OFFICE OF CHIEF COUNSEL .....   | 110        |
| G.           | INTERACTION BETWEEN IMMIGRATION AUTHORITIES AND LAW ENFORCEMENT .....               | 111        |
| <b>VII.</b>  | <b>FEDERAL AND STATE PUBLIC ASSISTANCE</b> .....                                    | <b>113</b> |
| A.           | IMPLEMENTATION OF THE LAW .....   | 113        |
| B.           | IMPEDIMENTS TO ECONOMIC ASSISTANCE .....  | 118        |
| C.           | LANGUAGE BARRIERS AND TRANSLATION .....   | 120        |
| <b>VIII.</b> | <b>MEDICAL SERVICES</b> .....   | <b>121</b> |
| A.           | INTRODUCTION .....  | 121        |
| B.           | LANGUAGE BARRIERS AND INTERPRETATION .....  | 122        |
| C.           | DOMESTIC VIOLENCE CASE IDENTIFICATION AND DOCUMENTATION OF INJURIES.....            | 125        |
| <b>IX.</b>   | <b>DOMESTIC VIOLENCE SHELTERS</b> .....   | <b>131</b> |
| A.           | ACCESS TO SHELTERS.....   | 132        |
| B.           | FEAR OF LEGAL CONSEQUENCES.....   | 136        |
| C.           | FUNDING BARRIERS .....  | 137        |
| <b>X.</b>    | <b>CONCLUSION</b> .....   | <b>138</b> |

|  |            |
|--|------------|
| <b>XI. RECOMMENDATIONS .....</b>   | <b>139</b> |
| A. FOR THE MINNESOTA GOVERNOR, STATE OFFICIALS AND STATE LEGISLATURE ..... | 139        |
| B. FOR LAW ENFORCEMENT AND JAILS .....                                     | 141        |
| C. FOR PROSECUTORS.....  | 142        |
| D. FOR COURT ADMINISTRATORS .....  | 143        |
| E. FOR COURTS AND JUDGES .....   | 145        |
| F. FOR PROBATION AUTHORITIES.....  | 146        |
| G. FOR CHILD PROTECTION SERVICES .....                                     | 146        |
| H. FOR STATE GOVERNMENT ASSISTANCE AGENCIES .....                          | 147        |
| I. FOR MEDICAL INSTITUTIONS.....   | 147        |
| J. FOR SHELTER MANAGERS .....  | 148        |
| K. FOR FEDERAL LEGISLATIVE AUTHORITIES.....                                | 148        |
| L. FOR FEDERAL IMMIGRATION AUTHORITIES .....                               | 149        |

**APPENDIX A: METHODOLOGY**

**APPENDIX B: GLOSSARY**

**APPENDIX C: IMMIGRANT AND REFUGEE POWER AND CONTROL WHEEL**

## **I. PREFACE**

Minnesota Advocates is releasing this report as part of its celebration of Human Rights Day, December 10, 2004, the 56<sup>th</sup> anniversary of the Universal Declaration of Human Rights. Through its membership in the United Nations and ratification of subsequent treaties, the United States committed itself to protecting certain fundamental rights of persons within its jurisdiction. These rights include the right to life and security of person, the right to equal protection of the laws and the right to a remedy for the violation of rights. In the last year and a half, Minnesota Advocates has investigated governmental efforts to promote and protect these rights in their response to battered immigrant women in the Minneapolis/St. Paul metropolitan area.

With this report, Minnesota Advocates highlights many of the innovative programs and legislative initiatives that advance the safety of battered refugee and immigrant women in our community and the prosecution of their abusers. The report finds that battered refugee and immigrant women in the Twin Cities area nevertheless face serious obstacles in accessing protection from domestic violence and government services, and in pursuing accountability for their abusers. These obstacles include the following:

1. language barriers and inadequate access to interpretation services;
2. barriers from within immigrant communities that impede government effectiveness;
3. fear of government institutions and immigration authorities;
4. inadequate funding of necessary services and programs;
5. delays in the provision of services;
6. ineffective screening of individuals seeking assistance;
7. poor documentation of domestic violence crimes and injuries;
8. inadequate record-keeping;
9. inadequate coordination of services across government systems; and
10. limited access to culturally-specific programming.

Minnesota Advocates' findings are derived from over 150 interviews, primarily in Hennepin and Ramsey Counties, with judges, lawyers, prosecutors, public defenders, advocates, probation officers, immigration officials, medical service providers, interpreters, child protection employees and others regarding their interaction with refugee and immigrant women who have been battered.

This report includes an analysis of governments' compliance with their obligation to protect the human rights, safety and security of refugee and immigrant women who are victims of violence. Minnesota Advocates looks forward to working together with community leaders to address the issues identified in the report and to improve our community's response to battered immigrant women.

Robin Phillips  
Executive Director

Cheryl Thomas  
Women's Program Director

## **II. EXECUTIVE SUMMARY**

Violence against women is the greatest human rights scandal of our times ... Violence against women is not confined to any particular political or economic system, but is prevalent in every society in the world and cuts across boundaries of wealth, race and culture. The power structures within society which perpetuate violence against women are deep-rooted and intransigent. The experience or threat of violence inhibits women everywhere from fully exercising and enjoying their human rights.<sup>1</sup>

Of all the forms of violence against women, domestic violence<sup>2</sup> is one of the most insidious and widespread throughout the world. Nearly one-third of American women (31 percent) report having been physically or sexually abused by a husband or boyfriend at some point in their lives.<sup>3</sup> The Council of Europe reports that domestic violence is the major cause of death and disability for women aged 16 to 44 and accounts for more death and ill-health than cancer or traffic accidents.<sup>4</sup> In 1999, the Russian government estimated that each year 14,000 women are killed by their partners or relatives.<sup>5</sup> The World Health Organization has reported that around the world 10-70 per cent of women are physically assaulted by their male partners.<sup>6</sup>

A 2002 survey demonstrated that domestic violence victims in Minnesota accounted for 26 percent of all violent crime victims.<sup>7</sup> The survey also showed that 81 percent of victims of domestic violence in Minnesota did not report one or more incidents of violence to law enforcement.<sup>8</sup> The former Chief Judge of Hennepin County District Court, the largest county in Minnesota, recently stated, "Domestic violence may well be the number one issue of public safety in this state. In the last five years 132 women and 68 children under the age of 13 died because of domestic violence."<sup>9</sup> A police official from St. Paul recently stated, "Domestic violence is the most frequently committed violent crime in St. Paul and by a long shot the resources are not commensurate with the frequency or nature of the problem."<sup>10</sup>

---

<sup>1</sup> Amnesty International, *It's in Our Hands: Stop Violence Against Women* 1-2. (2004).

<sup>2</sup> For the purposes of this report, Minnesota Advocates used the following definition of domestic violence expressed by the United Nations: "Domestic violence is the use of force or threats of force by a husband or boyfriend for the purpose of coercing and intimidating a woman into submission. This violence can take the form of pushing, hitting, choking, slapping, kicking, burning, or stabbing." U.N. Ctr. For Social Development and Humanitarian Affairs, *Strategies for Confronting Domestic Violence: A Resource Manual* at 7, U.N. Doc. ST/CSDHA/20 (1993). This definition reflects data indicating that women are the primary victims of domestic violence.

<sup>3</sup> The Commonwealth Fund, *Health Concerns Across a Woman's Lifespan: 1998 Survey of Women's Health*, (1999).

<sup>4</sup> *Domestic Violence against Women*, Eur. Parl. Ass., Recommendation 1582 (September 2002).

<sup>5</sup> *Fifth Periodic Report of the Russian Federation*, Committee on the Elimination of Discrimination Against Women, U.N. Doc. CEDAW/C/USR/5 (1999).

<sup>6</sup> *World Report on Violence and Health*. 24, World Health Organization (2002).

<sup>7</sup> Minnesota Department of Public Safety, Office of Justice Programs, *Safe at Home: 2002 Minnesota Crime Survey* 7 (December 2003), available at [http://www.ojp.state.mn.us/cj/publications/crimesurveys/2002\\_Safe\\_at\\_Home.pdf](http://www.ojp.state.mn.us/cj/publications/crimesurveys/2002_Safe_at_Home.pdf).

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

<sup>9</sup> Public letter from Kevin Burke, former Chief Judge, Hennepin County District Court (February 6, 2004).

<sup>10</sup> Interview dated August 30, 2004.

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

Domestic violence violates a woman's fundamental human rights, including her right to life, safety and security, her right to be free from discrimination on the basis of sex, race or national origin, her right to due process of law and her right to a remedy for harms against her. International human rights law – principles of which are reflected in the United States Constitution, civil rights law, criminal law and civil law-- mandates that governments protect individuals from violence and provide them with effective assistance and remedies when these rights are violated.

With this report, Minnesota Advocates for Human Rights (hereinafter Minnesota Advocates) examines the government response to violence against refugee and immigrant women by their intimate partners in the Minneapolis/St. Paul metropolitan area through the prism of human rights.<sup>11</sup> This report examines federal, state and local governments' responses to this violence. While all women are at risk of violence, refugee and immigrant women are particularly vulnerable to abuse<sup>12</sup> and less likely to access and receive government protection and services due to language barriers, fear of deportation and legal systems, community pressures, funding cuts for needed services and other obstacles that exist in the law or in the implementation of the law. As one expert in legal advocacy for refugee and immigrant women explained:

Language, culture and immigration status exacerbate the level of violence, block victims from access to information about legal remedies, and complicate their efforts to obtain the relief they need to end the violence. Culture, religion, socio-economic, and immigration status do not determine whether domestic violence will occur, but rather influence what barriers a battered immigrant women must confront, what relief she will need to obtain from the legal system or other sources, what should be included in her safety plan, what threats the abuser will use against her, and what excuses the abuser will use in an attempt to justify his violence.<sup>13</sup>

Minnesota has a thirty-year legacy of efforts to end domestic violence. With the introduction of the nation's first shelter for battered women in St. Paul, Minnesota in 1972 and one of the first domestic violence laws in the United States in 1979, Minnesota became a leader in advocating for the safety of domestic violence victims and accountability for their abusers. As new waves of immigrants arrive in the Twin Cities every year, it is imperative that government and community leaders review their response to domestic violence in refugee and immigrant communities and ensure that victim safety and offender accountability are made a priority.

---

<sup>11</sup> The Minneapolis/St. Paul metropolitan area comprises seven counties in the state of Minnesota: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties.

<sup>12</sup> For an introduction to the forms of abuse often experienced by battered immigrant women, see the Immigrant and Refugee Power and Control Wheel attached as Appendix C to this report.

<sup>13</sup> Leslye E. Orloff and Rachel Little, *Somewhere to Turn: Making Domestic Violence Services Accessible to Battered Immigrant Women* (1999), available at [www.vawnet.org](http://www.vawnet.org).



***A. Refugee and Immigrant Women in Minnesota: Diverse Experiences***

This report addresses barriers to victim safety and perpetrator accountability in refugee and immigrant communities. Minnesota Advocates presents its findings in large part without highlighting the ethnicity or national origin of the individuals involved. While this report presents some generalizations about the experiences of refugee and immigrant women in Minnesota, Minnesota Advocates acknowledges that the experiences of refugee and immigrant women in the Minneapolis/St. Paul metropolitan area are diverse. It is important to note that the barriers discussed in this report do not reflect the experience of all immigrant survivors of domestic violence.

In this report, the term “immigrants” includes all individuals who desire to become permanent residents of the United States.<sup>14</sup> This group includes, for example, individuals who are granted visas because they are family members of a Legal Permanent Resident of the United States or a United States citizen, qualify for certain employment-based immigration visas, or are selected through the “Diversity Visa Lottery” program to receive visas. This group also includes individuals who have been granted refugee or asylum status and may adjust their immigration status to legal permanent residency in the United States after a period of time.<sup>15</sup> Refugees are individuals who have been persecuted in their home country or have a credible fear of persecution on the basis of race, religion, nationality, political opinion, or membership in a particular social group.<sup>16</sup> Of the immigrants who arrived in Minnesota during the 1980s and 1990s, about 40% are refugees.<sup>17</sup> They include Hmong or East African refugees who arrived in the United States from refugee camps in Thailand or Kenya. Other immigrants who fear persecution in their home country come to the United States and apply for asylum (up to one year after they arrive in the United States).<sup>18</sup> It is important to note that in interviews for this report, few government agencies or service providers could identify the women they served according to these definitions. Generally, interviewees described situations of women who had recently arrived to live in Minnesota from other countries and/or whose proficiency in English is limited.

---

<sup>14</sup> Under the Immigration and Nationality Act (INA), non-citizens present in the United States are classified as either “immigrants” or “nonimmigrants.” Non-immigrants are “persons who seek admission for a limited period of time and usually for a limited purpose.” Non-immigrants have a visa that sets forth the time period during which they may be present in the United States, and the conditions under which they may be present (i.e., whether they are allowed to work, whether they must be enrolled in an educational program). Such temporary visas are generally designated according to the statutory section that governs the admission of that particular group of non-immigrants (i.e., H-1, H-2, etc.). “Undocumented” refers to non-citizens who entered the United States without the authorization of the U.S. government or whose legal immigration documents have expired since they entered. David Weissbrodt, *Immigration Law and Procedure* 109 (1998).

<sup>15</sup> There are many other ways in which individuals can immigrate to the United States (i.e., through the amnesty in the 1980s, or more specific statutory provisions such as the Cuban Adjustment Act) that grant legal status and allow individuals to adjust to permanent residency after a time. See Lauren Gilbert, *Family Violence and the Immigration and Nationality Act*, 98-3 *Immigration Briefings* 4 (1998).

<sup>16</sup> Immigration and Nationality Act (INA) § 101 (a) (42) (1952).

<sup>17</sup> Minnesota State Demographic Center, *Media Release: Number of Immigrants in State Increasing; 40 Percent are Refugees* (January 22, 2001).

<sup>18</sup> *Id.* at 208.

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

Minnesota's refugee and immigrant populations have increased in recent years, with people coming primarily from Latin America, Thailand, Cambodia, Vietnam, Laos, Russia, Somalia and Ethiopia.<sup>19</sup> The number of refugees in Minnesota rose in the 1970s and 1980s due in part to the end of the Vietnam war and upheavals in the Soviet Union. In the 1990s, more African refugees came to Minnesota, including a large number from Somalia.<sup>20</sup> Most of the refugees left their home countries because of war and dangerous situations. They chose to move to the United States to reunite with family members and to take advantage of employment opportunities.<sup>21</sup> Very recently, a significant number of Hmong refugees arrived in Minnesota as part of a resettlement program that began in 1975. In September 2004, over 1,400 Hmong refugees arrived in Minnesota.<sup>22</sup>

Although immigrant women have arrived in the United States from a variety of different places and circumstances, researchers have begun to provide some generalizations about the experience of immigrant women and its effect on gender roles in the immigrant family. Immigration to the United States can bring profound change to the lives of immigrant women and their families.

Adjustment to a new culture is particularly complicated for women. They are often viewed as the keepers of tradition and charged with passing this tradition on to the next generation. For many, the jobs or roles they held in their home countries are not transferable to the United States. Women are often not as educated as the men in their communities and may not be literate. Many job-training programs do not provide courses for limited English proficient (LEP) individuals. When they are available, they often do not incorporate discussion of cultural differences, and are not compatible with the schedule of someone in charge of small children.

It may take an immigrant woman many years to overcome these barriers to economic success, years marked by long hours in low-paying jobs. For many women, these jobs are necessary for their families to survive economically, yet the independence and status they gain as breadwinners may create tension with their husbands and extended families. One scholar noted that, "immigrant women's enhanced social status...often goes hand in hand with immigrant men's loss of public and domestic status. In the United States, immigrant men may for the first time in their lives occupy subordinate positions in class, racial, and citizenship hierarchies."<sup>23</sup> The husband's disappointment may lead to anger if he feels that his position as family leader is being

---

<sup>19</sup> These estimates are from data from the 2000 Census, the Minnesota Department of Education, the Department of Homeland Security's Immigration Statistics, and the Minnesota Department of Health. See Ronningen, Barbara J., *Estimates of Selected Immigrant Populations in Minnesota: 2004* (June 29, 2004), available at [www.demography.state.mn.us/PopNotes/EvaluatingEstimates.pdf](http://www.demography.state.mn.us/PopNotes/EvaluatingEstimates.pdf).

<sup>20</sup> J.R. Anderson, *Living in America*, City Pages (October 1, 2003).

<sup>21</sup> Wilder Research Center, "Speaking for Themselves: A Survey of Hispanic, Hmong, Russian and Somali Immigrants in Minneapolis-Saint Paul", 2000.

<sup>22</sup> WCCO report dated October 21, 2004.

<sup>23</sup> Pierrette Hondagneu-Sotelo, *Gender and Immigration: A Retrospective and Introduction*, in *Gender and U.S. Immigration: Contemporary Trends 8* (Pierrette Hondagneu-Sotelo, Berkeley and Los Angeles: University of California Press eds., 2003).

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

challenged.<sup>24</sup> His wife's adaptation may be viewed negatively as becoming "Americanized" by his family or the community. Any gains she may achieve as a wage earner may be accompanied by guilt, criticism and other stress.<sup>25</sup>

Many immigrant women bear the primary responsibility for raising their children and maintaining their homes. As one scholar writes, "The dilemma confronting many immigrant women, it would seem, is to defend and hold together the family while attempting to reform the norms and practices that subordinate the women."<sup>26</sup>

Male dominance in families may not only survive the move to a new country but may even be reinforced when men, threatened by the new roles they see their wives assuming, seek to enforce old customs of inequality in the name of tradition. An advocate described one family in the Minneapolis/St. Paul area that experienced domestic violence following immigration to Minnesota. The father of the family was significantly older than his wife. He could not accept the fact that his wife was becoming more open to American culture, demonstrated in the manner in which she dressed their daughter. He subsequently became abusive towards her.<sup>27</sup>

American institutions may act to reinforce the male-dominance experienced by refugee women in their countries of origin. Resettlement agencies often give information to just one person from the family unit, which is likely to be the man. Women do not always receive information about customs and laws in the United States directly. As a result, immigrant women do not necessarily know about the services, resources and legal remedies available to them. When only the man has crucial knowledge about such things as citizenship, work permits and education, there is no guarantee he will transfer this knowledge to his wife.<sup>28</sup> Without knowledge of the language or customs of their new country, isolated in their homes with no access to funds or familiarity with public transportation, immigrant women may be at the mercy of their abusive partners. The traumatic experiences of refugee women in their home countries may have made them more vulnerable to exploitation and less likely to feel that they can change their circumstances.

Advocates in Minnesota and around the country are working to address the barriers faced by immigrant survivors of domestic violence in establishing safe homes for themselves and their families. On the state level, there are a number of non-profit organizations that advocate for the rights of immigrant women, including the Minnesota Coalition for Battered Women, the Battered Women's Justice Project, the Battered Women's Legal Advocacy Project, Asian Women United of Minnesota and Casa de Esperanza.<sup>29</sup> On the national level, the National Network to End

---

<sup>24</sup> See Carola Suarez-Orozco, *Psychocultural Factors in the Adaptation of Immigrant Youth: Gendered Responses, in Women, Gender, and Human Rights: A Global Perspective* (Marjorie Agosin, Rutgers University Press eds., 2001).

<sup>25</sup> Patricia R. Pessar, *Engendering Migration Studies: The Case of New Immigrants in the United States, in Gender and U.S. Immigration: Contemporary Trends 28* (Pierrette Hondagneu-Sotelo, Berkeley and Los Angeles: University of California Press, eds. 2003).

<sup>26</sup> *Id.* at 33.

<sup>27</sup> Interview dated October 8, 2003.

<sup>28</sup> Interview dated June 30, 2003.

<sup>29</sup> Contact the Minnesota Coalition for Battered Women at [www.mcbw.org/](http://www.mcbw.org/). Contact the Battered Women's Justice Project at <http://www.bwjp.org/>. Contact the Battered Women's Legal Advocacy Project at [www.bwlap.org](http://www.bwlap.org/). Contact

Violence Against Women, composed of representatives from the Immigrant Women Program of Legal Momentum (formerly the NOW Legal Defense Fund), the Family Violence Prevention Fund; and the National Immigration Project of the National Lawyers Guild, have conducted the most significant advocacy on these issues.<sup>30</sup> In addition, universities in the United States have conducted research concerning domestic violence experienced by women of certain ethnicities in a variety of locations, e.g. research on the experience of Hispanic women in the Southeastern United States or immigrant South Asian women residing in the United States.<sup>31</sup>

### ***B. Project Goals and Methodology***

Since 1998, Minnesota Advocates has been a member of the Immigrant and Refugee Battered Women's Task Force (the Task Force) based in the Minneapolis/St. Paul area.<sup>32</sup> This report was undertaken in response to an urgent need expressed by this community group. The Task Force consists of representatives of service agencies, shelters, immigrant groups, government agencies and others who have regular contact with or serve refugee and immigrant women. The Task Force is concerned about the obstacles refugee and immigrant women face when they seek safety from violent partners. In light of its concerns, the Task Force asked Minnesota Advocates to document these obstacles in an effort to improve the community's response to this violence.

The purpose of the project is (1) to evaluate the government's compliance with its obligations under international human rights law to protect refugee and immigrant women from domestic violence, (2) to articulate program and policy recommendations to improve the safety of refugee and immigrant women and to promote accountability for violent offenders, and (3) to use the findings of this report to educate the community about the obstacles refugee and immigrant women face in establishing safe homes for themselves and their children and in prosecuting their abusers for their criminal conduct.

While there are no definitive statistics on the incidence of domestic violence in refugee and immigrant communities in Minnesota, two studies have found that the problem is extensive.<sup>33</sup>

---

Asian Women United of Minnesota at <http://www.awum.org/>. Contact Casa de Esperanza at [www.casadeesperanza.org/](http://www.casadeesperanza.org/).

<sup>30</sup> Contact the National Network to End Violence Against Women at <http://www.immigrantwomennetwork.org/>. Contact Immigrant Women Program of Legal Momentum at <http://www.legalmomentum.org/issues/imm/index.shtml>. Contact the Family Violence Prevention Fund at <http://endabuse.org/>. Contact the National Immigration Project of the National Lawyers Guild at <http://www.nationalimmigrationproject.org/default.html>.

<sup>31</sup> Carolyn Murdaugh, Salena Hunt, Richard Sowell, and Irma Santana, *Domestic Violence in Hispanics in the Southeastern United States: A Survey and Needs Analysis*, 19 *Journal of Family Violence* n. 2 (April 2004); Anita Raj and Jay G. Silverman, *Immigrant South Asian Women at Greater Risk for Injury from Intimate Partner Violence*, 93 *American Journal of Public Health* n. 3 (March 2003).

<sup>32</sup> The Task Force is a grassroots network of battered women's advocates and service providers who work cooperatively to improve their skills and increase the awareness of advocates and service providers about the special needs of battered women who are refugees or immigrants. The Task Force's mission is to facilitate networking, to exchange information and to influence policy development. The Task Force is not affiliated with any one organization and its membership is open to all interested advocates and service providers.

<sup>33</sup> Alvi, Shahid, Ph.D., Schwartz, Martin D., Ph.D., DeKeseredy, Walter, Ph.D., and Bachaus, Jacqueline, *Victimization and Attitudes Towards Wife Abuse of Impoverished Minority Women* 9 (unpublished manuscript)

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

These findings are consistent with the rates of domestic violence in Minnesota generally as discussed above.

Minnesota Advocates did not undertake statistical research for this project. Rather, the organization used the human rights fact-finding and reporting methodology that it has used in fourteen other reports on violence against women in other countries.<sup>34</sup> Minnesota Advocates has published reports on violence against women in Albania, Armenia, Bulgaria, Haiti, Macedonia, Moldova, Nepal, Poland, Romania, Ukraine and Uzbekistan. This methodology involved the following research strategies:

- (1) Review of research on violence against refugee and immigrant women in Minnesota and around the country.
- (2) Review of relevant laws, policies and health education materials.
- (3) Interviews with advocates for battered refugee and immigrant women.
- (4) Focus groups with legal, medical and service professionals (both public and private) who work with battered refugee and immigrant women.
- (5) Interviews with legal and medical professionals, government administrators, immigration officials, service providers, and interpretation and translation service providers.
- (6) Interviews with survivors of domestic violence identified by advocates as individuals who wanted to tell their story.

Minnesota Advocates focused its interviews on institutions and individuals in the Minneapolis/St. Paul metropolitan area. Thus the state and local government agencies referred to in the report are primarily those of the City of Minneapolis, the City of St. Paul, Hennepin County, Ramsey County and the State of Minnesota. Minnesota Advocates conducted over 150 interviews in connection with this project. In developing findings, Minnesota Advocates identified specific barriers in the legal system as well as trends and themes that emerged from these interviews. *It is important to note that not all the findings may be equally applicable to all the government institutions in each jurisdiction listed above.* Although the scope of this report extends only to the counties of the Minneapolis/St. Paul metropolitan area, Minnesota Advocates believes that the barriers it has identified in this report are likely to exist for battered immigrant women throughout the state of Minnesota. Additional research about the experiences of battered immigrant women in Greater Minnesota is warranted.

The project's Steering Committee, composed of community members and domestic violence advocates, provided guidance for this project including review and feedback on the report. In collaboration with local advocates and government agencies Minnesota Advocates will use the findings of this report to raise awareness of the needs and problems facing refugee and immigrant victims of violence in the Minneapolis/St. Paul metropolitan area.

---

presented at the American Society of Criminology annual meetings, November 2002); The Immigrant Law Center, Non-Citizen Women and Children: A Vulnerable Minnesota Population 8 (2003).

<sup>34</sup> See the full text of this methodology attached as Appendix A to this report.

### ***C. Findings of this Documentation Project***

Minnesota Advocates identified five major obstacles that prevent an effective government response to violence against immigrant women in the Minneapolis/St. Paul metropolitan area. They are: 1) language barriers, 2) fear of deportation and legal systems; 3) obstacles in the law and the implementation of the law; 4) cultural barriers and community pressures; and 5) funding issues. These obstacles are trapping many women and their children in violent relationships and preventing or deterring them from effectively accessing systems and services designed to ensure their safety and security. In addition, these obstacles work to diminish the effectiveness of government agencies in providing services to immigrant women. Addressing these obstacles will both improve the government's response to domestic violence against immigrant women and make it likely that more battered immigrant women will access the resources and legal remedies available to them.

This section of the report summarizes the findings of the research and interviews in these five areas. The following sections of this report more specifically outline the project's findings as they pertain to particular government institutions or those that receive significant funding from the government.

#### **1. Language Barriers and Interpretation Services**

Language barriers are the most significant obstacles facing immigrant women who seek protection from the government and access to community services.

Federal law requires that government agencies receiving federal funds provide interpretation for the LEP individuals they serve.<sup>35</sup> Minnesota law also requires state government agencies and

---

<sup>35</sup> Under Title VI of the Civil Rights Act, recipients of federal funding are required to take reasonable steps to ensure language accessibility of their services. 42 U.S.C. § 2000(d); 28 C.F.R. §42.104 (1964). Under Executive Order 13,166, recipients of federal funds such as state courts must take "reasonable steps to ensure meaningful access to their programs and activities" by limited English proficient (LEP) individuals in order that such programs and activities do "not discriminate on the basis of national origin in violation of Title VI." Exec. Order No. 13,166 65 Fed. Reg. 159 (Aug. 16, 2000). Federal guidance to federal fund recipients concerning compliance with the requirements of Title VI is provided by each agency that distributes the funds, e.g., the Department of Justice and the Department of Health and Human Services.

The Department of Justice provides that the "reasonable steps" that are necessary will be based on:

- (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee;
- (2) the frequency with which LEP individuals come in contact with the program;
- (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and
- (4) the resources available to the grantee/recipient and costs.

67 Fed. Reg. 19237, 19240 (April 18, 2002). This guidance specifically discourages the use of family members, friends or neighbors as interpreters. Noting that there may be some instances in which a "limited-English proficient" ("LEP") person would want to have a friend or family member as an interpreter, the guidance emphasizes that family interpreters may often be inappropriate:

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

other services to be language accessible. State agencies that serve a substantial number of non-English speaking people are required to employ bilingual people or interpreters “to ensure provision of information and services in the language spoken by a substantial number of non-English speaking people” and to translate materials explaining agency services.<sup>36</sup> Many Minnesota agencies at the state and county level have developed plans for ensuring the language accessibility of their services in accordance with federal and state law, which plans are usually entitled “Limited English Proficiency Plans.”<sup>37</sup> Minnesota state law also requires that interpretation services be provided for LEP individuals in both civil and criminal court proceedings.<sup>38</sup>

---

An example of such a case is when police officers respond to a domestic violence call. In such a case, use of family members or neighbors to interpret for the alleged victim, perpetrator, or witnesses may raise serious issues of competency, confidentiality, and conflicts of interest and is thus inappropriate.

*Id.* at 19242-19243. In Appendix A, the guidance notes that for law enforcement, “[r]eliance on children is especially discouraged unless there is an extreme emergency and no preferable interpreters are available.” *Id.* at 19327, 19247. Appendix A also notes that “[e]mergency service lines for the public, or 911 lines, operated by agencies that receive federal financial assistance must be accessible to persons who are LEP.” 67 Fed. Reg. 19327, 19248.

Department of Health and Human Services Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 65 Fed.Reg. 52762 (August 8, 2003) provides that the “reasonable steps” that are necessary will be based on those set out in the Department of Justice guidance above. Unlike the similar guidance promulgated by the Department of Justice, the DHHS adds the following exception: after conducting the four-factor test above, “a recipient may conclude that different language measures are sufficient for the different types of programs or activities in which it engages, or, in fact, that in certain circumstances, recipient-provided language services are not necessary.” 67 Fed. Reg. 19327 (June 18, 2002). The DHHS guidance also does not as strongly discourage the use of family members, friends or neighbors as interpreters as does the DOJ guidance. 65 Fed. Reg. 52762 (August 8, 2003). The DHHS guidance notes that a “limited-English proficient” (“LEP”) person may “feel more comfortable when a trusted family member/friend acts as an interpreter” and that in “some” (rather than “many”) circumstances family members (especially children) or friends may not be “competent to provide quality and accurate interpretation.” 65 Fed.Reg. 52762 (August 8, 2003). The DHHS guidance, however, does require that “extra caution” be exercised when an LEP person chooses a minor as the interpreter. 65 FR 52762 (August 8, 2003).

Title VI does not apply to federal government or agencies, because these entities do not “receive” federal funding. Executive Order 13166 encourages agencies to comply with Title VI. Executive Order 13166 provides that “each Federal agency shall examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. Each Federal agency shall also work to ensure that recipients of Federal financial assistance...provide meaningful access to their LEP applicants and beneficiaries.”

<sup>36</sup> Minn. Stat. § 15.441 (2004).

<sup>37</sup> For example, Hennepin County Fourth Judicial District Court and the Health and Human Services Departments have each produced a Limited English Proficiency Plan. Minnesota Advocates has learned that certain cities in the metropolitan area are developing similar plans.

<sup>38</sup> In civil state court trials, the presiding judicial officer must appoint an interpreter when a person who has “difficulty speaking or comprehending the English language” is a litigant or witness. Minn Stat. § 546.42-546.44. An accused in a criminal proceeding who has “difficulty speaking or comprehending the English language” is specifically provided with the right to a “qualified” interpreter. *Id.* at § 611.30-611.34. Section 480.182 provides that the state courts will assume the cost of court-related interpreters. *Id.* at § 480.182. Sections 611.33 (criminal) and 546.44 (civil) govern the qualification of interpreters. *Id.* at § 611.33, § 546.44. Both provide that no person may be

Minnesota Advocates found that language barriers give abusers significant opportunities for abuse and control affecting women's access to government services and protection. Many women join a husband or partner who has been in Minnesota for months or years, or is an U.S. citizen. These men may use their superior knowledge of the language and society not only as a form of power but also as a tool to isolate women from the community and the services that might be available to them there.

Interviews revealed frequent instances where immigrant women were denied the opportunity to learn English. An advocate described an immigrant woman who lived in a western suburb with her husband. He would not allow her to work or to leave the house. Her mother visited and encouraged her to get out of the house to take classes and make friends. The husband learned about the mother's involvement and moved the woman and the children back to their country of origin.<sup>39</sup>

In the context of the justice system, Minnesota Advocates found that language barriers and inadequate interpretation services hamper immigrant women's interaction with police, prosecutors, legal advocates, courts and probation officers. These problems are particularly acute at the scene of an assault where police arrive to a situation of violence, tension and fear. This is often a woman's first contact with any government agency. In the most extreme cases, she not only does not get the protection she needs, she is arrested and detained without access to an interpreter because of biased interpretation or lack of interpretation. If convicted, she could be deported or lose eligibility for immigration relief available under the Violence Against Women Act.

Interviews revealed that if the victim does not speak English police may use children, neighbors or even the abuser himself to interpret at the scene of a reported assault. Inadequate or biased interpretation compromises the accuracy of the police report, an important part of the justice process. Without a full and accurate police report, prosecutors and courts cannot adequately prosecute offenders.

Language barriers and inadequate interpretation services also impede a victim's ability to communicate with prosecutors, judges and probation, significantly limiting the prosecutors' ability to prepare a case for trial. Judges cannot effectively assess the risk a defendant presents to victims or make effective decisions about sentencing. Probation officers cannot communicate important information to victims. Where treatment services are not provided in a defendant's language, probation is ineffective in rehabilitating offenders who have been convicted of domestic assault.

Inadequate interpretation services also inhibit a woman's ability to obtain a civil Order for Protection (OFP). Minnesota Advocates' findings demonstrate that language barriers interfere

---

appointed as an interpreter unless he or she "is readily able to communicate with the handicapped person, translate the proceedings for the handicapped person, and accurately repeat and translate the statements of the handicapped person to the officials before whom the proceeding is taking place. *Id.*

<sup>39</sup> Interview dated July 16, 2003.



with the process when a woman is petitioning for an OFP, during the hearing and when the judge issues the order.

Minnesota Advocates' found problems with interpretation throughout the court system, including a shortage of qualified interpreters, interpreter misconduct, and the lack of an effective complaint mechanism and disciplinary procedures. Efforts are being undertaken by court administrators responsible for interpretation in the justice system to remedy some of these problems.<sup>40</sup>

The ability of Child Protection Services (CPS) to evaluate fairly and effectively the safety and well-being of the children of immigrant women is also hampered by inadequate interpretation services. Minnesota Advocates' findings show that, too frequently, interpretation services are not accessed when officials intervene in a family situation. Documents critical to the proceedings are not translated. As a result, CPS workers do not receive complete information about a family's situation, jeopardizing immigrant women's rights to custody of their children.

Language barriers, inadequate interpretation services and the failure to access interpretation services or translation services for important documents all negatively affect battered immigrant women as they seek services such as medical care, government financial assistance and shelter. It is important to note that Minnesota has not yet established standards or a certification process for interpreting in medical institutions. Minnesota Advocates found that interpretation in medical institutions is often inadequate in part because of funding cuts that have reduced the number of available interpreters. As a result, immigrant women find it difficult to access medical services. Language barriers make it difficult for medical professionals to determine whether an immigrant patient is a victim of domestic assault, to document domestic violence injuries and to provide victims of domestic violence with referrals to appropriate resources. Inadequate interpretation services have also created a significant barrier to women's ability to access government assistance. Notices of services provided by financial assistance offices, including a brochure concerning the availability of a Family Violence Waiver, are often provided only in English. Shelters often do not provide adequate interpretation services for residents. As a result, battered immigrant women may feel uncomfortable, leave the shelter or find themselves unable to voice questions or concerns to shelter staff.

## **2. Fear of Removal and Legal Systems**

General fear of removal (deportation)<sup>41</sup> and legal authorities frequently prevents immigrant women from seeking protection or services from any government institution. These fears intensify the isolation experienced by many battered immigrant women. As one immigration attorney explained about her clients, "They don't call the police, they don't go to the doctor, they don't seek help."<sup>42</sup> Many other interviewees expressed the same opinion. One advocate

---

<sup>40</sup> See discussion at the State and Local Justice Systems section entitled, "Court Interpretation."

<sup>41</sup> Prior to 1996, removal proceedings were referred to as exclusion proceedings or deportation proceedings depending on the circumstances of an alien's detection or apprehension. Now all proceedings to remove an alien from the United States are referred to as removal proceedings. See INA § 240.

<sup>42</sup> Interview dated June 10, 2003.

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

explained that few immigrants attempt to access any government institution at all. More likely, she explained, they enter the system involuntarily when someone else calls to report the violence.<sup>43</sup> Battered immigrant women sometimes come into contact with government authorities when medical and educational institutions provide victims with information about services and legal remedies, or report abuse to government authorities when mandated by law.<sup>44</sup>

As discussed above, fears about removal (deportation) and legal authorities often impede an effective government response to violence. Concerns about post-September 11 legislative initiatives, and in particular, proposed legislation that would amend the federal immigration laws, aggravate these fears.<sup>45</sup> The United States House of Representatives recently considered a bill that would allow for expedited removal of aliens who are present in the United States without authorization. Such removal, without judicial supervision, could threaten battered immigrant women and their families with removal before they have an opportunity to avail themselves of immigration relief for which they may be eligible.<sup>46</sup>

Minnesota Advocates' research indicates that the fear of removal (deportation) has a powerful silencing effect on some victims of violence. One advocate reported that a battered immigrant woman provided the following explanation: "The worst day with [my abuser] is still better than my life in [my home country]."<sup>47</sup> Removal is a concern particularly for undocumented women, but women who are here with lawful status may only have conditional residency, or they may have been deceived about their status or rights by their abuser. Interviews revealed that many immigrant women do not report violence to anyone including family, friends or neighbors for fear that someone will call the police. In addition, battered immigrant women who have obtained OFPs are often reluctant to report their abuser's violation of the order because such a violation is a deportable offense. Battered immigrant women may also fear the effects on family members if they contact authorities. An immigrant woman whose husband physically assaulted and threatened her with death for many years described an incident in which her brother was staying with her on the evening of a severe assault by her husband. Her brother came to her aid and attacked the husband. The brother was arrested and ultimately removed from the United States.<sup>48</sup>

---

<sup>43</sup> Interview dated September 10, 2004.

<sup>44</sup> For more information about domestic violence case identification in medical institutions, please see the section of this report entitled, "Medical Services." The scope of this project does cover the important role educational institutions play in domestic violence case identification and access to government services. Additional research is warranted in this area.

<sup>45</sup> For example, Congress recently considered but did not pass legislation that would have required local law enforcement officers to enforce United States immigration laws. Clear Law Enforcement for Criminal Alien Removal Act of 2003, H.R. 2671. In addition, the Bush Administration considered passing regulations in connection with the 2003 Medicare Modernization Act that could have required medical professionals to inquire about patients' immigration status and keep copies of patients' immigration documents. *See Hospital Regulation Would Threaten Battered Immigrant Women, Experts Warn*, Family Violence Prevention Fund's News Flash (September 2, 2004), available at <http://endabuse.org/newsflash>.

<sup>46</sup> 9/11 Recommendations Implementation Act, H.R. 10 (2004).

<sup>47</sup> Interview dated July 7, 2003.

<sup>48</sup> Interview dated September 7, 2004.

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

If a battered woman's partner has legal documentation, he may tell her that if she calls the police, they will separate her from her children and send them to a deportation center with no notice. An abuser may threaten that he will keep the children and have his partner deported.<sup>49</sup> These types of threats, along with economic concerns, keep many immigrant women captive in abusive relationships.<sup>50</sup>

Even in cases where women possess documentation equal to their husbands, complex forms in an unfamiliar language combined with inadequate information when entering the United States can result in confusion, fear and thus vulnerability to whatever an abuser may tell his partner. In addition, legal permanent resident women (green card holders) can be removed (deported) if they are convicted of abusing their partners, even if they are not the primary aggressor.

Many immigrants arrive in the United States owing a great deal of money to those who helped them cross the border. One battered woman reported that it took her two years to pay off the debt. She took two food service jobs, did not go anywhere, and paid the debt bit by bit. "Now I am free," she said. "We don't owe any more. Now I can think about myself." This undocumented woman explained that if she had had a social security number or a form of identification, her husband could not have had such control over her.<sup>51</sup> Some immigrants come to the United States relying on a promise that they will be married when they arrive.<sup>52</sup> If a citizen husband does not marry an immigrant fiancé within three months of her arrival, she falls out of status and could be deported.

A police officer described the situation of a recent refugee:

There was a Somali lady a year ago who was new to this country. She knew a little English. She was living with her boyfriend and she said he was never abusive in their country. He came here first and then she did after one year. He started drinking and smoking, and started pushing her. He wouldn't let her leave the house and she had no phone. Because of her lack of language skills, she couldn't get a job. He began to constantly hit and assault her. The neighbors called the police. She tried to get out but he would sweet-talk her back, saying no one would help her. He said that if she left him, he would call immigration because he was the sponsor. She told us, 'I don't need your help anymore...'<sup>53</sup>

Even if both parties have appropriate documentation, they still often have a legitimate fear of removal (deportation). Interviews revealed that it is common knowledge in immigrant communities that those convicted of domestic violence offenses or violations of OFPs are subject to removal.<sup>54</sup> Removal of the abuser can have significant consequences for the victim. She may

---

<sup>49</sup> Interview dated June 16, 2003.

<sup>50</sup> Interview dated October 14, 2003.

<sup>51</sup> Interview dated December 18, 2003.

<sup>52</sup> Interview dated July 30, 2003.

<sup>53</sup> Interview dated August 11, 2003.

<sup>54</sup> INA § 237 (a)(2)(E) (codified at 8 U.S.C. 1227). Also *see* the State and Local Justice Systems section entitled, "Prosecution."

not want to be separated from her husband, or his removal may mean the loss of her only source of financial support, particularly if she is not authorized to work legally and is prohibited from receiving public benefits. She may also not wish to give up all hope of reuniting with her husband or feel guilt for having him removed.<sup>55</sup>

A victim's fear of removal (deportation) may be particularly acute with the increased enforcement of federal immigration laws in response to the September 11 terrorist attacks. As one author noted about the current climate in the justice system:

Law enforcement is increasingly a seamless web, in which authorities may move without hindrance between a traffic stop and deportation or a hospital visit and prison, or the airport and a maximum-security cell. This unrestricted integration of law-enforcement operations is terrifying to contemplate, let alone to experience.<sup>56</sup>

### **Minneapolis and St. Paul Ordinances on Police Reporting to Immigration Authorities**

Both Minneapolis and St. Paul have recently passed ordinances that directly address the growing fear that prevents immigrants and refugees from reporting crimes to law enforcement officials. The ordinances reflect the recognition that the primary responsibility of local police is enforcement of Minnesota law, not federal immigration law and policy. Many in the justice system report that these ordinances, essentially "don't ask, don't tell" policies, are positive developments. If implemented, they may alleviate immigrant women's fear of calling the police when domestic violence occurs.

One advocate explained that since September 11, 2001 there has been increasing fear in immigrant communities of making contact with the "system." There is a sense that immigration authorities are much more aggressive now, that they "jump right in" and "respond really quickly."<sup>57</sup> An employee of a Somali community organization whose work focuses on youth described a pervasive fear of police based on incidents of harassment since September 11, 2001. The employee reported that the community has confronted police officers and government

<sup>55</sup> See, e.g., Elizabeth Shor, *Domestic Abuse and Alien Women in Immigration Law: Response and Responsibility*, 9 Cornell J.L. & Pub. Pol'y 697, 707 (2000) (arguing that deportation of abusive spouses should be examined in light of the victim's needs).

<sup>56</sup> Anannya Battacharjee, *Whose Safety? Women of Color and the Violence of Law Enforcement*, American Friends Service Committee and the Committee on Women, Population and the Environment (2001), available at <http://www.afsc.org/community/WhoseSafety.pdf>.

<sup>57</sup> Interview dated August 7, 2003. In Minnesota, for example, recent post-September 11 changes in the law have made it easier to identify immigrants who may be undocumented. Pursuant to the Driver's License Proof of Identity and Residency Standard, January 22, 2003, MN House of Representatives H.F. 1, immigration status can be reflected in the expiration date of a driver's license. See Minnesota Rules Part 7410.0410 Proof of Residency, Subparagraph 6 Lawful Short Term Admission Status.

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

officials about the incidents and that elders and police have held several meetings on the issue. Unfortunately, circumstances have not changed significantly.<sup>58</sup>

Government employees explained that immigration authorities initiate regular contact with the jails.<sup>59</sup> One attorney reported that one county jail initiates calls to immigration authorities when immigrants arrive at the jail.<sup>60</sup> This contact contributes to immigrants' overall fear of government institutions.

Police and prosecutors reported that they do not have policies requiring or encouraging reporting to immigration authorities, however, there is a great deal of misinformation about police reporting within immigrant communities. Some law enforcement agencies are conducting needed outreach to immigrant communities. One officer, in discussing the goals of such outreach efforts, explained, "You need to get the message out into the community that you don't do immigration stuff. Second, explain that if you don't speak English, we will still listen. And three, you need to create the expectation, help people to understand what they can expect from us."<sup>61</sup> Despite these positive developments, one interviewee reported that a police officer facilitated the reporting of her status to the immigration authorities by providing her abusive partner with contact information for the immigration authorities.<sup>62</sup>

Fear of removal (deportation) also deters many battered immigrant women from accessing public assistance in the form of OFPs, medical assistance or financial assistance. Interviewees reported that many immigrant women avoid seeking OFPs and medical care in cases of domestic violence, in part due to fear that they or their families will be reported to the criminal justice or the immigration authorities. This fear is justified to some degree. Immigration law provides that a violation of an OFP is a deportable offense.<sup>63</sup> Minnesota law requires medical professionals to report to law enforcement injuries that involve firearms and situations of child endangerment.<sup>64</sup> Interviewees report that financial assistance workers are required to ask for a Social Security number and sometimes immigration status to determine eligibility for certain benefits. They are not required to report anyone to the immigration authorities unless the worker "knows" that the person is in violation of the immigration law, i.e., is shown a copy of a deportation order.<sup>65</sup> Many medical professionals and government workers reported that they do not otherwise inquire about immigration status or report cases to law enforcement. One interviewee explained that

---

<sup>58</sup> Interview dated July 28, 2003. Interviewee described how police will begin questioning male youth when a large number of them gather near a playground across the street. Interviewee also described how male teenagers are picked up by police off the streets and dropped off far from home. Finally she described an incident where two Somali students were interrogated and arrested after police entered their classroom at a local community college. A wallet had been reported missing. Ultimately the students were released, but they were intimidated and humiliated. In the end, the school and the police made an apology to the students.

<sup>59</sup> Interviews dated September 21, 2004 and September 30, 2004.

<sup>60</sup> Interview dated September 13, 2003.

<sup>61</sup> Interview dated March 1, 2004.

<sup>62</sup> Interviews dated December 3, 2003.

<sup>63</sup> INA § 237 (a)(2)(E) (ii).

<sup>64</sup> Minn.Stat. §§ 626.52, subd. 2, and 626.556 (2004); Interviews dated June 19, 2003 and July 7, 2003.

<sup>65</sup> Interview dated August 14, 2004.

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

employees report individuals to immigration authorities only in the cases of serious criminal acts.<sup>66</sup>

A more general fear and distrust of legal systems and institutions apart from deportation issues may also prevent immigrant women from contacting government agencies of any kind. This fear or distrust may originate from a woman's experience in her home country or it may be based on perceptions or actual experience of law enforcement's treatment of communities of color in this country. Fear of discriminatory and even violent treatment of people of color by law enforcement in the United States may also affect immigrant women's willingness to seek help from the legal system in the event of domestic violence.<sup>67</sup> This fear and distrust of legal systems is compounded by limitations on the availability of legal representation that might assist immigrant women in navigating the legal system. Legal aid offices are often restricted in their ability to provide services to undocumented women.<sup>68</sup> In addition, some immigrant women may not meet the income requirements to receive free legal representation but may also not be able to afford to pay for legal representation. Finally, Minnesota Advocates found that cuts in the budget of the state public defenders, if not remedied in the next legislative session, could have a profound effect on the availability of legal representation for immigrant mothers in the child protection system.

For refugees, the trauma of past persecution at the hands of authorities in their home country may still be very present in their minds. Refugees were granted their immigration status precisely because of this persecution. For example, immigrants who were persecuted because of their religion in their home country, e.g. Pentecostals and Baptist Russian immigrants, are sometimes very suspicious of social services and any other form of assistance.<sup>69</sup>

Some women may come from countries where the government and law enforcement are oppressive or corrupt. Police brutality may be common in a woman's home country. A publication by a Latina agency explains that Latinos distrust government institutions due to the corrupt and often brutal injustices they suffered in their home countries.<sup>70</sup> Somalia has had no functioning government for over a decade. As one advocate who works with immigrant women said, "Immigrant women will try everything else before contacting the legal system."<sup>71</sup> Another advocate explained:

---

<sup>66</sup> Interview dated August 8, 2003.

<sup>67</sup> See generally, Anannya Bhattacharjee *Whose Safety? Women of Color and the Violence of Law Enforcement*, American Friends Service Committee, Committee on Women, Population and the Environment (2001).

<sup>68</sup> Under Section 504(a)(18) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, legal aid organizations that are funded by the federal Legal Services Corporation ("LSC") are prohibited from representing most undocumented individuals, regardless of whether the funds used are LSC or non-LSC funds. Congress modified this prohibition to allow LSC-funded legal aid offices to provide limited legal assistance to abused immigrant spouses and children, as long as this assistance is provided with non-LSC funds. 45 C.F.R. §1626.4. This exception, however, only provides relief to spouses and children. See generally, Brennan Center, *The Restriction Barring Legal Services Corporation-Funded Lawyers from Assisting Aliens*, available at [http://www.brennancenter.org/resources/resources\\_act\\_aliases\\_factsheet.html](http://www.brennancenter.org/resources/resources_act_aliases_factsheet.html).

<sup>69</sup> Interview dated August 6, 2004.

<sup>70</sup> Casa de Esperanza, *Latino Families and Domestic Violence* 14 (2003).

<sup>71</sup> Interview dated September 30, 2003.

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the Minneapolis/St. Paul Metropolitan Area: A Human Rights Report*  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights

The whole process, court officials, sheriffs in uniforms, is very scary to many women. Their history is about abuse by political systems at home. These systems are very corrupt and seeing all the uniformed officials almost makes them go into flashback and makes them less trusting of this system.<sup>72</sup>

It is also possible that the legal system in a victim's home country may devalue the testimony of women, as in some countries where the testimony of one man is equal to that of two women. In Somalia, a country that is a major source of immigrants to Minnesota, women have lost many legal rights in recent years.<sup>73</sup> According to Amnesty International, as of 2003, 54 countries still have laws that actively discriminate against women and 79 countries have no law against domestic violence.<sup>74</sup>

Some women may not realize that laws in Minnesota may be different from those in their home country. An immigrant woman explained that she never called the police or sought an OFP (a civil remedy) because she didn't know the police could help her. She lived in Minnesota for a year before she learned the police could help her.<sup>75</sup> When women's experiences with the justice system in their own countries have been unfair and discriminatory, they may be less likely to seek redress from the system here or less likely to cooperate with that system.

Immigrant women may fear eviction from their home if they call the police to report abuse. Advocates reported that evictions of domestic violence victims from their rented apartments or homes are common.<sup>76</sup> Although laws exist to prevent retaliation against a tenant who is exercising her rights, housing policies that declare 'zero tolerance' for domestic violence (resulting in the eviction of domestic violence victims because of a domestic violence incident at her home) are not specifically prohibited in Minnesota.<sup>77</sup>

---

<sup>72</sup> Interview dated October 27, 2003.

<sup>73</sup> Osman, Hibaaq I., *Somalia: Will Reconstruction Threaten Women's Progress?* Ms. Magazine, March/April 1993, at 12. See also Africa Watch Women's Rights Project Seeking Refuge, *Finding Terror: The Widespread Rape of Somali Women Refugees in Northeastern Kenya* (October 4, 1993); "Somalia Quick Facts," WomenWarPeace, available at <http://www.womenwarpeace> (last accessed February 27, 2004); "Somalia," AFROL Gender Profiles, available at [http://www.afrol.com/categories/women/profiles/somalia\\_women.htm](http://www.afrol.com/categories/women/profiles/somalia_women.htm) (last accessed February 27, 2004).

<sup>74</sup> As Amnesty International reports, "Impunity encoded in the law is the exception, although it features in a number of countries emerging from conflict. More common are laws that are inadequate, police forces that are uninterested, criminal justice systems that are remote, expensive and biased against women, and communities that still do not take violence against women seriously...Laws against violence against women – especially domestic violence – frequently emphasize family reunification or maintenance over protecting victims. In some countries laws allow so called 'honor-crimes' or allow a defense of honor to mitigate criminal penalties, putting the right of the family to defend its honor ahead of the rights of individuals in the family." Amnesty International, *supra* note 1, 86-87.

<sup>75</sup> Interview dated December 18, 2003.

<sup>76</sup> Interviews dated July 7, 2003 and June 26, 2003.

<sup>77</sup> Advocacy groups have challenged policies instituted by landlords which require eviction of tenants who are victims of domestic violence. Family Violence Prevention Fund, *Lawsuit Challenges Housing Policies That Discriminate Against Battered Women*, (July 27, 2001).

Finally, interviewees reported that a battered immigrant woman may fear that accessing criminal or civil remedies through the courts will motivate her partner to kidnap her children and return to his home country.<sup>78</sup> One immigrant woman described how her abuser attempted to kidnap her child.<sup>79</sup> Another immigrant woman reported that she believes if she agrees to visitation in divorce documents, she is fearful that her husband will try to kidnap their child.<sup>80</sup>

### **3. Obstacles in the Law and the Implementation of the Law**

During the course of this project, Minnesota Advocates identified many laws and policies that serve as obstacles to immigrant women's access to government services or immigration relief. In addition, there are a number of procedural or policy factors that contribute to the government's failure to provide adequate resources to prevent or address domestic violence suffered by immigrant women, including the following:

- delays in the provision of services;
- ineffective screening of individuals seeking assistance;
- poor documentation of domestic violence crimes and injuries and inadequate record-keeping;
- failure to adequately coordinate services across government systems; and
- inadequate access to culturally-specific programming.

These obstacles are presented in detail according to government system in sections IV through IX below.

Legal provisions often create obstacles by inappropriately restricting eligibility for government assistance or creating unnecessary hardship. For example, following passage of the Violence Against Women Act (VAWA) in 1994, federal immigration law provides needed immigration relief to domestic violence victims. However eligibility for such relief is restricted to victims who are or were married to an abusive legal permanent resident or citizen spouse. By allowing these women to apply for immigration relief without the support of their spouses (self-petition), the federal government has prevented some abusive spouses from using immigration status as a weapon against their partners. Eligibility for this relief, however, does not reach certain categories of immigrants. For example, women who arrived in the United States on fiancée visas, but who are not yet married, may not apply for immigration relief under VAWA. Women who were married in religious ceremonies often have difficulty proving they are married in their application for benefits. In addition, immigrant women who qualify for relief under VAWA often remain isolated in their homes and financially unstable because they are restricted from applying for employment authorization until their application has been approved. The approval

---

<sup>78</sup> Conference Notes dated April 1, 2003 and June 20, 2003.

<sup>79</sup> Interview dated December 4, 2003.

<sup>80</sup> Interview dated December 3, 2003. International and federal law and organizations address international parental kidnapping and provide some mechanisms by which a parent can try to recover her children. An analysis of the government response to parental abduction, however, is beyond the scope of this project. See Patricia M. Hoff, Family Abduction Prevention and Response (National Center for Missing and Exploited Children, March 2002), available at [http://www.missingkids.com/en\\_US/publications/NC75.pdf](http://www.missingkids.com/en_US/publications/NC75.pdf).



*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

of VAWA applications is taking up to a year which may result in a longer period of isolation and hardship for battered immigrant women.

Legal provisions have also acted as barriers to medical care and documentation of injuries at medical institutions in the metropolitan area. Under Federal and State law, eligibility for general medical assistance has been eliminated altogether for undocumented immigrants. As a result, undocumented battered immigrant women must seek medical care at emergency rooms where domestic violence case identification may be impossible and documentation of injuries is more difficult. In addition, some battered immigrant women do not receive the consistency of care that facilitates disclosure of domestic violence and preserves documentation of a pattern of injuries. Such disclosure and documentation may be essential for an immigrant woman to obtain immigration relief or criminal prosecution. Finally, Minnesota law does not provide coverage of interpretation in medical services that are ancillary to doctor or patient services. This means that some battered immigrant women will not receive interpreter assistance to obtain medical appointments or prescriptions for medicine.

Federal law also restricts some battered immigrant women's eligibility for a domestic violence waiver of "deeming rules" the state must apply when evaluating applications for public assistance. The state must take into account the income of a battered immigrant woman's sponsor, usually her abuser. The waiver of such deeming is available only to individuals who are not living with their abuser. This rule acts as a barrier for battered immigrant women for whom leaving their abusers is not safe.

Minnesota Advocates identified delays in the provision of government services that affect the safety of battered immigrant women and their ability to pursue offender accountability. For example, delays in the police response to calls to the scene of a domestic assault or a violation of an OFP and the failure to pursue offenders who leave the scene place battered immigrant women at risk of continued violence. Delays in the provision of court interpretation services often result in the delay of OFP hearings and other civil court hearings. These delays may impact a woman's safety and may make her reluctant to follow through with a civil or criminal law remedy that may improve her safety. Delays in the adjudication of immigration relief under VAWA also result in battered immigrant women experiencing long periods of isolation and dependence on their abusers.

Ineffective screening of individuals seeking government services also creates barriers for battered immigrant women seeking government services or assistance. For example, government financial workers are not effectively screening immigrants who apply for benefits for the purposes of recognizing eligibility for (1) the Family Violence Waiver, which waives time limits on receipt of financial assistance from the government; and (2) benefits for which self-petitioners under the VAWA qualify upon receipt of a "*prima facie* notice" from immigration authorities. In addition, medical institutions are frequently not conducting adequate screening for domestic violence for a number of reasons, including confidentiality concerns or the lack of cultural sensitivity on the part of some medical staff.

Minnesota Advocates found that the lack of government documentation of domestic violence crimes and medical institution documentation of injuries have made it difficult for many battered immigrant women to access the benefits of criminal, civil and immigration processes. Police reporting at the scene of domestic violence involving immigrants is frequently inadequate, in large part because of a failure to access interpretation services. These inadequate reports limit both prosecutors' ability to successfully pursue cases and the courts' effectiveness in assessing the risk to immigrant victims of violence. Likewise, medical professionals, especially those in emergency rooms, have acknowledged that they struggle to adequately document and keep records of injuries that may be related to domestic violence.

A lack of coordination among government agencies and courts often serves to make government systems unnavigable for a battered immigrant woman and sometimes jeopardizes her safety or custody of her children. For example, the criminal justice system frequently does not coordinate adequately with civil courts adjudicating OFP hearings or with CPS and juvenile courts. One possible result is that the criminal justice system detains a parent without her knowledge of ongoing processes involving adjudication of custody of her children.

Finally, many government agencies and government-funded service providers have not provided battered immigrant women or members of their families with programming that is culturally-specific. For example, there are no shelters in the metropolitan area that provide culturally sensitive services for Muslim women (in particular, East African women). In addition, there are not enough culturally-specific programs for immigrant probationers or for immigrant parents in the child protection system. Battered immigrant women are more likely to attend programs that provide services in their native language and that take into account their own cultural and immigrant experiences. When these programs are available, the government does not always cover the cost, making them inaccessible to many immigrant women.

#### **4. Cultural Barriers and Community Pressures**

Immigrant women's access to community services and law enforcement is frequently hampered by forces within their own communities. One advocate explained that accessing the system can be like "declaring war against your community and belief system."<sup>81</sup> Cultural barriers and community pressures may also have a profound effect upon the effectiveness of government agencies' response to immigrant victims of violence after they access the system.

Consistent with studies from many cultures<sup>82</sup> on the causes of domestic violence, Minnesota Advocates' research revealed a common belief in some immigrant communities that it is a man's right to beat his wife. Describing her community, one advocate said, "Men are the decision

---

<sup>81</sup> Interview dated August 4, 2003.

<sup>82</sup> *2003 Report of the Special Rapporteur on Violence Against Women, Developments in the area of violence against women (1994-2002*, U.N. Economic Commission at U.N. Doc .E/CN.4/2003/75/Cor. 1 (2003). (Available in PDF and Word, 24 pages ); *Addendum 1 to the Special Rapporteur's 2003 Report, International, regional and national developments in the area of violence against women 1994-2003*, U.N. Economic Commission at U.N. Doc. E/CN.4/2003/75/Add.1 (2003). (Available in PDF and Word, 434 pages).

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

makers and a strong woman is trouble. It is okay to get slapped. If you complain, your in-laws tell their son, ‘You have a bad wife, put her in her place.’”<sup>83</sup> Another advocate explained, “The community does not see it as a safety issue for her, they see it that she is bad.”<sup>84</sup> The woman is usually lectured and told that the violence is training for her role in life, or that she has caused the violence and she must change her behavior. Another advocate explained, “there are never any actual consequences” for the abuser.<sup>85</sup> “All the burden is on the women but none is on him. She has to change but not him.”<sup>86</sup> If the family and/or clan perceive that there is no reason for the violence, they might lecture the man and threaten to take away his wife or children if he does not stop.<sup>87</sup> One advocate recounted a conversation with a woman who had been abused by her husband. The woman told the advocate that it was “better to be a battered wife than no wife at all.”<sup>88</sup>

In some immigrant communities polygamy is common – a situation which often compromises women’s rights and makes them more vulnerable to violence.<sup>89</sup> One woman, who survived her husband’s attempt to kill her, explained that she thought she had made him angry by questioning his desire to take a second wife.<sup>90</sup> Arranged marriages are also common for girls at a very young age, often making them vulnerable to abuse and violence.<sup>91</sup>

The traditional respect and deference to elders that is prevalent in many cultures may, in some circumstances, create a dangerous situation for immigrant women who are victims of violence.<sup>92</sup> For example, interviewees described how elder victims may advise younger women not to confront their abusive husbands or boyfriends. These elders may justify a man’s behavior, i.e., drinking or having a mistress, by saying that it is “just what men do.”<sup>93</sup>

A battered woman recounted a conversation she had had with an elder in her community. The elder told her a story about a woman who had gone to a wise man to seek advice. The wise man

---

<sup>83</sup> Interview dated June 25, 2003.

<sup>84</sup> Interview dated August 20, 2003.

<sup>85</sup> Interview dated September 22, 2003.

<sup>86</sup> Interview dated October 27, 2003.

<sup>87</sup> Interview dated June 9, 2003.

<sup>88</sup> Interview dated September 18, 2003.

<sup>89</sup> Interviews dated July 30, 2003 and September 12, 2003; see also Foo, Lora Jo, *Asian American Women: Issues, Concerns and Responsive Human and Civil Rights Advocacy* 121 Ford Foundation (2002); Somali Immigrants in Minnesota [www.unitedwaytwincities.org/news/immigrants\\_somali.cfm](http://www.unitedwaytwincities.org/news/immigrants_somali.cfm), acc. January 30, 2003.

<sup>90</sup> Interview dated September 10, 2004.

<sup>91</sup> Foo, *supra* note 89.

<sup>92</sup> A publication by the Casa de Esperanza, a shelter for Latinas, explains that respect for elders and authority is an important value in Latino culture. It also explains that Latino families often have distinct gender roles, with the Latino father as the authority figure and chief provider and the mother as a nurturing figure in charge of the family’s well being. The publication also emphasizes the Latino value of interdependence. “Mainstream culture often views life in an individualistic way, making decisions in the best interest of the individual. In contrast, our reality is communal. We tend to make decisions after first weighing the impact on the entire family (both nuclear and extended), the community, and other support systems in the community. Mainstream culture may interpret our interdependence as unhealthy dependence or codependence. On the contrary, it is the supportive, strengthening reality that defines us.” Casa de Esperanza, *supra* note 70, 12-13.

<sup>93</sup> Interview dated June 16, 2003.

said, “I will give you advice, but you have to do what I tell you. First you have to bring me a lion’s eyelash.” So the woman went to the jungle to find a lion. The first time she threw meat from a distance, and then got closer and closer, until she was able to take an eyelash. She took the eyelash to the wise man, who told her, “If you can do this to a lion, you can do the same thing to your husband.” According to this woman, the message to her was clear—she should be “patient, submissive and responsible.” It was her responsibility to change her husband. Just as she could change the animal, she could change him.<sup>94</sup>

Interviews revealed that frequently, immigrant women are not aware of their right to be free from violence. They have accepted domestic violence as a way of life.<sup>95</sup> One advocate described, “This was a foreign concept in my support group for young girls. ...They accept violence because their mom[s], cousin[s], get hit.”<sup>96</sup> One woman said, “[I]t took me two years to find out what abuse means. I was doing what my mother did for my dad...I can’t say, ‘Where have you been?’ because he was the man...He gave me black eyes and I never called the police.”<sup>97</sup>

Interviewees reported that if women do object to violence and seek help, there may be significant community pressure to seek recourse or resolution of the domestic violence situation within the clan or community-based justice system.<sup>98</sup> As one battered woman explained, “[a]s soon as you call the police, you are ostracized.”<sup>99</sup> Accessing help outside the community is frequently viewed as harming the reputation of the family. If a woman calls the police, one advocate explained, people may say that she has become “Americanized” and is betraying her whole community.<sup>100</sup> Advocates described the situation for women in one community. If a woman’s husband goes to jail, his family will put pressure on her family. They might disown her, and then she would be denied a traditional burial.<sup>101</sup> Though there is great pressure to seek recourse within the community, women face a difficult dilemma because informing the community of the violence may cause them great shame.

Community pressure may also take the form of interpreter misconduct or family member interference with domestic violence screening in medical settings. For example, Minnesota Advocates found that, in some cases, court interpreters have shamed women seeking OFPs or

---

<sup>94</sup> Interview dated June 30, 2003.

<sup>95</sup> A recent Minnesota study on domestic violence in minority communities, which included refugee and immigrant women, found that women who thought that domestic violence was never acceptable reported much less abuse. The study referred to norms of the Southeast Asian communities that may make women more vulnerable to abuse – traditions of suffering and perseverance, accepting one’s fate and not seeing divorce or separation as a solution to abuse. The study concluded that “The main finding from this study seems to be that those women who adhere less to these traditional norms are less likely to suffer from physical, psychological and economic abuse.” Alvi, *supra* note 33.

<sup>96</sup> Interview dated June 25, 2003. A Somali advocate reported that she believes 90 percent of Somali relationships are abusive and that Somali men pressure and control women regardless of their age, education level or job. Although her agency is a general women’s advocacy organization, she estimated that 85% of their time is spent working on issues related to domestic violence. Interview dated July 16, 2003.

<sup>97</sup> Interview dated December 1, 2003.

<sup>98</sup> See discussion in the section entitled “Criminal Courts and Judicial Response.”

<sup>99</sup> Interview dated June 30, 2003.

<sup>100</sup> Interview dated July 24, 2003.

<sup>101</sup> Interview dated July 2, 2003.

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

divorce, told the women to go back to their abusers and omitted details of abuse from the interpretation they provided. This conduct can impede a woman's access to civil remedies that may be crucial to her safety. In medical settings, family members including the abuser himself sometimes interfere or prevent an interpreter from working with a domestic violence victim in connection with a medical screening that includes questions about violence.

Interviewees also explained that community justice systems can be dangerous for battered immigrant women because these systems often prioritize preservation of the family or reputation of the clan over the safety of the victim. Interviewees explained that in one community, it is common for the family or clan to intervene to ensure that a couple stays together. Community and family pride are at stake in ensuring that children have two parents. In many communities, battered immigrant women receive significant pressure from their communities not to divorce violent spouses. Individuals who work with immigrant women reported that community or clan leaders frequently contact a woman who has sought the assistance of a mainstream organization and pressure her to recant, arguing that her actions will destroy her family.<sup>102</sup> One judge described her experience with immigrant victims frequently facing pressure from the abuser's family to request that their cases be dismissed. "[T]hey start saying that she is a liar, that she isn't credible. They create this wall of them against her. It's as if the male has a bunch of advocates."<sup>103</sup>

The pressure put on some women by the elders in their communities can be severe. One woman said that an elder approached her, pulled her aside, and said that her batterer had learned a lot and that "...Now is the point where you can take him back. You will be respected." This battered immigrant woman described how children are also used to pressure women to recant. Regarding her decision to leave her abusive partner, she said, "I cannot count how many times I am approached by members of the community to change my mind."<sup>104</sup>

Some community elders appear to be taking steps to prevent criminal and civil justice institutions from responding to women's requests for assistance. Interviewees reported that the elders in one suburban location asked the police not to respond to domestic violence calls from their community. When the police said that they must respond, the elders requested that the police contact them after they receive a call. The police refused.<sup>105</sup> Advocates also described a situation in which community elders appeared at the courthouse and intimidated a woman who had agreed to testify as a witness in a case.<sup>106</sup>

A police officer recounted a situation in which a woman, who was regularly beaten by her husband, had gone to an advocate to get an OFP and change the locks on her doors. The officer said:

She changed her number, did everything right. But then the elders and the phone calls came. Little by little she became afraid. She stopped answering the door or

---

<sup>102</sup> Interviews dated July 30, 2003 and August 4, 2003.

<sup>103</sup> Interview dated June 16, 2003.

<sup>104</sup> Interview dated June 30, 2003.

<sup>105</sup> Interview dated July 28, 2003.

<sup>106</sup> Interview dated August 4, 2003.

phone when we came by or called. The last time we talked to her she said, “I am fine, the elders are going to move us and he has promised not to hurt me.” They moved away. I haven’t read her name in the news, thank God.<sup>107</sup>

A lawyer who is a leader in one immigrant community explained that, despite community pressure, it is essential for mainstream institutions, particularly the justice system, not to treat cases involving immigrant women differently from other cases. She explained her fear that violence may be excused in the name of respecting another’s “culture.” The message must be sent that there is no double standard. “[We must] enforce the law and they will be deterred,” she said.<sup>108</sup>

Despite the prevalence of community pressures to hide violence, many interviewees explained that the laws prohibiting domestic violence are generally valued by immigrant women and that they often have an impact on abusers’ conduct. One advocate expressed her view that the perception that domestic violence is just a normal way to “discipline” a woman may be changing for many immigrants. “When you come here, you start to see that this is not right.”<sup>109</sup> One advocate explained that here, men hear rumors about how domestic violence is a criminal offense and they do not want to go to jail. Abusive men “hate the ‘American’ system - that a woman is encouraged to be independent and have other resources.”<sup>110</sup>

## **5. Reductions in Funding for Essential Services**

Interviewees agreed that state, county and local budget cuts are greatly impacting the availability and quality of services that are essential for battered immigrant women to establish safe homes for themselves and their families. As one advocate said, “When we bring immigrants and refugees to this country, we expect them to live as Americans. How will this happen without support services?”<sup>111</sup> Interviewees explained that the budget cuts will have a particular impact on those organizations that provide direct services and population-specific programs. Budget cuts have a disproportionate effect on immigrant communities because they often have greater needs for public assistance, including financial and medical assistance.<sup>112</sup> “Millions of dollars have been cut this year and there are more cuts planned for the future. In this environment it just can’t be expected that there will be funding for [a specific immigrant group] if there is no program for women in general,” said a state government official.<sup>113</sup>

Immigrant families will be greatly affected by cuts in programs to provide interpretation services for LEP individuals, in funding for government assistance administration, in the budget for

---

<sup>107</sup> Interview dated August 11, 2003.

<sup>108</sup> Interview dated June 25, 2003.

<sup>109</sup> Interview dated June 30, 2003; “[W]omen are assuming new roles while men seek to maintain old traditions.” The Minneapolis Foundation, *Immigration in Minnesota 5* (1999), available at <http://www.mplsfoundation.org/initiatives/graphics/lutefisk.pdf>.

<sup>110</sup> Interview dated August 7, 2003.

<sup>111</sup> Interview dated June 23, 2003.

<sup>112</sup> Interview dated July 1, 2003.

<sup>113</sup> Interview dated July 9, 2003.

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

shelters, in the provision of free legal services and in the funding for interpreters in medical institutions.<sup>114</sup> A manager in a social service agency described the loss of a large part of the funding for the Office of Multicultural Services (OMS) as a “huge blow” to Hennepin County. She explained that the office helps government agencies “understand the needs of the various populations.”<sup>115</sup> The mission of the OMS is to facilitate access to county services in a safe environment for those with limited English proficiency.<sup>116</sup> Likewise, the Minnesota Court Interpreter Program funding has been negatively affected by budget cuts. The funding cuts in government assistance offices will also affect victims of domestic violence. In a county employment counseling office, twelve domestic violence specialists were reduced to one specialist who has not had training on VAWA.<sup>117</sup> Other county domestic violence advocates explained that immigration, interpretation and translation services are the first things to go when there are budget cuts. One representative of a government agency serving immigrant women explained that women use their services only if there are advocates from their particular community on staff. This representative expressed deep concern that staff cutbacks will jeopardize the safety of immigrant women.<sup>118</sup>

Advocates expressed serious concern about the method for allocating funding for crime victim services in Minnesota that was put into effect in 2003. Under this system, money for crime victim services (excluding shelter and VAWA money) is currently divided among ten judicial districts based on a formula that takes into account the following factors: each district’s respective population and geographic size (weighted the highest at 3), Part 1 and Part 2 of reported crime from the Uniform Crime Report for 2000-2002 (weighted at 2), size of the communities of color living within the district (weighted at 1), and the amount of corporate and foundation funding historically provided in regions of the state (weighted at 1).<sup>119</sup> Districts are to organize community meetings in which attending organizations will determine how these funds are to be allocated for the following five years.<sup>120</sup> In 2003, one government official explained that “[i]t is the hope of the office that while there may not be enough funding for population-specific agencies, that these agencies will collaborate with other agencies to maximize service.”<sup>121</sup> Advocates fear that the smaller groups that serve immigrant victims of domestic violence will be disproportionately affected by this system.<sup>122</sup>

The state has also reduced funding for crime victim services over the last few years. Since fiscal year 2000, almost 46% of crime victim services funding (including services for battered women)

---

<sup>114</sup> Interview dated July 15, 2003.

<sup>115</sup> Interview dated August 21, 2003.

<sup>116</sup> Interview dated August 8, 2003.

<sup>117</sup> Interview dated October 16, 2003.

<sup>118</sup> Interview dated October 7, 2003.

<sup>119</sup> Office of Justice Programs, Crime Victim Services Funding Distribution Planning Process (Fiscal Year 2005), available at the website of the Department of Public Safety at <http://www.dps.state.mn.us/OJP/MCCVS/Funding/Commentary%20Funding%20plan%20Spec%20Ed%202.pdf>.

<sup>120</sup> Interview dated July 9, 2003.

<sup>121</sup> Interview dated July 9, 2003.

<sup>122</sup> Interview dated June 23, 2003.

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

and almost 27% of shelter funding from the state has been cut.<sup>123</sup> These budget cuts compromise the ability of shelters, community advocacy programs and criminal justice intervention programs to provide the interpretation and other culturally appropriate services for immigrant victims of domestic violence.

Funding necessary for the state's public defender system and other free legal services has been reduced over the last year. The availability of free legal services is essential for many battered women. This is especially true for battered immigrant women who often have difficulty navigating government systems that are completely foreign to them, e.g., the criminal, juvenile and family court systems. The Public Defender system has faced a \$7.6 million deficit<sup>124</sup> that threatens to reduce the availability of public defenders for immigrant families in the child protection system. The funding for many of the legal aid offices in the Minneapolis/St. Paul metropolitan area has been reduced. These offices have been forced to establish priorities in the cases they take on, and as a result, battered immigrant women who are not able to afford legal representation may not be able to obtain services at legal aid centers.

Drastic funding cuts in the area of human services have also affected the availability of specialized services for immigrant mothers to assist them in complying with any applicable CPS case plan. The budget for the Department of Human Services in Hennepin County, for example, was cut by \$50 million in 2003.<sup>125</sup> These cuts have had an effect on the availability of community-specific programming, such as parenting classes for immigrant parents in the child protection system. In addition, the budget cuts have negatively affected the number of staff and site visits, the budget for interpretation and translation services, and the ability to hire bilingual staff, all of which affect the quality of services CPS provides to battered immigrant mothers. Funding cuts have also reduced access to supervised visitation at a visitation center, which is essential for a battered mother to safely transfer her children to an abusive partner for visitation.<sup>126</sup>

Budget cuts in the emergency medicine departments and clinics throughout the Minneapolis/St. Paul metropolitan area have resulted in a reduction in the availability of interpreters. The availability of interpretation at these medical facilities is essential for appropriate treatment of battered immigrant women who often seek medical assistance in emergency rooms, in part because they are not eligible for any other medical assistance under federal law.<sup>127</sup>

---

<sup>123</sup> See Minnesota Coalition for Battered Women, *History of State General Funds Allocated for Crime Victims*, on file with Minnesota Advocates for Human Rights (citing statistics and figures from the Office of Justice Programs, Minnesota Department of Public Safety). See also Dan Gunderson, *Crime Victim Advocates Unhappy About Funding Cuts*, Minnesota Public Radio (December 1, 2003) (citing community advocates' concerns about the 2003 reduction in funding for crime victim services in the amount of \$733,000).

<sup>124</sup> Minnesota Public Radio, *Pawlenty agrees to fix city aid glitch, defender budget* (July 22, 2004).

<sup>125</sup> Hennepin County Budget 2004: Program Information, available at [http://www.co.hennepin.mn.us/vgn/portal/internet/hcdetailmaster/0,2300,1273\\_1722\\_105680841,00.html](http://www.co.hennepin.mn.us/vgn/portal/internet/hcdetailmaster/0,2300,1273_1722_105680841,00.html).

<sup>126</sup> Interview dated August 27, 2003.

<sup>127</sup> Interview dated June 19, 2003



### **III. INTERNATIONAL HUMAN RIGHTS LAW OBLIGATIONS**

To the extent that government authorities in the Minneapolis/ St. Paul metropolitan area have not taken adequate steps to prevent, prosecute, investigate, punish and redress acts of domestic violence against immigrant women, they are not in compliance with international human rights standards.

#### ***A. Obligations of the United States***

The United States (acting on its own or by and through state and local governments)<sup>128</sup> is bound by its international obligations arising under treaties and customary international law to guarantee equal protection of the laws and the right to an effective remedy. The government is also responsible to protect individual human rights to life, security of person and freedom from torture. Specifically, the United States has signed and ratified the International Covenant on Civil and Political Rights (“ICCPR”), the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”), and the Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), and is bound by the provisions of these treaties.<sup>129</sup> By an Executive Order issued in 1998, the United States government acknowledged these obligations. The Order states that, “[i]t shall be the policy and practice of the Government of the United States, being committed to the protection and promotion of human rights and fundamental freedoms, fully to respect and implement its obligations under the international human rights treaties to which it is a party, including the ICCPR, the CAT, and the CERD.”<sup>130</sup>

The United States has also signed, although not ratified, the Convention on the Elimination of All Forms of Discrimination Against Women (the “Women’s Convention”). Pursuant to Article 18 of the Vienna Convention on the Law of Treaties, the United States is therefore prohibited

---

<sup>128</sup> While the federalist structure of the United States may have an effect on the way in which the federal government works to comply with its obligations under international law, domestic legal systems cannot be used as an excuse for non-compliance with international obligations. Restatement (Third) of the Foreign Relations Law § 321 cmt. b (1986) (“A state is responsible for carrying out the obligations of an international agreement. A federal state may leave implementation to its constituent units but the state remains responsible for failures of compliance.”); *see also*, International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR, Supp. No. 16 at 52, U.N. Doc. A/6316 (1966)[hereinafter ICCPR] (the Covenant’s provisions “shall extend to all parts of federal states without any limitations or exceptions”); *Nature of the General Legal Obligation on States Parties to the Covenant*, Human Rights Committee, General Comment 31, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004) (government “may not point to the fact that an action incompatible with the provisions of the Covenant was carried out by another branch of government as a means of seeking to relieve the State Party from responsibility for the action and consequent incompatibility”); Vienna Convention on the Law of Treaties, Jan. 27, 1980, art. 27, 1155 U.N.T.S. 331 [hereinafter Vienna Convention](states “may not invoke the provisions of its internal law as justification for its failure to perform a treaty”).

<sup>129</sup> Restatement (Third) of the Foreign Relations Law, *supra* note 128 (“Every international agreement in force is binding upon the parties to it and must be performed by them in good faith.”).

<sup>130</sup> Exec. Order No. 13,107; 61 Fed. Reg. 68,991 (1998).

from taking any action that would violate the “object and purpose” of the Women’s Convention.<sup>131</sup>

### ***B. Right to Equal Protection of the Laws***

One of the most well-established principles under international law is the government’s obligation to guarantee equal protection of the laws. This principle is reflected in Article 7 of the Universal Declaration of Human Rights (“UDHR”),<sup>132</sup> Article 26 of the ICCPR,<sup>133</sup> Articles 5 and 6 of the CERD,<sup>134</sup> and Article 3 of the Women’s Convention.<sup>135</sup> The principal of non-discrimination and equal protection is equally well-established in federal and Minnesota state law.<sup>136</sup> To the extent that the government has failed to prevent and punish domestic violence against immigrant women, it has not adequately protected their right to equal protection of the laws on the basis of race, ethnicity, national origin, and sex.

Battered immigrant women may arguably be denied equal protection of the laws based on their immigration status (e.g., as a conditional resident or undocumented alien) or their status as new arrivals (which is often associated with being a non-English speaker or with unfamiliarity with legal or medical processes).<sup>137</sup> There are a number of ways immigration status can affect the protection that may be available to victims or the extent to which their abusers are prosecuted. Battered immigrant women are denied equal protection of the laws: 1) when courts are inaccessible to immigrant women because of the absence of adequate and unbiased interpretation

---

<sup>131</sup> Vienna Convention, *supra* note 128, art. 18.

<sup>132</sup> Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948)[hereinafter UDHR]. The UDHR was adopted and proclaimed by the United Nations General Assembly (of which the United States is a member) in 1948.

<sup>133</sup> ICCPR, *supra* note 128.

<sup>134</sup> International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, U.N. GAOR, 20<sup>th</sup> Sess., Supp. No. 14 at 47, U.N. Doc. A/6014 (1966) [hereinafter CERD].

<sup>135</sup> CERD, G.A. res. 34/180, U.N. GAOR, 34<sup>th</sup> Sess., Supp. No. 46 at 193, U.N. Doc. A/34/46 (1981).

<sup>136</sup> These rights are protected under federal and state law through the Fourteenth Amendment to the U.S. Constitution, Section 2 of the Minnesota Constitution, Title VI of the Civil Rights Act of 1964, and the Minnesota Human Rights Act (“MHRA”), Minn. Stat. 363A.02. The MHRA states that it is the “public policy of the state to secure for persons in the state, freedom from discrimination” in employment, housing, public accommodation, public services and education, that such discrimination “threatens the rights and privileges of the inhabitants of this state,” and that the opportunity to obtain government services, employment and housing without discrimination is “recognized and declared to be a civil right.”

<sup>137</sup> In addition, when the government fails to respond to domestic violence as it responds to violence that is perpetrated by strangers, it has failed to guarantee equal protection of the laws to women. In other words, “whatever level of resources a state decides to devote to enforcing criminal laws against private acts of violence, it must ensure that crimes against women receive at least as thorough an investigation and as vigorous a prosecution as crimes against men.” Kenneth Roth, Domestic Violence as an International Human Rights Issue, in *Human Rights of Women: National and International Perspectives* 326, 334-35 (Rebecca J. Cook, ed., 1994). Thus, if domestic violence programs are under-funded compared to programs addressing other kinds of violence and if judges do not assess the danger to the victim before releasing a perpetrator, women have been denied equal protection of the laws. Although the scope of this project did not permit a comparison of the police response to crimes of domestic violence versus other crimes, the principle of equal protection would also be violated if the police respond more slowly to crimes of domestic violence than to other crimes.

or the lack of cultural competency; 2) when police reports do not reflect the abuse because the officer could not (or would not) understand the woman; 3) when police routinely use abusers or children as interpreters because of language barriers; and 4) when immigrant women are afraid of seeking assistance from the courts or the police because they rightly fear that they or their husbands will be removed (deported) from the United States.

In addition to the individual prohibitions on discrimination on the basis of race, national origin, ethnicity and gender, there are numerous international documents that call attention to the particular needs of women who face both race and sex discrimination. Agenda Item 9 of the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance Programme of Action, for example, recommends actions states can undertake to address the intersecting problems of gender<sup>138</sup> and race discrimination. It urges states to recognize that the intersection of gender and race discrimination make migrant women and girls particularly vulnerable to violence.

The intersection of sex and race discrimination can result in equal protection violations when the state fails to address the particular needs of women who experience discrimination on the basis of multiple statuses, and also when the state's policies themselves prevent women from obtaining protection from violence.

As the Special Rapporteur on Violence Against Women explained in her 2001 report to the Preparatory Committee for the 2001 World Conference against Racism,<sup>139</sup> battered women who belong to marginalized groups often confront additional obstacles, such as language barriers or cultural insensitivity, to protecting themselves from violence. Focusing on encounters with the criminal justice system, the Special Rapporteur noted that minority women's attempts to seek justice through such systems "are regularly forestalled:"

Although legislation exists, measures to ensure its full implementation - including communicating provisions to the public, training officials responsible for administering the legislation, providing legal support services to enable beneficiaries to invoke legislation, monitoring implementation and ensuring further development of legislation in response to the reality on the ground - have not been sufficient. ... Threats and harassment by perpetrators and their communities, and social pressures which exist within families and communities force women victims to compromise or withdraw rather than to pursue justice.<sup>140</sup>

---

<sup>138</sup> Although this World Conference addressed discrimination on the basis of gender, it should be noted that international human rights conventions to which the United States is a party proscribe discrimination on the basis of sex, a term that refers to the physical characteristics of a person rather than the gender identity of a person.

<sup>139</sup> Report to the Preparatory Committee for the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, Racial Discrimination, Xenophobia and Related Intolerance on the subject of race, gender and violence against women, A/CONF.189/PC.3/5 (July 27, 2001)[hereinafter Report].

<sup>140</sup> *Id.* ¶ 57.

Given the additional obstacles faced by immigrant women, the state's obligation to ensure equal protection requires additional measures—e.g., measures addressing language and cultural accessibility of institutions—that may not necessarily be required in other situations.<sup>141</sup>

As the Special Rapporteur explains further, existing policies of and biases within government institutions may themselves undermine the protection afforded to immigrant women. “Gender biases which exist within institutions of redress are often exacerbated by ingrained caste and other biases against members of disadvantaged communities.”<sup>142</sup> Further, in many instances,

existing policies and immigration laws clearly support the gender hierarchy in their families and communities, as the legal status of most immigrant women is dependent on the legal status of their husbands or fathers. Even women who are subjected to domestic violence by their husbands are not freed from this dependency and the law forces them to choose between the violence of their husbands or deportation by the national authorities.<sup>143</sup>

In this context, ensuring equal protection means eliminating those government practices that create barriers to immigrant women's efforts to seek protection from domestic violence. As the Committee on the Elimination of Racial Discrimination (the body charged with interpreting CERD), has recognized in its General Recommendation 25, “racial discrimination does not always affect women and men equally or in the same way. There are circumstances in which racial discrimination only or primarily affects women, or affects women in a different way, or to a different degree than men.”<sup>144</sup>

### ***C. Rights to Life, Liberty, Security of Person and Freedom from Torture***

The United Nations has recognized domestic violence as a violation of the fundamental human rights of women.<sup>145</sup> A government's failure to protect women from domestic violence and to

---

<sup>141</sup> Both CERD and the Women's Convention recognize as equal protection violations those actions that have a disproportionate effect on a particular group, and allow for special measures undertaken to support or advance women or individuals of a particular racial or ethnic group that are necessary to ensure these individuals' equal enjoyment of rights or to accelerate de facto equality. See CERD, *supra* note 134, arts. 1(1), 1(4), 2(1)(c), G.A. Res. 2106 (XX), Annex, U.N. GAOR, 20<sup>th</sup> Sess., Supp. No. 14 at 47, U.N. Doc. A/6014 (Jan. 4, 1969); *Id.* arts. 1,4, G.A. Res. 34/180, U.N. GAOR, 20<sup>th</sup> Sess., Supp. No. 46 at 193, U.N. Doc. A/34/46 (Sept. 3, 1981). This is in contrast to the anti-discrimination law of the United States, which does not distinguish between actions that make distinctions to further substantive equality versus those that deny it, and emphasizes instead mere “formal equality.” Johanna E. Bond, *International Intersectionality: A Theoretical and Pragmatic Exploration of Women's International Human Rights Violations*, 52 Emory L.J. 71, 96 (2003).

<sup>142</sup> Report, *supra* note 139, (A/CONF.189/PC.3/5), ¶ 57 (July 27, 2001),

<sup>143</sup> *Id.* at ¶ 115.

<sup>144</sup> *Gender Related Dimensions of Racial Discrimination*, CERD, 56<sup>th</sup> Sess., General Recommendation 25, U.N. Doc. A/55/18, annex V at 152 (2000), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 214 (2003).

<sup>145</sup> See *Violence against women*, CERD, 11<sup>th</sup> Sess., General Recommendation 19, U.N. Doc. A/47/38 at 1 (1993), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 243 (2003) (violence against women constitutes discrimination and “seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men”); *Elimination of*

punish perpetrators violates a number of clearly established individual human rights, specifically, the right to life, liberty and security of person, and the right to be free from torture.

Domestic violence violates a woman's right to life, liberty and security of person. These rights are set forth in Article 3 of the UDHR<sup>146</sup> and Article 6 of the ICCPR.<sup>147</sup> These individual rights are also protected under domestic law.<sup>148</sup>

Some acts of domestic violence can also be understood as a form of torture,<sup>149</sup> which is prohibited under the CAT,<sup>150</sup> Article 5 of the UDHR and Article 7 of the ICCPR, and which has become a preemptory (*jus cogens*) norm of international law.<sup>151</sup>

Under international law, governments are not only obligated to refrain from violating an individual's right to life, liberty and security of person, but must also work both to prevent such violations from occurring at the hands of private individuals and to punish perpetrators when violations occur. The CAT, for example, specifically requires governments to "take effective legislative, administrative, judicial or other measures" to prevent acts of torture in any territory under its jurisdiction and "to ensure that all acts of torture are offences under its criminal law."<sup>152</sup> The Human Rights Committee, the international body charged with interpreting the ICCPR, has explained that the obligations of the ICCPR "will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons and entities." As a result, in some circumstances a state may violate its obligations under the ICCPR by "permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused

---

*violence against women*, Commission on Human Rights, 59th meeting, Resolution 2003/45, E/CN.4/2003/L.11/Add.4 (April 23, 2003)(condemning all acts of violence against women and affirming that violence against women constituted a violation of women's human rights).

<sup>146</sup> UDHR, G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948).

<sup>147</sup> ICCPR, G.A. Res. 2200A (XXI), U.N. GAOR, 21<sup>st</sup> Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966),.

<sup>148</sup> These rights are protected under federal and state law through the Fifth and Fourteenth Amendments to the U.S. Constitution and Section 7 of the Minnesota Constitution.

<sup>149</sup> See, e.g., Bonita C. Meyersfeld, *Reconceptualizing Domestic Violence in International Law*, 67 Alb. L. Rev. 371, 398 (2003)(discussing works that have "highlighted the similarities between frequent forms of extreme domestic violence and the acts contemplated by the drafters of the Convention against Torture and other international instruments" and offering a framework for reconceptualizing extreme forms of domestic violence as private torture under the CAT); Rhonda Copelon, *Intimate Terror: Understanding Domestic Violence as Torture*, in *Human Rights of Women: National and International Perspectives* 116 (Rebecca J. Cook, ed., 1994) (comparing the physical and psychological elements of domestic violence with the definition of torture and concluding that "the process, purposes, and consequences [of the two] are startlingly similar").

<sup>150</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46 (1984)[hereinafter CAT]. These rights are also protected under both federal and state law, including the Eighth Amendment of the U.S. Constitution.

<sup>151</sup> See, e.g., Rhonda Copelon, *supra* note 149, at 116, 117. A *jus cogens* or preemptory norm of international law "is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." Vienna Convention, *supra* note 128, art. 53.

<sup>152</sup> CAT, arts. 2, 4, G.A. Res. 39/46 (1984)(in accordance with art. 27 (1)).

by such acts by private persons or entities.”<sup>153</sup> The Committee on the Elimination of Discrimination Against Women (CEDAW), the body charged with interpreting the Women’s Convention, has articulated similar standards. CEDAW states that parties to the treaty are not only obligated to refrain from committing violations themselves, but are also responsible for otherwise “private” acts such as domestic violence if they fail to fulfill their duty to prevent and punish such acts.<sup>154</sup>

Case law interpreting international and regional human rights law also supports the principle that governments are required to exercise due diligence to prevent and respond to private acts that violate human rights norms.<sup>155</sup> The Inter-American Court of Human Rights, addressing the issue of “disappearances” in the *Velásquez Rodríguez Case*, explained that an act that may not initially be directly imputable to the government because it is the act of a private person can result in international responsibility for the State if the government fails to:

prevent the violation or to respond to it as required by the Convention ... The 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>156</sup>

Subsequent cases have applied this due diligence standard specifically in the context of domestic violence. In 2001, for example, the Inter-American Court of Human Rights held a government responsible for failing to prosecute and punish a perpetrator of domestic violence.<sup>157</sup> Thus, any government failure to exercise due diligence in preventing acts of domestic violence against immigrant women and punishing perpetrators—failure to exercise due diligence in responding to calls relating to domestic assault or violations of protection orders, in making available interpreters in courts and other institutions, and in providing sufficient resources, including shelter, to immigrant victims of domestic violence—is a violation of women’s individual human rights.

The Beijing Platform for Action, the conference document resulting from the United Nations Fourth World Conference on Women’s Rights in Beijing, China, articulates a comprehensive approach to the problem of violence against women. It includes, for example, specific strategies for addressing violence against immigrant women—such as establishing “linguistically and culturally accessible services for migrant women and girls, including women migrant workers,

---

<sup>153</sup> *Nature of the General Legal Obligation on States Parties to the Covenant*, Human Rights Committee, General Comment 31, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004).

<sup>154</sup> CEDAW, General Recommendation 19; *see also, e.g.*, Declaration on the Elimination of Violence Against Women and the Vienna Declaration and Programme of Action from the 1993 World Conference on Human Rights.

<sup>155</sup> *See Akkoc v. Turkey*, Eur. Ct. H.R., Application number 22947/93 and 22948/93 (October 10, 2000); *Plattform “Arzte für das Leben v. Austria*, Eur. Ct. H.R., Application number 10126/82 (June 21, 1988); *and X and Y v. Netherlands*, Eur. Ct. H.R., Application number 8978/80 (March 26, 1985).

<sup>156</sup> *Velásquez Rodríguez Case*, Inter-Am. Ct. H.R., Ser. C, No. 4, Judgment of 29 July 1988, 1989 28 ILM 291.

<sup>157</sup> *Maria da Penha Maia Fernandez v. Brazil*, Inter-Am. Ct. H.R., Report Number 54/01, April 16, 2001.

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

who are victims of gender-based violence” and recognizing the “vulnerability to violence and other forms of abuse of women migrants, including women migrant workers.”<sup>158</sup> The Beijing Platform also calls on governments to: 1) ensure that victims are guaranteed access to just and effective remedies, including compensation of victims and rehabilitation of perpetrators; 2) inform women of their rights to seek redress; 3) ensure that women with disabilities have access to information and services; 4) create, improve or develop training programs for government agents on the issue of domestic violence; 5) allocate adequate resources within the government for activities related to domestic violence; and 6) provide well-funded shelters and other support for victims, including medical and counseling services and legal aid.<sup>159</sup>

All human rights are indivisible and interdependent.<sup>160</sup> The UDHR, for example, protects the full panoply of human rights, including civil, political, economic, social and cultural rights.<sup>161</sup> As both the ICCPR and the International Covenant on Economic, Social and Cultural rights acknowledge, the ideals of freedom from want and from fear “can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.”<sup>162</sup> These rights are “inextricably linked. ... [O]ne cannot fully realize civil and political rights without the full enjoyment of economic, social and cultural rights, and vice versa.”<sup>163</sup> In the context of this report, it is clear that without economic support, shelters, and other assistance, it is unlikely that women who decide to leave their batterers will be able to do so. Without access to adequate health care, mortality rates due to domestic violence increase. Without training, the most effective law enforcement and child protection procedures will not be implemented consistently with women’s needs.

Despite the obligation under international law to protect individuals from private acts that violate their rights, however, courts in the United States have found such an obligation only in very

---

<sup>158</sup> Beijing Declaration and Platform for Action, Fourth World Conference on Women, September 15, 1995, A/CONF.177/20 (1995), A/CONF.177/20/Add.1 (1995).

<sup>159</sup> The U.N. Declaration on the Elimination of Violence Against Women has similarly articulated a number of steps that United Nations member states (such as the United States) should take to combat violence against women, including investigating and punishing acts of domestic violence; developing comprehensive legal, political, administrative and cultural programs to prevent violence against women; providing training to law enforcement officials; promoting research and collecting statistics relating to the prevalence of domestic violence; and providing assistance, health and social services, and other support structures to promote the rehabilitation of victims. *Declaration on the Elimination of Violence against Women*, G.A. Res. 48/104, U.N. GAOR, 48<sup>th</sup> Sess., Supp. No. 49 at 217, U.N. Doc. A/48/49 (1993); *see also* Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 33 I.L.M. 1534 (1994)(The United States is not a party to this Convention).

<sup>160</sup> *See* Bond, *supra* note 141, at 87-88 (“Today, an increasingly widespread recognition of human rights as interdependent and indivisible has begun to break down the hierarchy between civil and political rights and economic, social, and cultural rights.”).

<sup>161</sup> Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

<sup>162</sup> ICCPR, G.A. res. 2200A (XXI), U.N. GAOR, 21<sup>st</sup> Sess., Supp. No. 16 at 52, U.N. Doc. A/6316 (1966); International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), U.N. GAOR 21<sup>st</sup> Sess., Supp. No. 16 at 49, U.N. Doc. A/6316 (1966).

<sup>163</sup> Bond, *supra* note 141, at 153; *see also* Lisa A. Crooms, *Indivisible Rights and Intersectional Identities or, “What Do Women’s Human Rights Have to Do with the Race Convention?”* 40 *How. L.J.* 619, 631 (1997) (criticizing the refusal of some U.N. members “to see the ‘second-generation’ rights of social, economic, and cultural life as conditions precedent to the meaningful exercise of the ‘first-generation’ rights of civil and political life”).

limited circumstances. In *DeShaney v. Winnebago County Department of Social Services*, for example, a case involving a challenge to a social services agency's failure to act to protect an abused child, the Supreme Court held that "nothing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors."<sup>164</sup>

In a recent decision, the Tenth Circuit Court of Appeals heard a challenge to a local government's failure to act in *Gonzales v. City of Castle Rock* (01-1053). Jessica Gonzales, the petitioner, had obtained a restraining order against her estranged husband to protect herself and her daughters. When her husband abducted the children, she contacted the police but the police refused to enforce the order, and her husband murdered the children. Ms. Gonzales brought suit, alleging that the failure of the police to enforce the order constituted a violation of both substantive and procedural due process. Relying on *DeShaney*, the Tenth Circuit rejected her substantive due process claim. The court did find, however, that the issuance of the restraining order created a due process right in the petitioner to enforcement of the order, and that the government's failure to enforce the order violated her right to procedural due process. The United States Supreme Court has announced that it will hear the appeal of this decision.<sup>165</sup>

#### ***D. Right to an Effective Remedy***

The right of victims of human rights violations to effective remedies is well-established in international law. Article 8 of the UDHR, Article 6 of CERD, and Article 2 of the ICCPR guarantee that states shall provide an effective and adequate remedy for acts violating fundamental rights guaranteed by law, including—in the ICCPR—the right to have the remedy determined by a competent authority and to enforcement of any remedy granted.<sup>166</sup> Articles 13 and 14 of the CAT similarly provide that individuals who allege that they have been tortured have the right to complain to authorities, to have their case heard by the competent authorities, and to obtain redress, including fair and adequate compensation. In addition, this obligation is set out under domestic law.<sup>167</sup>

The scope of the right to an effective remedy is described in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law ("Van Boven Principles").<sup>168</sup> Pursuant to these principles, the right to an effective remedy includes the right to: "(a) Access justice; (b) Reparation for harm suffered; and (c) Access the factual information concerning the violations."<sup>169</sup>

---

<sup>164</sup> *DeShaney v. Winnebago County Dep't of Soc. Serv.*, 489 U.S. 189, 195 (1989).

<sup>165</sup> Charles Lane, *Court Will Rule on Town's Liability in Family Violence*, Washington Post, November 2, 2004, at A02.

<sup>166</sup> UDHR, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948); ICCPR, G.A. res. 2200A (XXI), U.N. GAOR, 21<sup>st</sup> Sess., Supp. No. 16 at 52, U.N. Doc. A/6316 (1966). These rights are also protected under both federal and state law, including the Fifth Amendment of the U.S. Constitution, Section 7 of the Minnesota Constitution (due process), and Section 8 of the Minnesota Constitution (entitlement to a remedy).

<sup>167</sup> See e.g., Section 8 of the Minnesota State Constitution.

<sup>168</sup> See *Final Report of the Special Rapporteur, Mr. M. Cherif Bassiouni*, Commission on Human Rights, E/CN.4/2000/62 (2000).

<sup>169</sup> *Id.* at ¶ 11.



*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

*Access Justice:* The principles call on states to make all available remedies for violations known. States must take steps “to minimize the inconvenience to victims, protect their privacy as appropriate and ensure their safety from intimidation and retaliation,” and make available the means to ensure that victims are able to exercise their right to an effective remedy.<sup>170</sup>

*Reparation:* The principles call on states to ensure that victims are entitled to restitution from the party responsible for the harm, or, if that party is unable or unwilling to provide restitution, the state should seek to provide such reparation to victims who have sustained bodily injury and their dependants.<sup>171</sup> Victims are also entitled to compensation for physical or mental harm, lost opportunities, material damages and loss of earnings, harm to dignity, and costs for legal, medical or other expert assistance.<sup>172</sup> The principles also require the state to ensure that violations cease, to verify the facts and disclose such facts (to the extent not harmful to the victim), to provide an official declaration restoring the rights of the victim, to ensure that the perpetrator is sanctioned, and to prevent the recurrence of violations.<sup>173</sup>

*Access to Information:* The principles call on states “to develop means of informing the general public and in particular victims of violations of international human rights and humanitarian law of the rights and remedies contained within these principles and guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access.”<sup>174</sup>

When battered immigrant women are denied effective access to justice, to reparation for the harm they have suffered, or information about their legal rights—because the police, prosecutors, courts, medical or other institutions are not language accessible or culturally competent, or because women do not call the police or go to the hospital because they are afraid they will be deported—they have been denied their right to an effective remedy for the crime of domestic violence.

---

<sup>170</sup> *Id.* at ¶ 12; *see also id.* at ¶ 10 (the government “should ensure that its domestic laws, as much as possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her retraumatization in the course of legal and administrative procedures designed to provide justice and reparation”).

<sup>171</sup> *Id.* at ¶¶ 17-18.

<sup>172</sup> *Id.* at ¶¶ 22-23.

<sup>173</sup> *Id.* at ¶ 25.

<sup>174</sup> *Id.* at ¶ 26.

#### **IV. State and Local Justice Systems**

Justice system personnel throughout the Minneapolis/St. Paul metropolitan area have made major efforts to improve their response to domestic violence against immigrant women. They have undertaken outreach, training, and reform efforts to more effectively resolve these cases. Nevertheless, battered immigrant women who attempt to access the justice system frequently encounter significant obstacles.

As the United Nations Development Fund for Women notes below, the enforcement of laws providing criminal or civil remedies for battered women is of particular concern in the struggle to eliminate violence against women:

Ensuring women's access to justice means that governments must commit to establishing a rule of law that factors in all the issues that affect implementation and exercise due diligence to prevent, investigate and punish violence against women.

Closing the gap between the laws on the books and their implementation [is] one of the most pressing concerns of anti-violence advocates. There are many reasons that legislation is not implemented: laws are not taken seriously or are selectively applied; the appropriate enabling legislation is not passed; inadequate provisions are made for enforcement; or the resources allocated for implementation are insufficient.<sup>175</sup>

Although some interviews revealed positive experiences with the justice system, more often they exposed obstacles at every level of the process, from the first contact with police through resolution in criminal or civil court. These barriers contribute to immigrant women's hesitancy to seek recourse from the justice system, interfere with their safety and prevent violent offenders from being held accountable for their crimes.

If not remedied by police departments, prosecutors, court administrators or judges, these barriers can lead to the violation of the survivors' right to life and safety or their right to access the legal system without suffering discrimination on the basis of ethnicity or national origin. Moreover, battered immigrant women may be deprived of the benefit of United States constitutional guarantees to equal protection of the laws and due process if the government authorities fail to ensure access to the courts.

More specifically, a failure to provide adequate interpretation services in court proceedings may be deemed a failure to comply with Title VI of the Civil Rights Act of 1964. Under Executive Order 13166, recipients of federal funds such as state courts must take "reasonable steps to ensure meaningful access to their programs and activities" by limited English proficient (LEP) individuals in order that such programs and activities do "not discriminate on the basis of

---

<sup>175</sup> UNIFEM, *Not a minute more: Ending violence against women* 42 (2003).

national origin in violation of Title VI.”<sup>176</sup> Department of Justice guidelines further explain that such steps must include the provision of interpretation services to ensure the language accessibility of court proceedings depending on the number of LEP persons served by the courts, the frequency the courts are used by LEP individuals, the nature and importance of the courts to the lives of LEP individuals and the resources available to court administration to provide such services.<sup>177</sup> Minnesota Statutes also require that interpreters be appointed in both criminal and civil proceedings.<sup>178</sup>

### ***A. Law Enforcement and Jails***

As discussed above, fear of the legal system and removal (deportation)<sup>179</sup> as well as community pressures often deter battered immigrant women from calling the police in cases of domestic assault. While police departments in the Minneapolis/St. Paul metropolitan area are working to address these barriers and improve their response to domestic violence against immigrant women, interviews revealed that some police practices compromise the safety of these women and do not contribute to the goal of holding offenders accountable for criminal conduct. These problems are particularly acute at the scene of the assault where an officer secures the crime scene, interviews parties and witnesses, gathers information, makes an arrest decision and writes the incident report.

Interviewees also reported serious incidents where battered immigrant women were arrested and detained because of inadequate interpretation services or a failure to access interpretation services. In at least two cases, women were not informed of the charges against them either at the time of arrest or while in detention.<sup>180</sup> Interviews revealed that these problems are more serious in some precincts than in others.

Because police are often a battered woman’s first contact with the criminal justice system or any government agency, their response may determine whether the woman will pursue any further remedies. As one law enforcement official explained, “It starts with the first contact at the scene. If the officer takes them seriously and does the work, then when it gets to us, [trust] is already established.”<sup>181</sup> A medical professional also stressed the importance of the first contact that an

---

<sup>176</sup> Executive Order 13166—Improving Access to Services for Persons With Limited English Proficiency, 65 Federal Register 159 (August 16, 2000).

<sup>177</sup> See generally Department of Justice Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 2671 (January 18, 2002).

<sup>178</sup> Minn Stat. §§480.182, 546.42-546.44, 611.30-611.34. For a detailed discussion of the requirements outlined in these statutes, see the discussion of Language Barriers in the “Executive Summary” to this report

<sup>179</sup> Prior to 1996, removal proceedings were referred to as exclusion proceedings or deportation proceedings depending on the circumstances of an alien’s detection or apprehension. Now all proceedings to remove an alien from the United States are referred to as removal proceedings. See INA § 240.

<sup>180</sup> See the subsection below entitled, “Domestic Violence Survivors and Those Who Help Them May be Arrested and Detained Due to Lack of Interpretation Services.” Other interviews documented that, too frequently, immigrant women are arrested or detained after they call police to report violence.

<sup>181</sup> Interview dated August 11, 2003. A report by the Battered Women’s Justice Project discusses the importance of contacts with the criminal justice system. “Each action” of the legal system, beginning with the 911 call, “is an opportunity to centralize or marginalize women’s safety.” Case Processing of Misdemeanor Domestic Violence

immigrant woman has with law enforcement.<sup>182</sup> She reported that, at that first contact, “[battered immigrant women] need to feel protected in order to speak out and need to believe that their word is important enough for the police to take them seriously.”<sup>183</sup> Finally an advocate remarked that police often take actions which undermine the trust that an immigrant woman might have in them. She explains that police often accompany an abuser to the house of his abused partner (to retrieve belongings pursuant to a protection order) and then leave the house before the abuser has left.<sup>184</sup>

Both advocates and battered women expressed frustration and anger at the inadequacy of the police response to calls reporting assaults or violations of Orders for Protection (OFPs). Interviews revealed: 1) serious problems with interpretation at the scene of an assault; 2) extensive delays in response time to calls for help; 3) a failure to pursue those who violate OFPs; 4) inadequate documentation in the police report hindering effective prosecution; and 5) inadequate investigation into reports of domestic violence. Extensive cuts in law enforcement resources have contributed to inadequate responses to domestic violence calls.

### **Improvements in the Police Response to Domestic Violence Against Immigrants**

The Minneapolis Police Department recently received a federal grant through the Violence Against Women Act to establish a *Domestic Abuse Project*. This grant provides for a domestic abuse advocate and a city attorney, including one Spanish speaker, to work inside the police department to improve police response to domestic violence. In addition, the Minneapolis police are working with local battered women’s shelters, community service and advocacy programs, and other community groups specifically serving immigrant communities to implement an outreach program to inform women of their rights under Minnesota law.

Police Department officials in St. Paul have organized meetings with immigrant community leaders to improve communication. The Department also publishes a brochure entitled *Information on the Family and Sexual Violence Unit* in three languages. The brochure includes a section entitled, “Are You a Victim?” and states that the mission of the St. Paul Police Department is “to hold abusers accountable for their actions, and direct victims to resources in the community to assist them in their needs.”

### **1. Domestic Violence Victims and Those Who Help Them May be Arrested and Detained Due to Lack of Interpretation Services**

Inadequate interpretation and law enforcement failure to access interpretation services at the scene of a domestic violence crime or at the police station have adversely affected battered immigrant women. In particular, a lack of interpretation has compromised their ability to obtain

---

Cases: Initial Police Response to Arraignment: A Report from the Safety and Accountability Audit 6, Battered Women’s Justice Project (September 2000).

<sup>182</sup> Interview dated July 30, 2003.

<sup>183</sup> *Id.*

<sup>184</sup> Interview dated September 30, 2003.

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

protection from violence. In some cases, it has even resulted in their arrest, where their rights have been further violated by inadequate or non-existent interpretation services. If ultimately convicted of a domestic violence offense, a woman may be subjected to removal (deportation), as discussed in the section of this report entitled, “Federal Immigration Law and Authorities.” She may also lose other relief available to her under the Violence Against Women Act, including the right to apply for lawful permanent residency.

Adequate interpretation services are important not only at the scene of the assault but also in the hours directly following an arrest. Interpretation services are essential to the thorough and accurate documentation of the offense and also to an arrested person’s right to be fully informed of the charges against him.

Advocates, service providers, government employees and battered women reported situations where, at the scene of an assault, female victims did not speak English and were arrested based on explanations given by English-speakers at the scene. In these cases, the woman’s version of events was not recorded.<sup>185</sup> Interviews revealed that police may use neighbors, children, family members, including male family members, “even the abuser himself,” to translate.<sup>186</sup> Other interviews revealed cases where victims were arrested and detained and were not given access to an interpreter during the arrest or detention process.

Minnesota law specifically provides that anyone accused of a crime is entitled to be informed of the reasons for the arrest.<sup>187</sup> Minnesota law also requires that following the apprehension or arrest of a person with limited English proficiency, law enforcement “... shall immediately make necessary contacts to obtain a qualified interpreter and shall obtain an interpreter at the earliest possible time at the place of detention.”<sup>188</sup> Prosecutors are required to make any formal criminal charges within 36 hours of detention.<sup>189</sup>

Interviews with attorneys and personnel from county jails revealed that frequently there are no established procedures for providing interpretation services to detainees who do not speak English. One government employee explained that Hmong or Spanish speaking officers frequently interpret for detainees but she was not aware of any interpretation services for East or West Africans.<sup>190</sup> A government attorney reported her experience that it was not uncommon for a detainee to be held without access to an interpreter for one to two days.<sup>191</sup>

---

<sup>185</sup> One advocate described the situation as follows, “Women get arrested instead of the abuser because of language issues and body language. African women who seek help often seem more agitated than the man; that is how they communicate crisis. The abusers often know more English and relay things quietly to the police.” Interview dated August 6, 2003.

<sup>186</sup> Interview dated August 7, 2003.

<sup>187</sup> “Every person arrested by virtue of process, or taken into custody by an officer, has a right to know from such officer the true ground of arrest; . . .” Minn. Stat. § 611.01 (2004) 1.

<sup>188</sup> Minn. Stat. § 611.32, Subd. 2.

<sup>189</sup> Minn. R. Crim. P. 4.02, Subd.5(1).

<sup>190</sup> Interview dated September 30, 2004.

<sup>191</sup> Interview dated October 14, 2004.

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the Minneapolis/St. Paul Metropolitan Area: A Human Rights Report*  
December 10, 2004  
*A Publication of Minnesota Advocates for Human Rights*

The interpretation service available to police at the scene of an assault is the Language Line – a twenty-four hour telephone translation service. Many interviewees reported that immigrant men are more likely to speak English than women and that police often rely on them to describe what happened rather than use the Language Line. Several interviewees also noted that police officers need approval from their supervisors to use the Language Line service.<sup>192</sup> This approval process may be a factor contributing to the failure of police officers to access interpretation services in some cases. One police officer reported that “[Determining whether to access interpretation services is] a personal assessment [for the officer at the scene], and it also depends on the sergeants-some say, go ahead and call.”<sup>193</sup>

In one example, a man repeatedly physically abused and threatened to kill his immigrant wife and their children over many years. He followed through on his threats by attempting to strangle her in bed one night. The woman was able to get away but her husband continued to beat her and threatened their son with a gun when the boy tried to help. Police came to the scene after they were called from a neighbor’s home. The man shot himself before police arrived and accused his wife of the shooting. The woman was arrested and spent two nights in jail. In jail, the woman received messages in her language only through the intercom. She did not receive individual interpretation services and reported that she did not understand why she was being held. She understood only that police wanted to check her hands for gunpowder. It was Saturday and the police could not perform the test until Monday. The woman was not given medical attention at the jail. She was released when investigators were eventually able to determine the facts of the case.<sup>194</sup>

An advocate described a story where a woman called the police during an assault. Her partner cut his wrists to show the police when they arrived. The woman could not explain to police what happened because she did not speak English. She was arrested and spent three days in jail.<sup>195</sup>

In another case, an advocate had accompanied a victim to court where she had been charged with assault for punching her husband and giving him a black eye. According to the advocate, the victim claimed that her husband had been “choking” her and she punched him in self-defense. The abuser called the police and told them that his wife had “attacked” him. They arrested the woman without obtaining her story. Unlike her husband, she spoke no English. According to the advocate, the case was ultimately dismissed because of inconsistencies in the abuser’s story.<sup>196</sup>

---

<sup>192</sup> Interviews dated July 1, 2003, July 28, 2003, and August 11, 2003.

<sup>193</sup> Interview dated August 11, 2003.

<sup>194</sup> Interview dated September 10, 2004.

<sup>195</sup> Interview dated October 16, 2003.

<sup>196</sup> Interview dated April 5, 2004

## **2. Inadequate Police Reports Impede Immigrant Women's Access to Safety and Justice**

Minnesota law requires that police make written reports in cases of domestic violence.<sup>197</sup> Without a detailed, thorough report outlining the nature of the injuries and the circumstances of the assault, prosecutors and judges cannot apply and enforce the law. Although police departments have made positive efforts to improve the quality of police reports in domestic violence cases, many attorneys and advocates described inadequate reports as a problem hindering immigrant women's access to the justice system.

Police reports are particularly important in cases of domestic violence against immigrant women because a report taken at the scene of the assault may be the only source of evidence in the case. As discussed in the Executive Summary to this report, pressures facing immigrant women may make it more likely that they will not want to testify in a case against their abusers. In these cases, the prosecutor must rely entirely on other evidence of the crime, the most significant of which is the police report.

One advocate described the importance of training police officers in the unique aspects of documenting injuries to women of color. This advocate described how bruises on women of color are often not immediately apparent. It may be necessary to obtain photos of the injuries a day later.<sup>198</sup> A police officer, however, explained the difficulty police encounter when trying to take photos or document injuries of some immigrant women at the scene of an assault. "There is a terrible domestic violence problem in the Somali community. We get calls but we seldom get reports. We get to the scene and there's nothing we can do because she is all veiled up."<sup>199</sup>

An advocate who worked with women in the justice system described an immigrant client who had been repeatedly battered by her boyfriend. She obtained an OFP. Despite the Order, her boyfriend came to her home one night, dragged her down two flights of stairs by her hair and forced her into his vehicle.<sup>200</sup> Someone nearby heard the violence and called the police. The police did not access interpretation services nor did they write a police report about the violent assault. After the incident, the advocate called the precinct on behalf of her client to inquire about a police report. When she spoke with the officer who had been at the scene of the assault, he explained that he did not write a police report because he felt it would be a wasted effort. The advocate reported that the officer said that he believed there was no point in filing a report if she cannot or will not follow through on the case [because she cannot speak English].<sup>201</sup>

In another case referenced in the subsection of this report entitled, "Prosecution," a battered woman and her advocate described a police report documenting a situation where a man came to

---

<sup>197</sup> Minnesota requires that the report contain at least the name of the victim, whether an arrest occurred, the name of the arrested person and a brief summary of the incident. Minn. Stat § 629.341, Subd. 4.

<sup>198</sup> Interview dated September 7, 2004.

<sup>199</sup> Interview dated August 30, 2004.

<sup>200</sup> Both the violation of the Order for Protection and the assault are criminal offenses. Minn. Stat § 609.2242 and Minn. Stat § 518B.01 Subd. 14.

<sup>201</sup> Interview dated September 11, 2003.

the aid of his immigrant sister when her husband assaulted her. The advocate explained that the immigrant woman's story "got lost" in the police description of the incident. Despite the decades-long history of violent assaults by her husband, the woman's injuries from the particular incident were not as apparent or severe as those of her husband and her brother. Therefore, the police did not focus on the woman's injuries.<sup>202</sup>

Another advocate reported an incident where an immigrant woman who had been "badly assaulted" was brought to a county domestic abuse center. Police had been called to the scene, but did not make a report. The service center arranged to go to the police station and make a report. Eventually, the abuser was convicted of domestic assault.<sup>203</sup>

In a case documented by the Battered Women's Justice Project, an advocacy group in Minneapolis that studied domestic violence cases in Hennepin County, a police report included the following description:

"Officers met with victim ... There was a slight language barrier. ... Defendant was yelling things in Spanish I could not understand. My partner was later informed by a witness that he was yelling, 'When I get out, I'm going to kill you,' and he was yelling it to the victim."<sup>204</sup>

Another police report stated, "Victim described injuries in 'broken English.' Defendant did not speak – 'glared and stared' at victim who appeared to cower."<sup>205</sup> Both of these reports left out significant information about the assault, apparently due to language barriers.

One advocate noted that, in some situations, an incomplete police report may lead to the release of a batterer who has caused serious injuries.<sup>206</sup> A police investigator or the prosecutor may need to follow up on facts left out of a police report because of language barriers or inadequate interpretation. Time to fill in missing details is limited because Minnesota law requires that prosecutors make a complaint within 36 hours or the jail will release the perpetrator.<sup>207</sup>

### **3. Delays in Police Response and the Failure to Pursue Offenders Who Leave the Scene Place Battered Immigrant Women at Risk**

Advocates and victims described persistent and lengthy delays in the police response to assaults or violations of OFPs, and frequent failures to pursue abusers who violate OFPs.<sup>208</sup> Interviewees

---

<sup>202</sup> Interview dated September 7, 2004.

<sup>203</sup> Interview dated September 30, 2003.

<sup>204</sup> Case Processing of Misdemeanor Domestic Violence Cases: Arraignment to Sentencing: A Report from the BWJP Safety and Accountability Audit 35, Battered Women's Justice Project (March 2002).

<sup>205</sup> *Id.*

<sup>206</sup> Interview dated August 1, 2003.

<sup>207</sup> Minn. R. Crim. P. 4.02, Subd.5(1).

<sup>208</sup> Pursuant to Minn. Stat § 518B.01 Subd. 14, a violation of an order for protection is a criminal offense. The frequent failure of law enforcement to pursue violators of protection orders is a problem that was identified by



*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

reported that these problems are more serious in some precincts than others. In recent years, police departments have undergone severe budget cuts prompting more than one police official to characterize their response to domestic violence cases as a matter of “triage.”<sup>209</sup>

In addition to their duty to respond to 911 and other calls reporting violence, the police are charged with the enforcement of OFPs. Even if the offender is not at the scene when the police respond to a call reporting the violation of an OFP, Minnesota law dictates that the police pursue and arrest the offender if they have probable cause to believe that the OFP was violated.<sup>210</sup> A law enforcement officer described a program instituted by his department where police aggressively monitored offenders who had repeatedly violated their OFPs. Officers went to offenders’ homes to see if they were violating the court orders. This officer explained that the program was successful and that many victims were “very happy” to see the police officers.<sup>211</sup>

One advocate described her view that, “Police do not respond as they should to an OFP violation notice. Women sometimes get yelled at by the police. Police take an hour to respond after an abuser has been outside knocking on the door. When they arrive on the scene, they ask where the abuser is, and of course he’s already left. As a result, women are forced to relocate again and again.”<sup>212</sup> Another advocate described a case where she went to a woman’s home for a client meeting. The woman had an outstanding OFP against her abuser. The advocate was in the home when the abuser arrived. As soon as they saw his truck they called the police, but they did not arrive until two hours later.<sup>213</sup>

Another advocate relayed the story of an immigrant woman who will no longer return her calls. The advocate is extremely concerned about the woman’s safety. The woman obtained an OFP in 2003 but the abuser continued to harass and assault the woman. In one incident when the OFP was in effect, the abuser came to the home and threw a rock through a window and then assaulted the woman, bruising her face and arms. Her child was present in the home and she called the police who finally came after a long delay. By the time police arrived, the abuser had left the home. The police did not pursue the offender and did not prepare a police report. In another incident, the advocate was with the woman in her home when the abuser came to the door. The advocate called 911 for assistance and reported that there was an outstanding OFP.

---

Hennepin County community leaders in 2002. See Hennepin County Domestic Fatality Review Pilot Project Report 11 (2002).

<sup>209</sup> Interview dated March 1, 2004.

<sup>210</sup> “A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order granted pursuant to this section or a similar law of another state, the United States, the District of Columbia, tribal lands, or United States territories restraining the person or excluding the person from the residence or the petitioner’s place of employment, even if the violation of the order did not take place in the presence of the peace officer, if the existence of the order can be verified by the officer.” Minn. Stat. § 518B.01, Subd. 14 (emphasis added). These situations are often referred to as Gone on Arrivals or GOAs. Interview dated August 11, 2003.

<sup>211</sup> Interview dated September 27, 2004

<sup>212</sup> Interview dated June 13, 2003.

<sup>213</sup> Interview dated September 12, 2003.

The advocate, the woman and her child all hid in the kitchen and waited an hour and a half for the police to arrive.<sup>214</sup>

Another advocate explained that in some cases, the police do not come to the scene at all. She described one case in which the police arrived after an extensive delay and the male officer watched football while the female officer listened to the story but did not take any notes. The police did not pursue the offender in this case.<sup>215</sup>

### ***B. Prosecution***

Although advocates reported that most prosecutors demonstrate concern for the victim and an understanding of deportation issues,<sup>216</sup> prosecution of an abuser presents unique complications for immigrant victims of violence.

Interviews revealed problems with communication between prosecutors and victims and lack of coordination between agencies that are trying to contact the victim for investigative purposes. Many of these difficulties related to language barriers and appear to be more serious in some counties than in others. Reports from other sources also documented failures to adequately present a victim's situation to the court during prosecution proceedings involving immigrant women.

#### **Limited English Proficiency Plans**

Government agencies are required by federal and state law to provide meaningful access to services for residents with limited English proficiency. (See the subsection below entitled, "Court Interpretation.") Many government agencies on the state and local level have prepared plans to guide the provision of language-accessible services. The Minneapolis City Attorney's Office, which is responsible for prosecution of misdemeanor domestic violence cases, is developing its own Limited English Proficiency Plan. This plan responds to a city council resolution that directs each city agency to "ensure meaningful access by Limited English Proficient persons to its programs, services and activities." According to officials in the City Attorney's office, the plan will focus on Spanish, Hmong, Somali, Oromo, Laotian, and Vietnamese, the six most commonly used second languages in the city's schools.

In addition, interviews revealed that battered immigrant women often feel mistreated because of difficulties in communicating with prosecutors and related service providers. This can accentuate any reluctance they may have about proceeding with a criminal prosecution. Interviewees reported that battered immigrant women are often less likely to cooperate with prosecutors because of community and family pressures not to prosecute. Without victim cooperation, prosecutors depend on other evidence such as police reports to prove their cases. If

<sup>214</sup> Interview dated July 22, 2003.

<sup>215</sup> Interview dated October 29, 2003

<sup>216</sup> Interview dated June 26, 2003.

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

the police reports are inadequate because of insufficient interpretation, prosecutors may not be able to pursue these cases.<sup>217</sup>

In a case described earlier in this report, a man came to the aid of his sister when her husband assaulted her. The prosecutor had to work very hard to develop a case against the abuser because the police report focused on the more serious injuries to the woman's husband and brother and not on the woman's injuries. The assault on the woman "got lost" in the report, but the prosecutor worked with the investigator, the advocate and the victim to gather the necessary evidence to successfully prosecute the husband.<sup>218</sup>

In addition, because conviction for a domestic violence crime is a deportable offense, many prosecutors, advocates, and victims of domestic violence are concerned about prosecution in general. One prosecutor noted, "It is very difficult when the victim begs me not to prosecute the abuser because she is afraid he will get deported."<sup>219</sup> Battered immigrant women may call the police when they are at risk of immediate harm, but they may not want the offender prosecuted, convicted and removed (deported) from the United States. An attorney explained that a woman's decision to call the police does not necessarily represent an effort to separate from the abuser. Rather, she may only want to end the abuse, even if only in the immediate situation.<sup>220</sup> The possibility of removal may ultimately deter a woman from calling the police for assistance in the first place.

Prosecutors from Minneapolis and St. Paul reported that the number of domestic violence cases being processed through their offices appears to have decreased in recent years.<sup>221</sup> Some prosecutors expressed concern that domestic violence is underreported and that battered immigrant women are not accessing the criminal justice system.<sup>222</sup> One police official, however, explained that he has observed that police are receiving a large number of calls from immigrant women.<sup>223</sup> He explained his fear that immigrant victims of domestic violence do not follow up with the information that police need to write reports and proceed to prosecution. By contrast, other interviewees insist that the large number of calls from battered immigrant women do not result in police reports because police do not access interpretation services when needed at the scene of a crime or do not respond in a timely manner. See the subsection above entitled, "Law Enforcement and Jails" for more information on issues relating to police reports.

Neither prosecutors nor police departments keep statistics on the number of domestic violence cases processed through their offices that involve immigrants. Prosecutors explained that it

---

<sup>217</sup> See discussion in the above subsection B entitled, "Inadequate Police Reports Impede Immigrant Women's Access to Safety and Justice."

<sup>218</sup> Interview dated September 7, 2004.

<sup>219</sup> Interview dated October 2, 2003.

<sup>220</sup> Interview dated May 28, 2003.

<sup>221</sup> Interviews dated July 17, 2003 and October 2, 2003. Responsibility for prosecution of misdemeanor domestic violence cases, which constitute the majority of these types of assaults, lies with the City Attorney's office in both Minneapolis and St. Paul.

<sup>222</sup> Interview dated July 17, 2003.

<sup>223</sup> Interview dated August 30, 2004. Also see discussion of police reports in the subsection above entitled, "Inadequate Police Reports Impede Immigrant Women's Access to Safety and Justice."

would be difficult to collect such statistics because there is no method to identify immigrants among victims of crimes.

## **1. The Immigration Consequences of Domestic Violence Convictions Affects the Successful Prosecution of Cases Against Abusers**

Legal professionals, advocates and service providers reported that battered immigrant women are acutely aware of the immigration consequences of a conviction for a domestic violence crime and that it affects their willingness to cooperate with prosecution of abusers. In addition, confusion exists among victims, advocates and prosecutors about the impact of immigration law and criminal law and the effect a case will have on victims' lives.<sup>224</sup>

Perpetrators of domestic violence crimes, including misdemeanors and violations of protection orders, may be removed (deported) from the United States.<sup>225</sup> In many cases, the victim does not want the abuser to be removed. She may not want to be separated from him, she may lose her only source of financial support (particularly if she is not authorized to work legally and is prohibited from receiving public benefits), and she may fear for her spouse's well-being in his country of origin.<sup>226</sup> One advocate explained, "[W]hat the women want is for the violence to stop, not for the person to leave. They don't want their children to be without a father."<sup>227</sup> Another advocate added, "Sometimes the women just want the police to show up and scare [the abusers] but then the police take over."<sup>228</sup> One prosecutor emphasized, "the bottom line is that we don't want people hitting each other, but we also don't want to tear families apart."<sup>229</sup>

Some prosecutors explained that it is their policy not to treat domestic violence cases involving immigrants differently than other cases, despite harsh immigration consequences. One prosecutor noted, "We try to take victim's wishes into account but our general policy is if we can prove it we go ahead."<sup>230</sup> Another prosecutor noted his view that if the victim does not want to go forward, the prosecutors make a decision on whether to prosecute based on how much evidence they have.<sup>231</sup> If prosecutors do pursue prosecution of immigrant offenders, however, Minnesota case law provides that judges may not stay adjudication of a sentence against the

---

<sup>224</sup> Prosecutors reported that they need training on the issue of collateral consequences, on VAWA, and on other issues that can come up when dealing with immigrant victims of violence, including cultural and community-related issues. Interviews dated March 8, 2004 and September 22, 2004.

<sup>225</sup> 8 U.S.C. 1227 § 237 (a)(2)(E)(2001).

<sup>226</sup> See, e.g., Elizabeth Shor, *Domestic Abuse and Alien Women in Immigration Law: Response and Responsibility*, 9 Cornell J.L. & Pub. Pol'y 697, 707 (2000) (arguing that deportation of abusive spouses should be examined in light of the victim's needs).

<sup>227</sup> Interview dated June 13, 2003.

<sup>228</sup> *Id.*

<sup>229</sup> Interview dated July 2, 2003. This prosecutor suggested giving immigration judges more discretion. This however would result in only increased uncertainty for immigrant women, and hold the potential for introducing bias into the system.

<sup>230</sup> Interview dated October 2, 2003.

<sup>231</sup> Interview dated July 2, 2003.

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

wishes of prosecutors.<sup>232</sup> Defense counsel may wish to stay adjudication of a sentence, which avoids the conviction and a possible, removal (deportation) of the individual from the United States.

Prosecution of domestic violence crimes involving immigrants does in some cases appear to be treated differently, often due to concerns about the immigration consequences. A probation officer expressed frustration at one case involving a man who had multiple convictions for domestic violence. For domestic violence crimes, Minnesota law allows for increased penalties or “enhancement” to a gross misdemeanor, or felony if certain conditions exist – including repeat misdemeanor convictions.<sup>233</sup> In this case, the perpetrator’s sentences were never enhanced and his prosecution was suspended. The officers believed that the lenient treatment was because of his immigration status.<sup>234</sup>

One prosecutor estimated that at least two times per year victims are so concerned about removal (deportation) that they reduce assault charges to disorderly conduct. This prosecutor said that many issues are factored into this decision – the criminal history of the abuser, the seriousness of the assault, the level of cooperation of the abuser.<sup>235</sup> Even in cases where abusers have been charged with the lesser crime of disorderly conduct, immigration officials have examined the facts of the cases to see if domestic violence offenses were committed.<sup>236</sup> As a result, a perpetrator may plead guilty to a disorderly conduct offense, but may still be deported if the perpetrator admitted to facts that establish a domestic violence crime.<sup>237</sup>

Finally, lawyers, advocates and service providers reported incidents in which abusers, often through counsel, threatened victims and witnesses if they proceeded with prosecution of cases against them. One prosecutor described a case where an immigrant victim of domestic violence

---

<sup>232</sup> *State v. Vahabi* 1996 WL 940208; *State v. Krotzer* 548 N.W.2d. 252 (1996).

<sup>233</sup> Minn. Stat. § 609.2242, Subd.2, Subd. 4 (2004).

<sup>234</sup> Interview dated November 3, 2003.

<sup>235</sup> Interview dated July 17, 2003

<sup>236</sup> Interview dated August 5, 2003. Convictions for domestic violence will also prevent individuals from adjusting status to legal permanent resident. *See generally*, Ann Benson, Overview of Immigration Consequences of Criminal Conduct for Immigrant Survivors of Domestic Violence 10, Washington Defender Association (2004). In these situations, immigrants need to go back and get the convictions vacated, and recently there have been efforts to close these loopholes.

<sup>237</sup> Interview dated August 5, 2003. Several immigration attorneys reported that in proceedings to remove (deport) the perpetrators, immigration judges in Minnesota are reviewing the underlying facts of criminal cases. If immigration judges are alerted by counsel to acts of domestic violence in the facts of the case but not necessarily the charge, the judges sometimes remove the perpetrator from the United States under the immigration provisions of VAWA, INA § 237 (a)(2) E. Interviewees reported that judges are learning about the underlying facts of a criminal case that do not include domestic violence charges because of the close interaction between county jails and Immigration and Customs Enforcement (ICE). As one government attorney reported, the Investigative Branch of ICE files Notices to Appear in Immigration Court based on a report from ICE agents at county jails about 1) a particularly brutal case of domestic violence, 2) a case involving a person with a history of domestic assault (whether or not the charge is assault), or 3) a case involving a person who has overstayed his visa (whether or not the charge is assault or disorderly conduct). Interviews dated June 10 and 13, 2003, December 18, 2003 and March 8, 2003. Importantly, according to one attorney, immigration judges in Minnesota are taking into consideration the wishes of the violence survivor and the welfare of any children of the perpetrator when deciding whether to deport a domestic violence perpetrator. Interview dated June 10, 2003.

and a witness to the assault agreed to testify for the prosecution. In written correspondence, the criminal defense attorney threatened both women with perjury charges and deportation if they testified against her client.<sup>238</sup>

## **2. Inadequate Contact with Victim and Victim Input into Proceedings Frequently Affects Prosecution**

Successful prosecutions of domestic violence cases involving immigrants are frequently hindered by difficulties contacting and communicating with victims, resulting in limited victim input to the proceedings. Victim input is necessary for effective prosecution and appropriate sentencing in a domestic violence case. As the Battered Women’s Justice Project noted in its 2002 report, “This information helps indicate what level of danger a victim faces, clues to the defendant’s history with violence, and the likelihood of escalation of violence.”<sup>239</sup>

### **Efforts to Improve Prosecution of Domestic Violence Cases in Ramsey County**

In an effort to improve prosecution of domestic violence cases, the Ramsey County Attorney’s Office and the St. Paul City Attorney’s Office established the *Joint Domestic Abuse Prosecution Unit (JPU)* in 2000. The unit was formed to prosecute domestic abuse cases where children are present. The goal of the unit is “to decrease the fragmentation in the prosecution of domestic assault cases, thereby enabling more effective prosecution, resulting in more accountability for the perpetrator and better services to victims and witnesses.” Ramsey County Attorney’s Office/St. Paul City Attorney’s Office, *Joint Domestic Abuse Prosecution Unit Evaluation Report*, The Institute on Criminal Justice, University of Minnesota Law School (January 2002). While the unit has not focused specifically on issues facing immigrant women, findings from an evaluation of the project reported that better communication, cooperation and collaboration between agencies was resulting in better prosecution. Although attorneys in the unit expressed the need for better communication with victims, steps have been taken to achieve this goal by having both Hmong and Spanish advocates in the unit.

One prosecutor explained her view that the system in her jurisdiction is inefficient because multiple parties contact the victim after an assault has been reported to police.<sup>240</sup> This view is supported by the 2002 Battered Women’s Justice Project report on domestic violence prosecutions in Minneapolis which concluded, “The lack of coordination among the agencies has a particularly negative impact on non-English speaking victims and raises due process concerns regarding non-English speaking defendants.”<sup>241</sup> This report noted that ineffective

<sup>238</sup> Interview and correspondence dated September 22 and 23, 2004.

<sup>239</sup> Battered Women’s Justice Project, *supra* note 204, at 34. This BWJP report noted that early and ongoing contact with victims was in general inadequate and incomplete in Minneapolis. *Id.* at 34–36.

<sup>240</sup> This prosecutor explained that a non-profit group, The Council for Crime and Justice, a police investigator and the Domestic Abuse Project all contact the victim after a report of an assault. Interview dated March 8, 2004.

<sup>241</sup> Battered Women’s Justice Project, *supra* note 204, at 35.

communication with non-English speaking victims continues through the investigation process and into court proceedings.<sup>242</sup>

One prosecutor described her extreme frustration during a trial for domestic assault in which the limited English proficient victim had agreed to testify against her abuser. The prosecutor was unable to communicate with the victim except when she was on the witness stand because the prosecutor did not have an interpreter available to her.<sup>243</sup> The prosecutor described how difficult it was to prosecute a case without being able to communicate with a key witness.<sup>244</sup>

An advocate described a pre-trial proceeding she attended in which, despite the victim's willingness to come to court, the prosecutor's office had not initiated contact with her.<sup>245</sup> The advocate explained that the prosecutor lost an opportunity to obtain the victim's story and support her courage in coming forward. The interpreter appointed for the immigrant defendant did not appear. The victim appeared, without an interpreter, and waited over three hours until the case was rescheduled. The advocate watched a person from the defense attorney's office going back and forth from the victim to the defendant in the courtroom. The advocate overheard him say to the victim, "So you don't want him to go to jail." It sounded to her like a directive, not a question. He told her, "When they ask you, say you don't want him to go to jail."<sup>246</sup>

One prosecutor expressed her concern about policies that could discourage contact with victims. She referred to a new policy that requires a Social Security number before a witness can be reimbursed for mileage.<sup>247</sup> She described an incident in which two immigrant women came to her office to discuss a case but they could not be reimbursed for mileage because they did not have Social Security numbers. The prosecutor was concerned that this policy will further hamper the prosecutor's ability to obtain needed contact with and evidence from undocumented victims.<sup>248</sup>

### **3. Evidence-Based Prosecutions Present Particular Difficulties in Cases Involving Battered Immigrant Women**

Evidence-based prosecutions, which rely on substantiation other than the victim's testimony, present particular difficulties in cases involving immigrant women. Prosecutors in the

---

<sup>242</sup> *Id.* at 36

<sup>243</sup> Interview dated September 22, 2004. Although a court interpreter is generally made available only for witnesses in a court proceeding, a prosecutor may have access to an interpreter provided by her direct supervisor. Interview dated September 27, 2004.

<sup>244</sup> *Id.*

<sup>245</sup> Although it may not be appropriate for prosecutors to speak with victims directly, representatives from prosecutors' offices or other agencies appointed by them may be delegated with this task.

<sup>246</sup> Interview dated July 1, 2004.

<sup>247</sup> *See, e.g.*, Hennepin County, Fourth District Court, Subpoena Form, Instructions, and Certificate for Payment of Witness Fees and Travel Expenses, available at [http://156.99.86.13/districts/fourth/Forms/Common/Subpoena and Instructions.doc](http://156.99.86.13/districts/fourth/Forms/Common/Subpoena%20and%20Instructions.doc) (last revised September 22, 2004).

<sup>248</sup> Interview dated July 17, 2003.

Minneapolis/St. Paul area use evidence-based prosecutions in cases where there is enough evidence to prosecute without the victim's testimony.<sup>249</sup>

An evidence-based prosecution is often the only alternative for prosecutors in cases involving battered immigrant women.<sup>250</sup> Family and community pressures, fear of deportation, language issues and other obstacles often deter battered immigrant women from cooperating with prosecutors. One prosecutor noted, "Women are reluctant to participate in prosecutions because their community will shun them. They're not just leaving him, they're leaving the community."<sup>251</sup>

Victims can be subpoenaed in evidence-based prosecutions. One prosecutor indicated that he thought that women were ultimately glad to have the opportunity to tell their story when subpoenaed.<sup>252</sup> Another prosecutor agreed that most women seem relieved that they have this opportunity to tell their story. The subpoena, which obligates women to testify, relieves them of responsibility for contact with authorities.<sup>253</sup> Advocates, however, emphasized that women often feel that they have done something wrong when they get a subpoena.<sup>254</sup> In addition, a victim may not understand a subpoena when, as is frequently the case, it has not been translated into her native language.<sup>255</sup> A woman's testimony may also affect her chances of gaining immigration relief under the Violence Against Women Act (VAWA). One attorney related the story of a woman who had been called to testify against her batterer. If she testified, he could be removed (deported) for having committed a domestic violence offense.<sup>256</sup> If she protected him by not testifying, she would not have the evidence she needed to support her VAWA petition. Her attorney recommended that she say she was too afraid to testify.<sup>257</sup>

### **Efforts to Improve Prosecution of Domestic Violence Cases in Minneapolis**

In 2001, the Minneapolis City Attorney's Office partnered with the Battered Women's Justice Project to examine its systems in an effort to identify practices and procedures that might be improved to increase the effectiveness of prosecution of domestic violence cases. The project, referred to as a Safety Audit, focused on bail hearings, pretrial hearings and dispositional stages of the cases. The Safety Audit produced a 74 page report with findings and recommendations related to better ensuring the safety of victims throughout the process. It included specific findings concerning immigrant women. The report can be found at [www.bwjp.org](http://www.bwjp.org).

<sup>249</sup> *Id.*

<sup>250</sup> Interview dated March 8, 2004

<sup>251</sup> Interview dated July 14, 2003.

<sup>252</sup> Interview dated July 17, 2003.

<sup>253</sup> *Id.*

<sup>254</sup> Interview dated June 26, 2003.

<sup>255</sup> Interview dated September 30, 2003

<sup>256</sup> Immigration and Nationality Act (hereinafter INA) § 237 (a)(2)(E). See the "Federal Immigration Law and Authorities" section of this report.

<sup>257</sup> Interview dated July 22, 2003.



The prosecutor may not pursue a case if insufficient evidence exists to obtain a conviction. As discussed more fully in the subsection of this report entitled, “Domestic Violence Victims and Those Who Help Them May be Arrested and Detained Due to Lack of Interpretation Services,” police are often less likely to adequately investigate crimes when faced with a language barrier. Often, they use children, neighbors or abusers to translate, and may be reluctant to use the Language Line because of budgetary considerations.<sup>258</sup> This language difficulty is reflected in inadequate or incomplete police reports. One prosecutor remarked that police reports involving crimes committed against battered immigrant women were “terrible” and that few provided sufficient information to prosecute.<sup>259</sup> As a result, only the cases that involve severe physical injuries are likely to reach the prosecutor.

Prosecutors may also rely on medical reports as evidence in evidence-based prosecutions. Medical documentation of injuries, however, may also be inadequate in cases involving immigrant women. One judge reported that she sees many cases in which battered immigrant women refused to go to the hospital for medical documentation of their injuries. As a result, the judge explained, the “chance to charge at the appropriate level is lost” because there is not enough information available.<sup>260</sup>

#### **4. Prosecution of Domestic Violence Victims May Have Serious Immigration Consequences**

If a domestic violence victim is prosecuted, due to inadequate interpretation services at the scene of an assault or because she assaulted her abuser in self-defense, the consequences can be severe. As discussed in other sections of this report, domestic violence victims may be subject to removal (deportation) if convicted of a domestic offense.<sup>261</sup>

A victim may also lose her right to apply for lawful permanent residency. As discussed in the section entitled “Federal Immigration Law and Authorities,” domestic violence victims have the right to apply for lawful permanent residency status under the Violence Against Women Act. In deciding on the application, the immigration authorities will examine whether she has “good moral character.” If convicted of a domestic violence crime, the immigration service can argue that a woman does not have good moral character.<sup>262</sup>

Though none of the interviews conducted for this project documented a victim’s removal (deportation) or her loss of her rights under VAWA due to conviction, this risk exists for battered

---

<sup>258</sup> Interview dated March 8, 2004.

<sup>259</sup> *Id.*

<sup>260</sup> Interview dated July 11, 2003.

<sup>261</sup> INA § 237 (a)(2)(E); Under certain circumstances deportation may be waived. If the woman is a non-citizen acting in self defense, if she has violated an order intended for her benefit or if the offense did not result in serious bodily injury or it involved a connection between the crime and the abuse, deportation may be waived...*Id.* at (a)(7)

<sup>262</sup> Zelda B. Harris, *The Predicament of the Immigrant Victim/Defendant: “VAWA Diversion” and Other Considerations in Support of Battered Women*, 14 *Hastings Women’s L.J.* 1, 16 (Winter 2003); see also Benson, *supra* note 236.

immigrant women. The risk is high where inadequate interpretation services compromise the criminal justice system's ability to adequately ascertain the facts of a case.

As one expert notes:

Too often immigrant survivors who have not committed crimes, who were acting in self defense or whose criminal conduct was related to the abuse are wrongly advised to plead guilty in criminal cases without being fully and correctly apprised that the plea they are entering has immigration consequences. Often times that consequence is deportation, even for the most minor criminal offense. Immigrant victims' lack of fluency in English and familiarity with U.S. laws and the United States legal system compound this problem, particularly when defense attorneys offer advice without considering the immigration consequences of criminal convictions.<sup>263</sup>

### ***C. Court Interpretation***

Although judges, attorneys and advocates reported that many court interpreters are highly competent, many individuals inside and outside the justice system described inadequate interpretation services in court proceedings. Interviewees report that, as a result, many battered immigrant women experience language barriers in seeking criminal or civil relief in court.

Problems in the court system include: 1) a shortage of qualified interpreters; 2) difficulties in the administration of the certified and roster court interpreter programs (including limitations on funding and appropriate training and educational opportunities); 3) delays in obtaining interpreters; 4) victim concerns about confidentiality; and 5) interpreter misconduct (i.e, stepping out of the interpreter role to counsel or even shame women). These problems may result in the court being denied information necessary for a criminal or a civil proceeding. Such information could include documentation of injuries and information that might be used to assess the risk a defendant presents to a victim such as criminal history, prior threats or information about the nature of the assault. Language barriers and inadequate interpretation services may also result in fundamental misunderstandings about the facts of a case and have a chilling effect on an immigrant woman's willingness to use the court system.

#### **1. External Factors Complicate the Provision of Court Interpretation Services**

Some external factors complicate the government's ability to provide court interpretation services in Minnesota courts. These factors include an increasing number of requests for interpreters, the difficulty of interpreting legal and medical terms or terms relating to violence, the number of dialects that exist for particular languages and confidentiality issues caused by the size and close-knit relationships among members of certain immigrant communities.

---

<sup>263</sup> Benson, *supra* note 236, at 1.

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the Minneapolis/St. Paul Metropolitan Area: A Human Rights Report*  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights

Since the State took over administration of interpretation in the Minnesota Courts five years ago, the number of requests for interpreters has increased dramatically. In Hennepin County, the number of requests has increased from 10,000 to 15,000 per year over the last five years. The number has increased from 2,000 to 6,000 per year over the last five years in Ramsey County. The District Courts in Hennepin and Ramsey Counties are responsible for the majority of the total number of interpreter requests statewide. From January through June 2004, the Minnesota Court Interpreter Program received invoices for nearly 10,000 hours of interpretation services from all district courts, including the districts represented by Hennepin and Ramsey Counties.<sup>264</sup> In addition, requests for interpretation in certain rare languages like Karen have grown even more dramatically than the overall requests for interpretation.<sup>265</sup>

Another complicating factor is the difficulty of interpreting legal and medical terms and descriptions of violence between languages, especially when a comparable term or concept does not exist in a language. For example, there is no Hmong or Cambodian word for “safe place.” In many languages, “domestic violence” is not easily translated. In addition, certain translations of violent/abusive conduct will not convey the severity of the conduct.<sup>266</sup> Interpretation of technical medical and legal terminology can be difficult. For example, there is no word for ‘depression’ in the Hmong language.<sup>267</sup> In Hmong, the meaning of the word ‘rape’ cannot be translated into one word.<sup>268</sup>

An interpreter may not be able to accurately interpret a victim’s testimony if they speak different dialects of the same language. Even with a language as widely spoken as Spanish, the facts of a case can be confused if the interpreter and the client speak different dialects.<sup>269</sup> One advocate explained that there are 250 dialects spoken in Cameroon. As a result, an interpreter who claims to know Cameroonian languages may not speak the relevant dialect.<sup>270</sup> Of the Hmong languages, there are two dialects and not all ethnic Hmong speak both dialects. Eighty percent of ethnic Hmong speak White Hmong dialect and twenty percent of ethnic Hmong speak Green or Blue Hmong dialect.<sup>271</sup> Dialects often create the need for the government to develop separate certification exams for each dialect.

Another factor that complicates interpretation services is the fear on the part of a battered immigrant woman that an interpreter from her immigrant community will tell her story within the community. Interviewees reported that many immigrant women fear interpreters will breach their obligation to maintain confidentiality, even if they do not know the interpreter directly. Fears about interpreter breaches of confidentiality are generally not as great among Latinas, whose communities are heterogeneous, as they are among battered women from small, closely-

---

<sup>264</sup> Data provided by the Minnesota Court Interpreter Program.

<sup>265</sup> Interviews dated August 23, 2004 and October 1, 2004. Karen is a language spoken by the Karen people in Northern Thailand.

<sup>266</sup> Interview dated October 27, 2003.

<sup>267</sup> Interview dated July 30, 2003.

<sup>268</sup> Interview dated June 13, 2003. In this interview, a Minneapolis attorney described a case where the court did not allow a Hmong interpreter to adequately explain rape.

<sup>269</sup> Interview dated June 13, 2003.

<sup>270</sup> Interview dated July 10, 2003.

<sup>271</sup> Interview dated August 23, 2004.

connected Southeast Asian communities.<sup>272</sup> The Code of Professional Responsibility for Interpreters requires that interpreters recuse themselves from interpreting for individuals they know and to keep the details of the proceedings confidential. Nevertheless, fears about confidentiality may make a battered immigrant woman reluctant to share part or all of her story with the court, even if the interpreter has not conducted herself inappropriately. Interviewees revealed that some battered immigrant women express a preference for an interpreter who belongs to the same immigrant community and other women prefer an interpreter who does not belong to the same community.<sup>273</sup>

## **2. The Minnesota Court Interpreter Program**

To provide the interpretation services in Minnesota district courts as required under Federal and Minnesota law, the Supreme Court of Minnesota organized the Minnesota Court Interpreter Program.<sup>274</sup> As one interpreter has noted, this program represents the best and worst of possible systems: an excellent court interpreter certification and training program, supplemented by a roster of interpreters who are not evaluated for language proficiency or interpretation skills.<sup>275</sup> Those certified in the court interpreter certification program pass an examination on language and interpretation skills. Individuals placed on the roster of interpreters have completed an ethics examination and one-day orientation program and have signed an affidavit of compliance with the Code of Professional Responsibility for Interpreters.<sup>276</sup> Interviewees reported that certified interpreters have performed well in the courts, but that the services provided by roster interpreters vary in quality. The following discussion outlines the principal challenges that the Minnesota Court Interpreter Program and Minnesota district court administrators face in providing interpretation services. These issues include training, funding, interpreter misconduct, the lack of effective disciplinary and complaint mechanisms, delays and other procedural challenges.

---

<sup>272</sup> Interview dated June 19, 2003

<sup>273</sup> Interview dated June 13, 2003.

<sup>274</sup> See Minnesota General Rules of Practice for the District Courts, Rule 8, Interpreters, *available at*: <http://www.courts.state.mn.us/rules/general/GRtitleI.htm#g8>. To supplement the corps of certified court interpreters, the Court Interpreter Program maintains a statewide roster of interpreters who may work in the courts. To be listed as an interpreter on the roster of court interpreters requires only that you complete a six-hour orientation, take the ethics exam and sign a sworn affidavit of professional responsibility. In 1999, the Supreme Court adopted a Best Practices Manual on Interpreters in the Minnesota State Court that sets out screening standards to be applied by county interpreter offices arranging appointments with interpreters.

<sup>275</sup> Interview dated October 18, 2003.

<sup>276</sup> Minnesota Judicial Branch, Minnesota Court Interpreter Program, *available at* <http://www.courts.state.mn.us/page/?subSite=courtInterpreters&pageID=118>.

### **Minnesota's Certified Court Interpreter Program**

In 1993, the Minnesota Supreme Court Task Force on Racial Bias in the Judicial System evaluated the provision of interpreter services in Minnesota state courts. The Task Force described a number of problems facing non-English speaking litigants and witnesses in the court system that are highly relevant to the needs of immigrant victims of domestic violence. In particular, the Task Force made the following findings: 1) there are no uniform standards or processes for training and certifying interpreters; 2) court personnel are not trained in proper use of interpreters; 3) family members are often used as interpreters; and 4) courts do not have bilingual staff who might be able to ensure that adequate interpretation is being provided. The Task Force recommended, among other things, the promulgation and implementation of rules governing court interpretation in consultation with affected court personnel. From 1995 to 1996, in response to the Task Force report, the Minnesota Supreme Court developed standards and procedures for training, conduct, certification, qualification and compensation of interpreters. The Minnesota Court Interpreter Program includes a Certification Process that involves both an ethical evaluation and an evaluation of language proficiency. The Supreme Court implements this program through participation in the 32-member State Court Interpreter Certification Consortium. Minnesota was one of nine states that formed the consortium in 1995.

### **3. Lack of Adequate Interpreter Services During Court Proceedings Impedes Access to Justice for Battered Immigrant Women**

Interviewees reported that interpreters who have been certified under the Minnesota Court Interpreter Program generally provide excellent interpretation services, whether in criminal or civil court.<sup>277</sup> A 2000 survey of court participant satisfaction with Hennepin County court interpretation corroborates this conclusion.<sup>278</sup> In this survey, Spanish-speaking court participants who received certified interpretation services were generally satisfied with these services. Somali and Hmong respondents who received interpretation services from a roster interpreter varied in their responses from positive to negative.<sup>279</sup>

Certified court interpreters have passed tests in ethics, language and interpretation skills. Unlike certified interpreters, roster interpreters receive no evaluation of their language proficiency or interpretation skills. As one government worker explained, an interpreter being listed on the

<sup>277</sup> Interview dated August 23, 2004.

<sup>278</sup> Bruce Downing, *Final Report to Hennepin County Courts, District Court Administration, Hennepin County Government Center: Hennepin County Court Access for L.E.P. Individuals*, Program in Translation and Interpreting, ILES, College of Liberal Arts, University of Minnesota 5 (2000). Downing states: "One of the clear contrasts in the data is the difference between the satisfaction with the services experienced by the Spanish speakers who were served by experienced, trained, full-time, court-certified interpreters and the dissatisfaction displayed by the Somali and Hmong speakers who were served by interpreters who were not court certified, and who may or may not have had much experience or training in court interpreting." *Id.* at 11-12. This dissatisfaction was expressed in the form of concerns about confidentiality, the linguistic abilities of the interpreter, and the failure to perform sight translations of court documents when necessary.

<sup>279</sup> *Id.*

roster “doesn’t guarantee they can interpret – anybody can get on the roster.”<sup>280</sup> Interviewees reported that the Minnesota Court Interpreter Program plans to implement a program to evaluate roster interpreters, using a test that is less difficult and not as expensive for the interpreter as are the certification exams. Until such a system is in effect, the court interpretation scheduling offices at the county level are left to conduct screening themselves or to contract with interpreter agencies that conduct screening of the interpreters on their own.<sup>281</sup>

Although the Minnesota Court Interpreter Program aims to provide certified interpreters to court participants when it can, there are a number of factors that limit its ability to provide those services, including the following:

- the cost of certified interpretation services;
- occasional non-compliance with Supreme Court Rules;
- funding and other limitations on educational and training opportunities necessary for interpreters to become certified;
- limitations on funding for the development of certification exams and practice tests; and
- the reduction in available educational/training programs for interpreter candidates.

The Minnesota Supreme Court recognized the value of certified court interpreter services when it adopted Rule 8 of the General Rules of Practice for the District Courts Regarding Interpreters.<sup>282</sup> The rule requires county-level court interpretation scheduling offices to attempt to find a certified interpreter before contacting interpreters on the state roster. Advocates and government workers reported that a few county interpreter scheduling offices in the Minneapolis/St. Paul metropolitan area frequently do not comply with this rule.<sup>283</sup> Budgetary considerations may contribute to the problem because certified interpreters are paid \$50 an hour and a roster interpreter is paid between \$30 and \$40 an hour.<sup>284</sup> Most government workers and interpreters, however, reported that this rule is followed. The problem, they explain, is that there are few if any certified interpreters available in most languages except Spanish and Russian. This scarcity is due in part to the difficulty of the certification exam, difficulties candidates face in gaining access to appropriate training or education, and the lack of certification exams in certain languages.<sup>285</sup>

Government workers, advocates and interpreters all described the certification as the most reliable method of ensuring that the interpreter is qualified to interpret in the language

---

<sup>280</sup> Interview dated June 4, 2004. Note that in 1999, the Minnesota Supreme Court adopted a Best Practices Manual on Interpreters in the Minnesota State Court that sets out screening standards to be applied by county interpreter offices arranging appointments with roster interpreters.

<sup>281</sup> One government worker says that policy works well. Interview dated June 4, 2004. According to the Best Practices Manual, the county court interpretation offices are asked to use a screening form adopted by the Supreme Court which is available on the Minnesota Judicial Branch website at <http://www.courts.state.mn.us/>.

<sup>282</sup> Rule 8 of the General Rules of Practice for the District Courts Regarding Interpreters (1995).

<sup>283</sup> Interview dated August 23, 2004.

<sup>284</sup> Minnesota Judicial Branch, Minnesota Court Interpreter Program, *available at* <http://www.courts.state.mn.us/page/?subSite=courtInterpreters&pageID=118>.

<sup>285</sup> Interviews dated June 4, 2004 and August 23, 2004.

advertised. Limitations on funding for the certification process, however, have had a negative effect on the quality of interpretation offered for LEP individuals in the Minneapolis/St. Paul metropolitan area, including battered immigrant women.<sup>286</sup> Interviewees suggested that the Minnesota Court Interpreter Program should be funded to develop certification and practice examinations for high-need languages in the Minneapolis/St. Paul metropolitan area that are not currently offered, particularly Oromo and Amharic.<sup>287</sup> Each certification exam costs approximately \$35,000 to develop. In addition, second exams should be created for certain languages covered by the certification program for which there is only one version available, e.g., Somali, Hmong, Lao, Bosnian and Vietnamese. Interviewees explained that interpreter candidates are only allowed to take a given examination twice.<sup>288</sup> As a result, if there is not a second version of the test available, an interpreter candidate who needs to take a certification exam two or three time before passing will not be able to obtain certification.

Interviewees also reported that decreased federal and state funding for English as a Second Language classes have crippled the ability of interpreter candidates to obtain the training in English that they need to pass the certification exam.<sup>289</sup> In addition, the termination of specific programs such as the University of Minnesota's English Center program creates further difficulties for interpreter candidates who need high-level (13<sup>th</sup> grade level) training in English in order to become interpreters.<sup>290</sup> No interpreter candidate passed the certification exam for the Somali language when it was offered for the first time in September 2003. No one has yet passed the Lao certification exam. Only one individual has ever passed the Hmong certification exam administered by the state.<sup>291</sup>

#### **4. Access to Criminal and Civil Law Remedies is Made Difficult by Court Interpreter Misconduct and the Lack of Effective Disciplinary Measures for Such Misconduct**

Interviewees reported that interpreter misconduct, reinforced by ineffective disciplinary measures, represents a significant obstacle for battered immigrant women seeking access to the court system.<sup>292</sup> This misconduct ranges from procedural errors to legal counseling and shaming. While state court officials are making efforts to reform the disciplinary system for

---

<sup>286</sup> Interview dated August 23, 2004.

<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

<sup>289</sup> *Id.* For example, federal funding for English as a Second Language programs decreased dramatically in 2003 as a result of changes in the Comprehensive Adult Skills Assessment System (CASAS) minimum assessment score required for federal funding. *Id.* Similarly, state funding for English as a Second Language programs was reduced retroactive to 2002. *Id.*

<sup>290</sup> This program was cut because foreign student enrollment declined following the September 11 attacks and the resulting slow down in the grant of student visas.

<sup>291</sup> Interviews dated June 4, 2004 and August 23, 2004.

<sup>292</sup> Interviews dated June 13, 2003, August 6, 2003, October 7, 2003, and October 27, 2003; *see also* Marie McCain, *Justice Lost in Translation, Some Fear*, Minneapolis Star Tribune, posted on Monday, June 14, 2004 at [www.twincities.com](http://www.twincities.com).

court interpreters (see text box in this section), interviewees indicated that in general, state and county court administrators are unaware of the extent and seriousness of this problem.<sup>293</sup>

Interviewees recounted numerous incidents of court interpreter misconduct that jeopardized an effective justice system response to domestic violence. These incidents also violated the Code of Professional Responsibility for Interpreters. Canon 1 of the Code provides that “[v]erbatim, ‘word for word’ or literal oral interpretations are not appropriate when they distort the meaning of what was said in the source language, but every spoken statement, even if it appears non-responsive, obscene, rambling or incoherent should be interpreted.”<sup>294</sup> Interpreters are never allowed to give legal advice or to “interject any statement or elaboration of their own.”<sup>295</sup> The Code, however, recognizes that to some extent, interpreters may be able to provide important cultural information. A requirement of a verbatim translation may fail to recognize cultural and linguistic complexities. Some terms may need explanation, which means that an interpreter who speaks longer than the question may not be acting unethically.<sup>296</sup> Canon 3 requires that an interpreter disclose to the court any knowledge about the client or his or her family or business associates.

Interviewees reported the following incidents of interpreter misconduct:

- One interviewee estimated that approximately 1 in 10 court interpreters provide their clients with legal advice in contravention of the Code of Professional Responsibility for Interpreters that was endorsed by the Minnesota Supreme Court.<sup>297</sup>
- An abuser was chatting with the interpreter. The deputy sheriff was asked to remind them that this conversation was not appropriate, but the sheriff said there was nothing he could do. The interpreter said that it was just small talk, but the client was very intimidated by it.<sup>298</sup>
- An interpreter assisting with the completion of a petition for an OFP began asking personal questions. When the advocate objected, the interpreter became aggressive.<sup>299</sup>
- An advocate made a complaint with the court interpretation office about the unprofessional conduct of an interpreter. The interpreter was sent back into court about ten minutes later because there was no other interpreter available.<sup>300</sup>
- An interpreter from the same immigrant community as the client told the client to go back to her abuser.<sup>301</sup>

---

<sup>293</sup> Interviews dated June 17, 2004 and August 9, 2004.

<sup>294</sup> Code of Professional Responsibility for Interpreters 1120 (1996).

<sup>295</sup> *Id.*

<sup>296</sup> Blong Yang & Abigail Turner, *Language Access to the Courts: How Are We Doing?* 4 (September 23, 2003).

<sup>297</sup> Interview dated October 7, 2003

<sup>298</sup> Interview dated October 27, 2003.

<sup>299</sup> Interview dated June 13, 2003.

<sup>300</sup> *Id.*



*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

- In many instances, court interpreters were related to or knew one of the parties, and did not recuse themselves as required by the Code of Professional Responsibility for Interpreters.<sup>302</sup>
- A probation officer reported that in her experience it was not uncommon for interpreters to “victim bash.” She described an interpreter who was harshly criticizing the victim to the probation officer.<sup>303</sup>

Many interviewees, including judges, described how cultural biases may affect an interpreter’s conduct in the courtroom. For example, interpreters may disregard their training guidelines in a given proceeding and favor clan priorities. Usually, interpreters do not explain such a conflict to the court. Several judges recognized the problem of bias among interpreters.<sup>304</sup> One judge described a case where she was informed that the interpreter was stepping out of his role as an interpreter and admonishing the victim about the effects of her actions on her family.<sup>305</sup> Another judge told a similar story of an interpreter who “would not interpret word for word.” The judge had to stop the interpreter.<sup>306</sup> One interviewee added that an interpreter’s cultural bias may be reflected in the omission of certain words, e.g., words deemed inappropriate because of their sexual nature.<sup>307</sup> Such omissions would be very difficult to detect unless participants in the court proceedings know the language in question or they review an audiotape of the proceedings.

Interpreter misconduct may also take the form of communicating a bias that the victim of abuse is at fault or that the family should stay together. These biases in turn feed a victim’s fear that an interpreter will breach his or her duty not to disclose information relayed in court proceedings or in medical examinations. In one case involving a deaf Hmong woman, the interpreter did not interpret the abuser’s admission that he hit the woman.<sup>308</sup>

In another case described by an advocate, the judge apparently perceived that an inappropriate exchange was occurring between the alleged victim and the interpreter. The judge ordered that the proceeding be recorded. The advocate was then asked to listen to the tape and heard the interpreter telling the woman to tell the judge that the case should be dismissed because nothing had happened.<sup>309</sup>

---

<sup>301</sup> Interview dated October 27, 2003.

<sup>302</sup> *Id.*; This type of misconduct violates Canon 3 of the Code of Professional Responsibility. Code of Professional Responsibility for Interpreters 1120 (1996). This type of misconduct was reflected in a 2000 survey of court participant satisfaction with court interpretation conducted by the University of Minnesota for Hennepin County. Downing, *supra* note 278, at 19. An interviewer commented that “I feel that [the interpreter and client] both seem to know each other from either previous engagements or are related to one another.” *Id.*

<sup>303</sup> Interview dated November 3, 2003.

<sup>304</sup> Interviews dated June 16, 2003, June 25, 2003, and July 11, 2003.

<sup>305</sup> Interview dated July 11, 2003.

<sup>306</sup> Interview dated April 5, 2004.

<sup>307</sup> Interview dated August 23, 2004.

<sup>308</sup> Interview dated September 12, 2003.

<sup>309</sup> Comments on June 19, 2003.

As a result of their observation of interpreter bias and breaches of confidentiality, some advocates emphasized the need for interpreter training in the dynamics of domestic violence. Because of the danger that interpreters may make assumptions about the validity or legitimacy of women's stories, or feel a need to defend what he or she believes are aspects of his or her culture, advocates emphasize that interpreters must strictly comply with the Code of Ethics (no legal advice, opinions, or mediation).<sup>310</sup>

Interviewees reported that advocates often detect interpreter misconduct because they speak the same language as their client. In one case, an advocate realized that the interpretation was not accurate and raised her hand to tell the judge. The interpreter became very angry. The judge dismissed the interpreter, and a colleague of the advocate interpreted for the client in that case.<sup>311</sup> Unfortunately, not all advocates or judges have the ability to detect interpreter misconduct.

Interviewees reported that misconduct is greater among roster interpreters. For these interpreters, there is no effective penalty for a violation of the interpreter code of professional responsibility other than disqualification by a judge from a particular proceeding or termination of the interpreter's employment.<sup>312</sup> For certified interpreters, the Rules on Certification of Court Interpreters provide that state certification of an interpreter may be revoked or suspended because of an ethical violation.<sup>313</sup> Although this disciplinary rule is in place, no effective complaint mechanism exists. Government workers explained that complaints should be made with the Minnesota Court Interpreter Program Coordinator, working under the State Court Administrator's Office. However, an explanation of this process and instructions about how to make a complaint with the coordinator were only recently added to the Court Users section of the

---

<sup>310</sup> Clients may, to some extent, even expect translators to speak for them.

<sup>311</sup> Interview dated July 10, 2003.

<sup>312</sup> See Rule 8.03, Minnesota General Rules of Practice for the District Courts (Includes amendments effective through January 1, 2004), Minnesota Supreme Court Commissioner's Office (2004). Rule 8.03 Disqualification from Proceeding reads as follows: "A judge may disqualify a court interpreter from a proceeding for good cause. Good cause for disqualification includes, but is not limited to, an interpreter who engages in the following conduct:

(a) Knowingly and willfully making a false interpretation while serving in a proceeding;

(b) Knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;

(c) Failing to follow applicable laws, rules of court, or the Code of Professional Responsibility for Interpreters in the Minnesota State Court System.

(Added effective January 1, 1996; amended effective January 1, 1998.) *Advisory Committee Comment 1995:* Interpreters must take an oath or affirmation to make a true interpretation to the best of their ability, to the person handicapped in communication and to officials. Minnesota Statutes, sections 546.44, subdivision 2; 611.33, subdivision 2 (1994). Interpreters cannot disclose privileged information without consent. Minnesota Statutes, sections 546.44, subdivision 4; 611.33, subdivision 4 (1994). These and other requirements are also addressed in the Code of Professional Responsibility for Interpreters in the Minnesota State Court System.

<sup>313</sup> Interview dated August 9, 2004. Rule VI. Suspension or Revocation of Certification, Rules on Certification of Court Interpreters. The State Court Administrator's Office has authority to suspend or revoke interpreter certification "on the grounds of" unprofessional or unethical conduct, including, without limitation, a conviction of a crime resulting in a sentence or a suspended sentence, or conduct that violates the Minnesota Code of Professional Responsibility for court interpreters. See Rule VI B. The Rules on Certification of Court Interpreters provide that only a final determination on the revocation or suspension of certification and the facts cited in support of the determination may be made public, absent a court order. See Rule VI E.

website of the Minnesota Court Interpreter Program.<sup>314</sup> Interviewees acknowledged that only a handful of complaints had been filed with the State Court Administrator in the last year.<sup>315</sup> In addition, as of 2002, the Interpreter Advisory Committee charged with receiving any request for an appeal of a disciplinary decision by the State Court Administrator is no longer in existence.

### **Minnesota Court Interpreter Program to Reform Interpreter Disciplinary Process and Complaint Mechanisms for Court Users**

The Minnesota Court Interpreter Program has reported that it is currently reviewing its procedures with respect to complaints about interpreter misconduct and the enforcement of the Code of Professional Responsibility for Interpreters in the Minnesota State Court System. The program plans to reform these procedures in the near future with a view toward (1) implementing a disciplinary system that will apply to both certified and roster interpreters, (2) developing a set of guidelines for local courts on how to make Limited English Proficient court users aware of the new complaint procedure; and (3) arranging for secondary review of the program's disciplinary decisions against an interpreter. In advance of these changes, the Minnesota Court Interpreter Program redesigned its website and included in the court user section information on how to make a complaint concerning court interpretation.

## **5. Procedural Challenges in the Provision of Interpretation Services to Battered Immigrant Women**

Many interviewees described procedural challenges in the provision of court interpretation services that often frustrate effective communication between the court and battered immigrant women. These procedural challenges include failures in communicating the interpreter role, delays in obtaining appropriate interpretation services, and difficulties in providing female interpreters or an adequate number of interpreters for proceedings involving battered immigrant women. These procedural challenges may create confusion and fear, as well as increase the likelihood that a battered immigrant woman will not disclose all the relevant facts or will be deterred from participating in court proceedings at all. In some cases, these barriers deny battered immigrant women meaningful access to the criminal justice system and civil remedies available to them.

Interviewees confirmed that the court's failure to explain the role of the interpreter to battered immigrant women often creates confusion. Interviewees reported that immigrant women sometimes learn about the interpreter's role in a court proceeding from the interpreter or a judicial officer. There is, however, no established procedure for providing this explanation to immigrant parties or to other participants. As a result, in one OFP proceeding, an elderly immigrant petitioner "slipped through the cracks" and did not receive an explanation of the interpreter role.<sup>316</sup> She had told the interpreter her story at the beginning of the proceeding and

<sup>314</sup> See Minnesota Judicial Branch Website, available at <http://www.courts.state.mn.us>.

<sup>315</sup> Interview dated August 9, 2004.

<sup>316</sup> Interview dated June 17, 2004.

expected the interpreter to advocate on her behalf. Instead, the interpreter provided the court with literal interpretation of the petitioner's comments as she is required to do. The petitioner did not relay to the judge all of the details of her story because she thought the interpreter would do so. The judge denied the petition without the benefit of these details.

Interviewees also described serious delays in obtaining interpreters for court proceedings. A 2000 survey of court participant satisfaction with Hennepin County court interpretation also reflects dissatisfaction concerning delays.<sup>317</sup> One advocate explained that interpreters are in such high demand that her clients often experience lengthy waiting periods before a court proceeding can proceed.<sup>318</sup> One victim reported that she had to go to court three times before there was an interpreter available for her hearing.<sup>319</sup> In another case, an advocate and her client waited two hours at court for an interpreter. Eventually, the judge asked that the advocate interpret for the client.<sup>320</sup>

Interviews revealed that delays in obtaining court interpreters are on occasion caused by a judicial clerk's failure to notify the court interpreter scheduling office sufficiently in advance of the proceeding.<sup>321</sup> These delays can be very dangerous for battered immigrant women who are seeking safety from the courts. A delay may mean that a survivor goes without the protection she is seeking for hours or even days. In addition, delays may deter a battered immigrant woman from cooperating with a criminal prosecution or from proceeding with a petition for an OFP.

Many advocates, judges, and attorneys expressed the view that it is essential to have female interpreters for battered immigrant women in the courts and other stages of the process. One advocate explained that she always prefers to use female interpreters so that her clients will feel comfortable seeking her assistance. The advocate reported that in some cases her clients hesitated to speak openly and expressed fear that their stories would not be told accurately when they had male interpreters.<sup>322</sup> She cited examples of male interpreters asking questions such as, "Why did he hit you? What did you do?"<sup>323</sup>

Several interviewees expressed dissatisfaction with the court interpretation system because it does not respond to requests for female interpreters.<sup>324</sup> One interviewee explained that the court interpretation scheduling offices send whoever is available.<sup>325</sup> Government employees and court interpreters, however, report that the court interpretation scheduling offices make every effort to

---

<sup>317</sup> A court participant noted that "[o]ne time he came and there was no interpreter available to help him out. This is his third time coming with his daughter. One time in November of 1999, they waited for four hours. There was no interpreter and they did not know where to go so they went home. He is happy this time that there was an interpreter. It is always helpful and better than having no interpreter." Downing, *supra* note 278, at 8.

<sup>318</sup> Interview dated October 27, 2003.

<sup>319</sup> Interview dated December 2, 2003.

<sup>320</sup> Interview dated June 13, 2003.

<sup>321</sup> Interview dated October 4, 2004.

<sup>322</sup> Interview dated June 9, 2003.

<sup>323</sup> Interview dated June 13, 2003.

<sup>324</sup> Interviews dated October 7, 2003 and October 29, 2003.

<sup>325</sup> Interview dated October 29, 2003.

respond to requests for female interpreters.<sup>326</sup> They explained that meeting these requests is made difficult because there are few if any female interpreters available for some languages, especially for East African languages.

Interviewees discussed numerous problems presented by the appointment of a single interpreter for the victim and the perpetrator in court proceedings. The policy of the Minnesota state courts is to appoint one interpreter for a criminal or civil proceeding unless the proceeding is a criminal trial; a tag-team of two interpreters is assigned for a criminal trial. In appointing one interpreter for a proceeding, the courts are generally following the Best Practices Manual on Interpreters in the State Court System,<sup>327</sup> which provides that counsel must request an additional interpreter for witnesses in a criminal proceeding or when necessary in a civil proceeding.

Advocates, lawyers and others expressed concern that when one person interprets for both the victim and the perpetrator, the woman may be forced to sit in close proximity to her abuser, an intimidating prospect for any domestic violence victim.<sup>328</sup> In addition, when only one interpreter is available during a proceeding, a controlling abuser can dominate the proceeding to the disadvantage of the victim. The best practice stated above does not address the situation in which a battered woman is representing herself in a civil proceeding, and does not know she can request another interpreter for the proceeding. Prosecutors have indicated that this policy also impedes communication with the victim of domestic violence during a criminal proceeding.<sup>329</sup>

## **6. Interpretation Provided for the Deaf and Hard of Hearing**

Interviews revealed that court interpretation for the deaf and hard of hearing is complicated, especially when deaf and hard of hearing individuals do not speak a recognized form of sign language.<sup>330</sup> There are a limited number of certified American Sign Language interpreters available to provide interpretation to the deaf and hard of hearing in our community and no interpreters for other forms of sign language. Two interpreters must work together when a deaf or hard of hearing individual does not understand American Sign Language: a deaf interpreter

---

<sup>326</sup> Interview dated June 4, 2004.

<sup>327</sup> Best Practices Manual on Interpreters in the Minnesota State Court System, Minnesota Supreme Court Interpreter Advisory Committee. Section 4. D (2) entitled, Multiple Participants Handicapped in Communication, states as follows:

(a) Criminal Proceedings: When both a defendant and another participant need interpretation in a proceeding and counsel requests separate interpreters, the best practice is to appoint each an interpreter. One shall interpret the proceedings for the defendant to ensure communication with defense counsel, thereby vindicating the defendant's constitutional rights to effective assistance of counsel, to present a defense and to confront state witnesses. And the second shall interpret the witnesses' testimony into English for the fact-finder. Both interpreters, whether interpreting for the defendant or another participant, remain officers of the court.

(b) Civil Proceedings: When more than one participant to the proceeding is handicapped in communication, and counsel requests that a separate interpreter be appointed for his or her client, the best practice is to appoint separate interpreters.

<sup>328</sup> Interview dated September 30, 2003.

<sup>329</sup> It may, however, be possible for prosecutors to submit a request to their agency administrator for interpreter services needed to communicate with a victim during a court proceeding. Interview dated September 27, 2004.

<sup>330</sup> Interview dated September 12, 2003

(relay interpreter) and an American Sign Language Interpreter.<sup>331</sup> Interviewees reported that court personnel appear aggravated by this complication and that this response can affect the quality of service received by the deaf or hard of hearing battered woman.<sup>332</sup>

Minnesota has special rules in place for interpretation for the deaf and hard of hearing. Interviews did not reveal any interpreter misconduct among court interpreters for the deaf and hard of hearing in this system. To become certified to interpret in the Minnesota state court system, a sign language interpreter must receive a Comprehensive Skills Certificate from The Registry of Interpreters for the Deaf (RID) or a Level 5 Master Certificate from the National Association of the Deaf. In addition, certified sign language interpreters must obtain a Legal Specialist Certificate from the RID, take the ethics exam, attend the orientation and file an affidavit.<sup>333</sup> To work in the court system, a deaf interpreter must become a Certified Deaf Interpreter with RID. In response to litigation pursued on behalf of deaf parties to court proceedings, the Minnesota Court Interpreter Program has published a complaint form for the deaf and hard of hearing soliciting feedback regarding experience with the court system.<sup>334</sup>

#### ***D. Criminal Courts and Judicial Response***

Interviews revealed that battered immigrant women face unique obstacles in proceedings in criminal courts. Because few cases go to trial, judges will have contact with most battered immigrant women in the pre-trial process, including arraignment, bail setting, pre-trial hearing or in the post sentencing stages after a plea agreement. Problems with language barriers, community pressures and immigration consequences are acute in all these proceedings. Because the judge has the power to sentence and incarcerate a defendant or order a defendant out of his home, community pressure on the victim to drop the case may be particularly intense during the court proceedings. This section focuses on those obstacles presented specifically in the pre-trial appearances in court and in the sentencing process.<sup>335</sup>

##### **1. Lack of Information Impedes Courts' Effectiveness at Arraignment and Pre-trial Hearings Involving Battered Immigrant Women**

Interviews revealed that judges frequently do not have the information necessary to make appropriate decisions regarding the safety of battered immigrant women and the seriousness of the assault at the arraignment hearing. At the arraignment hearing, judges are obligated to assess

---

<sup>331</sup> Interview dated July 21, 2003.

<sup>332</sup> Interviews dated July 21, 2003 and September 12, 2003.

<sup>333</sup> Interview dated July 21, 2003.

<sup>334</sup> Minnesota Court System, Feedback/Complaint Form for Deaf and Hard of Hearing Persons, *available at* <http://www.courts.state.mn.us/page/?pageID=163&subSite=courtInterpreters>.

<sup>335</sup> The arraignment hearing is usually the defendant's first appearance in court, in front of a judge. The victim may be present at this hearing. Also *see* the subsection above entitled, "Prosecutors," for a discussion of issues related to the prosecutor's role in this process.

the risk a defendant presents to a victim, decide the amount of bail and consider whether to issue an order directing the defendant to stay away from the victim.<sup>336</sup>

In assessing the risk presented to a victim, judges should have complete information about the nature of the assault, criminal history of the defendant, and threats he may have made. This information may be gathered before the hearing. Research has revealed that in many cases, courts have not been effective in gathering this essential information even from English speaking victims.<sup>337</sup> Courts are less likely to be able to adequately assess the risk presented by a defendant to a non-English speaking immigrant woman when adequate interpretation services are not available to present a victim's story. As discussed above, a victim's reluctance to give a full accounting of the facts to male interpreters may also limit a judge's ability to adequately assess the risk an alleged perpetrator poses.<sup>338</sup>

One advocate described an arraignment hearing in a misdemeanor domestic violence case in which the defendant was released with no bail. Both the prosecutor and the probation officer reported to the court that they had no information or input from the victim. The victim, a Spanish-speaking woman, was sitting in the courtroom, but no one was available to interpret her story.<sup>339</sup>

In a story referenced above in this report, an advocate described a pre-trial proceeding she attended where despite the victim's willingness to come to court, no effort was made to obtain her story and use the information to assess safety and risk. The victim appeared at a scheduled pre-trial hearing without an interpreter, and waited over three hours until the case was rescheduled. Her only contact was with a representative of the defense attorney's office who appeared to the advocate to be encouraging her to recant her story.<sup>340</sup>

---

<sup>336</sup> Minnesota law also addresses the unique risk factors faced by domestic violence victims in its requirements that court personnel conduct evaluations of the severity of risk presented by abusers at the pre-trial. Minn. Stat 629.72 states, "In making a decision concerning pretrial release conditions of a person arrested for domestic abuse, harassment, violation of an order for protection, or violation of a domestic abuse no contact order, the judge shall review the facts of the arrest and detention of the person and determine whether: (1) release of the person poses a threat to the alleged victim, another family or household member or public safety; or (2) there is a substantial likelihood the person will fail to appear at subsequent proceedings." In some Minnesota counties, including Ramsey County, an individual charged with a domestic assault crime is held in jail without bail until his first appearance in court. Interview dated November 22, 2004; *see also* Cheryl Thomas, Judicial Response and Demeanor in the Domestic Violence Court 10 (WATCH, November 15, 2001). In Hennepin County, those charged with misdemeanor domestic assaults can post bail and be released from jail prior to the arraignment hearing. Interview dated April 5, 2004.

<sup>337</sup> A report by the Battered Women's Justice Project regarding arraignment hearings in domestic violence cases concluded, "During the period of observation, only one victim spoke directly to the court. She was not accompanied by an advocate and seemed confused about where to go or who to talk to. This lack of contact with the victim prior to arraignment has a negative impact on both victim safety and offender accountability. Lack of information from the victim regarding the impact of the assault, and her level of fear of the defendant seriously diminishes the ability of the court to make relevant decisions regarding the level of risk posed by the release of the defendant, and to impose meaningful and appropriate Conditions of Release." Battered Women's Justice Project, *supra* note 204, at 34. Also *see* the subsection entitled, "Prosecution," for discussion of prosecutors and investigation process.

<sup>338</sup> *See* discussion in the subsection entitled, "Criminal Courts and Judicial Response."

<sup>339</sup> Interview dated August 7, 2003.

<sup>340</sup> Interview dated July 1, 2004. *See* the section above entitled, "Court Interpretation."

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

In addition to information that is elicited in courtroom appearances, courts can and must rely on information presented to them by other criminal justice personnel when they assess risk. The police report is particularly important to this assessment. As discussed above in the section entitled “Law Enforcement and Jails,” police reports are often incomplete and reflect inadequate interpretation at the scene of the assault. Probation officers also reported that it is uncommon for a judge to ask for a risk evaluation in pre-trial proceedings. These evaluations are designed to give the court information about the level of danger an abuser presents to a victim.<sup>341</sup> Courts’ issuance of a No Contact Order at the arraignment hearing may also be affected by inadequate interpretation and translation services. No Contact Orders, commonly issued by the court at arraignment hearings and generally based in part on the court’s risk assessment, can provide important protection to domestic violence victims. It can take months or even a year or more to resolve a criminal case and during that time a woman may be in danger of more violence. These orders direct the defendant to stay away from the victim, her home or her place of work.<sup>342</sup>

Courts must have thorough information through adequate interpretation to make an appropriate decision about whether to issue a No Contact Order and the specific terms of the order. Without adequate interpretation services, it is difficult for the Court to gather the information it requires to make this decision. See the section entitled, “Court Interpretation” for more information on challenges the government faces in providing these services.

Interviewees also noted that when the orders are issued, it is the practice of some courts to include with them a letter to victims, informing them of the conditions for release of the defendant. This important information is not translated into the victim’s language.<sup>343</sup>

---

<sup>341</sup> Interview dated May 19, 2004. The Hennepin County court monitoring organization WATCH stated in recent report as follows: “In most cases observed by WATCH, judges appeared to receive a pre-trial release evaluation form for each defendant appearing at arraignment that referenced many of these factors. However, monitors noted several instances where judges did not have these forms or criminal history data at the time of arraignment. Also, during interviews conducted by WATCH, some judges noted their own concern that they did not have enough information at arraignments to adequately assess the safety risk presented by offenders. One judge noted in an interview with WATCH that, unless judges were diligent about requesting certain information, they might not have it. WATCH observed many hearings where judges were not informed of the facts of arrest and detention until they asked for the information.” WATCH, Hennepin County Court, *Judicial Response and Demeanor in the Domestic Violence Court*, 11 (2001).

<sup>342</sup> As one author states, “The vast majority of defendants in domestic violence cases are released prior to trial usually on their own recognizance. The victim is especially vulnerable during the pre-trial period, when the defendant may try to retaliate for her role in having him arrested, or threaten her with more violence if she cooperates with prosecution. The court can protect the victim during this period by restricting the defendant’s access to her as a condition of pre-trial release.” Gail Goolkasian, *Confronting Domestic Violence: The Role of Criminal Court Judges*, National Institute of Justice (1986).

<sup>343</sup> Interview dated October 14, 2004.



## **2. Post-Conviction Proceedings in Cases Involving Immigrants Are Affected by Deportation Consequences, Lack of Appropriate Rehabilitation Services and Language Barriers**

Immigration consequences and lack of interpretation and appropriate rehabilitation services diminish the effectiveness of post-conviction proceedings in cases involving immigrants. One judge explained that there is a great deal of discussion among criminal justice personnel about the collateral consequences of conviction in domestic violence cases involving immigrants. She explained that collateral consequences such as removal (deportation) are not a basis for departure under the sentencing guidelines, but “it’s a huge part of the bargaining process.”<sup>344</sup> She described a concern among judges that conviction for a low level crime such as a misdemeanor may result in the deportation of an abuser to a country where serious human rights violations are common.<sup>345</sup>

Several criminal justice professionals and advocates expressed concern that, to prevent removal (deportation), convictions are being avoided in some cases involving immigrants by laws that allow sentences to be stayed (or delayed).<sup>346</sup> Avoiding conviction has consequences other than preventing removal, such as the loss of the possibility of enhancing charges. Minnesota law allows for the enhancement of misdemeanor domestic violence charges to a more serious crime where there have been repeat convictions.<sup>347</sup> Although Minnesota law allows for a sentence to be stayed, the stay only postpones the conviction, it does not avoid it altogether. Only in cases where there is a stay of adjudication (the judge does not accept the defendant’s guilty plea) is the conviction avoided. Although judges and lawyers reported that stays of adjudication are rare, the concern remains that they are being used in cases involving immigrants.

Provisions regarding sentences for domestic assault are outlined in Minnesota Statutes Section 609.2242. If a sentence for domestic assault is stayed, allowing the defendant to avoid incarceration if he complies with the requirements of probation, the court must order the defendant to participate in a domestic abuse counseling program.<sup>348</sup> Section 518 sets forth requirements for such programs.<sup>349</sup> These programs are selected and supervised by probation officers and can involve programs that may include anger management, batterers’ treatment or chemical dependency treatment.<sup>350</sup>

---

<sup>344</sup> Interview dated June 16, 2003. *See* the subsection of this report entitled, “Prosecutors,” for a discussion on how these considerations affect prosecutors’ decisions on charging cases.

<sup>345</sup> *Id.*

<sup>346</sup> Interviews dated July 11, 2003 and November 3, 2003. “Judges might be asked to stay sentences.” Interview dated July 11, 2003.

<sup>347</sup> Minn. Stat. § 609.2242, Subd. 2

<sup>348</sup> Minn. Stat. § 609.135, Subd. 5.

<sup>349</sup> Minn. Stat. § 518B.02(1). Other portions of Chapter 611 of the Minnesota Statutes set forth the rights of crime victims, including the victim’s right to be notified of a decision not to prosecute and the right to a separate waiting area or safeguards to minimize the victim’s contact with the offender. Minn. Stat. § 611A.0315, §. 611A.034. By law, Minnesota is required to create an inter-agency task force on domestic violence. *Id.* at § 611A.202. Each county and city attorney is required to develop and implement a plan for expediting and improving the disposition of domestic violence cases. *Id.* at §611A.0311(2).

<sup>350</sup> Most of the domestic violence crimes committed in the Minneapolis/St. Paul metropolitan area are processed as misdemeanors and often the only sanction for conviction of these crimes is probation. The Hennepin County District

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

Several probation officers described a serious lack of resources and community capacity to effectively assist and rehabilitate immigrant offenders. These probation officers described specific concerns about the lack of adequate programs for Asian and Somali men.<sup>351</sup> One officer described a Hmong client who needed chemical dependency treatment but was unable to receive it due to language barriers. A probation officer from another jurisdiction reported satisfaction with programs for some ethnic groups but acknowledged that there are no program options for others.<sup>352</sup>

Probation officers receive requests from offenders to send them to community programs run by community elders. These programs, however, may not address the violence in an effective way. For example, one probation officer described a community group program that directed the offender to do volunteer work that did not address his violence or anger. An additional concern is that a violent offender's failure to comply with the elder-sponsored program did not have any real consequences.<sup>353</sup>

Probation officers also expressed concern that there are rarely sanctions imposed by the court for an offender's failure to comply with a program required by probation.<sup>354</sup>

Probation officers also reported incidents where courts lifted No Contact Orders without input from criminal justice personnel with detailed knowledge of a defendant's status and behavior. A probation officer described a case where an immigrant man convicted of a domestic violence crime contacted a judge requesting that his No Contact Order be lifted. The man was a first time offender. He had explained to the judge that his wife's parents would be visiting from his home country and it would be very shameful for him to not be living in the home. The Court lifted the Order without contacting the probation officer in charge of the case.<sup>355</sup> Other probation officers described two similar cases where judges lifted No Contact Orders issued against immigrant men convicted of domestic violence crimes while they were on probation. The orders were lifted without consulting the probation officers. These actions can interfere with a probation officer's duty to track offenders carefully and be informed about their behavior and conduct during probation. This practice presents a particular danger in cases where a battered immigrant women is isolated and pressured by family and community not to object to the request to lift these orders.

Finally, probation officers expressed concern about language barriers that prevent needed communication with victims about offender behavior and risk factors. Important letters to victims from courts and probation about the legal process, the sentence an offender receives and

---

Court Research Division measured domestic assault cases filed from 1993-2003. Statistics from 2002 indicate that 132 out of a total of 4,557 domestic assault cases were felonies. The remainder were misdemeanors. Hennepin County Domestic Fatality Review Team, *A Report to the Hennepin County Board of Commissioners* 29 (November 2003). For the first 6 months of 2003, 83 out of 2,172 cases were felonies. *Id.*

<sup>351</sup> Interview dated November 3, 2003.

<sup>352</sup> Interview dated October 19, 2004.

<sup>353</sup> Interview dated November 3, 2003.

<sup>354</sup> Interview dated November 3, 2003. Battered Women's Justice Project, *supra* note 204, at 34.

<sup>355</sup> Interview dated November 3, 2003.

his conditions of probation in many cases are not translated into the victim's language.<sup>356</sup> In addition, there is concern about victims being isolated without any communication with a probation officer about the offender's behavior or his compliance with the court orders. One officer reported that he had three Somali clients in an 18 month period. He was never able to communicate with any of the victims in any of the cases.<sup>357</sup>

### **3. Restorative Justice and Community Based Justice Systems Can Compromise Victim Safety and Offender Accountability**

Formal restorative justice programs do not appear to have been well tested in immigrant communities. Many interviewees were concerned that community based justice systems compromise women's safety in cases involving violence against immigrant women.

Experts in criminal justice reform in domestic violence cases emphasize their concern about the use of restorative justice programs in domestic violence cases in general:

[R]estorative justice practices are not primarily designed to account for (or protect from) the real and ongoing risks that battered women often face long after the crimes have been committed against them. While the principles of restorative justice might be applied in a way that could hold batterers accountable and keep women safe, the practices employed currently are problematic.<sup>358</sup>

Interviewees described two types of community based justice systems – a process sanctioned by the criminal justice system and one led by elders or leaders inside immigrant communities before the criminal justice system becomes involved. Many interviewees, particularly advocates, expressed concern about employing either of these systems as a response to domestic violence against immigrant women.

Recently there have been significant efforts to promote a restorative justice process that is integrated into the criminal justice system.<sup>359</sup> Some advocate replacing certain procedures and

---

<sup>356</sup> Interview dated October 14, 2004. As discussed in the section entitled "Prosecution," correspondence from the Court is also not translated in the pre-trial phase of proceedings. When defendants are released pending trial, it is court practice to send letters informing victims of the conditions of his release and information about any No Contact Orders. This important information is only being sent in English. Interview dated October 14, 2004.

<sup>357</sup> Interview dated November 3, 2003.

<sup>358</sup> Loretta Frederick and Kristine Lizdas, *The Role of Restorative Justice in the Battered Women's Movement* 26 (2003) Battered Women's Justice Project, available at [www.bwjp.org](http://www.bwjp.org).

<sup>359</sup> A restorative justice program is defined by Minnesota Statute Section. 611A.775:

A community-based organization, in collaboration with a local governmental unit, may establish a restorative justice program. A restorative justice program is a program that provides forums where certain individuals charged with or petitioned for having committed an offense meet with the victim, if appropriate; the victim's family members or other supportive persons, if appropriate; the offender's family members or other supportive persons, if appropriate; a law enforcement official or prosecutor when appropriate; other criminal justice system professionals when appropriate; and members of the community, in order to:

sanctions of the criminal process with these community-based mechanisms.<sup>360</sup> One community service employee described the process developed by her organization in which community members work with offenders and victims after an arrest for domestic assault. This process is sometimes referred to as “sentencing circles” or “peacemaking circles.”<sup>361</sup> The offender pleads guilty at a pre-trial hearing as part of an arrangement for participation in the program. The court imposes a stay of adjudication and there is no pre-sentence investigation or court ordered sanction. If the offender successfully completes the program required by the sentencing circle, there is no conviction on his record. To take part in this program, the prosecutor, judge, defense attorney, defendant and victim must all agree to it and the offender must apply to the program.<sup>362</sup> Criminal justice system personnel and advocates reported that this program is not currently being used in domestic violence cases in Hennepin or Ramsey County, but that similar systems have been used in the past. There are also efforts to promote its use in the future.

A number of interviewees described community-based justice systems that are currently being used in immigrant communities to avoid the criminal justice system entirely. Immigrant communities have initiated councils, usually of elders or leaders, which convene before the victim has had contact with the criminal justice system.<sup>363</sup>

Attorneys, advocates and others explained that too frequently, these systems prioritize the preservation of the family or the reputation of the clan and community over the safety of the victim. They explained that they do not adequately punish the offender for his violent assaults. They do not ensure that a victim will be able to sufficiently report on the history of violence and nature of the assault so that those making decisions about sanctions for assaults can evaluate the risk presented to the victim and her children by the offender.

A group of domestic violence advocates explained that the response of one such program has been to say: “Husband, don’t do this. Wife, you have to go back and behave so he won’t do this.”<sup>364</sup> Employees of another organization explained that the message of these programs to a woman is the following: “[t]his is what a man is supposed to do, go back and have a big heart.”<sup>365</sup>

- 
- (1) discuss the impact of the offense on the victim and on the community;
  - (2) provide support to the victim and methods for re-integrating the victim into community life;
  - (3) assign an appropriate sanction to the offender; and
  - (4) provide methods for reintegrating the offender into community life.

<sup>360</sup> The manual entitled, *Community Circles of Washington County: Cottage Grove Manual* states, “The criminal justice system was not designed to handle the complexity of all these cases, or the issues that create these dysfunctional family behaviors. The courts may resolve legal issues but the adversarial legal process often aggravates the conflict.” *Community Circles of Washington County: Cottage Grove Manual* 3 (2004).

<sup>361</sup> According to the system described by one interviewee, community members who participate in the sentencing circle are not required to have training in domestic violence. Interview dated September 24, 2004.

<sup>362</sup> Interview dated September 24, 2004; *Community Circles of Washington County: Cottage Grove Manual*, *supra* note 360, at 7.

<sup>363</sup> Interview dated July 30, 2003.

<sup>364</sup> Interview dated August 20, 2003.

<sup>365</sup> Interview dated June 25, 2003.

A medical service provider who works with immigrant women reported that one community justice program typically fines a domestic violence offender about fifty dollars and asks him to apologize to the victim.<sup>366</sup> Another advocate stated that the elders in this program say to the woman, “have a good heart, be patient, be a good person, and one day he will return.”<sup>367</sup> Advocates do not accompany women to the programs and the victims are often reluctant to speak on their own behalf because of cultural pressures.<sup>368</sup> One advocate explained her opinion that one problem with community justice programs is a failure of some programs to allow women to participate in the decision-making process.<sup>369</sup>

Interviewees explained that the ostensible safeguards built into community-based systems are not sufficient to protect women. A government employee serving immigrant women explained that, although the elders in one program ask both the victim and perpetrator if they want to participate, women are unlikely to be able to say that they do not want to proceed. In addition, this employee explained that the public nature of the proceedings may be an inherent barrier to some immigrant women’s willingness to tell their stories of abuse. Such public disclosure completely contradicts everything she has been taught. “If it is open to the public, men will go and if women do, they will not be able to say anything.”<sup>370</sup>

### ***E. Civil Courts***

In their attempt to escape domestic violence, immigrant woman may access civil remedies such as the OFP and/or divorce. Attorneys and advocates concluded that, for many battered immigrant women, the process of obtaining an OFP is a far more accessible remedy than divorce. However, many of the barriers discussed earlier in this report are also present when women access either of these civil remedies. These include language barriers, biases among court personnel, interpretation problems, fear of deportation and pressures from communities. For some immigrant victims of domestic violence, obtaining an OFP and/or a divorce may be the only option for establishing a safe home for herself and her children.

#### **1. The Important Remedy Offered by Orders for Protection Is Not Always Effectively Used in Cases of Immigrant Women**

The OFP remedy outlined in Minnesota’s Domestic Abuse Act (the Act) can be a powerful tool for immigrant women seeking safety from violent partners. Many advocates and victims emphasized the importance of this remedy. However, many people interviewed also described interpretation problems, fears of immigration consequences, and other factors that prevent immigrant women from achieving the safety envisioned by the Act.

---

<sup>366</sup> Interview dated July 30, 2003.

<sup>367</sup> Interview dated June 26, 2003.

<sup>368</sup> Interview dated July 30, 2003.

<sup>369</sup> Interview dated June 25, 2003.

<sup>370</sup> Interview dated September 22, 2003.

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

Pursuant to the Act, an OFP may provide many different kinds of relief, including: 1) restraining an abuser from committing acts of domestic violence; 2) excluding the abuser from the home or work; 3) awarding temporary custody of children; and 4) establishing temporary child support and spousal maintenance.<sup>371</sup> The Act provides courts with wide latitude in issuing orders that could be used to reflect the unique circumstances of immigrant women's lives. For example, courts may award the temporary use of property or restrain parties from transferring or disposing of property. This could include important immigration papers or work authorizations. They may order child support or visitation and temporary maintenance in cases where a woman is not able to work. The law provides that courts may use their discretion in ordering effective relief, "...as it deems necessary for the protection of a family or household member..."<sup>372</sup> It is difficult, however, for most petitioners to obtain all elements of relief they require because they are not represented by counsel.<sup>373</sup>

Interviewees noted that, in an OFP hearing, only some Judges inquire and record whether the alleged abuser accepts the order and findings of abuse, or just the order.<sup>374</sup> Not all judges are aware that acceptance of the findings of abuse can provide crucial evidence to support a self-petition for immigration status under the federal Violence Against Women Act (VAWA).<sup>375</sup> See the section entitled, "Federal Immigration Law and Authorities" for more information on this form of immigration relief.

In addition, OFP relief does not implicate the battered immigrant woman's immigration status. A divorce decree, by contrast, may affect the immigration status of the woman or her abuser.

---

<sup>371</sup> Minnesota's Domestic Abuse Act provides for both temporary and permanent relief. Minn. Stat. § 518B.01. It defines "domestic abuse" as any of the enumerated acts, "if committed against a family or household member by a family or household member." The enumerated acts include: "(1) physical harm, bodily injury, or assault; (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or (3) terroristic threats, ...criminal sexual conduct, ...or interference with an emergency call..." *Id.* at §518B.01(2)(a). "Family or household members" are defined as

- (1) spouses and former spouses;
- (2) parents and children;
- (3) persons related by blood;
- (4) persons who are presently residing together or who have resided together in the past;
- (5) persons who have a child in common regardless of whether they have been married or have lived together at any time;
- (6) a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and
- (7) persons involved in a significant romantic or sexual relationship. Minn. Stat. § 518B.01(2)(b).

<sup>372</sup> *Id.* at Subd. 6 (12)

<sup>373</sup> One advocacy organization estimates that, in Hennepin County, at most 20% of OFP petitioners are represented by counsel. Priya Outar, *2004 WATCH OFP Report 3*, WATCH (October 2004).

<sup>374</sup> Interviews dated June 13 and July 28, 2003.

<sup>375</sup> *Id.*

**a) Problems with Interpretation Services May Impede Women's Ability to Achieve Safety through Orders for Protection**

Language and interpretation services are obstacles to immigrant women's effective use of the OFP provisions of the Act. These barriers affect women when they are petitioning for an OFP, participating in the hearings, and receiving the order from the judge.

While there are offices in both Hennepin and Ramsey County with staff to assist women with their OFP petitions (see text box below), interviewees reported cases where the shortage of qualified interpreters discouraged women from accessing their services.<sup>376</sup> Frequently, court administrators do not make available certified court interpreters to assist women with the completion of OFP petitions.<sup>377</sup> Advocates and attorneys agreed that court interpreters who have passed the state administered certification exam generally provide adequate interpretation services. (See the subsection above, entitled "Court Interpretation," regarding the certification process and the languages for which certification is offered.) Interviewees reported that interpretation services provided by uncertified interpreters, however, vary in quality.

Administrators and clerks of the domestic abuse service centers estimate that a significant number of women seeking OFPs are immigrants. This estimate is based on the number of interpretation requests that are made with their office. For example, in Ramsey County, 176 requests were made for Spanish interpretation between November 2001 to July 2003 and 192 requests were made for Hmong interpretation between January 2001 to August 2003.<sup>378</sup>

In Hennepin and Ramsey Counties, interpreters who are not certified by the Minnesota Court Interpreter Program often assist battered immigrant women in filling out petitions for OFPs.<sup>379</sup> In Ramsey County, bilingual staff members of the Ramsey County Domestic Abuse Office assist OFP petitioners who speak Spanish or Hmong.<sup>380</sup> Interviewees reported concerns that the policy of appointing interpreters who are not certified to assist in preparing documents relied on by the court may jeopardize the effectiveness of the OFP process. The quality of the interpretation may not be adequate to obtain all of the relevant facts.

---

<sup>376</sup> Interview dated July 1, 2003.

<sup>377</sup> Interview dated July 1, 2003.

<sup>378</sup> Data provided by Ramsey County Domestic Abuse Center.

<sup>379</sup> Interviews dated June 13, 2003 and July 1, 2003.

<sup>380</sup> Interview dated August 27, 2003.

### **County Domestic Abuse Service Centers**

Hennepin and Ramsey Counties have domestic violence service centers dedicated to assisting domestic violence victims in the justice system. These agencies are staffed with well-trained advocates and criminal justice personnel who provide needed assistance to domestic abuse survivors. The Domestic Abuse Service Center in Hennepin County has Latina, Southeast Asian and Somali advocates who assist women with their applications for Orders for Protection. The office also provides legal advice from both city and county attorneys, and assists women with preparing safety plans and finding housing. The Ramsey County Domestic Abuse Office's primary role is to assist women with petitions for Orders for Protection. They have Spanish and Hmong speakers on staff. Adequate interpretation services are essential for these services to be accessible to non-English speakers.

Interviewees also reported that often, in the less populous counties of the Minneapolis/St. Paul metropolitan area, court administrators have not made interpreters available for LEP women who seek to complete petitions for OFPs. In these counties, shelter advocates are often forced to spend hours to assist clients in completing this form. Shelter advocates reported that they are not trained to complete petitions for OFPs and that assisting with this process interferes with their job duties and commitments to other clients.<sup>381</sup>

Certified court interpreters are also necessary at the OFP hearings to ensure that women's stories are accurately presented to the judges. Advocates and victims reported that these interpreters are not always available during OFP hearings. An immigrant woman reported that she returned to court three times before an interpreter was finally present for her OFP hearing.<sup>382</sup> Others reported concerns about having one interpreter translate for both the victim and the perpetrator. See the subsection entitled, "Court Interpretation" for more information about this issue. Interpretation services are particularly important in view of cultural differences that may confuse court proceedings. An advocate described an OFP hearing where a woman was trying to tell her story of abuse to the judge but found it difficult to identify the particular time in which events occurred. She referred to events occurring "before her first child."<sup>383</sup>

Attorneys and advocates expressed a common concern that the final OFP issued by the court after a hearing before a judge is frequently not translated to the parties in court because the interpreter has left the courtroom.<sup>384</sup> They explained that judges fail to request that interpreters

---

<sup>381</sup> Interview dated July 28, 2003.

<sup>382</sup> Interview dated December 2, 2003.

<sup>383</sup> Interview dated September 12, 2003.

<sup>384</sup> Interviews dated July 1, 2003 and July 7, 2003. A recent report published by the court monitoring group WATCH also documented the problem. The report found, "Parties who speak a language other than English face even more hurdles in understanding *ex parte* and final order, since they are not translated. The best being done right now is when judicial officers explain the final order in further detail in the courtroom or ask the interpreter to stay after the hearing to interpret it. The latter solution is problematic, however, as interpreters are trained to interpret speech and not speak on behalf of the court. Interpreters asked to translate written orders also spend more time waiting for judicial officers to prepare individualized orders while they may be needed elsewhere. Furthermore, interpreters are



stay in their courtrooms until the orders are issued or the interpreters are required to leave for other court interpretation assignments.<sup>385</sup> An attorney described a case where the failure to translate an OFP resulted in the parties not being made aware of the child support provisions of the order.<sup>386</sup>

Advocates and attorneys also described a concern about the absence of an interpreter when the OFP is issued resulting in the disclosure of confidential information, such as the location of a shelter or other residence of the abuse survivor.<sup>387</sup> They reported that it is not uncommon for OFPs to contain errors or inappropriate information because judges typically have only a short time to record the OFPs with the court reporter.<sup>388</sup> An interpreter can translate an OFP for the parties enabling them to correct the OFPs if necessary and remove any confidential information that is included inadvertently.

### **b) The Immigration Consequences of Order for Protection Violations Affect Women's Access to These Remedies**

Interviewees reported that fear of removal (deportation) is a barrier to battered immigrant women's use of the OFP remedy. One advocate working at a county domestic abuse center indicated that the vast majority of her clients fear that petitioning for an OFP will result in their own removal from the United States.<sup>389</sup>

In addition, the immigration consequences of a violation of an OFP, which is a criminal offense, can affect a woman's use of the remedy.<sup>390</sup> The petition form in some jurisdictions now indicates that a violation of an OFP could lead to the removal of the subject of the order should he violate it.<sup>391</sup>

One immigrant woman explained that she is afraid that there could be a "big problem" if she got an OFP and the police intervened. She is afraid of the police because her entire family is undocumented and she thinks they will be removed if she gets an OFP.<sup>392</sup> Another advocate described a situation in an OFP hearing that demonstrates the legitimacy of victims' fear of the legal system. This advocate was present in an OFP hearing where the counsel of the respondent abuser disclosed that the abuse victim was undocumented.<sup>393</sup>

---

inappropriately placed in the position of responding to questions about the order. WATCH recommends that the county invest in translation of standard OFP forms in the most commonly spoken foreign languages in the community to meet this need." Priya Outar, *2004 WATCH OFP Report 5*, WATCH (October 2004).

<sup>385</sup> Interview dated September 3, 2003.

<sup>386</sup> Interview dated July 7, 2003.

<sup>387</sup> Interview dated July 7, 2003. Meeting dated February 12, 2004.

<sup>388</sup> Meeting dated February 12, 2004.

<sup>389</sup> Interview dated September 11, 2003.

<sup>390</sup> INA § 237 (a)(2)(E) (ii). The Immigration and Nationality Act makes the violation of an order for protection an offense for which the immigration authorities may remove an alien from the United States. *Id.*

<sup>391</sup> See e.g., Hennepin County Order for Protection Petition Form (2003).

<sup>392</sup> Interview dated December 18, 2003.

<sup>393</sup> Interview dated July 7, 2003.

A legal advocate described a case where her client agreed to her husband's demands that she not petition for an OFP because he was worried about the immigration consequences of violating the order. This woman, who had suffered violence for years at the hands of her husband, agreed instead to a divorce in which the court order included the protection remedies she would have sought in the OFP.<sup>394</sup>

### **c) Funding Cuts Affect Women's Access to Order for Protection Remedies**

Funding cuts have directly impacted the number of staff available to assist battered immigrant women at the domestic abuse centers in Hennepin and Ramsey counties and at community advocacy programs that play a similar role in assisting battered women with civil law processes.<sup>395</sup>

Funding cuts have decreased or eliminated court administration services that have in the past benefited battered immigrant women who have petitioned for an OFP. For example, in Ramsey County, court administration is no longer funding services to assist parties in the enforcement of visitation arrangements pursuant to an OFP.<sup>396</sup> One advocate explained that the result will be that battered immigrant women will have difficulty enforcing OFP visitation schedules and negotiating changes in their schedules with their abusers when circumstances change.<sup>397</sup> In addition, Ramsey County no longer provides a crisis nursery for OFP petitioners who cannot find childcare during their appointments with the Domestic Abuse Center.<sup>398</sup>

### **d) Child Custody Issues May Discourage Immigrant Women from Seeking an Order for Protection**

Child custody issues often affect a domestic violence victim's decision to seek an OFP. The OFP provisions of the Act explicitly provide courts with the authority to address child custody issues in the Order. The law provides that courts may "award temporary custody or establish temporary parenting time with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children."<sup>399</sup> Despite this language prioritizing victim safety, victims reportedly fear that they may lose custody of their children through the OFP process. The situation is exacerbated in cases involving immigrant women who often fear that they will lose custody of their children because of their immigration status. While none of Minnesota Advocates' interviews documented situations where immigrant mothers lost custody of their children in the OFP process, many sources described the women's fears of the system based on lack of information and understanding about the process. Interviewees also

---

<sup>394</sup> Interview dated October 5, 2004.

<sup>395</sup> Interview dated October 7, 2003.

<sup>396</sup> Interviews dated August 27, 2003 and September 30, 2003.

<sup>397</sup> Interview dated September 30, 2003.

<sup>398</sup> Interview dated September 12, 2003. Even when a crisis nursery was funded, women could not use it if they had made an appointment with the Domestic Abuse Center for Ramsey County in advance. *Id.*

<sup>399</sup> Minn. Stat. § 518B.01, Subd. 6(4)

explained that the perception that Child Protection Services unfairly scrutinizes immigrant women contributes to the fear that legal institutions may take a woman's children away.<sup>400</sup>

In cases where immigrant mothers do pursue OFPs, courts can direct abusers to refrain from removing their children from the country. An order not to take children out of the country can be forwarded to the appropriate embassy, which will ideally then decline to issue a visa for the children.

## **2. Divorce Proceedings Are Not Easily Accessible and Present Particular Problems for Battered Immigrant Women**

Custody issues, immigration status, community pressures and the ability to obtain legal representation are obstacles for immigrant women escaping violent spouses through divorce. According to Minnesota family law, any person who has been a resident of Minnesota for six months may obtain a divorce.<sup>401</sup> Thus, undocumented women may file for divorce if they meet the residency requirement.

### **a) Immigrant Women Have Difficulty Obtaining Legal Representation for Divorce Proceedings**

The high cost of obtaining a divorce attorney is prohibitive for many battered immigrant women. One advocate explained that there are many battered immigrant women whose income is high enough that they are not eligible for the services of Legal Aid, but not high enough to hire a private divorce attorney.<sup>402</sup> Another advocate explained that most battered immigrant women are not able to file for divorce without an attorney because they have complicated custody or property issues requiring the advice of an attorney.<sup>403</sup>

An immigrant woman described her experience of agreeing to a divorce after many years of abuse by her husband. The woman spoke little English and, although she was represented by an attorney, her advocate reported that the agreement she signed was "grossly unfair." The court awarded her physical custody of her child but the agreement provided that the husband would keep their house and provide her with only \$50 per month in child support expenses. The advocate explained that her client had little bargaining power and inadequate legal

---

<sup>400</sup> See discussion in the section entitled, "The Child Protection System."

<sup>401</sup> According to Minnesota law, a district or county court may dissolve a marriage when the court finds that there has been an irretrievable breakdown of the marriage relationship. Minn. Stat. § 518.06, Subd. 1 No dissolution shall be granted unless (1) one of the parties has resided in this state, or has been a member of the armed services stationed in this state, for not less than 180 days immediately preceding the commencement of the proceeding; or (2) one of the parties has been a domiciliary of this state for not less than 180 days immediately preceding commencement of the proceeding...*Id.* at § 518.07 (2003).

<sup>402</sup> Interview dated September 12, 2003.

<sup>403</sup> *Id.*

representation. Her client agreed to the unfair resolution because it would allow her to keep her child and provide a small amount of financial support.<sup>404</sup>

### **b) Immigrant Women Receive Significant Pressure from their Communities Not to Divorce Violent Spouses**

Many interviewees reported that immigrant women receive considerable pressure from their communities to stay married to violent spouses. In addition, divorced and single women are so stigmatized in some communities that many will endure violence rather than end their marriages. An advocate described how in one culture, there is strong social pressure to “be married and stayed married.” The advocate explained, “If a woman is divorced she will lose her social status in the community and women often stay in an abusive relationship because of this. Women who get divorced get married very soon after to avoid losing their social status, and often become a second wife.” This advocate described a marriage where the husband wanted a divorce from his wife. He severely beat her to coerce her into getting divorced, but the woman had been divorced before and wanted to stay married. The advocate explained that this woman was an educated, self-sufficient woman, but “...thought it was better to be a battered wife than to be no wife at all.”<sup>405</sup> Another advocate explained that in some communities, keeping the family together is the most important priority in cases of domestic violence.<sup>406</sup>

### **c) Immigrant Mothers Encounter Bias in the Court System When Seeking Divorce**

Many interviewees described the difficulty immigrant women face when seeking custody of their children in divorce proceedings. Although courts are required to consider any findings of domestic abuse in custody proceedings,<sup>407</sup> interviews revealed that in many cases of domestic abuse no such findings exist. In some cases, they may be overruled by biases of court system personnel.<sup>408</sup> Interviewees described how court system personnel too frequently focus on immigrant women’s lack of English proficiency, their immigration status, their poverty or their unfamiliar parenting practices in decisions regarding custody.

One attorney described a case involving a 19-year old immigrant woman who married an abusive 30 year-old American man. She was unaware that domestic violence was a crime until her English teacher informed her it was. She sought refuge in a shelter and was subsequently granted an OFP. Her husband, who had at one point abducted her child, sought a divorce. Court system personnel assigned to protect the interests of the child in the divorce proceeding responded to the husband’s claim that the woman was about to be removed (deported) from the United States by repeatedly calling immigration officials to verify the claim. It was never

---

<sup>404</sup> Interview dated August 29, 2004.

<sup>405</sup> Interview dated September 18, 2003

<sup>406</sup> Interview dated June 9, 2003.

<sup>407</sup> Minn. Stat. § 518B.01 Subd. 17.

<sup>408</sup> Interview dated September 29, 2004.

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

verified. The immigrant woman's attorney explained that these personnel consistently focused the court's attention on the mother's immigration status and poverty. The court granted joint physical custody to the parents.<sup>409</sup>

---

<sup>409</sup> *Id.*

## **V. The Child Protection System**

### **A. Introduction**

Interviews revealed that some of the policies and practices of Child Protection Services (CPS)<sup>410</sup> and mandatory child abuse reporting requirements present significant obstacles to immigrant women's efforts to seek safety from violence and to establish safe homes for their families. The obstacles discussed below arise in connection with the reporting of child endangerment, CPS investigations, and Child in Need of Protective Services (CHIPS)<sup>411</sup> proceedings and case plans<sup>412</sup>. These barriers may be more prevalent in some counties of the metropolitan area than other counties.

A battered immigrant mother's involvement with CPS begins with a report of child endangerment. CPS in Minnesota is charged with responding to reports of child abuse and neglect from law enforcement and medical professionals required to make such reports (mandatory reporters<sup>413</sup>) and from other witnesses such as neighbors. In some circumstances, CPS takes action to protect children who have been endangered in situations involving domestic violence because such endangerment is considered a form of child neglect under Minnesota law. A child may be directly injured in the abuse, but often child protection is called because a child has witnessed domestic abuse involving his parents. In addition, Minnesota law allows any police officer responding to a report of domestic assault the right to remove a child from a home if he believes that the child is in conditions that endanger his or her health and safety.<sup>414</sup>

If a report of child endangerment (a form of child neglect) is filed with CPS or a child is taken into protective custody by law enforcement, CPS becomes responsible for investigating or assessing whether the child's safety and well-being is endangered.<sup>415</sup> The best interest of the child is the paramount concern of CPS in connection with investigations or assessments that result from reports of child abuse and neglect it receives.<sup>416</sup> If, on the basis of investigation or assessment, CPS concludes that child abuse or neglect has occurred, it prepares a CHIPS petition, making the appropriate allegations together with the county attorney's office.<sup>417</sup>

---

<sup>410</sup> In Hennepin County, CPS investigations are conducted by Hennepin County Child Protection Services, part of Hennepin County's Department of Human Services. In Ramsey County, the Child Protection Department of Ramsey County Community Human Services conducts CPS investigations.

<sup>411</sup> See Minn. Stat. § 260C.007 Subd. 6 (2004).

<sup>412</sup> See Minn. Stat. § 260C.007 Subd. 3 (2004).

<sup>413</sup> Mandatory reporters including professionals engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education and law enforcement are required by law to report child neglect, abuse or endangerment. See Minn. Stat. §626.556 (2004).

<sup>414</sup> Minn. Stat. § 260C.175 Subd. 1 (b) (2) (2004).

<sup>415</sup> See Minn. Stat. § 260C.157 (2004).

<sup>416</sup> Minn. Stat. § 260C.001 Subd. 2 (2004).

<sup>417</sup> Minn. Stat. §§ 260C.141, 260C.148 Subd. 1 (2004).

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

If a child is removed from the home by law enforcement, an emergency protective care hearing before a juvenile court judge must take place within 72 hours.<sup>418</sup> Within 60 days after the emergency protective care hearing, a trial is held at which the judge decides whether allegations of child neglect contained in the CHIPS petition are true. When a child remains at home following a report of child neglect, an initial hearing occurs no sooner than five and no later than 20 days after the parents have been served with a CHIPS petition. At these proceedings, a juvenile court judge determines whether a child is in need of protective services, i.e., whether CPS should take protective action regarding the child.<sup>419</sup> The assistant county attorney, the investigative social worker, the child protection social worker, the *Guardian Ad Litem* (GAL), and the parents provide evidence and testimony resulting from CPS' investigation or assessment and the events leading to the report of child neglect.<sup>420</sup> If the juvenile court judge finds that there is probable cause to initiate a CHIPS case, a case will be opened and a judge will determine where a child should reside while the case is pending.<sup>421</sup> Alternatively, the judge may dismiss the petition if the facts alleged have not been proved.<sup>422</sup>

If a CHIPS case is opened, a CPS social worker in consultation with a parent and a dispositional advisor from the Public Defender's Office must prepare and file with the court within 30 days a case plan including a list of steps the parent must take to be reunited with a child.<sup>423</sup> This case plan must be approved by the juvenile court.<sup>424</sup> Parents must comply with the plan or they risk losing custody of their children. A review hearing occurs every 60 to 90 days after CHIPS has been adjudicated and a disposition ordered.<sup>425</sup> The judge may dismiss the case at the review hearing if she determines that the child is no longer in danger. The County Attorney's Office must file either a transfer of legal custody (TLC) or a termination of parental rights (TPR) petition, if a child under eight has been in an out-of-home placement for six months or if a child eight years or older has been in an out-of-home placement for one year.<sup>426</sup> Parents who voluntarily agree to transfer legal custody to a relative agree to a TLC filing. If the parents want to place the child in long-term foster care, they file a long-term foster care petition. Cases that involve termination of parental rights are reviewed in front of the judge.<sup>427</sup> If parental rights are terminated, the case will be moved to the judge assigned to the state ward calendar. Every 90 days review hearings take place to monitor the well-being of children who are placed in the care of relatives or foster care.<sup>428</sup>

Interviewees reported that mandatory child abuse reporters and CPS investigators too frequently do not adequately evaluate child endangerment in domestic violence cases involving immigrants because of a failure to access appropriate interpretation services or because of cultural bias. This

---

<sup>418</sup> Minn. Stat. §§ 260C.176 Subd. 2, 260C.178 (2004).

<sup>419</sup> Minn. Stat. § 260C.307 (2004).

<sup>420</sup> *Id.*

<sup>421</sup> Minn. Stat. § 260C.201 (2004).

<sup>422</sup> Minn. Stat. § 260C.193 (2004).

<sup>423</sup> Minn. Stat. §§ 260C.201 Subd. 6, 260C.212 (2004).

<sup>424</sup> *Id.*

<sup>425</sup> *Id.* at Subds. 10 and 11 (2004).

<sup>426</sup> Minn. Stat. § 260C.301 Subd 1 (2004).

<sup>427</sup> Minn. Stat. § 260C.307 (2004).

<sup>428</sup> Minn. Stat. § 260C.201 Subd 11 (2004).

failure, along with the lack of coordination between CPS and courts issuing Orders for Protection (OFPs), are factors that compromise the safety of battered immigrant women and result in the unfair scrutiny of immigrant mothers by CPS. To the extent that the government fails to address these obstacles, the government is not fulfilling its obligations under international human rights law to protect the rights of battered immigrant women to life and security of person or to prevent discrimination on the basis of national origin against battered immigrant women in its administration of CPS and the juvenile courts.

In particular, interviews revealed that, too frequently, interpretation services are not accessed at the scene of a domestic violence crime against an immigrant mother or during CPS investigations or assessments involving battered immigrant mothers. This failure to access interpretation services violates federal and Minnesota law. Federal law as implemented in U.S. Department of Health and Human Services Regulations (DHHS) requires that agencies funded by DHHS (like CPS in the Minneapolis/St. Paul metropolitan area) offer interpretation services to Limited English Proficient (LEP) individuals, except where resources for such interpretation are not available or where such services are not necessary or important to the lives of the LEP persons served by the institution.<sup>429</sup> In addition, Minnesota law requires that the police officer provide a parent or custodian with certain information about their rights in the event that the officer is taking the parent or custodian's child into custody for CPS protection.<sup>430</sup>

Interviews also revealed many cases where CPS inappropriately shifted responsibility for the abusive relationship to the victim, focusing primarily on evaluating the mother's efforts to exclude the abuser from the home and less on the abuser's conduct. In part, this shift occurs because Minnesota law requires CPS to consider whether a battered woman has sought to exclude the abuser from the home or has sought other protective services.<sup>431</sup> Interviewees and other researchers explain that CPS frequently penalizes battered immigrant mothers for not taking action to protect themselves and their children from violence at the hands of their abusive husbands or partners, whether by seeking an OFP or another form of assistance.<sup>432</sup> In the most serious cases, CPS or the courts take the children from the battered mother. Interviews and research revealed that Minnesota laws and CPS policies and practices diminish the importance of the following pressures that battered immigrant women face:

---

<sup>429</sup> Civil Rights Act, 42 U.S.C. § 2000(d) (1964); 28 C.F.R. § 42.104; Department of Health and Human Services Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 65 Fed.Reg. 52762 (August 8, 2003).

<sup>430</sup> Minnesota Statute § 260C.175 (2004) requires that the officer notify the parent or custodian that he or she may request that the child be placed with a relative or a designated caregiver, instead of in a shelter care facility.

<sup>431</sup> For example, Minnesota Statute § 626.5552 subd. (b) (2004) provides as follows, "In determining whether there is a need for child protective services, the local welfare agency shall take into account the presence of protective factors in the child's environment. These factors include, but are not limited to: (1) whether the child is or has been the victim of physical abuse, sexual abuse, or neglect as defined in section 626.556, subdivision 2; (2) the age of the child; (3) the length of time since an incident of being exposed to domestic violence; (4) the child's relationship to the parent and the perpetrator of domestic violence; and (5) *whether steps are or have been taken to exclude the abuser from the home of the child or the adult victim sought protective services such as shelters, counseling, or advocacy services, legal recourse, or other remedies.*" (emphasis added).

<sup>432</sup> Interview dated August 17, 2004; *see also* Rebecca Kutty, *WATCH Monitoring of Open CHIPS Cases in Hennepin County Juvenile Court*, WATCH (May 23, 2001).



- the enormous financial pressures of starting a life in the U.S., the family's dependence on the abusive father for financial support or welfare, and the lack of a support network other than the husband's family;
- the fear of deportation for herself and her partner;
- the risk of increased violence that may come with seeking an OFP; and
- the battered immigrant mother's belief that she does not have enough evidence to obtain an OFP.

## ***B. Evaluation of Child Endangerment by Mandatory Reporters and CPS Investigators***

### **1. Mandatory Reporters**

Mandatory reporters of child endangerment under Minnesota law frequently do not access adequate interpretation services when evaluating whether to report a case involving domestic violence to CPS. As a result, interviewees explained that many mandatory reporters are reporting child endangerment in some domestic violence cases even when the circumstances are not serious enough to require such reporting under Minnesota law.

Under Minnesota law, CPS agencies are charged with responding to and investigating reports of child neglect and child abuse. In cases of domestic violence, professionals engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education and law enforcement are required by law to report child neglect in the form of child endangerment and child abuse to the local CPS agency or the local police department or sheriff's office.<sup>433</sup> These professionals are often referred to as "mandatory reporters" of child neglect and child abuse. These reports must be made "immediately," which term is defined to mean within 24 hours.<sup>434</sup>

In Hennepin County, mandatory reporters are instructed to report a child's exposure to domestic violence as child endangerment or abuse if the child has been involved in the violence (he or she is used to call the police or is used as a shield), if a weapon has been used, or if the domestic violence survivor has suffered serious injuries or has been hospitalized in the presence of the child.<sup>435</sup> Ramsey County child protection initial screening criteria instructs mandatory reporters to refer cases in which domestic assault results in unintentional injury to a child. CPS will then assess whether such conduct constitutes "neglect on the part of both caretakers involved."<sup>436</sup> Ramsey County child protection will also take referrals for assessment from Family or Domestic Abuse Court. These reporting standards as applied to cases involving domestic violence are significantly less broad than the obligation to report if a child has been exposed to the sight or

---

<sup>433</sup> Minn. Stat. § 626.556 (2004).

<sup>434</sup> *Id.*

<sup>435</sup> Interview dated August 21, 2003.

<sup>436</sup> Ramsey County Child Protection Initial Screening Criteria (last updated on March 13, 2002), available on Ramsey County website at <http://www.co.ramsey.mn.us/hs/screening.asp>.

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

sound of domestic violence (in other words, if a child has “witnessed” domestic violence) that was in place from 1998 to 2000.<sup>437</sup>

Battered immigrant women may come into contact with CPS when a mandatory reporter makes a report of child endangerment with respect to her children. Immigrant women may also come into contact with the child protection system when individuals in their immigrant communities or neighbors provide CPS or police with voluntary reports of child endangerment when women are being abused.<sup>438</sup>

Attorneys and advocates representing battered immigrant mothers in the child protection system maintain that, despite the change in the law, reporting of child endangerment or abuse in many cases involving domestic violence occurs when children have “witnessed” domestic violence in compliance with the standard in place from 1998 to 2000 and not the current standard.<sup>439</sup> This is true for domestic violence situations involving citizen and immigrant parents alike. Mandatory child abuse reporters are not reporting child endangerment in domestic violence cases solely in cases in which the child has been involved in the abuse, a weapon has been used or if the domestic violence survivor has suffered serious injuries/has been hospitalized in the presence of the child.<sup>440</sup>

Language barriers make it more likely that mandatory reporters will report child endangerment in cases of domestic violence. As discussed in more detail in the previous sections regarding police, shelters and medical services, reporters may not have adequate interpretation services or may fail to access interpretation services. Without adequate interpretation, mandatory reporters are unable to investigate the facts of a domestic violence situation involving an immigrant parent

---

<sup>437</sup> A government worker explained that five years ago the legislature introduced a law that mandated reporting to child protection if a child has been exposed to the sight or sound of domestic violence, a broader reporting obligation than exists today. There were too many reports and the legislature did not provide CPS with enough funding to handle the resulting investigations. As a result, the law was repealed with the understanding that it would be reinstated with funding. That is unlikely to happen because CPS funding has been cut dramatically in recent years. Legislative History for Minnesota Statute § 626.556 indicates that the definition of reportable child neglect was amended in 2000 Minn. Laws, c. 401, § 1, in subd. 2, par. (c) to delete the following conduct from the definition of neglect:

"(8) that the parent or other person responsible for the care of the child:

"(i) engages in violent behavior that demonstrates a disregard for the well-being of the child as indicated by action that could reasonably result in serious physical, mental, or threatened injury, or emotional damage to the child;

"(ii) engages in repeated domestic assault that would constitute a violation of section 609.2242, subd. 2 or 4;

"(iii) intentionally inflicts or attempts to inflict bodily harm against a family or household member, as defined in § 518B.01, subd. 2, that is within sight or sound of the child; or

"(iv) subjects the child to ongoing domestic violence by the abuser in the home environment that is likely to have a detrimental effect on the well-being of the child."

<sup>438</sup> Interview dated June 30, 2003.

<sup>439</sup> Interview dated August 21, 2003.

<sup>440</sup> Experts indicate that the impact of exposure to domestic violence on children depends on a number of factors and does not always rise to the level of endangerment. Jeffrey Edelson argues that the impact of the exposure to violence on children varies by the level of violence in a home, the degree of a child's exposure and the presence of other risk and protective factors. J. L. Edelson, *Should Child Exposure to Adult Domestic Violence be Defined as Child Maltreatment Under the Law?* St. Paul, Minnesota: University of Minnesota School of Social Work (2004), available at <http://www.mincava.umn.edu/link/documents/shouldch/shouldch.shtml>.

and its effect on the children. Without this information, mandatory reporters tend to take a “better safe than sorry” approach to reporting child endangerment and report to CPS without adequately investigating the factual details of the situation.<sup>441</sup> This approach may unnecessarily expose some battered immigrant mothers to the CPS system and the risk that they will lose their children because of their partners’ abuse.

## **2. Law Enforcement Practices in Taking Immigrant Children into Custody at the Scene of an Assault**

Interviewees reported that the standards for removing children from the home are so subjective that police, erring on the side of caution, often remove children from the home when it may not be in the best interest of the child or her family.<sup>442</sup> As discussed in the section entitled, “State and Local Justice Systems,” law enforcement too frequently fails to access adequate interpretation services when responding to domestic violence against immigrant women. As a result, there are often significant language barriers resulting in the officers not having adequate information to appropriately evaluate whether the children involved are in danger and should be removed from the custody of an immigrant parent.

Minnesota law permits a police officer at the scene of a domestic violence crime to make a determination to take custody of a child “when a child is found in surroundings or conditions which endanger the child’s health or welfare or which such peace officer reasonably believes will endanger the child’s health or welfare.”<sup>443</sup> A court will then review this determination within 72 hours. Experts state, however, that “to ensure stability and permanency, children should remain in the care of their non-offending parent (or parents), whenever possible.”<sup>444</sup> This conclusion is supported by a recent decision by the New York State Court of Appeals.<sup>445</sup> Language barriers and the failure of law enforcement to access interpretation results in police officers removing children from the custody of the non-offending parent more often than necessary.

In addition, interviewees reported that frequently, police officers do not comply with the requirement under Minnesota law that certain documentation be translated into the native

---

<sup>441</sup> Interview dated October 17, 2004.

<sup>442</sup> Interview dated October 7, 2004.

<sup>443</sup> Minn. Stat. § 260C.175 Subd. 1 (b) (2) (2004).

<sup>444</sup> Jeffrey Edelson and Susan Schechter, *Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice*, University of Minnesota School of Social Work (June 1999).

<sup>445</sup> *Nicholson v. Scopetta*, 2 U.S.CO.A No. 113 (2004) (not yet published in New York Reports). The New York Court of Appeals (New York’s highest court) unanimously held that law enforcement should not remove children from their homes only because they had witnessed domestic violence against their mothers. The Court stated that this action would unfairly hold innocent women accountable for the abuse and even cause harm to the children. The Court held that law enforcement would need to show that the mother was “indifferent to the psychological harm that repeated exposure to beatings caused the child in order to justify asking the courts to consider a removal. Further, it ruled that removing children from such homes without prior court approval - emergency actions that a federal court found the city had used for years - should be contemplated only in the rarest of instances.” Leslie Kaufman, *Court Limits Removing Child When Mother Is Abuse Victim*, N.Y. Times, Oct. 27, 2004, at A1.

language of the parent. For example, when a child is taken into custody for CPS protection, the officer must provide the parents with a list of names, addresses, and telephone numbers of social service agencies that offer child welfare services in the language of the parent or custodian.<sup>446</sup> Advocates and attorneys reported that police often do not have forms in all of the languages of the most populous immigrant communities in the Minneapolis/St. Paul metropolitan area.<sup>447</sup> In addition, these advocates and attorneys are also concerned that some immigrants are not literate in their native language. For these people, they said, the police should provide the required information orally, rather than relying on translated written materials.

The Fifth Precinct of the Minneapolis Police Department is implementing a new policy with the goal of improving the process by which police evaluate child endangerment and remove children from their homes (see description below).

#### **Child Development Policing Program (CDPP)**

The Fifth Precinct of the Minneapolis Police Department is initiating a new program designed to assist police officers in making a determination concerning child endangerment in domestic violence situations. This program may reduce the number of immigrant children being removed from their homes because of domestic violence and improve the government response to the co-occurrence of domestic violence and child endangerment. The program, “The Child Development Policing Program of the Minnesota Child Response Initiative,” will make available a CDPP team to respond to police calls for domestic or other violent incidents involving children. This team will include a clinician, advocate, and police supervisor, all of whom have participated in an 18-hour training curriculum on trauma and child development. *See* Minnesota Child Response Initiative (MCRI), Child Development Policing Program Brochure, May 2004.

### **3. CPS Investigators Fail to Access Interpretation Services and Are Often Biased in Evaluating the Families of Battered Immigrant Women**

Lack of adequate interpretation services during the investigation (in addition to the reporting stage) often results in unfair scrutiny of battered immigrant mothers.<sup>448</sup> One attorney reported that CPS practices often “exacerbate[d] the harm” experienced by immigrant children in cases involving domestic violence because of the inadequacy of interpretation or translation.<sup>449</sup> In addition, CPS investigators often scrutinize unfamiliar parenting practices of immigrant families due to their lack of knowledge about these families’ cultures.

---

<sup>446</sup> Minn. Stat. § 260C.175 (2004).

<sup>447</sup> Memorandum from Centro Legal Child Protection Roundtable Meeting (August 2003) (on file with Minnesota Advocates for Human Rights).

<sup>448</sup> *Id.*

<sup>449</sup> Interview dated August 17, 2004.

CPS is required under federal law to offer the use of interpreters to LEP individuals in connection with a CPS investigation.<sup>450</sup> Under Minnesota law, advocates argue that CPS workers must comply with a higher standard for accessing interpretation services. An attorney argues that CPS investigators should use a “qualified, neutral” interpreter when investigating allegations of child abuse, as Minnesota law enforcement is required to do.<sup>451</sup> This requirement is necessary because CPS workers share the results of such investigations with criminal justice authorities and thereby act as an arm of the criminal justice system.

CPS does not often access professional interpreters. Rather, CPS relies on investigators and caseworkers who speak Spanish, Hmong, or Vietnamese.<sup>452</sup> An attorney reported that, in one case involving an immigrant child, a CPS investigator claimed to speak Spanish and so interpreted at a CPS investigation at a high school.<sup>453</sup> The attorney took the position that this investigator is not a “qualified, neutral” interpreter, as CPS takes an adversarial position toward parents when investigating child endangerment in domestic violence cases. Only for less common languages will CPS access professional interpretation services through the Language Line or private interpreter agencies. One government worker said that CPS is very pleased when they can hire bilingual staff for purposes of working with immigrant families.<sup>454</sup>

The result of inadequate interpretation or the failure to access professional interpretation services is that husbands, partners or fathers who are violent, but more fluent speakers of English, can use these skills to influence the CPS process in their favor. Many interviewees reported that it is very common for the man to speak better English than his immigrant woman partner. One battered immigrant mother under investigation by CPS workers asserted that CPS workers found her abuser more credible because he had more education and better English skills than she did. She explained her belief that CPS is biased against her because she is on welfare, and is a non-English speaker.<sup>455</sup>

The problems that immigrant mothers encounter because of the failure of CPS workers to access qualified, neutral interpreters at the time of site visits are demonstrated by the following stories:

- One immigrant mother, a domestic violence victim, reported that CPS investigators recently came to her home for a site visit relating to her non-use of daycare assistance.<sup>456</sup> The mother does not speak English but comprehends many English words. The CPS investigators did not bring an interpreter with them. The mother had difficulty explaining

---

<sup>450</sup> Exec. Order No. 13,166 65 Fed. Reg. 159 (Aug. 16, 2000); Department of Health and Human Services Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 65 Fed.Reg. 52762 (August 8, 2003).

<sup>451</sup> *State v. Mitjans*, 408 N.W.2d 824, 829-31 (Minn. 1987)(recognizing the importance of qualified, neutral interpreters when police interview suspects); *see also*, William E. Martin and Peter N. Thompson, *Removing Bias from the Minnesota Justice System*, Bench & Bar of Minnesota, Vol. 59, No. 7 (August 2002).

<sup>452</sup> Interview dated August 21, 2003; Memorandum, *supra* note 446.

<sup>453</sup> Interview dated August 17, 2004.

<sup>454</sup> Interview dated August 21, 2003.

<sup>455</sup> Interview dated December 2, 2003.

<sup>456</sup> *Id.*

that she no longer receives daycare assistance.<sup>457</sup> She explained further that the investigators come to her home to check on her children every time the abuser makes a complaint of neglect. The investigators told her, “We are watching you. Every complaint is on the record.” The investigators explained that the complaints would be on her record for ten years. This battered immigrant mother expressed concern that CPS will use an accident against her. She feels as if she is under intense scrutiny. She worries about every cut or scrape on her children. This immigrant mother is forced to explain everything about her children to CPS without an interpreter.<sup>458</sup>

- A CPS worker explained that, in another case in which the mother had limited English proficiency and the father was English proficient, the use of interpreters by the county was “sporadic.”<sup>459</sup> This provides the articulate father with an advantage in communicating with CPS.
- In another child protection case involving a Cambodian family, the mother offered very little information or explanation during CPS site visits because she knew the interpreter.<sup>460</sup> She feared that her statements would not be confidential.<sup>461</sup>
- A CPS caseworker described a case in which CPS assigned a male interpreter.<sup>462</sup> He was from the same clan as the family being investigated. The mother was very concerned about her privacy and hesitated to share any information as a result. CPS was unable to find another interpreter.
- One immigrant mother was investigated at the scene of an alleged threat to her children. She was arrested without the benefit of interpretation or any explanation as to where the authorities were taking her children.<sup>463</sup>

Interviewees reported that bias sometimes occurs in the CPS evaluation of child endangerment in domestic violence cases involving immigrants. Minnesota statute 626.556 requires persons who conduct assessments or investigations under this section to “take into account accepted child-rearing practices of the culture in which a child participates and accepted teacher discipline practices, which are not injurious to the child’s health, welfare and safety.”<sup>464</sup>

Child protection caseworkers explained that they are in need of much more training on cultural issues. One caseworker stated, “We come to a case consultation and the issues are around culture and CPS does not consider that.”<sup>465</sup> Workers reported that this failure is sometimes apparent in Child Protection’s evaluation of mental injury. For example, it is acceptable for some immigrant parents to use words when speaking with their children that would not be used

---

<sup>457</sup> *Id.*

<sup>458</sup> *Id.*

<sup>459</sup> Interview dated October 8, 2003.

<sup>460</sup> *Id.*

<sup>461</sup> *Id.*

<sup>462</sup> *Id.*

<sup>463</sup> Interview dated September 21, 2004.

<sup>464</sup> Minn. Stat. § 626.556 Subd.2 (m) (2004).

<sup>465</sup> Interview dated October 8, 2003.

in the mainstream American culture. CPS often does not acknowledge that, in the parents' culture, certain words are not viewed as abusive.<sup>466</sup>

One attorney described her experience with CPS workers who were concerned about the cupboards being empty in an immigrant mother's home and about sleeping arrangements in which the child slept with the parents or other relatives.<sup>467</sup> Many immigrant families shop for groceries every day and are accustomed to these types of sleeping arrangements. CPS workers were not aware that these circumstances reflect accepted cultural norms in this immigrant's community.

#### **4. CPS Investigators Fail to Provide Language-Appropriate Documentation and an Explanation of Rights to Immigrant Mothers**

Immigrant mothers often do not receive important CPS documentation in their own languages and do not receive an explanation of their parental rights in their native language at the time of CPS site visits. These practices contravene federal and state law, and human rights standards.

Many CPS brochures are translated into multiple languages, although not the languages of every populous immigrant community in the metropolitan area.<sup>468</sup> Intake screening forms and Voluntary Placement Agreements (VPAs), agreements by which parents can authorize CPS to take custody of their children, have been translated into certain languages and are accessible to Child Protection investigators on the Minnesota Department of Human Services website.<sup>469</sup> Nevertheless, these translated forms are not always used in CPS investigations involving immigrants.<sup>470</sup>

A government worker explained that, if the worker involved in the case speaks the relevant language and no translation is available, he or she will translate the VPA into the native language of the family.<sup>471</sup> Attorneys and advocates reported, however, that not many workers are truly bilingual. Those employees who are bilingual are not necessarily qualified to interpret a legal agreement with such serious consequences.<sup>472</sup>

An interviewee reported that, in one case, the Child Protection investigators came for a site visit and explained parental rights to a battered immigrant mother who had suffered violence by her spouse. The CPS investigators did not have an interpreter available for this explanation.<sup>473</sup> In addition, CPS routinely sends this mother documentation about her case in English with no

---

<sup>466</sup> *Id.*

<sup>467</sup> Interview dated August 17, 2004.

<sup>468</sup> Interview dated August 21, 2003.

<sup>469</sup> Child Protection Services Forms, including Voluntary Placement Agreements are available at <http://edocs.dhs.state.mn.us/index.htm>.

<sup>470</sup> Interview dated August 17, 2004.

<sup>471</sup> Interview dated August 21, 2003.

<sup>472</sup> Memorandum *supra* note 446.

<sup>473</sup> Interview dated December 2, 2003.

translation.<sup>474</sup> The mother has explained that this increases her worry about the possibility of losing her children.<sup>475</sup>

Advocates and attorneys reported that CPS asks battered immigrant women to sign VPAs that allow CPS to take temporary custody of the children and immediately place the children in the Children in Need of Protective Services system. Without the benefit of interpretation and legal advice, many immigrant mothers do not understand what they are signing.<sup>476</sup> Advocates and attorneys reported that CPS workers often tell immigrant women that if they sign this English document their children will be returned to them sooner.<sup>477</sup> One attorney noted that, in one case involving five months of litigation, CHIPS investigators persuaded a LEP mother to sign a VPA to place her child into foster care and begin a CHIPS process. Until she obtained legal representation, she had no idea that she had a right to revoke the VPA. CPS workers provided the VPA in English, even though they have a Spanish translation of the VPA available. There was no interpretation of her rights included in the VPA, including her right to contact an attorney and have a hearing before a judge. After obtaining legal representation, this immigrant mother revoked the VPA and her child was returned to her following a hearing before a judge.<sup>478</sup>

In contrast to the CPS practices reported by attorneys and advocates, CPS employees and caseworkers reported that VPAs are rare and used typically in the event of a medical emergency involving a parent.<sup>479</sup> CPS caseworkers also reported that they have seen few cases involving voluntary placements.<sup>480</sup>

### ***C. Child Protection Services Case Plans***

Interviewees reported that certain child protection case plan requirements or services needed by an immigrant parent to comply with a case plan can be obstacles to reunification with her child. A child protection worker in consultation with parents and a dispositional advisor from the Public Defender's Office must prepare and file within 30 days of the initiation of a CHIPS action a case plan including actions that parents must take to be reunited with a child. Parents must comply with the plan or they risk losing custody of their child.

#### **1. CPS Case Plans Inappropriately Require Immigrant Women to Obtain Orders for Protection**

Many government workers and advocates reported that CPS caseworkers are inappropriately requiring battered mothers in the child protection system, including immigrant mothers, to obtain OFPs as a part of their CPS case plans. Although in some cases OFPs can produce positive

---

<sup>474</sup> *Id.*

<sup>475</sup> *Id.*

<sup>476</sup> Interview dated June 23, 2003; Memorandum, *supra* note 446.

<sup>477</sup> Notes from Conference dated August 2003.

<sup>478</sup> Interview dated August 17, 2004.

<sup>479</sup> Interview dated August 21, 2003.

<sup>480</sup> Interview dated October 8, 2003.



results,<sup>481</sup> interviewees reported many problems with requiring OFPs in CPS cases, especially cases involving battered immigrant women.<sup>482</sup> These workers and advocates are concerned that some immigrant mothers are having a particularly difficult time meeting this requirement. As a result, they are exposed to the risk of losing custody of their children or not being able to end CPS custody of their children.

For example, an attorney reported that in one case a CHIPS case plan developed by CPS explicitly required that a battered immigrant mother obtain an OFP. There was a full hearing involving this mother and her four children who had witnessed the violence. There was also a simultaneous criminal prosecution of the abuser. The judge determined that the OFP was not necessary because the criminal court had issued a No Contact Order. As a result, the CHIPS petition was dismissed.<sup>483</sup> In another case, an advocate reported that a client filed for an OFP after CPS pressured her to do so in order to retain custody of her children. The advocate reported that she also received pressure from the city attorney to file the OFP.<sup>484</sup> Research demonstrates that requiring or pressuring a domestic violence victim to obtain an OFP can have negative consequences. Separating from an abuser can increase the likelihood that an abused woman will experience increased violence, even homicide.<sup>485</sup> As a result, the decision to obtain an OFP should be the decision of the woman as she is in the best position to evaluate the risk of increased violence and other risks associated with obtaining the order.

One government worker reported that the child protection system is aware of these problems and is addressing CPS practice with respect to OFPs. Official CPS guidance relating to OFPs in one county indicates that CPS case plans should not require a domestic violence victim to petition for an OFP.<sup>486</sup> CPS administrative officials and the Juvenile Court bench have also discussed the issue. CPS has urged the courts not to require mothers to obtain OFPs. CPS administration has also provided guidelines on this subject for new staff.<sup>487</sup> Despite this guidance, the practice of requiring battered mothers to petition for OFPs persists.

Interviewees reported that there are a number of reasons why obtaining an OFP may be a problem for a domestic violence victim, including the risk of increased violence discussed above.<sup>488</sup> Interviewees reported that, if a particular battered mother perceives a risk of increased

---

<sup>481</sup> See discussion of Orders for Protection in the section entitled, "Civil Courts."

<sup>482</sup> Parents must comply with case plans in order to retain custody of their children or to end CPS custody of the children. A CPS contract caseworker acknowledged that Orders for Protection are indeed an explicit part of certain case plans developed by CPS and implemented by the caseworker. Interview dated October 8, 2003.

<sup>483</sup> Interview dated August 17, 2004.

<sup>484</sup> Interview dated October 27, 2003

<sup>485</sup> Family Violence Prevention Fund, Predictors of Domestic Violence Homicide of Women, available at <http://endabuse.org/programs/display.php3?DocID=242> (last accessed November 22, 2004). "Separating from an abusive partner after having lived with him, leaving the home she shares with an abusive partner or asking her abusive partner to leave the home they share were all factors that put a woman at "higher risk" of becoming a victim of homicide." *Id.* (citing *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 *American Journal of Public Health* 7 (July 2003)). See also Kutty, *supra* note 432.

<sup>486</sup> Interview dated August 21, 2003.

<sup>487</sup> *Id.*

<sup>488</sup> Memorandum, *supra* note 446.

violence, the requirement to obtain an OFP can become the equivalent of choosing between violence and retaining custody of her children.<sup>489</sup> In addition, interviewees reported that, in some cases, a battered mother may believe that she does not have sufficient evidence to qualify for an OFP. One advocate asserted that many CPS workers do not understand the eligibility requirements for an OFP and often send a woman to get an OFP when there may not be grounds for it.<sup>490</sup> Finally, advocates explained that requiring a battered mother to obtain an OFP can have the unintended effect of deterring the battered mother from reporting instances of abuse or violations of the OFP for fear of being deemed non-compliant with her case plan.<sup>491</sup> In cases where the mother retains custody of her children, she may also fear that CPS may take her children if she reports continuing violence.<sup>492</sup>

Interviewees noted that it can be particularly difficult for a battered immigrant woman to obtain an OFP. The immigration consequences of a violation of an OFP can complicate an immigrant mother's compliance with a CPS case plan if it requires that she obtain an OFP.<sup>493</sup> For example, in one CPS case involving domestic violence, a grandmother and mother were afraid to petition for an OFP because the abuser was from another country and he could be removed (deported)<sup>494</sup> from the United States for violating an OFP. Nevertheless, CPS required them to get an OFP because he was abusive.<sup>495</sup>

In addition, interviewees reported that requiring a battered immigrant mother to obtain an OFP often leads to a sequence of events that can result in the mother losing custody of her children. A battered immigrant mother in the child protection system often seeks contact with her abuser even after she has obtained an OFP and may even seek to lift the OFP. An immigrant mother's reliance on the abuser for financial support and childcare may necessitate contact with the abuser and lead to the violations of an existing OFP. Despite the fact that the petitioner who successfully obtains an OFP is not subject to the terms of the order and, therefore, cannot violate these terms, CPS often takes into consideration her contact with the abuser in evaluating compliance with a case plan. Interviewees reported the following:

- In reviewing an immigrant mother's compliance with her case plan, CPS workers faulted her for requesting that an OFP be lifted because a domestic violence episode followed.<sup>496</sup>
- In another case involving an immigrant family, the battered mother is completely dependent on the father of the family and has 7 or 8 children. Pursuant to the terms of the OFP, he is prohibited from being present at the house. The battered mother does not have

---

<sup>489</sup> Memorandum, *supra* note 446.

<sup>490</sup> Interview dated September 30, 2003.

<sup>491</sup> Interview dated August 22, 2003; Kutty, *supra* note 432.

<sup>492</sup> Interview dated August 22, 2003; Kutty, *supra* note 432.

<sup>493</sup> Immigration and Nationality Act §237 makes an alien who violates an Order for Protection deportable from the United States.

<sup>494</sup> Prior to 1996, removal proceedings were referred to as exclusion proceedings or deportation proceedings depending on the circumstances of an alien's detection or apprehension. Now all proceedings to remove an alien from the United States are referred to as removal proceedings. See INA § 240.

<sup>495</sup> Interview dated October 8, 2003.

<sup>496</sup> *Id.*

a job and does not speak English. She is having difficulty taking care of her family without contact with the abuser.<sup>497</sup>

A CPS caseworker explained that when a mother appears to be permitting violations of an OFP, CPS evaluates how many contacts the mother has had with the abusive spouse or partner and if the child has been endangered by these contacts.<sup>498</sup> Not all such cases will result in termination of parental rights. In fact, CPS caseworkers reported that CPS does sometimes end an investigation without taking action against a parent in cases in which there were OFP violations or the OFP expired.<sup>499</sup>

## **2. Losing Child Custody in CPS System Makes It Difficult for Battered Immigrant Women to Retain Adequate Housing, a Requirement of CPS Case Plans**

Immigrant mothers' housing may be jeopardized when CPS removes their children from the home and places them in foster care. Without custody of her children, the woman may lose eligibility for government housing and she could lose her house or apartment. The mother then faces a dilemma. Either a CPS case plan or a juvenile court judge making a custody determination will require that a mother obtain suitable and safe housing before the children are returned to her. However, without her children, she is not eligible to obtain adequate housing. The shortage of government housing makes it difficult to obtain public housing after an individual has lost it.<sup>500</sup> For example, one immigrant mother was evicted from government-subsidized housing because, as a result of a juvenile court decision regarding custody, her children were no longer living with her full-time.<sup>501</sup> Now, this mother is unable to qualify for affordable housing and is living in temporary housing. Her living situation will not qualify as "suitable and safe" as is required in the CPS case plan and she will have difficulty getting the family court to award her more time with her children.<sup>502</sup>

## **3. Lack of Culturally Appropriate Versions of Programs Mandated by CPS Case Plans**

Many attorneys and advocates reported that the resources CPS provides to immigrant parents in connection with the CHIPS process do not include existing programs specific to immigrant communities.<sup>503</sup> The availability of "culturally specific" and bilingual programs for mothers in the child protection system is vital to ensuring that immigrant mothers attend and benefit from the programs required for them to retain custody of their children.<sup>504</sup> As one author states, "the

---

<sup>497</sup> *Id.*

<sup>498</sup> *Id.*

<sup>499</sup> *Id.*

<sup>500</sup> Interview dated August 21, 2003.

<sup>501</sup> Interview dated September 21, 2004.

<sup>502</sup> *Id.*

<sup>503</sup> Interview dated August 21, 2003.

<sup>504</sup> Interview dated September 29, 2004.

extent to which [Limited English Proficient (LEP)] families are experiencing termination of parental rights because of unavailable bilingual services needs to be investigated.” Access to such services would likely “influence reunification, child well-being, and permanency for LEP families.”<sup>505</sup> Such access would therefore also benefit battered immigrant mothers in the system. Battered immigrant mothers are more likely to attend programs that provide services in their native language and that take into account their own cultural and immigrant experiences. Participation in counseling, parenting classes, drug abuse treatment and other programs may be required in the CPS case plan. If immigrant mothers wish to participate in community-based programs, they often must cover the cost of these programs because they are not included among the contracts CPS has made with large social service providers like the Domestic Abuse Project.<sup>506</sup> Minnesota law requires that CPS make reasonable efforts to provide programming to assist family compliance with CPS case plans, and that it perform this function in a culturally competent manner.<sup>507</sup> One CPS social worker explained that CPS workers will try to identify resources for parents in the Child Protection System at community organizations, if possible.<sup>508</sup> An attorney reported that there are some Latino-specific programs with which CPS contracts, but very few for South-East Asian mothers.<sup>509</sup> One CPS worker explained that, if the woman is in danger, social workers help her find a place in a shelter or work with her to find job training. But these resources may not be culturally or community-specific.<sup>510</sup> In one case, an immigrant woman was placed in a shelter where no one spoke her language or understood her culture.<sup>511</sup>

One CPS worker stated that, whatever intervention is made, “it has to come from the community itself,” especially if the community is “separated” from mainstream culture. As a result, for CPS to be more effective, it must offer more community-specific resources to mothers in their system.

#### **4. Funding for Mandated Programs and Legal Representation**

There is a shortage of legal representation and specialized services for immigrant mothers to assist them in complying with any applicable CPS case plans and in navigating the complex civil proceedings in juvenile and family courts.

Minnesota law requires that CPS make “reasonable efforts” to provide parents with appropriate services with the goal of reunifying the family.<sup>512</sup> These services include drug counseling,

---

<sup>505</sup> Layla P. Suleiman Gonzalez, Commentary 5, Five Commentaries: Looking to the Future, Children, Families and Foster Care Journal, available at [http://www.futureofchildren.org/information2827/information\\_show.htm?doc\\_id=210646](http://www.futureofchildren.org/information2827/information_show.htm?doc_id=210646) (noting that bilingual services for immigrant parents in the child protection system are insufficient). *See also*, Minnesota Department of Human Services, Service Delivery System Supporting Culturally Competent Practice, available at [http://www.dhs.state.mn.us/main/groups/agencywide/documents/pub/dhs\\_id\\_016418.hcsp](http://www.dhs.state.mn.us/main/groups/agencywide/documents/pub/dhs_id_016418.hcsp). (acknowledging that culturally appropriate service delivery is part of a CPS social worker’s cultural competence).

<sup>506</sup> Interview dated August 21, 2003.

<sup>507</sup> Minn. Stat. § 260.012 (2004) and § 260.221 subd. (5) (2004).

<sup>508</sup> Interview dated June 30, 2003.

<sup>509</sup> Interview dated August 21, 2003.

<sup>510</sup> Interview dated June 30, 2003.

<sup>511</sup> Interview dated September 2, 2004

<sup>512</sup> Minn. Stat. § 260.012 (2004).

parenting classes and mental health services. CPS' ability to meet this obligation has been compromised by funding cuts in recent years. The annual budget for the Hennepin County Department of Human Services that includes funding for CPS was reduced from \$552,660,293 in 2003 to \$516,756,774 in 2004.<sup>513</sup> This budget cut negatively affects the number of staff, the number of site visits, the budget for interpretation and translation, and CPS' ability to hire bilingual staff. These elements all affect the quality of services CPS provides in cases involving immigrant families. Funding cuts have also affected access to supervised visitation at a visitation center, which is essential for the safety of battered mothers.<sup>514</sup> Even before the recent funding cuts, the government made available to parents supervised visitation for only one hour a week.<sup>515</sup>

In the past, Minnesota made public defenders available to all parents in the CPS system. In 2004, the state's public defender program faced a budget deficit of \$7.6 million. This deficit risked a reduction in the state public defender staff and limitations on the availability of public defenders to parents in the CPS system.<sup>516</sup> As a last resort to avoid public defender layoffs, Minnesota Governor Pawlenty agreed that the deficit would be made up in the next session of the legislature. As one attorney noted, funding cuts at the state level, if not remedied, would result in some parents not receiving a public defender in cases that could end with the termination of their parental rights.<sup>517</sup> Any funding deficit in the area of public defense will affect all parents in the CPS system but may have a greater impact on immigrant parents who are trying to navigate a legal system that may be completely foreign to them.<sup>518</sup>

#### ***D. Lack of Coordination between Court Proceedings***

Interviewees reported that CPS workers and juvenile courts too often do not coordinate effectively with the criminal courts and OFP process during the CHIPS process.<sup>519</sup> For example, one advocate reported that at the initial CHIPS hearing of one immigrant mother, the abusive husband appeared with a lawyer. The immigrant mother could not appear because she was in jail, and the juvenile court holding the CHIPS hearing was not made aware of this fact.<sup>520</sup>

The interaction between civil courts adjudicating OFPs and juvenile court judges is also often inadequate. Often a woman will obtain an OFP and CPS receives a report from the police that the abuser was on the premises (to provide child care or funding). CPS then seeks the removal of the children. As a result, the woman may lose credibility before CPS and may be held

---

<sup>513</sup> Hennepin County Budget 2004: Program Information, available at [http://www.co.hennepin.mn.us/vgn/portal/internet/hcdetailmaster/0,2300,1273\\_1722\\_105680841,00.html](http://www.co.hennepin.mn.us/vgn/portal/internet/hcdetailmaster/0,2300,1273_1722_105680841,00.html).

<sup>514</sup> Interview dated August 27, 2003.

<sup>515</sup> Kutty, *supra* note 432.

<sup>516</sup> Minnesota Public Radio, *Pawlenty agrees to fix city aid glitch, defender budget* (July 22, 2004). The Minnesota Supreme Court in February 2004 struck down a law that would have allowed the Minnesota Board of Public Defense to charge co-pays to clients to make up this \$7.6 million deficit.

<sup>517</sup> Interview dated August 17, 2004; see James Baille, *Our Public Defender System: A Funding Crisis*, *Bench & Bar of Minnesota*, Vol. 61, No. 2, February 2004.

<sup>518</sup> Interview dated August 17, 2004.

<sup>519</sup> See Kutty, *supra* note 432.

<sup>520</sup> Interview dated May 20, 2004.

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

accountable for harming her children.<sup>521</sup> For many battered immigrant women, removing the father is often not feasible financially and may spark increased violence. The OFP process can be a trap in which the woman loses everything, including her children.

Attorneys also reported that, in support of an argument that a child has been maltreated, CPS offers to the juvenile court testimony provided in OFP hearings.<sup>522</sup> Testimony and affidavits from OFP hearings are being used by CPS to demonstrate that the children witnessed domestic violence and are thus in need of CPS. This practice may result in a victim being held accountable for the existence of violence rather than the abuser, a result that contravenes the purpose of the OFP.

Finally, the poor interaction between juvenile courts and other court systems has permitted abusive fathers to manipulate the CPS in retaliation for the mother obtaining an OFP.<sup>523</sup> In one case, the abuser filed a complaint of child abuse against the mother of his children. CPS investigated the charge at the mother's home, and continued their investigation in spite of the fact that they did not find any evidence to support the complaint. The victim remarked that CPS found the abuser's complaint credible even though they were aware that an OFP was in effect against him. The mother is now subject to periodic investigation by CPS. She reported feeling frustrated that her abuser has been able to use the CPS system to further control her. The mother said, "if I didn't do the OFP, then maybe [CPS] would not be coming to my house." She reported that accessing the system has exposed her to CPS and has ultimately hurt her. She said she fears losing her children everyday.<sup>524</sup>

---

<sup>521</sup> Interview dated August 21, 2003.

<sup>522</sup> *Id.*

<sup>523</sup> Interview dated December 2, 2003.

<sup>524</sup> *Id.*

## **VI. Federal Immigration Law and Authorities**

### **A. Introduction**

Research shows that abusers often use immigration status as a weapon in their abuse of their immigrant spouses, fiancées and intimate partners.<sup>525</sup> An abuser may threaten to have his immigrant spouse, fiancée or intimate partner or her children deported; may refuse to sign or file immigration or social services papers on her behalf; or may use the victim's immigration status in a custody battle. In addition, an abuser may hide or destroy his spouse's, fiancée's or intimate partner's passport, visa and other important papers that are necessary to support any application for immigration status or to return to her home country. In this way, abusers have used the government's requirements relating to the filing of immigration applications and its power to deport non-citizens as a weapon against their intimate partners. To the extent that the government fails to address this form of abuse, the government may be complicit in depriving immigrant women of lives free of violence in violation of its obligations under international human rights law to protect the rights to life and security of person.

In response to lobbying by advocates on behalf of battered immigrant women, the U.S. government has passed positive legislative measures over the last ten years. These changes have made immigration relief available to many immigrant survivors of domestic violence. An immigrant woman who has been abused by a U.S. citizen or resident husband may now be eligible to self-petition for immigration status under the Immigration and Nationality Act as amended by the 1994 Violence Against Women Act, and as amended in 2000 ("VAWA")<sup>526</sup> or

---

<sup>525</sup> Leslye E. Orloff & Rachel Little, *Somewhere to Turn: Making Domestic Violence Services Accessible to Battered Immigrant Women* (1999), available at [www.vawnet.org](http://www.vawnet.org).

<sup>526</sup> Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (1952)(hereinafter INA); INA §§ 204, 212, 216, 237 as amended by the Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902-55 (1994) (hereinafter VAWA). VAWA, as amended, is due for reauthorization in 2005. To be eligible for immigration status under VAWA, a victim of domestic abuse must (1) be legally married to the U.S. citizen or lawful permanent resident batterer. A self-petition may be filed if the marriage was terminated by the abusive spouse's death within the two years prior to filing. A self-petition may also be filed if the marriage to the abusive spouse was terminated, within the two years prior to filing, by divorce related to the abuse; (2) have been battered or subjected to extreme cruelty in the United States unless the abusive spouse is an employee of the U.S. government or a member of the uniformed services of the U.S.; (3) have been battered or subjected to extreme cruelty during the marriage, or must be the parent of a child who was battered or subjected to extreme cruelty by the U.S. citizen or lawful permanent resident spouse during the marriage; (4) be a person of good moral character; and (5) have entered into the marriage in good faith, not solely to obtain an immigration benefit.

The immigration provisions of VAWA were designed to remedy then-existing laws, which conditioned immigrant women's status in the U.S. on their spouses' assistance, a situation intolerable for battered women. The Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009-579 (1996) (IIRIRA) addresses some of the gaps that remained in VAWA and strengthened the protections available to women. For example, IIRIRA prohibits USCIS officers from relying solely on information submitted by an abuser in making an adverse determination concerning a self-petitioner, and requires officers to obtain independent corroboration of an abuser's information. IIRIRA also prohibits the disclosure of the applicant's information and provides for sanctions for such disclosure. See generally Leslye E. Orloff & Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses*, 10 Am. U. J. Gender Soc. Pol'y & L. 95, 119-120 (2001). Although IIRIRA contained a number of restrictions for immigrants, it did exempt VAWA

the 2000 Victims of Trafficking and Violence Protection Act (“VTVPA”).<sup>527</sup> Recent changes in immigration law also take into account the dynamics of domestic violence by providing relief to certain immigrant victims who are in removal (deportation) proceedings.<sup>528</sup> Relief may also be available to those petitioning for removal of their conditional permanent resident status in the U.S. Many immigrant women receive this conditional status in connection with an application that is supported by their U.S. citizen or permanent resident spouse. Unless they apply for relief under VAWA, these women must file with the support of their spouse a petition to remove the condition on their residency during a 90-day period before the second anniversary of the conditional grant of lawful permanent residence.<sup>529</sup>

Despite these positive changes to the laws, immigration attorneys reported problems in the implementation of VAWA and the VTVPA and in the conduct of the immigration authorities<sup>530</sup> in proceedings involving battered immigrant women. As discussed below, interviewees reported that a significant number of battered women are excluded from immigration relief under VAWA and the VTVPA. They also may encounter a lengthy self-petitioning process, a failure by county authorities to recognize their rights to public benefits under VAWA and a failure by immigration authorities to respect their confidentiality obligations. In addition, not all immigration authorities

---

self-petitioners from some of those provisions, such as the three- and ten-year unlawful presence bars and the bar on admissibility of individuals who entered the U.S. without INS authorization. IIRIRA § 301(b)(1); *see also* Orloff & Kaguyutan, 10 Am. U. J. Gender Soc. Pol’y & L. at 119; IIRIRA at (c)(1).

VAWA was further amended in 2000 by the Victims of Trafficking and Violence Prevention Act to address some of the problems that remained from the 1994 legislation. *See generally* Deanna Kwong, *Removing Barriers for Battered Immigrant Women: A Comparison of Immigrant Protections Under VAWA I & II*, 17 Berkeley Women’s L.J. 137, 145-148 (2002) (discussing amendments to VAWA). The changes described in this memo are changes to the self-petitioning procedure. Similar amendments were made to cancellation of removal procedures. *See* Gail Pendelton & Ann Block, *Applications for Immigration Status Under the Violence Against Women Act*, 1 Immigration & Nationality Law Handbook 436, 438 (2001). For example, the VTVPA allowed women to self-petition even if their spouses had divorced them or had lost their status as a permanent resident. The VTVPA created an exception to the rule that convictions for certain crimes rendered an alien inadmissible; under the amendment, crimes connected to domestic violence would not prevent admission. The VTVPA allowed battered immigrants with approved self-petitions to adjust status in the U.S., rather than forcing them to return to their country of origin and reenter the US.

<sup>527</sup> INA §§ 204, 240, as amended or added by the Victims of Trafficking and Violence Protection Act Pub. L. No. 106-386, (2000). (VTVPA).

<sup>528</sup> Prior to 1996, removal proceedings were referred to as exclusion proceedings or deportation proceedings depending on the circumstances of an alien’s detection or apprehension. Now all proceedings to remove an alien from the United States are referred to as removal proceedings. *See* INA § 240.

<sup>529</sup> This requirement was established as a part of the Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, 100 Stat. 3537 (codified as amended at INA § 216).

<sup>530</sup> The immigration authorities are now included as a part of the Department of Homeland Security and the Department of Justice. Immigration judges of the Department of Justice’s Executive Office for Immigration Review handle, among other matters, removal (deportation) proceedings. The investigative and legal officers of the United States Immigration and Customs Enforcement (a branch of the Department of Homeland Security) investigate and initiate removal (deportation) proceedings against undocumented immigrants and other removable aliens. The officers and attorneys of the United States Citizenship and Immigration Services (a branch of the Department of Homeland Security) adjudicate various applications related to immigration status whether at the Nebraska and Vermont Service Centers or at the local St. Paul/Minneapolis District Office (SPM District Office), which is located in Bloomington, Minnesota.



adjudicating immigration relief under VAWA and the VTVPA have had training concerning the dynamics of domestic violence. Also, in some instances certain immigration authorities have interfered with the adjudication of factual issues by the immigration officials at the Vermont Service Center (VSC) who have received such training. Language barriers and fear of deportation have also created significant barriers for battered immigrant women in connection with immigration matters. Finally, certain immigration provisions of VAWA that make domestic violence a removable (deportable) offense have exacerbated fears of battered immigrant women that they or their financially-supportive partners will be deported.

One immigration attorney reported that it is necessary to educate immigration judges and other attorneys regarding VAWA and U-visa interim relief.<sup>531</sup> Another attorney reported that she was forced to educate the immigration judge that the issue of violence underlying the approval of a VAWA self-petition should not be readjudicated in connection with removal (deportation) proceedings.<sup>532</sup>

### *Relief for Battered Immigrant Women under Immigration Law*

VAWA amends the Immigration and Nationality Act to give certain battered immigrants the ability to petition for lawful permanent resident status without the support of their spouses (for which support is usually required). All “self-petitions,” including those filed by battered immigrants in Minnesota, are reviewed by the VSC. VSC is a center of the United States Citizenship and Immigration Services (USCIS) that is staffed with immigration officers, most of whom have received training about domestic violence.<sup>533</sup> A self-petitioner becomes eligible to receive public assistance when she receives a notice from USCIS acknowledging that her petition contains sufficient evidence to make a *prima facie* case for eligibility for permanent residency status under VAWA.<sup>534</sup> Once a VAWA self-petition is approved, a self-petitioner is eligible to apply for employment authorization.<sup>535</sup>

---

<sup>531</sup> Interview dated March 8, 2004.

<sup>532</sup> Interview dated September 9, 2003.

<sup>533</sup> The Vermont Service Center has approved the majority of applicant’s petitions. (Interviews dated June 10, 2003; July 7, 2003; and March 22, 2004). As of 2000, the Center had approved over 6500 self-petitions. Sudha Shetty and Janice Kaguyutan, *Immigrant Victims of Domestic Violence: Cultural Challenges and Available Legal Protections* (February 2002) (citing Strack B, Acting INS Executive Associate Commissioner), available through National Electronic Network on Violence Against Women at [http://www.vawnet.org/DomesticViolence/Research/VAWnetDocs/AR\\_immigrant.pdf](http://www.vawnet.org/DomesticViolence/Research/VAWnetDocs/AR_immigrant.pdf). In 2003, the Center approved 1,291 self-petitions for immigration status under the VAWA, on the basis of which approval the self-petitioners adjusted to legal permanent residency status. 2003 Yearbook of Immigration Statistics, Office of Immigration Statistics, Department of Homeland Security 24 (September 2004).

<sup>534</sup> In accordance with 8 C.F.R. Part 204 § 2 (c)(6), “a *prima facie* case is established only if the petitioner submits a completed [self-petition on] Form I-360 and other evidence supporting all of the elements of a self-petition in the paragraph (c) (1) of this section.” In other words, a petitioner must submit testimony or other evidence that meets the elements required to obtain immigration status under VAWA described in note 2 above.

<sup>535</sup> See CFR § 274a.12(c) (9)-(14). VAWA self-petitioners typically become eligible for employment authorization upon approval of the self-petition because grants of deferred action (deferral of removal) and the attendant eligibility for employment authorization are included in the notice of approval. See Gail Pendelton & Ann Block, *Applications for Immigration Status Under the Violence Against Women Act*, 1 IMMIGRATION & NATIONALITY LAW HANDBOOK 436, 449 (2001). Effective December 1, 2004, USCIS issued new guidance requiring VAWA self-petitioners and

**Vermont Service Center Provides Immigration Relief to Battered Women As Intended under the Violence Against Women Act**

All “self-petitions” for immigration status under the Violence Against Women Act (VAWA), including those filed by battered immigrants in Minnesota, are reviewed by the Vermont Service Center (VSC), an office of the U.S. Citizenship and Immigration Services (USCIS) that was created in March 1996. The Center is staffed with immigration officers trained in the dynamics of domestic violence. Several legal professionals reported that generally, the VSC is operating well, and is “fairly evenhanded” in its adjudication of self-petitions made by immigrant women in Minnesota. An immigration attorney noted that the VSC “operates under the assumption that the woman is telling the truth rather than the assumption that the applicant is lying.” Another attorney noted that the Center provides a hotline service for self-petitioners filling out their petition. In addition, immigration attorneys report that, in accordance with federal immigration law, VAWA self-petitioners who are denied relief by the VSC are not referred to the immigration authorities for removal (see Immigration and Naturalization Service Memorandum regarding Non-Disclosure and Other Prohibitions Related to Battered Aliens: IIRIRA Section 384 (5 May 1997)). (Quotations from interviews dated June 18, 2003, September 9, 2003, and October 6, 2004).

A 1990 amendment to the Immigration and Nationality Act (INA) grants battered spouses the ability to apply for a waiver of the joint filing requirement for removal of conditions to permanent residency in the United States.<sup>536</sup> This relief benefits battered women who have already received conditional permanent residency status on the basis of an initial application that was filed with the support of a spouse. These women would generally need to apply to remove these conditions with the support of their spouse during the 90-day period preceding the second anniversary of being granted conditional lawful permanent residence.<sup>537</sup> This waiver, if granted, enables the immigrant victim of domestic violence to remove all conditions to her status and to obtain permanent residency without the assistance of her abuser. In Minnesota, the waiver applicant files her petition with the Nebraska Service Center, which generally refers waiver adjudication to the USCIS St. Paul/Minneapolis District Office (SPM District Office, the office in Bloomington, Minnesota that handles interviews for adjustment to permanent residency status, or “green card” interviews). Officers at SPM District Office do not have particularized training to adjudicate domestic violence related immigration relief in the same manner as USCIS officers at the VSC. Nevertheless, these officers are adjudicating the waiver of the joint-petition requirement discussed above, which involves an investigation concerning the existence of

---

U-visa interim-relief applicants to file applications for employment authorization at a new Chicago office rather than with the Vermont Service Center which was previously designated to receive these applications. Advocates for battered immigrant women are currently expressing their concerns to USCIS about how this policy may negatively affect clients. USCIS employees at the new Chicago office are not likely to have the training that enables many Vermont Service Center officers to handle applications from battered immigrant women in a sensitive way.

<sup>536</sup> INA § 216(c)(4)(C), (as amended by Pub. L. No. 101-649, 104 Stat. 4978(1990)). Applicants for this waiver must have experienced battering or extreme cruelty.

<sup>537</sup> This requirement was established as a part of the Immigration Marriage Fraud Amendments, Pub. L. No. 99-639, 100 Stat. 3537 (1986) (codified as amended at INA § 216).

domestic violence that is similar to the investigation of VAWA self-petitions handled by the VSC.

The immigration provisions of VAWA also provide relief to immigrant spouses of U.S. citizens and permanent residents who are in removal (deportation) proceedings. VAWA makes it possible for the judge to cancel such removal because of the domestic abuse the immigrant spouse has suffered. The spouse may also adjust to permanent residency status inside the U.S. In 2003, 110 individuals benefited from this form of immigration relief across the United States.<sup>538</sup> One battered immigrant women reported that she was treated fairly by the immigration judge adjudicating her case.<sup>539</sup> She praised the judge for spending six hours evaluating her case.<sup>540</sup>

Finally, VAWA amended the INA to provide that perpetrators of crimes of domestic violence or people who violate Orders for Protection (OFPs) are included among the “classes of deportable aliens.”<sup>541</sup> These provisions are controversial because they have exacerbated fears of deportation on the part of battered women. Around the country, they have resulted in the removal (deportation) of abusers (whether charged with domestic violence or disorderly conduct) as well as some domestic violence victims who committed assault in response to abuse. Note that in response to this controversy, the Violence Against Women Act 2000 authorizes the Attorney General to waive removal of battered immigrant women who have been charged with a domestic violence offense and who were not the primary aggressor.<sup>542</sup>

Under the VTVPA, an immigrant victim of domestic violence or similar crime may apply for a U-visa. Under the terms of this visa, an eligible immigrant victim may quickly obtain work permission and later have the opportunity to obtain lawful immigration status. To qualify for this visa, the immigrant victim must have suffered substantial physical or mental abuse and must have cooperated or be cooperating with a government official in investigation or prosecution of

---

<sup>538</sup> Office of Immigration Statistics, Department of Homeland Security, 2003 Yearbook of Immigration Statistics, 25 (September 2004).

<sup>539</sup> Interview dated September 2, 2004.

<sup>540</sup> *Id.*

<sup>541</sup> INA § 237 (a)(2) E. This provision provides that, “the term ‘crime of domestic violence’ means any crime of violence (as defined in 18U.S.C. § 16) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual’s acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government.” INA § 237 (a)(2)(E) (ii) provides that an alien is deportable if he or she is “enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable. For purposes of this clause, the term “protection order” means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a *pendente lite* order in another proceeding.”

<sup>542</sup> INA § 237 (a)(7).

this abuse.<sup>543</sup> One major disadvantage of the U-visa application is that upon rejection of the application for interim relief, the applicant receives no protection from referral to Immigration and Custom Enforcement (ICE) and placement in removal (deportation) proceedings.<sup>544</sup>

Immigration attorneys emphasized the need for continuing legal education for immigration attorneys and judges on issues relating to immigration relief under these acts and domestic violence generally.

### ***B. Eligibility for Immigration Relief***

Interviewees noted that many domestic violence survivors are excluded from eligibility for VAWA relief even though their abusers are using the victims' immigration status as a weapon in their abuse. Immigration attorneys expressed frustration that they have been unable to assist domestic violence survivors in applying for immigration status when they are unmarried or married in cultural ceremonies.

For example, the eligibility requirements for VAWA relief exclude immigrants who enter the U.S. on a fiancée visa and are not yet married.<sup>545</sup> One immigration attorney explained that there is nothing she can do to help many of her clients who are "mail order brides" from Russia.<sup>546</sup> There is no relief under VAWA for an abused immigrant who arrived in the U.S. on a fiancée visa but is not yet married. In these circumstances, an abuser can continue to use his fiancée's immigration status and her need for his support as a weapon in his abuse against her. Another immigration attorney noted that, if a woman arrives on a fiancée visa, does not marry her sponsor, but then marries another individual, the woman must leave the country to adjust her immigration status. In this case, she may risk receiving a three or ten year unlawful presence bar to entry in the U.S.<sup>547</sup> if she has overstayed her fiancée visa for more than six months.<sup>548</sup> Some women who come to the United States as fiancées or "mail-order brides" may be eligible to apply for U-visa interim relief as described above, but they may be reluctant to cooperate with law enforcement authorities and risk referral to ICE for removal (deportation).

---

<sup>543</sup> The regulations implementing the new non-immigrant "U" visas have not yet been promulgated. In the meantime, the Department of Homeland Security has issued guidance memos to USCIS in adjudicating "U-visa" interim relief (relief pending the issuance of implementing regulations). The interim relief provides that no one should be removed from the U.S. until they have had the opportunity to avail themselves of the provisions of the VTVPA and requires that immigration authorities defer any negative action (i.e. removal) against U-visa applicants who have received a *prima facie* determination notice. U.S. Department of Justice, Immigration and Naturalization Service, Memorandum, "Victims of Trafficking and Violence Protection Act of 2000 Policy Memorandum #2 – "T" and "U" Nonimmigrant Visas," (2001).

<sup>544</sup> Interview dated March 22, 2004.

<sup>545</sup> INA §§ 204, 212, 216, 237 (as amended by the Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902-55 (1994)).

<sup>546</sup> Interview dated August 5, 2003.

<sup>547</sup> Under the IIRIRA (amending INA § 212 (a)(9)), an individual on a temporary visa (work, fiancée, or other temporary status) may be barred from the U.S. for periods of three or ten years if he or she is unlawfully present in the U.S. for a period of time (e.g., he or she remains in the U.S. past the date on which his or her visa expires).

<sup>548</sup> Interview dated May 28, 2003.

In addition, private and government attorneys reported that some battered immigrant women have “fallen through the cracks.” These women either have a prior removal (deportation) order or they live with an abuser who is not their husband under civil law.<sup>549</sup> These battered women are excluded from eligibility for immigration status under VAWA.<sup>550</sup> In particular, women who were married in customary or religious ceremonies (but not a civil proceeding) often have difficulty qualifying for immigration relief under VAWA because of evidentiary hurdles.<sup>551</sup> One VAWA self-petitioner reported that the VSC has not yet approved her petition (filed in 2002) because she married in a religious ceremony in Kenya and has no evidence of the existence of the marriage.<sup>552</sup> The immigration authorities told her that they need her husband’s documentation or testimony to corroborate her story about the marriage and to prove that her son is also his son. As a result, she is unable to obtain work authorization or a Social Security card and must live in shelter housing. She is not able to go to school or work until she obtains immigration status.

Finally, spouses of abusive student-visa holders are also excluded from eligibility for immigration relief under VAWA, even though their spouses may be using their immigration status as a weapon against them. One immigration attorney explained that at least two women married to foreign students sought legal representation to apply for relief under VAWA. Because of these gaps in the law, the attorney could not help them.<sup>553</sup>

### ***C. Adjudication of Immigration Relief and Employment Authorization Requirements***

Several attorneys reported that VAWA self-petition adjudication delays at the VSC result in economic and emotional hardship for VAWA self-petitioners and their children. Delays make it difficult for self-petitioners to establish safe homes for themselves and their children independent of their abusers. Economic hardship results in part from the provision of VAWA that requires a self-petitioner’s application to be approved before the self-petitioner becomes eligible to apply for employment authorization.<sup>554</sup>

---

<sup>549</sup> Interviews dated June 10, 2003, December 18, 2003, and March 22, 2004.

<sup>550</sup> INA §§ 204, 212, 216, 237 (as amended by the Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902-55 (1994)).

<sup>551</sup> Interview dated December 3, 2004. The evidentiary requirements for submission of a self-petition under the Violence Against Women Act are set out in 8 C.F.R. § 204.2 (C). Under these requirements, a self-petitioner must establish the legal status of the marriage. The regulation states, as follows: “The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition. The self-petitioner’s remarriage, however, will be a basis for the denial of a pending self-petition.”

<sup>552</sup> Interview dated December 3, 2004.

<sup>553</sup> Interview dated September 30, 2004.

<sup>554</sup> INA §§ 204, 212, 216, 237 (as amended by the Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902-55 (1994)).

Typically, adjudication of a VAWA self-petition takes between nine months and more than a year.<sup>555</sup> Three months following submission of their applications, VAWA self-petitioners usually receive a notice that they have provided evidence that addresses each of the requirements of their petition.<sup>556</sup> The receipt of this notice, called a *prima facie* determination notice, makes the recipient (and perhaps any children also included on the petition) eligible for certain public benefits. See the section entitled, “Federal and State Public Assistance,” for more information concerning these benefits. VAWA self-petitioners usually must file for several six-month extensions of the *prima facie* determination notice to maintain their public benefits status while the VAWA self-petition is adjudicated.<sup>557</sup> Adjustment to permanent residency status currently takes an additional one to two years following approval of the VAWA self-petition.<sup>558</sup> Immigration attorneys are permitted to request that a client’s VAWA self-petition be expedited for good cause, such as a medical, safety, or other emergency. Nevertheless, immigration attorneys reported that the immigration authorities have not established clear rules concerning the circumstances in which they would honor such a request.<sup>559</sup> And while this tool may be available to immigration attorneys, there is no clear channel for a *pro se* applicant (a self-petitioner who files for immigration status without the assistance of an attorney) to request that her case be expedited.

### **U.S. Citizenship and Immigration Services Extend Validity of *Prima Facie* Determination Notices**

United States Citizenship and Immigration Services (USCIS) has taken some steps to address the hardship that battered immigrant women may face as a result of the lengthy (6 months to a year) process to adjudicate their self-petitions for immigration status filed under the Violence Against Women Act. USCIS has extended the validity of *prima facie* notices issued by the VSC from 150 days to 180 days and made possible extensions of up to 180 days. The VSC issues *prima facie* notices to those petitioners who have provided evidence in their petition that addresses each of the required elements for immigration status under VAWA. Receipt of a *prima facie* notice entitles the petitioner to certain public assistance. See the section of this report entitled, “Federal and State Public Assistance,” for more information about the assistance provided to battered immigrant women. The extension of the validity of the *prima facie* notices will enable more self-petitioners to receive public assistance under the original *prima facie* notice throughout the self-petition adjudication process.

U.S. Citizenship and Immigration Services, Interoffice Memorandum HQOPRD 70/8.1/8.2, Extension of Validity Period for Notices of *Prima facie* Case Issued in Connection with a Form I-360 Filed by a Self-Petitioning Battered Spouse/Child, 8 April 2004.

<sup>555</sup> Interviews dated June 10, 2003 and July 22, 2003. The Vermont Service Center has recently made changes in an attempt to reduce the length of the process to six months. Interview dated October 29, 2004.

<sup>556</sup> Interview dated June 10, 2003.

<sup>557</sup> Interview dated August 8, 2003.

<sup>558</sup> Interview dated September 30, 2004.

<sup>559</sup> Correspondence with interviewee dated November 18, 2004.

VAWA self-petitioners are not able to apply for employment authorization until the VSC approves their self-petitions, which typically takes at least one year from the date of submission.<sup>560</sup> This requirement together with the length of the VAWA self-petition process can create undue financial hardship for the self-petitioner and prolong her social isolation and dependence on her abuser. Interviewees noted that, in addition, employment authorizations are required for immigrant women to obtain Social Security cards. While it is true that a VAWA self-petitioner will likely be eligible for public assistance prior to receiving approval of her self-petition, any public assistance she receives may support the immigration authorities in an attempt to bar her from receiving permanent residency status in the U.S. on the grounds that she is a “public charge.”<sup>561</sup>

By contrast, employment authorization applications may be filed contemporaneously with U-visa interim relief applications, and are usually granted within three months of filing the application.<sup>562</sup> This system has worked well for battered immigrant women who qualify for the U-visa form of immigration relief.

Procedural mistakes on the part of USCIS have also contributed to the length of the VAWA self-petition process. In one example, USCIS lost documents that a client had submitted in connection with a VAWA self-petition, resulting in a further delay in the adjudication of the VAWA self-petition and adjustment of status.<sup>563</sup> In another case, an attorney reported that USCIS improperly considered information from the batterer, a U.S. citizen husband, through the *Guardian Ad Litem* (GAL) for the children in a state case relating to child custody.<sup>564</sup> As a result, the woman had to submit another large packet of information to refute the information provided by the GAL, causing a long delay in the process. Ultimately, the woman obtained legal immigration status.

#### ***D. Implementation of Immigration Relief in the Violence Against Women Act***

Interviewees reported that immigration and county authorities have failed to comply with certain provisions of VAWA that promote the safety and financial stability of battered immigrant women and their children. These provisions require that immigration authorities keep confidential the victim’s contact information and application. They also make VAWA self-

---

<sup>560</sup> Interview dated March 8, 2004.

<sup>561</sup> The Women Immigrants Safe Harbor Act (WISH) endorsed by the National Immigration Law Center and Legal Momentum, if passed, would exempt self-petitioners under VAWA and U-visa applicants from the public charge test applied when they apply for permanent residency status in the United States. For more information about WISH, please see the website of the National Immigration Law Center at [http://www.nilc.org/immspbs/cdev/wish/WISH\\_Sec-by-Sec\\_4-04.pdf](http://www.nilc.org/immspbs/cdev/wish/WISH_Sec-by-Sec_4-04.pdf).

<sup>562</sup> *Id.*

<sup>563</sup> Interview dated July 22, 2003.

<sup>564</sup> Interview dated June 10, 2003. The IIRIRA prohibits the immigration authorities from relying solely on information submitted by an abuser in making adverse determination concerning a self-petitioner, and requires them to obtain independent corroboration of any information provided by an abuser.

petitioners eligible for public assistance if they have received a *prima facie* determination notice.<sup>565</sup>

Government workers, immigration attorneys and advocates reported that in some cases, county financial assistance offices in Minnesota have not recognized *prima facie* determination notice recipients as eligible for public benefits in accordance with federal law.<sup>566</sup> VAWA guarantees that those self-petitioners who receive a *prima facie* determination notice (a notice that they have supplied information addressing each VAWA eligibility requirement for receiving immigration status) will receive certain public benefits.<sup>567</sup> Often advocates and attorneys for VAWA self-petitioners must appeal to several financial assistance supervisors before the agency recognizes the clients' eligibility for benefits, resulting in delays in the receipt of assistance. For more information about this county failure to comply with federal law, please see the section entitled "Federal and State Public Assistance."

Immigration authorities have compromised the safety of battered immigrant women by failing to respond to change in address notifications. An immigration lawyer reported that, in one case, the USCIS St. Paul/Minneapolis district office (SPM District Office) "did not respond to a woman's multiple change of address notifications, and the office continued to send correspondence to her abuser." (She had submitted a petition to the USCIS Nebraska Service Center to remove the conditions on her residency and to waive the joint-filing requirement based on the abuse she had experienced.)<sup>568</sup> In this case, the SPM District Office may have breached confidentiality obligations it is assigned under federal immigration law.<sup>569</sup> These obligations provide that in no case may any USCIS employee "permit use by or disclosure to anyone...of any information which relates to an alien who is the beneficiary of an application for relief" under VAWA. The mailing of correspondence to the woman's abuser in this case resulted in a dangerous situation for the petitioner. Her abuser became aware of her application for immigration status filed without his support, documenting his abuse.

### ***E. Adjudication or Review Conducted by Immigration Authorities***

Interviews revealed that SPM District Office officers and government attorneys who have not been trained about domestic violence are reviewing or adjudicating domestic violence related issues in connection with immigration status applications of battered immigrant woman (e.g., VAWA self-petitions). As a result, these women often experience repeated scrutiny of the existence of domestic violence in their lives. In addition, this practice often violates policies established by the USCIS.

---

<sup>565</sup> In accordance with 8 CFR Part 204 § 2 (c)(6), "a *prima facie* case is established only if the petitioner submits a completed [self-petition on] Form I-360 and other evidence supporting all of the elements of a self-petitioner in the paragraph (c) (1) of this section." In other words, a petitioner must submit testimony or other evidence that meets the elements required to obtain immigration status under VAWA described in note 526 above.

<sup>566</sup> Interviews dated June 18, 2003, August 8, 2003, and February 13, 2004.

<sup>567</sup> INA §§ 204, 212, 216, 237 (as amended by the Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902-55 (1994)).

<sup>568</sup> Interview dated July 7, 2003.

<sup>569</sup> IIRIRA § 384 (1996)(amending the Violence Against Women Act); see Immigration and Naturalization Service Memorandum, Non-Disclosure and Other Prohibitions Related to Battered Aliens: IIRIRA § 384 (May 5, 1997).



*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

Interviewees reported that (with the exception of the VSC) limited funding results in the immigration authorities receiving little or no training on VAWA, U-visas, or the psychological impact of domestic violence.<sup>570</sup> As a result, many immigration authorities are not sufficiently trained to evaluate certain evidentiary matters relating to domestic violence and immigration applications that relate to this violence.

Interviewees reported that the USCIS Nebraska Service Center and the SPM District Office are insensitive in handling requests for waiver of joint petitions to lift conditional legal permanent residency status due to battering or extreme cruelty.<sup>571</sup> One attorney complained that the offices know “nothing about domestic violence” and, as a result, battered immigrant women may have a difficult time obtaining the waiver of the joint-petition requirement.<sup>572</sup> Another attorney explained that there is a disparity in the treatment of domestic violence victims by VSC and by other parts of USCIS, including the Nebraska Service Center and the SPM District Office.<sup>573</sup> One immigration attorney reported, “USCIS sometimes ‘gets it’ when it comes to abuse, but so often, that’s not a consistent experience...[A]ttorneys can often ‘get loud’ and problem solve but it’s hard to imagine clients being able to adequately vocalize inequitable treatment on their own without an advocate to amplify those concerns.”<sup>574</sup>

One attorney described an example of such inequitable treatment in a case in which several petitions for the domestic violence waiver filed with the Nebraska Service Center three years ago were lost in transit between the Nebraska Service Center and the SPM District Office.<sup>575</sup> Inquiries into the status of these petitions were met with responses that the petitions were still pending. (By contrast, the VSC responds to such status inquiries promptly via a hotline.) When the petitions were located, interviews were scheduled and the SPM District Office officers inquired into why submitted medical reports were so old, why an abuse victim was still seeing her abusive husband and why a survivor of violence had not yet divorced her abuser. In fact, the latter had not filed for divorce because the petition was pending. A divorce subsequent to filing her application might have meant a further delay in removing conditions to her permanent residency status or a referral to removal (deportation) court. She might have had to withdraw her pending petition and file a petition for a waiver of the joint filing requirement based on the divorce.<sup>576</sup> This mistreatment of battered immigrant women has resulted in a delay of more than two years in the removal of conditions to their permanent resident status.

---

<sup>570</sup> One government attorney acknowledged that training of this kind would be useful. Interview dated December 18, 2003.

<sup>571</sup> INA § 216(c)(4)(C), (as amended by Pub. L. No. 101-649, 104 Stat. 4978 (1990)). This waiver is available to individuals and their children who have been battered or subject to extreme cruelty by their spouses. Evidence of the abuse may come from official records of police, medical professionals or schools, or affidavits as to the facts of the abuse. See USCIS Form I-751 Instructions (Rev. 04/30/04). Interview dated June 10, 2003.

<sup>572</sup> Interview dated June 10, 2003.

<sup>573</sup> Interview dated July 7, 2003.

<sup>574</sup> Correspondence with interviewee dated November 18, 2004.

<sup>575</sup> Interview dated October 6, 2003.

<sup>576</sup> In the end, this woman’s petition was approved two weeks following the interview that was delayed by two years. *Id.*

Immigration attorneys also reported that the Office of Chief Counsel and the USCIS SPM District Office (both in Bloomington, Minnesota) have unnecessarily subjected battered immigrant women to review of domestic violence issues already adjudicated by the VSC in connection with VAWA self-petitions.<sup>577</sup> Immigration attorneys reported that the USCIS SPM District Office has, in some cases, made inquiries about domestic violence at a battered immigrant women's interview to gain permanent residency (adjustment of status) following the VSC's approval of her VAWA self-petition.<sup>578</sup> These inquiries result in repeated questioning of immigrant survivors of domestic violence about the facts of the violence following VSC's determination that domestic violence has occurred. The USCIS officers at the VSC are the appropriate authorities to determine this factual question, as they have the benefit of extensive training in domestic violence. A 2002 memorandum issued by the predecessor agency of USCIS<sup>579</sup> makes it clear that the VSC has staff with expertise on these issues and so should be the sole authority adjudicating the issues underlying a VAWA self-petition. Accordingly, it is inappropriate for the SPM District Office to review these issues when it has no such expertise. As one immigration attorney stated, "That is not [the SPM District Office's] role, that's why VSC is there."<sup>580</sup>

One interviewee reported that the Office of Chief Counsel tried to reexamine the abuse issue underlying a VAWA self-petition approval in a hearing before an immigration judge in connection with a USCIS denial of adjustment of status. The woman's lawyer objected and showed counsel the USCIS memorandum<sup>581</sup> demonstrating that review of the VSC's determination as to the existence of domestic violence is not appropriate. Another immigration attorney reported that the Office of Chief Counsel is using VAWA defensively in removal proceedings by challenging the VSC's self-petition determination. In one case, the attorney reported that the Office of Chief Counsel asked the immigration judge to reopen the VSC finding of violence (a determination underlying the approval of the VAWA self-petition). The attorney then informed immigration judges for the SPM District that the issue of violence must not be readjudicated.<sup>582</sup>

Interviewees also reported that the Office of Chief Counsel is too often asking the VSC to review their decision on issues relating to the existence of violence.<sup>583</sup> This practice is permitted by USCIS with proper documentation and supervisor approval.<sup>584</sup> Interviewees, however, were

---

<sup>577</sup> Interviews dated October 4, 2004 and December 18, 2003.

<sup>578</sup> Interview dated October 3, 2004.

<sup>579</sup> Office of the Executive Associate Commissioner, U.S. Department of Justice, Immigration and Naturalization Service Memorandum for Regional Directors on the Revocation of VAWA-Based Self-Petitions (I-360s) (August 5, 2002).

<sup>580</sup> Interview dated March 22, 2004.

<sup>581</sup> Office of the Executive Associate Commissioner, U.S. Department of Justice, Immigration and Naturalization Service Memorandum for Regional Directors on the Revocation of VAWA-Based Self-Petitions (I-360s) (August 5, 2002).

<sup>582</sup> Interview dated September 9, 2003.

<sup>583</sup> Interview dated May 28, 2003.

<sup>584</sup> Office of the Executive Associate Commissioner, U.S. Department of Justice, Immigration and Naturalization Service Memorandum for Regional Directors on the Revocation of VAWA-Based Self-Petitions (I-360s), (August 5, 2002).

concerned about the effect that its frequent use has on battered immigrant women and their ability to avail themselves of relief under VAWA. An interviewee reported that, in one case, the Office of Chief Counsel, suspicious of a VAWA self-petitioner seeking adjustment of status, requested that the VSC review its approval of a VAWA self-petition. VSC subsequently issued an intent to revoke its approval of the self-petition. A hearing was held on the issue of fraud in the VAWA self-petition based on an investigation conducted by the Office of Chief Counsel. Ultimately, the client did not appear for the hearing. The interviewee explained her belief that the abusive husband is sabotaging the case by threatening the client and encouraging her not to come to court.<sup>585</sup> As a result, the domestic violence victim's immigration status may be jeopardized.

**U-Visa Interim Relief—Adjudication Transferred to Officers at Vermont Service Center Who Receive Training in the Dynamics of Domestic Violence**

Interviewees reported that the USCIS transfer of adjudication of U-visa interim relief (based on an immigrant's status as a victim of battering or extreme cruelty) to the VSC in October 2003 has improved immigrant women's access to U-visa interim relief. With the October 8, 2003 Memorandum entitled, "Centralization of Interim Relief for U Nonimmigrant Status Applicants," USCIS (1) established guidance for the Vermont Service Center adjudicators in determining eligibility for interim relief and (2) permitted Vermont to make determinations about the immigration status of victims of battering or extreme cruelty as part of the interim relief in U-visa applications. This change will enable U-visa interim relief applications to be reviewed by immigration officials who are appropriately trained in domestic violence.

***F. Office of Chief Counsel***

Government and private attorneys reported that the Chief Counsel's office views VAWA self-petition approvals with suspicion of fraud.<sup>586</sup> One attorney explained that "[t]here is a hostility against VAWA in the local office."<sup>587</sup> As discussed below, this hostility or suspicion contributes to inappropriate investigation of VAWA self-petitioners and the use of VAWA against self-petitioners in removal proceedings.

One attorney reported that the Office of Chief Counsel has opposed petitions to continue or terminate removal proceedings. These petitions allow a domestic violence survivor the time to gather evidence, prepare, and file a VAWA self-petition or U-visa interim relief.<sup>588</sup> In one case, an attorney's client was in removal proceedings and the Office of Chief Counsel was unwilling to terminate proceedings to allow the client to obtain U-visa interim relief.<sup>589</sup> The attorney explained that a recent USCIS memorandum may assist this client. In a memorandum dated May 6, 2004 and in agreement with the ICE, USCIS sets out a clear procedure for dealing with

<sup>585</sup> Interview dated March 22, 2004.

<sup>586</sup> Interviews dated December 18, 2003 and June 18, 2003.

<sup>587</sup> Interview dated May 28, 2003.

<sup>588</sup> Interview dated March 22, 2004.

<sup>589</sup> *Id.*

requests for U-visa interim relief in removal proceedings. It gives the VSC the authority to decide the status of an immigrant requesting U-visa interim relief in removal proceedings. This development will enable immigration officers with expertise in evaluating domestic violence issues to make the determination as to U-visa interim relief applicants in removal proceedings. This is essential for those battered immigrant women who are not eligible for cancellation of removal under VAWA.

### ***G. Interaction between Immigration Authorities and Law Enforcement***

Widespread fear exists among undocumented battered immigrant women that the police and other government service providers will report them or their abusers to the immigration authorities. This fear, combined with the lack of knowledge about the availability of immigration relief through VAWA, deters many domestic violence victims from calling the police. (See the discussion about this fear in the Executive Summary to this report.) It is important to note that in the case of VAWA self-petitions, the VSC is instructed not to report self-petitioners to ICE, whether or not the self-petition is approved. By contrast, filing for U-visa interim relief does not preclude referral to ICE for investigation and possibly removal (deportation).<sup>590</sup> Immigration attorneys therefore remain wary about filing an application for U-Visa interim relief without strong evidence of domestic abuse and cooperation with law enforcement or prosecution.<sup>591</sup>

Minneapolis and St. Paul have addressed immigrants' fear of deportation by passing ordinances that restrict police from asking for immigration documents or about immigration status when providing law enforcement services. (See the text box discussion of these ordinances in the Executive Summary for more information about these policies.) Nevertheless, immigrants fear voluntary reporting on the part of police or other government service providers. Voluntary reporting is facilitated by Minnesota's new driver's license regulations that require that the expiration date of an immigrant's driver's license coincide with the expiration date of his visa or immigration status (rather than on the anniversary of his birthday).<sup>592</sup> This regulation effectively identifies immigrants to police.

Advocates, attorneys and government workers reported that the ICE assigns investigators to review jail rosters (lists of inmates) at Hennepin and Ramsey County jails. These investigators send case files to their local office to review whether to place an immigration hold on an individual (the beginning of the process by which ICE seeks to remove the individual from the United States).<sup>593</sup> This contact between ICE and county jails often leads to ICE placing immigration holds on individuals who have been arrested for misdemeanor offenses, including

---

<sup>590</sup> *Id.*

<sup>591</sup> Interview dated March 8, 2004.

<sup>592</sup> Minn. R. Part 7410.0410 Proof of Residency, Subparagraph 6 Lawful Short Term Admission Status. The Rule reads as follows: "If the lawful admission period indicated on the federal primary document presented expires in 30 days or more from the date of application for the state driver's license, permit, or identification card, the applicant shall be issued a driver's license, permit, or identification card with a status check date that coincides with the lawful admission period on the federal primary document presented."

<sup>593</sup> Interview dated December 18, 2003.

*The Government Response to Domestic Violence Against Refugee and Immigrant Women in the  
Minneapolis/St. Paul Metropolitan Area: A Human Rights Report  
December 10, 2004  
A Publication of Minnesota Advocates for Human Rights*

domestic violence misdemeanors, prior to their conviction for such offenses.<sup>594</sup> One advocate for battered immigrant women noted that such immigration holds eliminate any deterrent effect resulting from conviction under the Minnesota criminal justice system.<sup>595</sup> An immigrant who is deported prior to state criminal proceedings may return to Minnesota and repeat his abusive conduct without fear of the state criminal authorities.<sup>596</sup> In addition, the close relationship between ICE and the county jails may deter battered immigrant women from calling the police when they are victims of assault or OFP violations. A battered immigrant woman may also be fearful that an arrest may result in the placement of an immigration hold on her undocumented partner and financial supporter.

---

<sup>594</sup> Minnesota Advocates' concern relates to the removal of individuals who are charged (and not yet convicted) of misdemeanor domestic assault.

<sup>595</sup> Interview dated October 29, 2004.

<sup>596</sup> *Id.*

## **VII. Federal and State Public Assistance**

Interviews revealed that battered immigrant women who seek financial independence from their abusers through public assistance often encounter many obstacles. Although there are some legislatively-created exceptions for victims of violence to the stringent limitations placed on immigrants' access to public benefits, interviews revealed that, too frequently, those exceptions are not implemented according to the law. Even for those who might access such benefits, the continuously changing eligibility requirements, particularly with respect to non-citizens, make financial independence through public assistance very difficult. Without access to financial assistance, battered immigrant women face a serious risk to their human rights to security and safety because of their dependence on violent husbands or partners.

Battered immigrant women may be financially controlled by their abusers, or may depend on their abusers for economic support.<sup>597</sup> Battered immigrant women frequently have few options to attain economic independence. They may lack work authorization, and even if they can work, those who have limited English proficiency and few skills may find it difficult to obtain work at a wage sufficient to support their families. Other immigrant women may be skilled professionals in their home countries, but unable to practice their trade here due to different qualification requirements.

### ***A. Implementation of the Law***

Immigrant eligibility for public benefits has been significantly restricted through the enactment of legislation such as the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA").<sup>598</sup> These same laws, however, have created and strengthened exceptions for battered immigrant women that should allow them access to many of the public benefits needed to ensure their safety. Yet while these exceptions for battered women are both welcome and necessary, interviewees reported that effective implementation of these exceptions has been frustrated by a lack of understanding of the realities of immigrant women's lives, funding cuts, and inadequate training and oversight.

---

<sup>597</sup> See Richard Tolman & Jody Raphael, *A Review of Research on Welfare and Domestic Violence*, 56 *Journal of Social Issues* 655-82 (2000); see generally Family Violence Prevention Fund, *Background on Laws Affecting Battered Immigrant Women*, available at <http://endabuse.org/programs/display.php3?DocID=320#6> (last accessed August 5, 2004).

<sup>598</sup> The rules for determining immigrants' eligibility for public benefits are complex and are driven by a variety of factors, including immigration status, the length of time the individual has held that status, whether the immigrant was receiving assistance when various pieces of legislation were enacted, and the rules and standards in the immigrant's state of residence. See generally Tanya Broder, *Immigrant Eligibility for Public Benefits*, in *AILA, 1 Immigration & Nationality Law Handbook* 409, 416 (2002).

## **1. Inadequate Implementation of Provisions Extending Eligibility for Benefits to Women under the Violence Against Women Act (VAWA)**

In addition to providing immigrant spouses who are victims of violence with relief related to immigration law,<sup>599</sup> the Violence Against Women Act (VAWA) also recognized that women who apply for this relief may often need public assistance to ensure their safety and their children's safety. Accordingly, women who self-petition for immigration relief under VAWA (self-petitioners) and whose applications are accepted as meeting the requirements for relief on the face of the petition are entitled to limited kinds of public benefits until their applications are evaluated.<sup>600</sup> Pending approval, eligibility through a *prima facie* notice is a woman's only source of financial support. Self-petitioners are not allowed to work until their applications are approved, a process which can take up to a year.<sup>601</sup>

Advocates described cases where women who were entitled to this assistance did not receive it. One advocate described a case where an immigrant woman who had received a *prima facie* notice faxed a copy of the notice to her financial worker, hoping to receive the public benefits to which she was entitled. Her efforts to submit an application were met by unreturned calls. After three months and three resubmissions of the same application, the client was finally granted benefits, although not the entire amount to which she was entitled. This advocate also described a case in which another government employee had no knowledge of the *prima facie* process or the VAWA provisions. The advocate applied for benefits on behalf of a client who had received a *prima facie* notice. Despite numerous attempts to explain her client's eligibility based on VAWA, the financial worker denied the benefits based on the woman's immigration status.<sup>602</sup>

Another interviewee described a situation where when asked about *prima facie* notices, a financial assistance counselor and her supervisor both reported that they had never seen one, nor did they know what benefits would be associated with such a notice.<sup>603</sup>

---

<sup>599</sup> See discussion of immigration relief for battered immigrant women in the section entitled, "Federal Immigration Law and Authorities."

<sup>600</sup> Following receipt of a VAWA self-petition on Form I-360, the U.S. Citizenship and Immigration Services Vermont Service Center makes a determination as to whether a VAWA self-petition and any supporting documentation submitted with it establish a "*prima facie* case". In accordance with 8 C.F.R. Part 204 § 2 (c)(6), "a *prima facie* case is established only if the petitioner submits a completed [self-petition on] Form I-360 and other evidence supporting all of the elements of a self-petitioner in the paragraph (c) (1) of this section. A finding of *prima facie* eligibility does not relieve the petitioner of the burden of providing additional evidence in support of the petition and does not establish eligibility for the underlying petition." In other words, "[t]he standard for a *prima facie* showing is: a statement of facts that, if substantiated, would lead to approval of the self-petition." Gail Pendelton and Ann Block, *Application for Immigration Status Under the Violence Against Women Act*, in AILA, 1 Immigration & Nationality Law Handbook (2002); See also 62 Fed. Reg. 60769-72 (Nov. 13, 1997); see also American Bar Association, Civil Legal Assistance for Battered Immigrants 35 (2001); Gail Pendelton, *Relief for Domestic Violence Survivors and for Victims of Crimes: Update on VAWA 2000, Trafficking, and U Visas*, in AILA, 1 Immigration & Nationality Law Handbook 330, 341 (2002).

<sup>601</sup> Interview dated May 28, 2003.

<sup>602</sup> Interview dated February 13, 2004.

<sup>603</sup> Interview dated August 13, 2003.

There is a widespread lack of knowledge among financial assistance workers and advocates regarding self-petitioning women's eligibility for public assistance.<sup>604</sup> Advocates recounted numerous instances in which applications were delayed or even denied based on financial workers' unfamiliarity with the applicant's eligibility under VAWA. Advocates themselves are frequently unaware of the availability of this form of relief, and sometimes believe that only a woman's children are entitled to benefits.<sup>605</sup> In addition, some agencies that did conduct needed training on VAWA have lost state funding necessary to conduct the training.<sup>606</sup>

There is a shortage of interpreters in financial assistance offices, particularly for less common languages. Consequently, women are often forced to wait weeks for appointments.<sup>607</sup> Alternatively, bilingual staff are often used as interpreters.<sup>608</sup> Use of an untrained employee as an interpreter presents serious risks of inaccurate interpretation. Employees not trained as interpreters may also be resentful of the double burden imposed on them by these additional interpretation duties. Finally, use of an employee to interpret may result in confidentiality breaches and conflicts of interest. In such informal contexts, interpreters are rarely screened in advance.

Finally, the categories of benefits to which self-petitioners may be entitled are limited. For example, because immigrant women are often ineligible for housing assistance, they remain in shelters as long as they are able or are moved from shelter to shelter.<sup>609</sup> Similarly, a *prima facie* notice is not recognized by the State of Minnesota as a form of identification sufficient to obtain a driver's license.<sup>610</sup>

## **2. Inadequate Implementation of Exceptions to Time Limits and Work Mandates Imposed by Welfare Legislation**

Battered immigrant women are frequently not receiving the protection intended under welfare legislation.

The welfare reform legislation of 1996 instituted major changes for recipients of public benefits that had significant effects on battered women. This legislation, the 1996 Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA") placed time limits on

---

<sup>604</sup> Interviews dated May 28, 2003, June 18, 2003, and September 12, 2003.

<sup>605</sup> Interview dated July 22, 2003.

<sup>606</sup> The lack of widespread dissemination of information about self-petitioners' eligibility for benefits is compounded by certain aspects of the notice itself that are confusing. The *prima facie* notice, which entitles an applicant to benefits, is identical in appearance to other immigration notices that expressly do not provide the holder with entitlements. Interview dated August 8, 2003. Similarly, *prima facie* notices do not explicitly list the applicant's children by name, making it difficult for mothers to obtain benefits for their. VAWA self-petitioners may include their children on their application for immigration status. Interview dated May 28, 2003.

<sup>607</sup> Interview dated September 12, 2003.

<sup>608</sup> Interview dated June 13, 2003.

<sup>609</sup> Interview dated December 3, 2003.

<sup>610</sup> Interviews dated May 28, 2003 and June 18, 2003.



benefits and work mandates as a condition of receiving income assistance.<sup>611</sup> Under PRWORA, women were limited to a total of five years of assistance. That assistance was conditioned on making satisfactory progress towards gainful employment.

Policy makers recognized that such limits were unworkable for some victims of violence. Progress toward gainful employment may be frustrated by abusive and controlling spouses or could otherwise result in increased danger. The loss of public assistance income could have significant consequences for the health and welfare of a battered woman and her children. As a result, many states created waivers for domestic violence victims. In Minnesota, for example, an applicant who is experiencing domestic violence may apply for a Family Violence Waiver. This waiver exempts the recipient from the five-year limit on receipt of public assistance and from certain work requirements as well.<sup>612</sup>

Different standards also apply to battered women's employment plans. An employment plan is to be guided by the safety of the woman, and by statute, cannot require her to obtain an Order for Protection (OFP). These plans can contain requirements to obtain employment only if doing so does not compromise her safety. Previously, these plans were called "alternative employment plans," until it was recognized that labeling the plan "alternative" risked alerting the woman's batterer to the fact that she had disclosed the abuse.

Interviews revealed that, contrary to Minnesota law and policy that require financial workers to screen financial assistance applicants for domestic violence, the provisions that should benefit victims of violence are not being consistently applied.<sup>613</sup> In some cases, individual financial assistance workers did not identify applicants eligible for the Family Violence Waiver, apparently due to their lack of understanding about domestic violence. A domestic violence victim who had applied for assistance had specifically observed that caseworkers did not engage in effective screening—*i.e.*, asking the question in different ways at different times. Further, while the counties had sought to train a limited number of individuals as domestic violence specialists, the number of such specialists has dramatically decreased in recent years.<sup>614</sup>

---

<sup>611</sup> PRWORA abolished the cash entitlement program, Aid to Families with Dependent Children (AFDC), and replaced it with a block grant program called Temporary Assistance to Needy Families (TANF). The Minnesota Family Investment Program (MFIP) is the Minnesota program funded by TANF and state funds. MFIP funds are distributed to the counties, and the counties are charged with administering the financial assistance programs.

<sup>612</sup> Minn. Stat. § 256J.42, Subd. 4; see Minnesota Department of Human Services, *MFIP Family Violence Waiver: For Domestic Abuse Victims*, available at <http://edocs.dhs.state.mn.us/lfsrver/Legacy/DHS-3477-ENG>. To obtain the waiver, the woman must provide evidence of the violence by providing any of the following: medical records, a statement from a battered women's advocate or a sexual assault advocate, a statement from a professional such as a doctor, nurse, clergy, counselor or social worker who was told about the abuse, a statement from a neighbor or family member, photos of injuries or damage to property, a police report or a copy of an order for protection or a harassment order.

<sup>613</sup> Financial workers are required by state law to screen for domestic violence in order to ensure that those women who need such waivers have the chance to apply, Minn. Stat. § 256J.09, Subd. 3b(3). County policy requires screening at initial intake, during employment counseling, and at an eligibility review.<sup>613</sup> Despite this law and policy, it appears that effective screening is not taking place. Interview dated August 13, 2003.

<sup>614</sup> Interview dated October 16, 2003.

Based on the number of women on public assistance staying at women's shelters, one expert estimated that less than one percent of women eligible for family violence waivers (which stop the 60 month limit on public benefits) are actually applying for and receiving this waiver.<sup>615</sup>

Finally, the county practice of outsourcing job-counseling activities to local, neighborhood social service agencies presents barriers for some immigrant women. In many immigrant communities, these local social service agencies are founded, administered and operated by men in the community. Although employment counselors are required by contract to affirmatively screen for domestic violence,<sup>616</sup> local agency job counselors may not be receptive to reports of domestic violence or willing to spend the time necessary to assess and identify women who may be eligible for the waiver.<sup>617</sup> In addition, interviewees reported that these community-based social service agencies are not referring battered women to appropriate domestic violence resources and specialists who can assist them in applying for the Family Violence Waiver.<sup>618</sup> One interviewee reported that many battered immigrant women end up being "brushed under the rug." There appear to be no procedures in place for state review of county and sub-contractor performance in implementing the financial assistance regulations.<sup>619</sup>

### **3. "Deeming" Rules Endanger Women's Safety by Requiring Them to Leave the Home**

A rule referred to as the "deeming rule" that requires women to leave abusers before they are eligible for benefits endangers the safety of immigrant women who are victims of violence. Although financial independence is often a prerequisite to women's safety, it is important for women to carefully plan when to leave an abuser. Separation from an abuser is often the most dangerous time for victims of violence. Advocates reported that by essentially requiring separation *before* receiving economic assistance, the deeming rule of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") can have the unintended consequence of forcing immigrant women to leave their abusers before they have determined that it is safe to do so.<sup>620</sup>

Typically, new immigrants to the United States are required to name a "sponsor" before they are issued a visa to enter the country. When that immigrant applies for public benefits, the income of the sponsor (or a spouse) is deemed to be the income of the immigrant, and the applicant will be denied benefits unless the total income of both is below the qualifying level.<sup>621</sup>

---

<sup>615</sup> Presentation dated April 1-2, 2004.

<sup>616</sup> Interview dated August 13, 2003.

<sup>617</sup> Interview dated July 28, 2003.

<sup>618</sup> Interview dated July 15, 2003.

<sup>619</sup> *Id.*

<sup>620</sup> Interview dated August 13, 2003.

<sup>621</sup> *See* 8 U.S.C. § 1631(a)(1).

Because this rule would effectively bar immigrant women from receiving public assistance, IIRIRA created an exception to these sponsor deeming rules for battered spouses.<sup>622</sup> To qualify for this exception, however, the immigrant applicant must demonstrate that *she no longer lives with her abuser*.<sup>623</sup> This limit on the deeming exception is applied without regard to whether leaving an abuser is safe for the woman.<sup>624</sup>

#### **4. Inadequate Implementation of Exceptions for In-Kind Services**

Programs that provide in-kind services such as domestic violence shelters are exempt from limitations on the provision of federal and state assistance to immigrants.<sup>625</sup> Nevertheless, evidence suggests that statewide, shelters and other providers of in-kind services may be declining to provide services to women because the providers are under the mistaken impression that they cannot provide services to undocumented or immigrant women.<sup>626</sup>

##### ***B. Impediments to Economic Assistance***

#### **1. Applicants' Fear is an Obstacle to Accessing Economic Assistance**

Despite efforts to address the deterrent effect of financial assistance rules and related regulations, there continues to be widespread fear in immigrant communities that seeking assistance will result in deportation or will negatively affect a person's ability to obtain a secure immigration status in the United States.<sup>627</sup> Immigration attorneys reported that despite the exception for receipt of public assistance for battered women, they suspect that financial assistance will nonetheless have negative consequences. Attorneys often advise women not to pursue this option.<sup>628</sup>

Legislators and financial assistance agencies have made efforts to respond to the chilling effect of certain regulations governing financial assistance, including those requiring agencies to report immigration status. For example, guidelines governing financial assistance in Minnesota and elsewhere require disclosure only when there has been an administrative determination that the

---

<sup>622</sup> *Id.* at (f)(1).

<sup>623</sup> *Id.* at (f)(2).

<sup>624</sup> The Women Immigrants Safe Harbor Act (WISH) endorsed by the National Immigration Law Center and Legal Momentum, if passed, would exempt self-petitioners under VAWA and U-visa applicants from the deeming rules of the IIRIRA. For more information about WISH, please *see* the website of the National Immigration Law Center at [http://www.nilc.org/immspbs/cdev/wish/WISH\\_Sec-by-Sec\\_4-04.pdf](http://www.nilc.org/immspbs/cdev/wish/WISH_Sec-by-Sec_4-04.pdf).

<sup>625</sup> Tanya Broder, *Immigrant Eligibility for Public Benefits*, in AILA, 1 Immigration & Nationality Law Handbook 409, 426 (2002); Leslye Orloff, *Lifesaving Welfare Safety Net Access for Battered Immigrant Women and Children: Accomplishments and Next Steps*, 7 Wm. & Mary J. of Women & L. 597, 626 (2001).

<sup>626</sup> Interview dated July 10, 2003.

<sup>627</sup> Interviews dated May 28, 2003, July 14, 2003, and August 13, 2003.

<sup>628</sup> Interview dated September 2, 2003.

person was ineligible for benefits by virtue of immigrant status.<sup>629</sup> Similarly, because women may fear that seeking public assistance will have significant immigration consequences,<sup>630</sup> VAWA and other laws have instituted rules preventing receipt of non-cash public assistance (and even cash assistance, for self-petitioners) from negatively affecting a domestic violence victim's immigration status.<sup>631</sup>

Despite efforts to address these deterrents, advocates reported widespread fear about accessing government institutions, even those designed to provide economic assistance to battered immigrant women.

## **2. Attitudes and Approaches of Individual Financial Workers Undermine Women's Access to Financial Assistance**

The attitudes and practices of individual financial workers have a negative effect on a woman's ability to gain financial self-sufficiency. One interviewee reported that a financial assistance worker, when presented with an application for benefits based on the applicant's receipt of a *prima facie* notice under VAWA, demanded "proof" of the abuse and refused to move forward with benefits until shown proof that the woman's husband had indeed tried to kill her.<sup>632</sup>

In another example, interviewees reported that a few counselors at some resettlement agencies address the man in an immigrant family as "head of the household." By doing so, they miss the opportunity to provide newly resettled women with information about their rights and about resources available to them.<sup>633</sup>

Other advocates also reported significant resistance on the part of financial workers to reports of domestic violence.<sup>634</sup> Some financial workers failed to return calls and provide information in the appropriate language. Some financial workers reportedly expressed skepticism to individual applicants or their advocates about the existence of domestic violence in their cases.<sup>635</sup>

---

<sup>629</sup> Minnesota Department of Human Services, *Combined Manual* § 0011.03.27.03; see generally Tanya Broder, *Immigrant Eligibility for Public Benefits*, in AILA, 424 (2002) (discussing other agencies that have adopted similar standards). PRWORA also contains provisions that prevent federal, state or local laws from interfering with exchange of information with INS. This provision does not require information sharing, but makes it difficult for agencies to guarantee the confidentiality of client information. *Id.* at 426.

<sup>630</sup> A recipient of public assistance may be deemed a "public charge," which can result in denials of entry visas and even deportation. See Shawn Fremstad, *The INS Public Charge Guidance: What Does it Mean for Immigrants Who Need Public Assistance?*, available at [http://www.cbpp.org/1-7-00imm.htm#N\\_4\\_](http://www.cbpp.org/1-7-00imm.htm#N_4_) (2000).

<sup>631</sup> 8 U.S.C. § 1182(p); Broder, 1 *Immigration & Nationality Law Handbook* 409, 428; see also Martha A. Matthews, *The Impact of Federal and State Laws on Children Exposed to Domestic Violence*, *The Future of Children* 50, 62 (1999) ("[A] history of inconsistency and unfairness in the application of the public charge doctrine has left immigrant communities fearful of applying for any public benefits at all.").

<sup>632</sup> Interview dated February 13, 2004.

<sup>633</sup> Interviews dated June 30, 2003, August 7, 2003, and September 22, 2003.

<sup>634</sup> Interview dated February 13, 2004.

<sup>635</sup> *Id.*

***C. Language Barriers and Translation***

Language barriers can present significant obstacles to women's ability to access public benefits. Although federal and state law require that government agencies receiving federal funds provide interpretation for LEP individuals they serve,<sup>636</sup> notices and documents provided by financial assistance offices are often provided in English, even when the office is aware that the client speaks another language.<sup>637</sup> The brochure describing the Family Violence Waiver, for example, is only available in English.<sup>638</sup>

---

<sup>636</sup> See 28 C.F.R. § 42.104; Minn. Stat. § 15.441; Under Title VI of the Civil Rights and the implementing regulations for Title VI, recipients of federal funding (e.g., hospitals, etc.) are required to take reasonable steps to ensure language accessibility. 42 U.S.C. §2000(d)(1964); 28 C.F.R. § 42.104; See also Department of Health and Human Services Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 65 Fed. Reg. 52762 (August 8, 2003).

<sup>637</sup> Interview dated February 13, 2004.

<sup>638</sup> Interview dated October 16, 2003.

## **VIII. Medical Services**

### ***A. Introduction***

Battered immigrant women often first encounter government systems through medical treatment at hospitals or clinics. Medical institutions that receive government funding play an important role in identifying cases of domestic violence and providing victims with information about services and legal remedies. In fact, medical professionals are mandatory reporters for child endangerment and violence committed with firearms.<sup>639</sup> In addition, government entities rely on medical institutions to treat and document injuries from domestic assault. Without documentation, immigrant victims of violence are often unable to substantiate domestic violence in court, leaving them with limited ability to prosecute perpetrators of violence or obtain immigration relief under the Violence Against Women Act.

Interviewees reported that language barriers, inadequate interpretation services, ineffective domestic violence screening and reductions in funding for domestic violence programming and immigrant medical services have, in some cases, contributed to medical institutions' frequent failure to properly identify domestic violence victims, treat these patients and document their injuries.

While private clinics do serve some battered immigrant women, the recent elimination of medical assistance for undocumented immigrants has resulted in many immigrant victims of violence seeking medical care in emergency rooms of government-funded hospitals.<sup>640</sup> Medical institutions are reimbursed by the state only for services undocumented immigrants seek in connection with labor and delivery of a child and emergency conditions.<sup>641</sup> Without access to reasonably priced or free medical services, undocumented battered immigrant women are unlikely to seek medical care and unlikely to access government assistance after domestic violence incidents. Restrictions on immigrant access to medical care and injury documentation increase their risk of harm from untreated injuries and limit their ability to prove a domestic violence charge in a court action or application for immigration relief. In addition, an interviewee explained her perception that immigrant reluctance to call for ambulance services (due to cost and ineligibility for assistance) contributed to fatalities in domestic violence cases involving immigrant victims.<sup>642</sup>

Interviewees were concerned that restrictions on government assistance in the area of medical care will mean that many battered immigrant women will not receive consistent care that makes it more likely that violence will be identified, injuries documented and further violence

---

<sup>639</sup> Minn. Stat. § 626.556 Subd. 3 (2004).

<sup>640</sup> Minn. Stat. § 256D.03 Subd. 3 (j) (2004). By contrast, medical professionals point out that refugees, who are able to work legally, often have health insurance and so are not as adversely affected by limitations on eligibility. Interview dated August 25.

<sup>641</sup> See Minn. Stat. § 256B.

<sup>642</sup> Interview dated June 16, 2003.

prevented.<sup>643</sup> Domestic violence case identification and effective documentation of injuries are more likely if a victim receives consistent care, rather than treatment from a variety of emergency medical professionals and institutions.<sup>644</sup> In the event that a woman seeks emergency medical care for injuries sustained because of domestic violence more than once, it is not likely that she will receive care from the same medical professional. In addition, the emergency departments at medical institutions are not providing their professionals with access to records of prior treatment. As a result, emergency room medical professionals will have difficulty identifying a pattern in the conduct of the patient or in the injuries sustained. It will also make it difficult for medical institutions to take action to prevent violence, such as detecting fear of violence in a patient or providing a battered woman with information relating to domestic violence resources in her community.

The barriers created or exacerbated by restrictions on Medical Assistance for undocumented immigrants and policies implemented by medical institutions compromise the government's ability to provide battered immigrant women with equal access to protection from domestic violence and to civil and criminal remedies for domestic violence.

### ***B. Language Barriers and Interpretation***

Interviewees reported that language barriers often interfere with domestic violence case identification for battered immigrant women. For example, one interviewee explained that, doctors and nurses often fail to identify violence as a cause of a medical emergency like miscarriage because of language barriers or because of intimidation by a spouse who is present during the medical evaluation.<sup>645</sup> An advocate explained that “the greater the problem with language, the greater the problem in getting women to open up and trust the medical personnel.”

In addition, interviewees reported that language barriers and the lack of interpretation services often make it difficult for battered immigrant women to call the hospital to arrange for medical care or to obtain prescriptions for medication.<sup>646</sup> In fact, under Minnesota law, interpretation services for immigrant women who are documented and eligible for Medical Assistance are only funded by the state if they are provided for a direct, person-to-person covered health care service.<sup>647</sup> This excludes payment for interpretation services in the context of making appointments, obtaining prescriptions and other important aspects of medical care. An advocate reported that, in one case, a battered woman traveled to the hospital to obtain a prescription only because the hospital worker she contacted by phone to obtain the prescription did not speak Spanish and there was no interpreter available.<sup>648</sup>

---

<sup>643</sup> Interview dated June 19, 2003.

<sup>644</sup> *Id.*

<sup>645</sup> *Id.*

<sup>646</sup> Interview dated September 12, 2003.

<sup>647</sup> See Minn. Stat. § 256B.0625 Subd. 18a (d). Medical assistance covers oral language interpreter services when provided by an enrolled health care provider during the course of providing a direct, person-to-person covered health care service to an enrolled recipient with limited English proficiency.

<sup>648</sup> Interview dated September 13, 2003.

Federal law and implementing regulations promulgated by the Department of Health and Human Services in 2003 require that federally-funded hospitals and clinics offer interpretation services to Limited English Proficient (LEP) patients. There is an exception where resources for such interpretation are not available or where such services are not necessary or important to the lives of the LEP persons served by the institution.<sup>649</sup>

Interviewees reported that access to interpretation services and the quality of such services in the Minneapolis/St. Paul metropolitan area ranges from excellent to poor. Cuts in funding for interpretation services, eligibility for such services, and the lack of a state certification program for medical interpreters are all factors that have contributed to certain institutions' failure to comply with their obligations to provide adequate interpretation services for LEP patients.

### **1. Reductions in Interpreter Staffing, Use of Bilingual Medical Professionals for Interpretation and Cuts in Funding Compromise Availability and Quality of Interpretation**

As one doctor reported, budget cuts in the emergency medicine departments and clinics throughout the Minneapolis/St. Paul metropolitan area have resulted in a reduction in the availability of interpreters.<sup>650</sup> For example, one advocate reported that battered immigrant women are receiving inadequate service at a private clinic because of cuts in funding for interpretation and a reduction in the number of bilingual staff.<sup>651</sup> Such reductions in hospital and clinic budgets are inconsistent with research that demonstrates that providing interpretation services is a low cost way of improving medical services to all LEP individuals, including domestic violence victims.<sup>652</sup>

Funding cuts that reduce the availability of interpretation services have serious consequences for the safety of immigrant victims of domestic violence. In many cases, funding cuts for medical interpretation have resulted in family members being kept in an examination room to interpret for the victim, thus making it less likely that the woman will disclose the violence.<sup>653</sup> Alternatively, battered immigrant women are forced to bring family with them to interpret for the doctor.<sup>654</sup> In one case, a victim had been assigned an interpreter at Hennepin County Medical Center in prior visits but recently had to take her brother to interpret for her because there was no Spanish language interpreter available for her. She explained that “[i]t is hard for me to understand the words. [If I do not have an interpreter,] it is hard to know what is going on.”<sup>655</sup> In

---

<sup>649</sup> Civil Rights Act, 42 U.S.C. § 2000(d)(1964); 28 C.F.R. § 42.104; Department of Health and Human Services Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 65 Fed.Reg. 52762 (August 8, 2003).

<sup>650</sup> Interview dated June 19, 2003.

<sup>651</sup> Interview dated September 13, 2003.

<sup>652</sup> Elizabeth A. Jacobs, MD, MPP, Donald S. Shepard, PhD, MPP, Jose A. Suaya, MD, MBA and Esta-Lee Stone, MS, OTR/L, *Overcoming Language Barriers in Health Care: Costs and Benefits of Interpreter Services*, Vol. 94, No. 5, American Journal of Public Health 866 (2004).

<sup>653</sup> Interview dated June 19, 2003

<sup>654</sup> Interview dated December 18, 2003.

<sup>655</sup> *Id.*



general she is comfortable with the medical services she has received at one emergency room in the area where there is only one interpreter available. At other clinics where she has received checkups, she has been assigned different interpreters at different times. Most of these interpreters have been women.

Lack of funding for interpretation in clinics and hospitals has also led to solicitation for free interpretation from bilingual professionals working in such medical institutions.<sup>656</sup> This lack of funding has created a burden on bilingual professionals in medical institutions as well as on the staff of community-based organizations who are required to interpret for their clients. Medical professionals may not be trained as interpreters.

**Interpretation Available at the Clinic of International Health at Regions Hospital in St. Paul**

Interviewees reported that the Clinic of International Health at Regions Hospital has a competent staff of interpreters that facilitate medical care for battered immigrant women. At the time of the interview, this clinic employed interpreters for the following languages: Vietnamese, Spanish, Somali, Russian, Oromo, Hmong, Cambodian and American Sign Language. If there is no interpreter available, as often happens at night or on the weekends, the medical staff of the clinic uses the Language Line. In some cases, patients will request the Language Line because it maintains anonymity.

**2. Lack of State Interpretation Standards, Proficiency Screening and  
Mandatory Training Results in Unreliable Medical Interpretation**

Minnesota has not established any standards for interpretation in medical institutions located in the state.<sup>657</sup> Thus, interpreter agencies or medical institutions have developed and applied standards for interpreters on an *ad hoc* basis. Advocates complained that the lack of a certification system results in interpreter misconduct. Clinic interpreters “often...just summarize what the victim has said. They will omit things, or add things.”<sup>658</sup>

Consistent with its goal of facilitating “equal access to health care and human services for clients with Limited English Proficiency,”<sup>659</sup> the Interpreting Stakeholders Group associated with the Upper Midwest Translators and Interpreters Association is discussing the possibility of advocating for a Medical Interpreter Certification Program in Minnesota comparable to the Supreme Court Interpreter Program discussed in the section entitled, “Court Interpretation.” There are a number of model standards and proficiency evaluation tests that are available for use in screening potential interpreters or translators. These include the ACTFL Test and standards

<sup>656</sup> Interview dated July 30, 2003.

<sup>657</sup> Notes from meeting dated October 2003.

<sup>658</sup> Interview dated June 13, 2003.

<sup>659</sup> Mission Statement of the Interpreting Stakeholders Group (in collaboration with the Upper Midwest Translators and Interpreters Association) (January 2004) (on file with Minnesota Advocates for Human Rights).

(including a national code of ethics) currently being developed by the National Council for Interpreting in Health Care. The goal of this council is to make a medical interpretation certification exams available for application nationwide in certain common languages like Spanish. There are also a number of models for interpreter training and orientation that might be implemented through Minnesota. One large medical institution, for example, has instituted a two-week orientation that involves shadowing an experienced interpreter.

### ***C. Domestic Violence Case Identification and Documentation of Injuries***

#### **1. Effectiveness of Domestic Violence Screening Process and Record-keeping Systems Varies**

The effectiveness of domestic violence screening varies among medical institutions in the Minneapolis/St. Paul metropolitan area.

Screening questions play a large role in the ability of medical institutions to identify domestic violence victims among their patients.<sup>660</sup> One doctor reported that, among different languages and cultures, there are differing definitions or conceptions of “violence.” As a result, it may be difficult for immigrant women to identify “violent” situations for their medical caregivers.<sup>661</sup> This reality makes the drafting of detailed and culturally appropriate screening questions important. One advocate explained that hospitals differ in the questions they use to screen patients for domestic violence.<sup>662</sup> For example, one institution asks “Are you being physically hurt or are you emotionally afraid?” One advocate reported that this screening question may be too broad for a immigrant woman who is being abused. Another advocate reports that another institution “screens patients by asking, ‘Are you battered?’” which question may make a woman defensive and reluctant to disclose any violence.<sup>663</sup> Comparatively, sources reported that another hospital asks a better screening question: “Is anyone close to you hurting, kicking you or screaming at you?” Sources reported that this question is more detailed and identifies illegal behavior.<sup>664</sup>

---

<sup>660</sup> Family Violence Prevention Fund, Predictors of Domestic Violence Homicide of Women, available at <http://endabuse.org/programs/display.php3?DocID=242> (last accessed November 22, 2004). “The study also highlights the critical role health care professionals can play in identifying victims of abuse and helping to increase the safety of battered women who are at increased risk for homicide. ‘It is important to consider the role medical professionals might play in identifying women at high risk of intimate partner femicide,’ concludes the study. It encourages health care providers to screen female patients for domestic violence and assess their danger by asking questions about abuse, such as ‘Does your partner try to control all of your daily activities?’ and ‘Is there a gun in the home?’.” *Id.* (citing *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 *American Journal of Public Health* 7 (July 2003)).

<sup>661</sup> Interview dated June 20, 2003.

<sup>662</sup> Interview dated September 30, 2003.

<sup>663</sup> Interview dated July 24, 2003.

<sup>664</sup> Interview dated September 30, 2003.

Interviewees reported that some medical institutions have not applied appropriate screening procedures or hired staff members who are culturally competent.<sup>665</sup> For example, screening questions should be varied and carefully prepared to address the reluctance among some immigrant women to answer certain questions such as those relating to sexual or reproductive health.<sup>666</sup> Some hospitals approach this issue by instructing interpreters not to interpret words used by medical professionals that may be offensive to a patient.<sup>667</sup> This may result in questions about domestic violence not being interpreted. Some medical institutions have a good reputation for being culturally sensitive in their screening process. Interviewees report that larger health care providers, however, need more training because the training they have received was not effective. Among the large hospitals, interviewees report that a few are training employees about the cultures of female patients who have undergone female genital mutilation. Interviewees report that immigrants served by suburban area hospitals are not receiving culturally sensitive services.<sup>668</sup>

### **Medical Professionals Prepare Video Guidance on Issues Facing Somali Victims of Violence**

Professionals working in General Internal Medicine at Hennepin County Medical Center have prepared a video providing guidance on issues relating to Somali victims of domestic violence. "Gaining Cultural Competency: Issues of Domestic Violence in the Somali Immigrant Community" is a training video for healthcare providers that addresses issues affecting immigrants, such as language, American law and specific barriers unique to culture. While many of the participants are Somali, the concepts may apply to other immigrants in situations of domestic violence.

Some medical institutions in the area have attempted to hire a staff that broadly reflects the languages and ethnicities of the populations they serve to help facilitate better communication and cultural understanding when discussing threats to health, including violence.<sup>669</sup> Not all medical institutions have made such hiring a priority.

---

<sup>665</sup> Interview dated July 24, 2003.

<sup>666</sup> See also, Closing the Gap: A Public Health Report on Health Disparities, Report on Immigrant and Refugee Health of the Twin Cities, Metro Minority Health Assessment Report 20 (June 2001). This report notes that agency staff in health departments across the metropolitan area reported "interpretation around sensitive issues as particularly problematic. For example, interpretation for family planning services create[s] tension and lead[s] to miscommunication. ... Several respondents explained that immigrants and refugees have different understandings of concepts that seem straightforward to U.S.-born clients. Some immigrants associate tremendous shame and stigma with diseases such as tuberculosis. Lack of understanding and social stigma can create barriers to testing, treatment, and public education around several important public health issues."

<sup>667</sup> Interview dated July 21, 2003.

<sup>668</sup> Interview dated July 15, 2003.

<sup>669</sup> Some healthcare providers reported in 2001 that they were trying to improve language and cultural accessibility of services by hiring bicultural and bilingual staff. They reported, however, that they were having difficulty making the requisite hires particularly for professional positions such as nurses. Closing the Gap: A Public Health Report on Health Disparities, Report on Immigrant and Refugee Health of the Twin Cities, Metro Minority Health Assessment Report 20 (June 2001).

According to several interviewees, domestic violence victims are more likely to disclose their experiences with violence to female medical personnel. For example, an interviewee reported that, in one area emergency room, female nurses are designated to conduct the screening.<sup>670</sup> A male medical professional reported that he will often seek a female medical professional or social worker if he suspects the existence of domestic violence but the patient does not speak of it.<sup>671</sup> In the Medicine Department at one area hospital, there are questions about the safety at home on the screening form completed by the provider (doctor), but the provider must remember to ask these questions. If there is suspicion of abuse, a domestic violence social worker is paged. There are no specific policies about whether or not a female social worker is called, but the medical staff will do their best to accommodate a patient's wish for a female social worker.<sup>672</sup>

A well-trained medical professional described her approach to domestic violence screening.<sup>673</sup> She tries to screen every female patient, particularly on the first visit. She most often screens women who report vague abdominal pain, mood problems and other generalized health problems that may be attributable to domestic abuse. If a woman says that she is a domestic abuse victim, then the medical professional will ask about the situation using questions such as, "Are you safe?" and "Are there children involved?" The medical professional will then prepare a safety plan with the patient and will call other domestic violence resources if the woman is interested. If she is not interested, she will give the woman contact numbers for relevant domestic violence resources for future use.

As discussed above, language barriers create significant obstacles for identifying domestic violence victims among patients during the screening process. Language barriers can be complicated by family member interference with the screening process. Medical professionals offered different viewpoints about the exclusion of family members from the examining room. One medical professional recalled a battered immigrant woman who complained of head aches and back pain a few times during her visits.<sup>674</sup> At a follow-up visit, the professional saw that the patient had been admitted to the emergency department and had a positive pregnancy test. When the professional asked the patient about the visit, the woman broke down. She explained that she sought help at the emergency department. She refused interpretation and her husband spoke with the emergency department staff. He falsely reported that she had been experiencing chest pain. The department conducted a pregnancy test, but the husband took her home without care and she continued to bleed until she miscarried the pregnancy. Another medical professional reported that such interference with diagnosis is one reason to exclude family members from the examining room.<sup>675</sup> This professional explained that, when a family member or suspected abuser is present, he sometimes asks the man to leave the room by mentioning that now is the time for the examination or offering the excuse that the patient needs to be admitted. When the family member is no longer present the medical professional tells the patient that he can find a safe place for her and provides her information about available domestic violence resources. Another

---

<sup>670</sup> Interview dated June 20, 2003.

<sup>671</sup> Interview dated August 25, 2003.

<sup>672</sup> Interview dated June 20, 2003.

<sup>673</sup> *Id.*

<sup>674</sup> *Id.*

<sup>675</sup> Interview dated August 25, 2003.

medical professional indicated that, in some circumstances, she would be inclined to allow a husband or partner to stay in an examination room because she is not sure if he would help or hurt communication with an immigrant patient.<sup>676</sup>

Finally, poor record-keeping, especially in emergency rooms, means that medical professionals often will not have access to any history of injuries or violence experienced by an immigrant patient. This lack of access to medical history makes it difficult to identify any patterns in injuries or behavior. One medical professional at a community emergency department explained that she personally documents the violence in the patient's record, but not all of her colleagues do the same.<sup>677</sup> Often when violence is identified, a social worker is not called because one may not be available. If the violence is not documented and a social worker does not become involved, it is impossible to confirm what happens to the victim following her medical care. The professional noted that it would be helpful if violence was listed as a diagnosis, then if the patient were to return to the emergency room for any reason in the future, it would appear in her file. The medical professional noted that she has had success in training students to document violence.

## **2. Reporting of Immigration Status and Fear of Removal**

Since September 11, 2001, the fears of undocumented women have increased, reducing their willingness to seek medical attention for domestic violence injuries or other conditions. An interviewee reported that one immigrant woman gave birth at home in the winter of 2003 because she was afraid to go to the hospital. If hospitals and social service agencies ask for social security numbers, victims may not report abuse. Even if battered immigrant women are documented, they may not seek help at a medical institution because they are afraid that if they cannot pay, they will be harassed and removed from the United States.<sup>678</sup>

Although medical professionals are required to report child and elder abuse and injuries caused by firearms to criminal justice authorities, medical professionals are not currently required to report immigration status.<sup>679</sup> Medical professionals disagree about whether there should be mandatory reporting of felony or gross misdemeanor level domestic abuse to the police or to social services.<sup>680</sup>

There is effort among members of the U.S. government to engage medical professionals in the enforcement of U.S. immigration law. Recently, the U.S. government considered implementing regulations for provisions of the Medicare Modernization Act of 2003 that would require hospitals to solicit immigration status information in connection with the provision of patient

---

<sup>676</sup> Interview dated June 19, 2003.

<sup>677</sup> *Id.*

<sup>678</sup> Interview dated July 25, 2003. Prior to 1996, removal proceedings were referred to as exclusion proceedings or deportation proceedings depending on the circumstances of an alien's detection or apprehension. Now all proceedings to remove an alien from the United States are referred to as removal proceedings. See INA § 240.

<sup>679</sup> See Minn. Stat. §626.556 (2004); Interviews dated June 20, 2003 and July 15, 2003.

<sup>680</sup> Interview dated July 15, 2003.

care. One requirement under the draft regulations, for example, would require hospitals and clinics to keep files with copies of patients' border crossing cards to qualify for federal financial assistance.<sup>681</sup> This plan has not been adopted in large part because of the objection of women's rights and immigrant rights groups.

### **3. Confidentiality Concerns**

Fears about confidentiality make it difficult for battered immigrant women to disclose facts about domestic violence to medical professionals.

Fears about confidentiality breaches by interpreters were reported to be more acute among Southeast Asian victims because of the small size of the Southeast Asian immigrant communities and their social structure. One interviewee reported that Southeast Asian domestic violence victims are more likely to know the interpreter at the medical facility where they are seeking medical services.<sup>682</sup> This source explained that Latino women are less likely to be fearful about confidentiality because the Latino community is more heterogeneous than other immigrant communities, so it is not as likely that the interpreter will know the patient.<sup>683</sup>

The presence of the abuser or another family member often makes it difficult for a domestic violence victim to disclose the existence of violence. A doctor reported that, in some circumstances, assessing the victim's situation is difficult because the interpreter is related to the victim, making it inappropriate to talk about the violence.<sup>684</sup>

Screening in public examination rooms in the emergency room may also make it difficult for a domestic violence victim to come forward with details of domestic abuse. Emergency rooms by nature create barriers to confidentiality. Generally, only curtains separate examination rooms in emergency departments. As a result, there is no verbal privacy. This makes it difficult for doctors and nurses to discuss abuse issues. Some medical institutions have a policy of screening emergency room patients with a survey so as to maintain confidentiality. One institution gives patients an envelope containing a survey that may be answered by peeling off a sticker. If a patient indicates the existence of an abusive relationship, he or she will be moved to a private room. This medical institution would like to translate this survey into foreign languages to accommodate immigrant patients but has not yet been able to do so.<sup>685</sup> Images may also be used in the survey to accommodate immigrant patients who are not literate.

---

<sup>681</sup> Family Violence Prevention Fund's Newsflash, *Hospital Regulation Would Threaten Battered Immigrant Women, Experts Warn* (Sept. 2, 2004), available at <http://endabuse.org/newsflash/index.php3?Search=Article&NewsFlashID=552>.

<sup>682</sup> Interview dated June 19, 2003.

<sup>683</sup> *Id.*

<sup>684</sup> Interview dated June 20, 2003.

<sup>685</sup> Interview dated July 15, 2003.

#### **4. Funding Cuts in Domestic Violence Programming**

Funding cuts have reduced the availability of medical services for battered immigrant women. Prior to cuts in social services, Hennepin County was improving its system of identifying domestic violence victims and referring them to the Hennepin County Domestic Abuse Service Center and other social services. Reduced funding will result in delays to this streamlining of patient screening and referral.<sup>686</sup>

Funding cuts have also led to an elimination of domestic violence programming at certain hospitals in the metropolitan area, as well as their affiliation with domestic violence shelters.<sup>687</sup> At one hospital, there is no funding for the care of domestic violence victims but there is state funding for the care of sexual assault victims.<sup>688</sup> Medical professionals at these hospitals reported that domestic violence case identification has declined. A group of doctors is trying to rebuild this programming and promote a multicultural approach in their work environment. One project works with a Somali nurse practitioner to develop a video for doctors about domestic violence. (See the text box above regarding the video this project produced). Another project produces presentations about domestic violence at conferences such as the national internal medicine conference. This group has received some funding from the hospital service league for this purpose.<sup>689</sup>

---

<sup>686</sup> Interview dated June 19, 2003.

<sup>687</sup> *Id.*

<sup>688</sup> *Id.*

<sup>689</sup> Interview dated June 20, 2003.

## **IX. Domestic Violence Shelters**

Interviewees reported that some immigrant women access shelters to seek safety for themselves and their children. It is important to note that immigrant women also receive assistance in obtaining safety and accountability from community based service and advocacy programs. Minnesota Advocates' decision to focus its research on shelter services was based on the significant government funding they receive.<sup>690</sup>

Minnesota Advocates' findings revealed that battered immigrant women avoid going to shelters for the following reasons:

- suspicion that the shelter staff will report them to immigration authorities;
- fear that language will be a barrier; and
- anxiety that there may be no staff members of their culture.

The United Nations has identified government support for shelters as necessary to protect the rights to life and security of person for battered women. Support for and oversight of domestic violence shelters are key components of both the government's response to domestic violence against immigrant women and its compliance with its obligations to protect their rights to life and security of person. Government agencies are also legally obligated to prevent discrimination on the basis of national origin in the funding or provision of shelter services for victims of domestic violence.

In connection with allocating state funding to shelters, the Minnesota legislature requires shelters to reach unserved or underserved populations with culturally appropriate and language-accessible services.<sup>691</sup> According to standards established by Minnesota's Office of Justice Programs in connection with its administration of state funding to shelters, the shelters must ensure that culturally appropriate food is available and that residents have access to culturally appropriate clothing and personal hygiene items.<sup>692</sup>

---

<sup>690</sup> Minnesota Advocates recognizes the important services provided to women by community advocacy programs in Minnesota. These programs also receive federal and state funding. Significant federal funding, including Violence Against Women Act funding, has been allocated in Minnesota to services for women of color including immigrant women. Advocates reported that community advocacy programs serving immigrant women in the metropolitan area face similar challenges with respect to providing language accessible and culturally specific services as are discussed with regard to shelters in this section.

<sup>691</sup> Minnesota Statute 611A.32 Subd.2(5) states that in their application for funding, shelters must present "evidence of an ability to do outreach to unserved and underserved populations and to provide culturally and linguistically appropriate services." And, once they receive a grant, Minnesota Statute 611A.371 Subd.2 states that "Designated shelter facilities are prohibited from discriminating against a battered woman or her children on the basis of race, color, creed, religion, national origin, marital status, status with regard to public assistance, disability, or sexual orientation."

<sup>692</sup> Battered Women's Shelter Program Standards, Office of Justice Programs, available at <http://www.ojp.state.mn.us/grants/ProgrammaticStandards/BWShelterStandards.pdf>.



Immigrant women are referred to shelters by numerous sources, including community organizations, the police, schools and churches. The first act of achieving contact with a shelter can be very difficult for a battered immigrant woman. Some battered immigrant women believe that if they ask for help, the shelter will require them to split up their families.<sup>693</sup> Interviewees explained that many immigrant women must establish trust in a service organization before they will acknowledge a need for shelter.<sup>694</sup>

Shelters in the metropolitan area provide 24-hour access to temporary safe housing for abuse victims and their children. They also provide legal and social systems referrals, support groups, transportation and community education. Shelters serve all women, although some have a specific community focus. There are currently eleven shelters in the Minneapolis/St. Paul area. There are also a few safe home networks, which temporarily house battered women in private homes. Some metropolitan area shelters may also use a network of hotels or motels that have agreed to let battered women stay briefly at no charge in vacant rooms. Shelters use these facilities only when the shelters are full because these facilities have no on-site support mechanisms for battered women.<sup>695</sup>

Researchers estimate that as many as 27,000 women in Minnesota are battered each year, 20% of whom may seek shelter.<sup>696</sup> Statistics on domestic violence are largely estimates; experts believe that 75% of incidents go unreported.<sup>697</sup> In a study of shelter use in Ramsey County, trends in 2001 and 2002 showed an increase in the number of women using shelters.<sup>698</sup> A statewide study, however, indicated that shelter use peaked in 1995 at 6,100 and had dropped to 4,900 by 1999.<sup>699</sup>

### ***A. Access to Shelters***

Two shelters in the metropolitan area focus on specific community groups and offer appropriate language services to battered immigrant women from those communities. While interviewees confirmed the importance of these shelters, some reported that battered immigrant women may be reluctant to contact the shelter serving their community due to confidentiality concerns. These women are more likely to approach a shelter that is designed to serve general community members, also referred to as a “mainstream shelter.” In addition, there are many immigrant groups for whom no community-based shelters exist. As a result, language-accessible services are extremely important in mainstream shelters.

---

<sup>693</sup> Interview dated October 15, 2003.

<sup>694</sup> Interview dated August 4, 2003.

<sup>695</sup> “Battered Women’s Programs in Minnesota” available at [http://dawn\\_1.tripod.com/MCBW/advprog.htm](http://dawn_1.tripod.com/MCBW/advprog.htm) accessed on February 3, 2004.

<sup>696</sup> Stephen Coleman, Ph.D., *An Evaluation of Minnesota’s Shelter Program for Battered Women: A Report to the Minnesota Legislature* 10 (March 2001).

<sup>697</sup> “Domestic Violence Fact Sheet” available at <http://www.wadvocates.org/factsheet.htm>, accessed on February 3, 2004.

<sup>698</sup> Shelly Hendricks and Craig Helmstetter, “Emergency shelters, transitional housing and battered women’s shelters” 1, Wilder Research Center (July 2003).

<sup>699</sup> Coleman, *supra* note 696, at 4.

Many shelters use the Language Line to provide interpretation services to their immigrant clients and are working to recruit more bilingual staff members. One shelter advocate explained that if a shelter does not have a staff member who speaks a battered woman's native language, the woman may leave the shelter without being served. She may feel "neglected" and "tell her friends in the community not to go to that shelter."<sup>700</sup> Shelter employees acknowledged that the lack of resources makes it very difficult for mainstream shelters to provide language-accessible and culturally appropriate services.<sup>701</sup> One interviewee reported that immigrant women were sometimes refused access to mainstream shelters because the shelters did not have appropriate language services.<sup>702</sup>

### **1. Informal Referral System Used by Shelters Inadequate to Meet Interpretation Needs**

Interviewees reported that many shelters build an informal system to refer clients to each other when there are language issues. This informal system results in unclear policies for shelter employees as well as failures to provide adequate interpretation services to shelter clients. In addition, shelters often do not provide translated materials to immigrant clients.<sup>703</sup>

Several interviews revealed that mainstream shelters frequently ask bilingual advocates at community-specific and mainstream shelters to provide interpretation services for a client without referring the client to the other shelter. This may be due in part to the requirement that shelters report the number of clients they serve in connection with their state funding. It is difficult for bilingual advocates at community-specific or mainstream shelters to meet the interpretation needs of clients at another shelter. Community-specific shelters have limited resources and a difficult time meeting the needs of their own clients. In addition, bilingual advocates at shelters do not necessarily have training in interpretation and may not be providing adequate interpretation services.

One advocate reported that shelters unable to provide appropriate interpretation services are not obtaining outside services when needed. She cited one example in which a neighbor called the police during a domestic dispute. The police arrived and brought the woman to a shelter. Her abuser had told her she would go to jail if she did not do as he said. The bars on the windows and the locked doors at the shelter convinced the woman that she was in jail. She spent her time looking for an escape route. It took several days for the shelter to obtain an interpreter to explain the shelter's system to the woman. "I don't think she believed it even then for a few days, but she didn't run out the door," said the advocate. "She might have believed that she would be shot..."<sup>704</sup>

---

<sup>700</sup> Interview dated October 16, 2003.

<sup>701</sup> Interview dated October 4, 2004

<sup>702</sup> Interview dated July 28, 2003.

<sup>703</sup> Interview dated June 13, 2003

<sup>704</sup> Interview dated July 14, 2003.

In another case, a woman who did not speak English stayed at a suburban shelter for four weeks before an interpreter arrived. “They did not know what to do with me,” she said.<sup>705</sup> Interviewees reported another situation (previously referred to in this report) where an immigrant woman was arrested at a shelter on a report of child abuse and no interpretation services were offered either at the time of arrest or detention.<sup>706</sup>

## **2. Immigrant Women Are Not Receiving or Are Unable to Access Culturally Appropriate Services at Shelters**

Many shelters are making an effort to provide culturally appropriate services. Interviewees reported that, in some cases, mainstream shelters had hired cultural coordinators to address cultural issues in the provision of services. The shelters cut these coordinator positions, however, when the Minnesota legislature capped shelter funding.<sup>707</sup> Advocates explained that a shelter must identify all the needs of an immigrant client, including those relating to religion and culture, before it is able to provide culturally-appropriate services. A shelter must also identify and provide services to address the unique and complicated legal issues that an immigrant client may face.

An immigrant woman may be reluctant to go to a mainstream shelter because she would be isolated from her community.<sup>708</sup> One medical professional reported that she would not send her Southeast Asian clients to a mainstream shelter because of cultural, food and health issues. Her clients, she explained, would be so uncomfortable in the shelters that they would return to their abusers.<sup>709</sup> Advocates at an agency that serves Southeast Asian immigrants reported similar concerns that an Asian woman in a mainstream shelter is much more likely to return to her abuser than if she has access to a culturally-specific shelter.<sup>710</sup> An advocate explained that there is also significant pressure within the Hmong community not to put children into a shelter.<sup>711</sup>

Some immigrant victims are afraid to go to shelters that serve their communities because they may see someone they know and feel exposed. In response to these difficulties, some organizations that include shelter services have separated their domestic violence programs from the offices providing other services to the general population.<sup>712</sup> Even if shelters make efforts to maintain a client’s confidentiality, inadvertent breaches sometimes occur. In one example, a shelter advocate explained that she had called a taxi to pick up a woman who had called in crisis.

---

<sup>705</sup> Interview dated September 2, 2004.

<sup>706</sup> Interview dated May 20, 2004.

<sup>707</sup> Interview dated July 14, 2003.

<sup>708</sup> Zdrazil, Alfred, and Christensen, Erica, “Understanding Challenges Facing Immigrant and Refugee Victims” (March 2000).

<sup>709</sup> Interview dated June 9, 2003.

<sup>710</sup> Interview dated October 27, 2003.

<sup>711</sup> Interview dated July 23, 2003.

<sup>712</sup> Interview dated June 25, 2003.

When the driver of the cab arrived at the woman's home, the woman realized that the driver was her husband's best friend. She feigned ignorance, and has not contacted the shelter since.<sup>713</sup>

In order to meet the state's requirement that shelters provide culturally appropriate services to shelter clients, interviewees reported that many shelters are making efforts to accommodate a battered immigrant woman's daily needs. In shelters where group meals are served, food can be a source of conflict. One advocate reported that, "We accommodate as much as we can with food."<sup>714</sup> This advocate explained that residents of a shelter may think an immigrant woman is getting special treatment if she receives rice, for example, and others do not.<sup>715</sup> One battered immigrant woman reported that she could not eat the food provided by the shelter during her four month stay there.<sup>716</sup>

Shelters often have difficulty providing other culturally appropriate living conditions for battered immigrant women. For example, interviewees reported that western beds can seem strange to some immigrant women, and sleeping separately from one's children may not be acceptable in some cultures. Interviewees also reported that shelters have difficulty accommodating religious practices. A woman may need a private place in which to pray each day and the shelter may not have an appropriate space.

The cultural practices of others staying at the shelter may be a source of misunderstanding and conflict. For example, women do not always have the same views about the appropriateness of breastfeeding in public. There may be cultural disagreements among shelter residents over practices related to feeding and disciplining children.<sup>717</sup> In one case an immigrant woman requested that her entire family come to the shelter to help her make a decision. The shelter made an exception to their rules to accommodate this wish.<sup>718</sup> Some immigrant women might find shelter-mandated participation in a support group to be an invasion of privacy, and thus a deterrent to staying at the shelter.<sup>719</sup>

### **3. Specific Needs of Certain Immigrant Groups Are Not Being Met By Shelters**

Shelters in the metropolitan area do not always make accommodations for the cultural and religious practices of their clients. In addition, there are not enough community-specific shelters available for battered immigrant women and their families.

---

<sup>713</sup> Interview dated July 7, 2003.

<sup>714</sup> Interview dated July 14, 2003.

<sup>715</sup> *Id.*

<sup>716</sup> Interview dated December 3, 2003.

<sup>717</sup> Interview dated July 28, 2003.

<sup>718</sup> Interview dated August 4, 2003.

<sup>719</sup> Casa de Esperanza, *supra* note 70, at 36.

Advocates agree that there are currently no shelters providing culturally appropriate services for Muslim or African women.<sup>720</sup> A social worker explained that as a result, a battered Somali woman would rather seek refuge at her relatives' homes than at a shelter. This social worker also explained that there are many myths about shelters that are pervasive in the Somali community. These myths deter Somali women from seeking help at mainstream shelters. One battered immigrant woman confirmed that most Somali women will not go to a shelter.<sup>721</sup> One interviewee described an incident shortly after September 11, 2001, in which a Muslim woman who had been referred to a shelter stayed at a hotel because she felt unsafe and believed there would be no one like her at the shelter.<sup>722</sup>

One interviewee explained that many Somali women who are Muslim are afraid to stay at shelters because they are afraid of abuse, that they may not have access to appropriate food and because they do not want their children exposed to smoking or drinking.<sup>723</sup>

Other sources described the need for culturally-appropriate safety planning at shelters. Advocates reported that such planning must be very specific in addressing an immigrant woman's needs. For example, one advocate explained that safety planning may be difficult for some East African women.<sup>724</sup> One interviewee explained that, for Hmong women, it is very important that safety plans include identification of someone in her family whom she can trust.<sup>725</sup> Interviewees also reported that Russian or Bosnian immigrants in the metropolitan area have few culturally specific services available to them to assist them with safety planning.

### ***B. Fear of Legal Consequences***

Interviewees reported that battered immigrant women are often reluctant to go to a shelter because they believe that the shelter employees will question their status or require them to institute legal actions against their abusers. This fear may be greater if a woman is undocumented or if her batterer told her that her status is questionable. A woman might fear that legal action will reveal her immigration status and the status of the people with whom she lives, as well as jeopardize her housing situation.<sup>726</sup> As discussed earlier in this report, a battered immigrant woman may not want her batterer, who is often the father of her children and possibly her only source of financial support, to be deported. A battered immigrant woman may not know that shelter advocates are not required to report the immigration status of their clients to immigration officials. She may also not know that they can assist her with safety planning that does not involve pressing criminal charges against her batterer.

The Office of Justice Programs requires shelters to apply for crime victim reparations for abuse victims. Interviewees report that some battered immigrant women do not want to complete these

---

<sup>720</sup> Interviews dated June 20, 2003, July 16, 2003 and August 6, 2003.

<sup>721</sup> Interview dated September 23, 2004.

<sup>722</sup> Interview dated June 20, 2003.

<sup>723</sup> Interview dated June 16, 2003.

<sup>724</sup> Interview dated October 16, 2003.

<sup>725</sup> Interview dated June 25, 2003.

<sup>726</sup> Interview dated August 4, 2003.

official papers because they or their abuser are undocumented, and they are afraid of deportation. In addition, employers of undocumented immigrants are unlikely to verify their employment, which is required by the Office of Justice Programs to obtain crime victim reparations. Verification of loss of income is also made difficult when an immigrant victim is paid in cash.<sup>727</sup>

### **C. Funding Barriers**

Cuts in overall funding for shelters have seriously compromised the ability of shelters to make protection accessible to battered immigrant women. These developments have also limited the ability of shelters to provide language-accessible and culturally-appropriate services to immigrant women who seek their services in compliance with Minnesota law.<sup>728</sup>

The Minnesota state government began to support shelters financially in 1977. In general, shelters received an annual grant from the state and *per diem* payments to cover the costs for each person staying there.<sup>729</sup> In 1998, the state shelter program was transferred to the Minnesota Center for Crime Victim Services, the mandate of which is now covered by the Minnesota Office of Justice Programs. Shelter expenditures have increased rapidly in the last decade.<sup>730</sup> In 1999, the legislature responded to this increase by capping total state spending for shelters at approximately \$18 million per year through 2003 and limiting the funds available to each shelter. The shelters that had higher expenses, usually the larger shelters in the metropolitan area, were the most severely impacted by these limits.<sup>731</sup> In July 2003, the Minnesota legislature reduced the cap on funding for domestic violence shelters from \$18 million to \$15.379 million a year in connection with other cuts in funding for crime victim services.<sup>732</sup> In addition, in 2003, the *per diem* payment system for shelter funding was eliminated in favor of a contract based system tying shelter funding to licensed capacity and actual occupancy and expenses over a two year period.

Although most Minnesota shelters also apply for grants from the federal government, United Way or private foundations, they rely heavily on state funding. Cuts in overall state funding for shelters may disproportionately affect battered immigrant women because they often need services that require additional funding, e.g., interpretation services, and they often require longer shelter stays than non-immigrant battered women. An immigrant woman with limited English, who may be undocumented and have no employment, support from her community, or eligibility for public housing, may suffer additional harm if she is asked to leave a shelter before she is ready.

---

<sup>727</sup> Interview dated September 22, 2003.

<sup>728</sup> See Minnesota Statutes 611A.32 Subd.2(5) and 611A.371 Subd. 2.

<sup>729</sup> The specifics of shelter funding are set out in Minnesota Statutes Sections 611A. 32, 611A.37, 611A.371, 611A.373, and 611A.375.

<sup>730</sup> Coleman, *supra* note 696, at 17.

<sup>731</sup> Coleman, *supra* note 696, at 34.

<sup>732</sup> See Minnesota Coalition for Battered Women, *History of State General Funds Allocated for Crime Victims*, on file with Minnesota Advocates for Human Rights (citing statistics and figures from the Office of Justice Programs, Minnesota Department of Public Safety). See also Dan Gunderson, *Crime Victim Advocates Unhappy About Funding Cuts*, Minnesota Public Radio (December 1, 2003) (citing community advocates' concerns about the 2003 reduction in funding for crime victim services in the amount of \$733,000).

## **X. CONCLUSION**

This report documents a complicated maze of laws and institutions that face refugee and immigrant victims of domestic violence who seek safety for themselves and their children and accountability for their abusers. Navigating these systems is proving difficult to impossible for many of these victims of violence, especially as language barriers, lack of interpretation services, community pressures, biases, lack of funding and inadequate implementation of the laws interact to further thwart women's efforts to escape violence. As immigrant communities grow, Minnesota must confront this urgent situation. Unless careful attention and resources are paid to making legal remedies and services more accessible and effective for refugee and immigrant women, government institutions risk isolating entire communities of women and being complicit in this debilitating form of violence.

All parts of the community should jointly commit to a new vision of a more effective government response to domestic violence in refugee and immigrant communities. This vision should include an efficient police response to calls reporting assaults and violations of Order for Protection –supported by adequate interpretation services to accurately describe the crime scene and enable effective prosecution of crimes. This vision should include competent and complete interpretation services throughout the justice system so that risks can be assessed accurately, offenders are treated appropriately and women's right to custody of their children is not jeopardized by misinformation. This vision should include an improved level of understanding among all levels of government employees about legal remedies, financial benefits and services which are available by law to immigrant victims of violence. Finally, this vision should include medical, community advocacy and shelter services with trained employees who have access to interpretation services so that they can, understand, serve and treat women who do not speak English.

Minnesota has an international reputation and proud history of leadership in addressing domestic violence. This state's legal reform, community organizing, shelter services and battered women's advocacy programs are models around the world for those seeking to confront domestic violence in their own communities. The new challenge is to make these successes relevant in the lives of battered refugee and immigrant women in Minnesota.

## **XI. Recommendations**

### ***A. For the Minnesota Governor, State Officials and State Legislature***

#### **Improve Services to Battered Immigrant Women in the Areas of Court Interpretation, Shelters, Law Enforcement, Legal Services, Probation and Child Protection Services by Adequately Funding the Following Programs**

- Enable the Minnesota Court Interpreter Program (the Program) to develop and administer a certification exam in languages that are commonly used in the Minneapolis/St. Paul metropolitan area as soon as possible, e.g., Amharic and Oromo. Enable the Program to develop additional certification examinations in languages for which there is currently only one examination available, e.g., Somali, Hmong, Lao, Bosnian and Vietnamese. Enable the Program to provide tuition scholarships for interpreter candidates to attend the University of Minnesota program for education in translation and interpretation. Such scholarships should be provided for candidates who speak high-need languages such as Somali, Oromo, Amharic, and Hmong. Enable the Program to establish a court interpreter monitoring program that might include the shadowing of certified and roster interpreters, review of audio tapes of court interpretation and preparing evaluations of court interpreters.
- Make it possible for metropolitan area domestic violence shelters to be able to provide adequate services to battered immigrant women seeking shelter, including interpretation services when necessary.
- Enable law enforcement agencies to adequately staff domestic violence units so that they can effectively respond to the high level of domestic violence crimes in the metropolitan area. Enable law enforcement officials to obtain interpretation services at the scene of an assault, during detention and during investigation.
- Facilitate training of law enforcement personnel to effectively respond to domestic violence cases involving immigrants.
- Expand coverage of interpretation services for all medical assistance recipients with limited English proficiency, so that they may receive interpretation during services that are ancillary to the person-to-person health care service, such as requesting prescriptions and making appointments.
- Aid court staff and services in their efforts to assist limited English proficient women seeking safety from violence. Enable counties to staff domestic abuse centers with an adequate number of advocates, attorneys and other staff members to provide essential court services to assist limited English proficient women who are seeking protection from violence.



- Assist government-funded medical institutions in the development of domestic violence programming and in the provision of appropriate medical care and interpretation and translation services for immigrant domestic violence victims. Aid these institutions in the development of institution-wide protocols for domestic violence screening and for training of medical professionals.
- Ensure sustained and adequate funding for Minnesota public defenders and legal aid offices in order to improve legal representation for battered immigrant women. Battered immigrant women often cannot afford private legal representation and have difficulty navigating legal systems and forms of legal relief that may be foreign to them. Legal representation for these women is often necessary for them to access civil and criminal legal remedies or to avail themselves of protections available under the law.
- Enable probation authorities and community organizations to develop and support bilingual and culturally-appropriate rehabilitation services and treatment programs for limited English proficient perpetrators of domestic violence. These programs are vital to ensuring that immigrant domestic violence offenders have adequate access to rehabilitation services and treatment programs.
- Assist Child Protection Services in providing immigrant, limited English proficient parents in the child protection system with culturally-appropriate and bilingual versions of programs they must attend in order to comply with their case plans and retain custody of their children. These programs are essential for battered immigrant mothers to attend and benefit from the programs required by Child Protection case plans.

#### **Access to Interpreters for Victims and Witnesses During Court Proceedings**

Ensure that victims and witnesses have full access to interpretation services during all criminal court, order for protection and child protection related proceedings.

#### **Law, Policy and Procedure Concerning the Mandatory Reporting of Child Neglect in Domestic Violence Cases**

Initiate a review of law, policy and procedure concerning the mandatory reporting of child neglect in cases involving domestic violence to ensure that immigrant children are not placed in the child protection system in cases in which their health and safety are not endangered.

#### **Domestic Violence Shelter and/ or Improved Community Advocacy Services for East African Women**

Review the need for improved services for East African women whether they be provided by establishing a community-specific shelter and/or through community advocacy programs.

#### **Certification Program for Medical Interpretation**

In collaboration with the National Council for Interpreting in Health Care, establish a Code of Professional Responsibility for Medical Interpreters and a program by which medical interpreters can be certified and sanctioned by the state.

**Violence Against Women Act Self-Petitioners' Eligibility for Driver's Licenses**

Include the *prima facie* determination notice received by Violence Against Women Act self-petitioners as one of the approved documents that a person may use to obtain a state identification or license.

**Eviction of Domestic Violence Victims/Rehabilitation of Housing Records**

Take action to prevent Minnesota landlords from enforcing housing policies that declare 'zero tolerance' for domestic violence (resulting in the eviction of domestic violence victims because of domestic violence incidents at their homes or 911 calls to police because of violence). Take action to enable battered immigrant women to rehabilitate their housing records following an eviction by a landlord because of events of domestic violence occurring at her residence.

**Education Efforts on Immigration, Family and Public Benefits Law**

Sponsor workshops to build the support structure for battered immigrant women in their own communities, including training on legal systems in Minnesota and clinical legal education for members of immigrant communities.

***B. For Law Enforcement and Jails***

**Law Enforcement Access to Interpretation Services Prior to Arrest**

In cases involving limited English proficient individuals, require police officers to obtain interpretation services at the scene of a reported assault. In addition, review procedures by which police officers receive authority to access interpretation services so that such procedures do not impede their access to such services.

**Law Enforcement Access to Interpretation Services Prior to Writing Incident Report**

In cases involving limited English proficient individuals, require police officers to obtain interpretation services before writing an incident report to fully comply with Minnesota Statute 629.341, subdivision 4, and the obligation to file a report in cases involving domestic abuse. Police officers should be trained about the particular importance of incident reports in cases involving limited English proficient individuals.

**Response Time**

Undertake a review of policy and procedure aimed at improving response time to calls reporting domestic violence and to calls reporting violations of Orders for Protection (OFPs), in view of the research that shows that the existence of an OFP is one of the most significant predictors of risk for victims.

**Pursuit of Those Who Violate Orders for Protection and Leave the Scene**

Institute policies and procedures aimed at improving the response to reports of domestic violence offenders who leave the scene of a domestic violence crime or violation of an OFP.

**Procedures and Policies Regarding Interpretation in Jails**

In order to comply with obligations under state and federal law, implement policies and procedures that ensure immediate access to interpreters for limited English proficient individuals who are being detained.

**Policies Concerning Removing Immigrant Children from their Homes**

Review policies and practices concerning the removal of immigrant children from the home in cases involving domestic violence in view of research showing that children should remain in the care of the non-offending parent whenever possible.

**Interpretation Provided by Family, Friends or Others at the Scene of a Domestic Assault**

In cases involving limited English proficient individuals, do not rely exclusively on family, friends or others at the scene of an assault to interpret for the assault victim(s) or perpetrator(s). Never rely on children to provide interpretation services at the scene of an assault.

**Compliance with Standards for Report Writing**

Improve report writing by following guidelines outlined in the report entitled, *Case Processing of Misdemeanor Domestic Violence Cases: Initial Police Response to Arraignment* (2000 Battered Women's Justice Project).

**Bilingual Law Enforcement Personnel**

Recruit and train bilingual personnel from the most populous immigrant communities in the metropolitan area in order to decrease fear of law enforcement in immigrant communities.

**Public Awareness about Immigration (or Separation) Ordinances Passed by Minneapolis and St. Paul**

Conduct town hall meetings to introduce the immigration or separation ordinances passed by Minneapolis and St. Paul to the most populous immigrant communities. These ordinances restrict law enforcement's ability to inquire about immigration status while providing needed government services.

***C. For Prosecutors***

**Contact with Victims**

In accordance with recommendations outlined in the report entitled *Case Processing of Misdemeanor Domestic Violence Cases: Initial Police Response to Arraignment* (2000 Battered Women's Justice Project), assess current practices to ensure that contact with the victim is undertaken in a coordinated and efficient manner that maximizes victim safety and best contributes to an effective prosecution of the case.

**Availability of Risk Assessment**

In all domestic violence cases, including those involving limited English proficiency parties, ensure that a risk assessment is available to the court during pre-trial proceedings.

**Prosecutor Training on Language Access and Legal Issues Affecting the Prosecution of Domestic Violence Crimes Involving Limited English Proficient Individuals**

Provide prosecutors with training in language, cultural, and legal issues that may affect the prosecution of domestic violence cases. This should include training on the Violence Against Women Act and immigration law and policy.

**Perpetrator Accountability for Continued Family Violence**

Continue efforts to prosecute domestic assault cases without the cooperation of the victim. Under Minnesota Statutes 260C.335 and 260C.425, explore filing civil petitions and criminal complaints against domestic violence perpetrators whose violent behavior contributes to the need for protection or services of a child.

**Communication of the Interpreter Role**

During the pre-trial and investigation process, when using interpreters, clarify the interpreter role for limited English proficiency victims or witnesses.

**Procedural or Legal Barriers to Communication with Victims of Domestic Violence Crimes**

Assess procedural or legal barriers to prosecutors' ability to contact and communicate with limited English proficient victims, such as requirements that victims/witnesses provide social security numbers before they can be reimbursed for expenses incurred due to contact with the prosecutor's office.

**Translation of All Documents Sent to Limited English Proficient Victims and Witnesses**

Ensure that all documents which prosecutors or their agents send to limited English proficient victims and witnesses are translated into the appropriate language.

*D. For Court Administrators*

**Evaluation of Language Proficiency and Interpreting Skills for Roster Interpreters**

Improve qualification standards for inclusion on the Minnesota Court Interpreter Roster. For interpreters seeking inclusion on the Court Interpreter Roster, administer an evaluation of the candidate interpreter's language proficiency and basic interpretation skills. Such evaluation could be based on the American Council on the Teaching of Foreign Languages Certified Testing Program (ACTFL) or on the evaluation employed by the University of Minnesota Language Center. Alternatively, roster interpreters should be required to complete a course that demonstrates language proficiency and interpretation skills, e.g., the University of Minnesota Certificate Program in Interpreting, or a program requiring shadowing an experienced court interpreter for a period of time and completing a certain number of supervised interpretation appointments.

**Disciplinary Body/System for Court Interpreters**

Establish an effective disciplinary system by which (1) participants in a court proceeding may comment on interpreter conduct and (2) interpreters who violate the Code of Professional Responsibility for Interpreters may be disciplined and/or removed from the list of Certified or Roster Court Interpreters.

**Recruitment of Interpreters (Especially Women)**

Recruit additional interpreter candidates to take the court interpreter certification exam, especially female interpreter candidates.

**Qualified Interpreter Assistance with Completion of Order for Protection Petitions**

Provide limited English proficient women with qualified interpreter assistance in completing OFP petitions.

**Communication between Courts and Jails Regarding Proceedings Involving the Same Party**

Take steps to improve communication between courts and jails regarding proceedings that involve the same party. By doing so, family court and criminal court will be able to make more informed decisions about issues including risk of violence and child custody. This communication will also allow family courts to take into account the detention of a party by criminal justice authorities.

**Court Delays**

Take effective measures to request and provide interpretation services as promptly as possible in order to avoid delays in court proceedings for limited English proficient individuals for whom attendance at the proceeding may be a hardship.

**Policy of Providing Single Interpreter for Opposing Parties in Domestic Violence Related Proceedings/Court Interpreter Best Practices**

Consider amending the current policy derived from the Court Interpreter Best Practices Manual that provides a single interpreter for opposing parties in court proceedings involving domestic violence, except when counsel requests additional interpreters. Administrators should consider appointing two interpreters, one for each party, in civil and criminal proceedings involving domestic violence.

**Response to Requests for Female Interpreters**

Take measures to more effectively respond to requests for female interpreters by limited English proficient women accessing the court system to gain protection from violence.

**Procedure for Communicating Interpreter Role to All Participants in Court Proceedings**

Institute a procedure for communicating the role of the interpreter to all participants of court proceedings either through the court clerk or judicial officer.

**Translation of Documents Relating to Court Proceedings for Limited English Proficient Individuals**

Ensure that documents provided or sent by the court to limited English proficient individuals are translated into the appropriate languages.

### **Interpreter Training in Legal Process and Vocabulary**

Provide state roster interpreters who work as officers of the Minnesota courts with training regarding legal procedures and vocabulary beyond the six-hour orientation program currently provided. Consider providing training in domestic violence issues for all court interpreters.

#### ***E. For Courts and Judges***

### **Judicial Inquiry into Adequacy of Interpretation Services**

In criminal cases where either party has limited English proficiency, request information regarding interpretation services available to both the offender and the victim at the time of arrest, during the investigation and throughout the pre-trial proceedings. To the extent they are relying on such information for their decisions regarding risk analysis, bail evaluation and release of offenders, judges should assess whether interpretation services were adequate during those stages.

### **Review of Family Court Settlement Agreements and Judgments and Decrees**

In cases involving individuals with limited English proficiency, review all settlement agreements and proposed judgments and decrees with limited English proficient parties to ensure that the parties understand the terms contained in the documents. At a minimum, judges should require the parties to file Affidavits of Translation along with all filed settlement agreements and proposed judgments and decrees. The Affidavits of Translation should attest to the fact that the document filed with the court was translated from English to the party by someone fluent in both English and the party's native language.

### **Policies Regarding the Lifting of No Contact Orders**

Do not lift no contact orders without consultation with prosecutors and probation officers.

### **Risk Assessment During Pre-trial Proceedings**

Require a risk assessment in pre-trial proceedings in all domestic violence cases, including cases where the parties have limited English proficiency.

### **Referral of Domestic Violence Cases to Restorative Justice Programs**

Do not refer domestic violence cases involving limited English proficient individuals to restorative justice or community-based justice programs until there is further research on the effectiveness of these programs for these communities.

### **Judicial Statement of Interpreter Role**

In both civil and criminal cases, during court appearances where interpreters are present, begin court proceedings with a statement of the interpreter's proper role in the courtroom. This statement should be addressed to all parties, attorneys, and criminal justice personnel.

### **Avoiding Interpreter Bias**

Take steps to be aware of possible interpreter bias in domestic violence cases involving limited English proficient women and to ensure that any bias does not interfere with the administration of justice. Such steps should include asking interpreters about their experience and possible

conflicts in the case prior to any appearance or hearing. Judges should use all available resources to evaluate the performance of an interpreter, including the opinion of bilingual advocates for survivors who attend the proceedings. If bias is detected, judges should immediately disqualify the interpreter for purposes of the proceeding under Rule 8.03 of Minnesota General Rules of Practice for the District Courts (Title I Rules Applicable to All Court Proceedings).

### **Court Requests for Female Interpreters**

Use female interpreters whenever possible when requested in domestic violence cases involving limited English proficient women.

### **Interpretation Services at Time of Issuance of Order for Protection**

Require interpreters appointed to interpret at an OFP hearing to remain available to interpret the order at the time it is issued, so that the interpreter may translate the order for limited English proficient parties and facilitate the correction of mistakes or the elimination of confidential information included in the order.

### **Juvenile Court Judges' Issuance of No Contact Orders**

In Child in Need of Protective Services cases involving domestic violence, the juvenile court bench should issue no contact orders against domestic abusers, thereby relieving the battered survivor of the decision whether to seek an OFP. It may be necessary for the juvenile court to first adjudicate the abuser as a parent so as to obtain jurisdiction over a domestic abuser in a Child in Need of Protective Services case.

## ***F. For Probation Authorities***

### **Probation Officer Training on Language Access and Legal Issues Affecting Limited English Proficient Individuals**

Provide probation officers with training in language, cultural and legal issues that may affect clients and victims who are limited English proficient. This should include training in immigration law and policy and the Violence Against Women Act.

### **Translation of Documents Sent by Probation Officers for Limited English Proficient Individuals**

In cases involving limited English proficient individuals, ensure that all documents sent to victims are translated into the appropriate language.

## ***G. For Child Protection Services***

### **Availability of Interpretation Services and Language-Appropriate Documentation during Evaluation of Child Endangerment and Child Protection Investigations**

Evaluate child endangerment at the scene of a domestic assault or in a subsequent investigation with the assistance of a neutral and qualified interpreter. Ensure that immigrant families are not placed in the Child Protection System unnecessarily and that law enforcement will not take

children into custody away from battered mothers when it is not in the best interest of the children.

**Inclusion of Orders for Protection Among Case Plan Requirements in a Child in Need of Protective Services Case**

Do not require a battered immigrant mother to obtain an OFP in connection with a Child in Need of Protective Services Case. Protection orders may not be a safe option for all battered mothers and may be particularly difficult for immigrant women to obtain because of the deportation consequences of a violation of the order.

**Training for Child Protection Services Personnel**

Provide training for Child Protection Services personnel on the cultures of the largest immigrant groups established in the metropolitan area, and the immigration issues that members of these groups may face.

*H. For State Government Assistance Agencies*

**MFIP Worker Training Concerning Immigrant Domestic Violence Victims' Eligibility for Public Benefits under the Violence Against Women Act**

All Minnesota Family Investment Program (MFIP) workers should receive training concerning the *prima facie* Notice received by Violence Against Women Act self-petitioners from the Vermont Service Center of U.S. Citizenship and Immigration Services. This notice entitles its recipients to MFIP and other government assistance.

**Domestic Violence Screening for Minnesota Family Investment Program (MFIP) Applicants**

MFIP administrators should implement a program by which a domestic violence advocate will screen all MFIP applicants for eligibility for the MFIP family violence waiver.

**Distribution of Information Concerning Domestic Violence Resources**

Service organizations, including refugee resettlement agencies, should integrate basic domestic violence information such as the definition of domestic violence (with examples, including examples of mental abuse), the fact that it is illegal, and how women can get help, in all of their programs. Service organizations should also disseminate basic information on housing rights.

*I. For Medical Institutions*

**Availability of Interpretation Services in Hospital Emergency Rooms in High-Need Languages**

Increase hiring of interpreters, especially for the Amharic, Oromo and Hmong languages.

**Bilingual Employees and Domestic Violence Screening in General Medicine and Emergency Departments**

Hospitals should employ a greater number of bilingual employees from various immigrant communities to improve the cultural accessibility of the medical services an institution provides



and to identify domestic violence cases among immigrant women more easily. Greater identification of domestic violence situations will enhance the government's ability to prevent further violence and will enable medical professionals to direct immigrant women to domestic violence resources in the Minneapolis/St. Paul community.

**Dissemination of Information about Domestic Violence and Appropriate Resources**

As part of an institution-wide protocol for responding to patients who may be domestic violence victims (see recommendation for Minnesota legislature above), disseminate domestic violence information through multiple avenues including brochures about child health or basic health information, enabling women to receive this information without it being obvious to their batterers.

***J. For Shelter Managers***

**Timely Provision of Interpretation Services to Limited English Proficient Shelter Residents**

Provide improved shelter access to women from immigrant communities. In connection with these efforts, shelters should develop a clear policy on when to call for interpretation services, and should develop a list of qualified interpreters together with other area shelters.

**Training of Domestic Violence Shelter Advocates**

Provide staff with additional training on cultural and legal issues affecting battered immigrant women, including information on the forms of immigration relief that are available for battered immigrant women in the United States.

***K. For Federal Legislative Authorities***

**Violence Against Women Act Self-Petitioner Eligibility for Employment Authorization**

Make Violence Against Women Act self-petitioners eligible to apply for employment authorization upon receipt of a *prima facie* notice from the immigration authorities.

**Eligibility for Immigration Relief under the Violence Against Women Act**

Amend the Violence Against Women Act to make individuals who enter into custom marriages, unmarried victims of domestic violence and spouses of student visa recipients eligible for immigration relief.

**Perpetrators of Domestic Violence Misdemeanors and Immigrants Who Violate Orders for Protection Are Deportable Aliens**

Review Section 237 (a)(2)(E) of the Immigration and Nationality Act and consider whether perpetrators of domestic violence misdemeanors and violations of Orders for Protection (OFPs) should be deportable if they do not fall within other categories of deportable aliens (e.g., perpetrators of aggravated felonies, certain firearm offenses and crimes of moral turpitude). This provision is responsible, in part, for immigrant survivors' reluctance to report misdemeanor level domestic violence offenses and violations of OFPs.

### **Undocumented Battered Women's Eligibility for Medical Assistance**

In order to ensure a continuum of medical care for battered immigrant women that will permit identification of the abuse and documentation of their injuries, amend federal law to permit the State of Minnesota to provide General Medical Assistance to battered immigrants.

### **The Women Immigrants Safe Harbor Act**

Enact the Women Immigrants Safe Harbor Act (WISH), which would expand battered immigrant women's eligibility for certain public benefits. WISH would exempt battered immigrant women who apply for immigration relief under the Violence Against Women Act or U-visas from the deeming rules enacted under the Illegal Immigration Reform and Responsibility Act and the public charge test applied by the immigration authorities at the time of application for permanent residency. WISH is endorsed by the National Immigration Law Center and Legal Momentum. For more information about WISH, please see the website of the National Immigration Law Center at [http://www.nilc.org/immspbs/cdev/wish/WISH\\_Sec-by-Sec\\_4-04.pdf](http://www.nilc.org/immspbs/cdev/wish/WISH_Sec-by-Sec_4-04.pdf).

### **Restrictions on Legal Service Organizations That Prevent the Provision of Services to Undocumented Battered Women**

Remove restrictions on legal aid organizations so that they can represent battered immigrants, including Violence Against Women Act Self-Petitioners or U-visa applicants. Under Section 504(a)(18) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, legal aid organizations that are funded by the federal Legal Services Corporation (LSC) are prohibited from representing most undocumented individuals, regardless of whether the funds used are LSC or non-LSC funds.

#### ***L. For Federal Immigration Authorities***

### **Immigration Relief under the Violence Against Women Act and the Victims of Trafficking and Violence Protection Act**

Take measures to expedite the adjudication of immigration relief under the Violence Against Women Act and the Victims of Trafficking and Violence Protection Act at the Vermont Service Center.

### **Review of Domestic Violence Issues Adjudicated by the Vermont Service Center**

The Office of Chief Counsel for Immigration and Customs Enforcement and the Examinations Office of U.S. Citizenship and Immigration Services located in the Bloomington, Minnesota should cease their improper review of domestic violence issues already adjudicated by the Vermont Service Center in connection with a self-petition under the Violence Against Women Act. Should these offices have concerns about the determination made by the Vermont Service Center that leads the office to "reasonably believe that a self-petition should be revoked," they should follow the appropriate procedure for notifying the Vermont Service Center about their concerns in accordance with the 2002 Memorandum from the Department of Justice regarding "Revocation of VAWA-Based Self-Petitions."

**Policy Memorandum on Public Assistance Guaranteed Under the Violence Against Women Act**

Produce a policy memorandum explaining Violence Against Women Act self-petitioner eligibility for public benefits. This memorandum could be used by petitioners, their attorneys or their advocates in their interactions with government employees charged with disbursing public benefits.

**Adjudication of the Domestic Violence Waiver Application Filed in Respect of a Petition to Remove Conditions to Permanent Residency**

Transfer to the Vermont Service Center all adjudication of the Domestic Violence Waiver applications filed in respect of petitions to remove conditions to permanent residency. Officers at the Vermont Service Center who have had the benefit of domestic violence training are the appropriate immigration officials to adjudicate these applications.

**Training for Immigration Officers and Attorneys**

Provide additional training for immigration officials and attorneys who investigate or litigate cases involving domestic abuse, or adjudicate applications for immigration relief based on domestic abuse, battering or extreme cruelty, including applications filed under the Violence Against Women Act and the Victims of Trafficking and Violence Prevention Act.

***Prima Facie* Determination Notice**

Amend the format for the *prima facie* determination notice of eligibility for public benefits. The format should be distinct from the format of a receipt for documentation. The *prima facie* determination notice should include the children listed on the self-petition of the mother, so that it is clear to county government assistance workers that the children are eligible for public benefits.

**Transparency of Adjudication of Immigration Relief for Battered Immigrants and Availability of Information Concerning the Applications for this Relief**

Improve the transparency of the process by which battered immigrant women obtain immigration relief, including the adjudication of self-petitions under the Violence Against Women Act (and related adjustment of status applications), applications for U-Visas, application for cancellation of removal on the basis of VAWA and waivers of the joint petition requirement to remove conditions to residency. The immigration authorities should also improve efforts to respond to inquiries from battered immigrant women concerning the status of their pending immigration applications.



The Government Response to Domestic Violence Against  
Refugee and Immigrant Women in the Minneapolis/St. Paul  
Metropolitan Area: A Human Rights Report

Minnesota Advocates for Human Rights  
650 Third Avenue South #550  
Minneapolis, MN 55402-1940

ISBN: 0-929293-57-6