

LEAVING DOESN'T MEAN LIVING:
ANALYZING THE CASE OF ANGELA VAUGHN,
CRIMINALIZED SURVIVORS OF GENDER-BASED VIOLENCE,
AND INTERNATIONAL HUMAN RIGHTS LAW

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I. INTRODUCTION

“Where was my protection? And now I’m sentenced for murder? I would have been better off if I had let him kill me.”¹ A chilling quote by Angela Vaughn demonstrates the tragic experience that many survivors of domestic violence face when they act to protect themselves from their abusive partners. Angela Vaughn is a mother, a daughter, and a friend who now faces a lengthy prison sentence as a result of the criminalization of her survival of domestic violence.² Vaughn lived in constant fear of her live-in boyfriend Ronald Grant’s physically abusive behavior, control tactics, and threats.³ Perhaps most importantly, Vaughn’s intimate understanding of Grant and the dynamics of their relationship led her to believe that her life was in danger on October 24, 2003.⁴ As a result, Vaughn acted to save her life by firing a single shot, killing Grant.⁵ Now, Vaughn is a criminalized survivor of domestic violence, serving a thirty-year sentence after a jury found her guilty of murder and possession of a weapon during the commission of a violent crime.⁶ In essence, Vaughn is serving an unjustly long sentence for protecting herself and her children.⁷

Angela Vaughn’s story represents one of many where survivors of domestic violence are facing lengthy sentences for protecting themselves from an abusive person or in response to abuse.⁸ Domestic violence is defined as “a pattern of behavior in any relationship that is used to gain or maintain power and control over an intimate partner.”⁹ It can involve abuse of other household or family members beyond intimate partners as well.¹⁰ Abusers use tactics such as “physical, sexual, emotional, economic or psychological

¹ Transcript of Record at 372, *State v. Angela Vaughn*, 2004-GS-04-748, 749 (S.C. 10th Cir. Ct. Gen. Sess. 2006) [hereinafter Transcript of Record].

² *Id.* at 374 (“Indictment number 2004-GS-04-749, it’s the sentence of the Court that the Defendant be committed to the State Department of Corrections for a term of five years. Indictment number 2004-GS-04-748, it’s the sentence of the Court that the Defendant, Angela Vaughn, be committed to the State Department of Corrections for a term of 30 years.”).

³ Transcript of Post-Conviction Relief Hearing at 20–25, *State v. Angela Vaughn*, 2008-CP-04-02319 (S.C. 10th Cir. Ct. C.P. 2010) [hereinafter Transcript of PCR Hearing].

⁴ Transcript of Record, *supra* note 1, at 306–07.

⁵ *Id.* at 306–09.

⁶ *Id.* at 374.

⁷ *Id.*

⁸ *Fact Sheet on Domestic Violence & the Criminalization of Survival*, FREE MARISSA NOW, <https://www.freemariissanow.org/fact-sheet-on-domestic-violence--criminalization.html> (last visited Mar. 20, 2023).

⁹ *What is Domestic Abuse?*, UNITED NATIONS, <https://www.un.org/en/coronavirus/what-is-domestic-abuse> (last visited Dec. 30, 2022).

¹⁰ *Id.*

actions or threats of actions [to] influence”¹¹ the people they abuse.¹² Domestic violence happens to people of all “race[s], age[s], sexual orientation[s], religion[s], [and] gender[s].”¹³ It also affects people of all socioeconomic groups and levels of education.¹⁴ Many survivors of domestic violence, specifically women—Tracey Grissom in Alabama, Charise Douglas in Georgia, and Tiffany Carroll in South Carolina¹⁵—are still incarcerated for acting to protect themselves. These survivors must wait for long periods of time before their cases are resolved and face long sentences for acting in direct response to the abuse they experienced.¹⁶ Though there are many types of acts for which survivors are criminalized, this Note will focus on actions taken in self-defense against an abusive person, often resulting in charges like assault and murder.

Section II of this Note will provide background information on gender-based violence, the American criminal justice system (with a particular focus on challenges faced by women and by survivors of interpersonal violence), and the criminalization of survivors. Section III will provide the international legal landscape that is pertinent to this issue. Section IV will then analyze Angela Vaughn’s case and apply international human rights law to demonstrate the errors that have been and could continue to be committed in her case. Lastly, Section V will conclude this Note by providing recommendations to the State of South Carolina and, more broadly, to American criminal justice entities for how they can provide better outcomes for criminalized survivors through improved legislation, trial practices, and sentencing practices.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Stephanie Taylor, *Convicted Murderer Tracey Grissom Sentenced to 25 Years*, TUSCALOOSANEWS.COM (Sept. 2, 2014, 10:50 AM), <https://www.tuscaloosaneews.com/story/news/2014/09/02/convicted-murderer-tracey-grissom-sentenced-to-25-years/29935649007>; Tim Chitwood, *Columbus Police Say No Evidence Backs Woman’s Claims of Abuse in Husband’s Shooting*, LEDGER-ENQUIRER (May 20, 2021), <https://www.ledger-enquirer.com/news/local/crime/article251426358.html>; Sara Coello, *Woman Who Killed Abusive Boyfriend Sparks SC’s Latest Call for Reform*, POST & COURIER (Sept. 14, 2020), https://www.postandcourier.com/news/woman-who-killed-abusive-boyfriend-sparks-scs-latest-call-for-reform/article_44da73f8-2e46-11ea-b9df-2b92c69a2400.html.

¹⁶ See Jean Lee, *Abuse Survivors Can Get Shorter Sentences in 2 States, but Courts Are Saying No*, THE 19TH, <https://19thnews.org/2021/07/domestic-violence-survivors-reduced-sentences-in-2-states> (July 12, 2021, 1:48 PM); Leigh Goodmark, *Criminalized Survivors Deserve Sentencing Reform*, GOTHAM GAZETTE (Dec. 5, 2022), <https://www.gothamgazette.com/130-opinion/11702-criminalized-survivors-deserve-sentencing-reform>.

II. BACKGROUND ON GENDER-BASED VIOLENCE, THE CRIMINAL JUSTICE SYSTEM, AND THE CRIMINALIZATION OF SURVIVORS

A. Gender-Based Violence

Two significant issues—gender-based violence and the role of gender in the context of the criminal justice system—feed into the issue of the criminalization of survivors of domestic violence. Gender-based violence is endemic in the United States.¹⁷ According to the National Coalition Against Domestic Violence, “nearly 20 people per minute are physically abused by an intimate partner” in America, meaning that more than ten million individuals are abused each year.¹⁸ Additionally, one in four women and one in nine men in America experience severe physical violence, contact sexual violence, or stalking by an intimate partner in their lifetime.¹⁹ With regard to sexual violence, on average, an American experiences sexual assault every sixty-eight seconds.²⁰ Additionally, one in six women and one in thirty-three men in America “have experienced an attempted or completed rape in their lifetime.”²¹ Though this widespread problem affects people of all demographic groups, these statistics demonstrate that these types of violence disproportionately affect women.²²

Experiencing abuse and trauma can lead to severe long-term impacts such as anxiety, depression, Post-Traumatic Stress Disorder (PTSD), substance abuse challenges, self-injury, suicide, and other mental health and interpersonal challenges.²³ Trauma causes the brain to process memories or experiences in a way that often leads trauma survivors to live in a constant state of hypervigilance or fear.²⁴ PTSD and related trauma triggers (“ . . . a stimulus

¹⁷ *Devastatingly Pervasive: 1 in 3 Women Globally Experience Violence*, WORLD HEALTH ORG. (Mar. 9, 2021), <https://www.who.int/news/item/09-03-2021-devastatingly-pervasive-1-in-3-women-globally-experience-violence>; see also *The Preventable Pandemic: Sexual and Gender-Based Violence*, UNITED NATIONS, <https://www.un.org/en/academic-impact/preventable-pandemic-sexual-and-gender-based-violence> (last visited Mar. 21, 2023).

¹⁸ *National Statistics*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/statistics> (last visited Dec. 30, 2022).

¹⁹ *Id.*

²⁰ *About Sexual Assault*, RAINN, <https://www.rainn.org/about-sexual-assault> (last visited Dec. 30, 2022).

²¹ *Scope of the Problem: Statistics*, RAINN, <https://www.rainn.org/statistics/scope-problem> (last visited Dec. 30, 2022).

²² *Id.*

²³ *Abuse, Trauma, and Mental Health*, OFF. ON WOMEN'S HEALTH (Feb. 16, 2021), <https://www.womenshealth.gov/mental-health/abuse-trauma-and-mental-health>.

²⁴ Mary Jo DiLonardo, *What Are PTSD Triggers?*, WEBMD (May 15, 2021), <https://www.webmd.com/mental-health/what-are-ptsd-triggers>.

that causes memories or reactions to severe or sustained trauma”²⁵) often cause people who have experienced trauma to react to something normal or non-threatening as if their body is in danger and fearful of such danger.²⁶ Additionally, the brain associates certain sights, sounds, smells, and other stimuli with traumatic experiences.²⁷ Experiencing or being exposed to one of these stimuli can cause trauma triggers for the person who experienced trauma, leading their body to react to the stimulus as if it is presently in danger.²⁸ Thus, experiencing various trauma triggers can lead a person’s body to experience a “flight, fight[,] freeze response[]” and react as if they are experiencing trauma.²⁹ In addition, people develop various mental health disorders as a result of experiencing trauma.³⁰ Moreover, many survivors end up in poverty or without housing as a result of their need to leave abusive situations, as they lack resources due to their abusive partners’ controlling behavior and tactics.³¹

Domestic violence between intimate partners, in particular, presents unique challenges to survivors. Domestic violence is rooted in the abuser’s desire to exert power and control over their partner.³² Because of this, domestic abusers will utilize a variety of tactics to maintain control in the relationship.³³ Physical and sexual abuse are used for a variety of reasons, including instilling fear in the survivor.³⁴ Additionally, this physical and sexual abuse is often accompanied by emotional and psychological abuse that leads the survivor to believe that no one else will ever love them or that they deserve this type of treatment.³⁵ Abusive people use gaslighting techniques, making their partners doubt or question their own reality or what they know to be true.³⁶ Abusers also isolate survivors from friends and family, control where their partners go, and control the family’s employment and finances.³⁷ These abuse tactics and many more are used to maintain power and control in the relationship. Abusers’ exertion of power and control over survivors makes it difficult

²⁵ *What Does It Mean To Experience A Trauma Trigger?*, UNIV. OF PITTSBURGH MED. CTR. (Aug. 24, 2021), <https://share.upmc.com/2021/08/trauma-trigger>.

²⁶ DiLonardo, *supra* note 24.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Fight, Flight, Freeze Responses*, TRAUMA RECOVERY, <https://trauma-recovery.ca/impact-effects-of-trauma/fight-flight-freeze-responses> (last visited Dec. 30, 2022).

³⁰ *Abuse, Trauma, and Mental Health*, *supra* note 23.

³¹ *See Domestic Violence and Homelessness*, ACLU WOMEN’S RTS. PROJECT, <https://www.aclu.org/sites/default/files/pdfs/dvhomelessness032106.pdf> (last visited Dec. 30, 2022).

³² *See What is Domestic Abuse?*, *supra* note 9.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

for survivors to document the abuse, seek help, or report the abuse.³⁸ The lack of documentation and evidence makes it challenging for survivors to pursue civil or criminal legal remedies against their abusers. Additionally, the hormones and neurotransmitters that the brain releases in response to trauma inhibit the production and retention of memories.³⁹ Thus, it is difficult for the brain to remember a traumatic event in its entirety and in chronological order.⁴⁰ “A victim’s prior physiological response to a traumatic experience may make them seem like they cannot get their story straight, or in chronological order. When in reality, it is actually that they cannot account for their memory of the event in chronological order.”⁴¹ Moreover, victims commonly only remember certain aspects of the event (often the most traumatic aspects) and forget other aspects.⁴²

Because of the multifaceted issues that accompany abusive relationships, survivors face significant challenges and barriers when trying to leave an abusive relationship, evidenced by the fact that “[o]n average, it takes a victim seven times to leave before staying away for good.”⁴³ Some barriers are psychological.⁴⁴ Survivors often fear the consequences of leaving their partners.⁴⁵ They may be intimidated by threats from their abusers or experience shame as a result of the abuse.⁴⁶ Survivors can also normalize their abuse or “may not know what healthy relationships look like”⁴⁷ due to their experience with their partners or as a result of abuse experienced or witnessed in the home as a child.⁴⁸ Additionally, survivors may have low self-esteem as a result of the abuse and thus believe they are at fault for or deserving of the abuse.⁴⁹ Other challenges are more so based on logistical difficulties. As a result of their abusive partners’ manipulation and control, many survivors lack financial

³⁸ *Power and Control: Break Free From Abuse*, NAT’L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/identify-abuse/power-and-control> (last visited Jan. 2, 2023).

³⁹ Jonathan E. Sherin & Charles B. Nemeroff, *Post-Traumatic Stress Disorder: The Neurobiological Impact of Psychological Trauma*, 13 *DIALOGUES CLINICAL NEUROSCIENCE* 263, 263–73 (2011).

⁴⁰ Chaficka Khodr Agha, *How Traumatic Experiences Impact Victim Behavior and Memory in the Aftermath of Violent Crime*, NAT’L CTR. FOR VICTIMS OF CRIME (Oct. 13, 2020), <https://www.ncvcta.org/post/how-traumatic-experiences-impact-victim-behavior-and-memory-in-the-aftermath-of-violent-crime>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *50 Obstacles to Leaving*, THE HOTLINE, <https://www.thehotline.org/resources/get-help-50-obstacles-to-leaving> (last visited Jan. 2, 2023).

⁴⁴ *Why People Stay*, THE HOTLINE, <https://www.thehotline.org/support-others/why-people-stay-in-an-abusive-relationship> (last visited Mar. 22, 2023).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

resources because their abusers control their finances or do not allow them to work.⁵⁰ Some survivors even fear the impact that leaving or reporting abuse might have on their immigration status.⁵¹ Cultural context and values may also impact someone's decision to leave, including cultural beliefs about marriage and divorce or experiences with and fear of law enforcement, particularly among certain racial or ethnic groups.⁵² For people with limited English proficiency, a language barrier may make it more difficult to seek help and leave an abusive relationship.⁵³ Many survivors feel guilty for disrupting their children's family structure, school enrollment, or other areas of their children's lives.⁵⁴ Additionally, abusive relationships are complicated and most often still involve feelings of love for the abusive partner, adding to the difficulty of deciding whether to leave.⁵⁵ No matter what a survivor's reasons for deciding whether to stay in an abusive relationship may be, leaving is not only extremely difficult but also highly dangerous.⁵⁶ Leaving an abusive relationship "is often the most dangerous period of time for survivors of abuse"⁵⁷ because "[w]hen a survivor leaves their abusive relationship, they threaten the power and control their partner has established over the survivor's agency, which may cause the partner to retaliate in harmful ways."⁵⁸ Additionally, survivors become intimately familiar with the dynamics of their relationship and are often able to predict their abusers' behavior.⁵⁹ Something that may seem meaningless or arbitrary to another person often carries significant meaning to a domestic violence survivor and may indicate that their safety is in danger.⁶⁰ Thus, a third party who is not intimately familiar with the relationship in the same way that the survivor is might not be able to identify certain signs that a survivor's life is in danger.⁶¹ Often, only the survivor knows this, and there are many challenges associated with demonstrating this in court, leading to survivors being doubted or the full picture of a survivor's story not being clearly painted.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *See id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Why Do Victims Stay?*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/why-do-victims-stay> (last visited Mar. 21, 2023) ("The victim in violent relationships knows their abuser best and fully knows the extent to which they will go to make sure they have and can maintain control over the victim.").

⁶⁰ *See id.*

⁶¹ *See id.*

B. *The Criminal Justice System*

There are many challenges in the American criminal justice system that play a significant role in shaping the experiences and outcomes of criminalized survivors. The criminal justice system seems to apply disparate treatment of individuals on the basis of their gender.⁶² Generally speaking, women are being incarcerated at an alarmingly and increasingly high rate; more specifically, “[b]etween 1980 and 2020, the number of incarcerated women increased by more than 475%.”⁶³ The previously described disparate impact of gender-based violence on women and the high rate of incarceration of women are certainly interrelated.⁶⁴ There are robust statistics demonstrating a strong correlation between incarcerated women and a history of abuse. Almost “60% of people in women’s prison[s] nationwide, and as many as 94% of some women’s prison populations, have a history of physical or sexual abuse before being incarcerated.”⁶⁵ Additionally, abuse is perpetuated in American jails and prisons, with 80,600 inmates sexually assaulted or raped each year.⁶⁶

C. *Criminalized Survivors*

The plague of gender-based violence and its impacts on survivors, the high rates of incarcerated women and the challenges they face, and the striking statistics demonstrating the connection between abuse and incarceration all culminate in the practice of criminalizing survivors.⁶⁷ Many survivors of abuse end up facing convictions and harsh criminal sentences, including many years of incarceration or even the death penalty, for acting in direct consequence of their abuse.⁶⁸ Often, survivors are criminalized for acting in self-

⁶² Niki Monazzam & Kristen M. Budd, *Incarcerated Women and Girls*, THE SENT’G PROJECT (Apr. 3, 2023), <https://www.sentencingproject.org/publications/incarcerated-women-and-girls>.

⁶³ *Id.*

⁶⁴ See Mary Gilfus, *Women’s Experiences of Abuse as a Risk Factor for Incarceration*, VAWNET (Dec. 2002), <https://vawnet.org/material/womens-experiences-abuse-risk-factor-incarceration>.

⁶⁵ *Analysis & Vision*, SURVIVED & PUNISHED, <https://survivedandpunished.org/analysis> (last visited Jan. 2, 2023).

⁶⁶ *Scope of the Problem: Statistics*, *supra* note 21.

⁶⁷ *Analysis & Vision*, *supra* note 65.

⁶⁸ See Sandra Babcock, *Lisa Montgomery: A Victim of Incest, Child Prostitution and Rape Faces Execution*, CORNELL L. SCH.: CORNELL CTR. ON THE DEATH PENALTY WORLDWIDE (Oct. 19, 2020), <https://deathpenaltyworldwide.org/lisa-montgomery-a-victim-of-incest-child-prostitution-and-rape-faces-execution>; Sandra Babcock, *Coalition of Former Prosecutors and Anti-Violence Organizations File Brief in Support of Melissa Lucio, Victim of Gender-Based Violence Facing Execution in Texas*, CORNELL L. SCH.: CORNELL CTR. ON THE DEATH PENALTY WORLDWIDE (Aug. 12, 2021),

defense to protect themselves or their children from an abusive partner.⁶⁹ Survivors are also criminalized for “Failure to Protect” or not being able to keep a child safe from the primary aggressor or abusive party.⁷⁰ Additionally, survivors face criminalization for acting under duress by an abusive person who “coerced [them] into acting as an ‘accomplice’ for another crime.”⁷¹ Further, survivors are criminalized for mental health issues, substance use, and poverty, conditions which often arise as a direct result of the abuse they faced.⁷² The impact that abuse has on survivors’ mental health plays a large role in the criminalization of survivors; the effects of trauma can lead a survivor to commit a crime in response to a trauma trigger, as a product of PTSD, or as a result of another mental health disorder, to name a few.⁷³

In addition, the familiarity that domestic violence survivors in particular have with the behavior of their abusers and the dynamics of their relationships may indicate to them that they are in danger. Thus, survivors may act to protect themselves from what they know to be a dangerous situation in circumstances that may not satisfy the traditional legal requirements for self-defense, particularly the requirement that the danger be imminent.⁷⁴

The mistreatment and injustice faced by criminalized survivors are not new issues in America.⁷⁵ Francine Hughes’s case and the subsequent movie *The Burning Bed* brought this issue to light in the United States in the 1970s.⁷⁶ In 1979, the cover of *The New York Times* featured an article about the

<https://deathpenaltyworldwide.org/coalition-of-former-prosecutors-and-anti-violence-organizations-file-brief-in-support-of-melissa-lucio-victim-of-gender-based-violence-facing-execution-in-texas>.

⁶⁹ *About Us*, NAT’L CLEARINGHOUSE FOR THE DEF. OF BATTERED WOMEN, <https://www.ncdbw.org/about-us> (last visited Jan. 2, 2023).

⁷⁰ Debra Whitcomb, *Prosecutors, Kids, and Domestic Violence Cases*, 248 NAT’L INST. JUST. J., Mar. 2002, at 3, 3.

⁷¹ *The Work*, THE DEVI CO-OP, <https://www.thedevicoop.org/igniting-hope/the-work> (last visited Jan. 2, 2023).

⁷² *Id.*

⁷³ See Sharyn Adams et al., *Trauma-Informed and Evidence-Based Practices and Programs to Address Trauma in Correctional Settings* (July 25, 2017), <https://icjia.illinois.gov/researchhub/articles/trauma-informed-and-evidence-based-practices-and-programs-to-address-trauma-in-correctional-settings>; Taylor, *supra* note 15.

⁷⁴ Farrah Champagne, *Non-Confrontational Self-Defense and the Imminent Threat Requirement*, A.B.A. (May 31, 2016), <https://www.americanbar.org/groups/litigation/committees/criminal/articles/2016/spring2016-0516-nonconfrontational-self-defense-imminent-threat-requirement>.

⁷⁵ See Erin Blakemore, *Francine Hughes Killed Her Abusive Husband—And Changed U.S. Views on Domestic Violence*, HISTORY (Mar. 21, 2019), <https://www.history.com/news/burning-bed-syndrome-francine-hughes-domestic-abuse>.

⁷⁶ *Id.*

increasing legal rights of domestic violence survivors (“[b]attered wi[ves]”)⁷⁷ who act in self-defense against their abusive partners.⁷⁸ However, despite the fact that this issue is not new to the American criminal justice system, survivors continue to face unjust proceedings and outcomes when charged with crimes that are related to their abuse. These include harsh sentences, victim-blaming questions and testimony at trial, and failures of attorneys to present adequate evidence of abuse and applicable legal defenses.⁷⁹

Women charged with violent crimes face particular challenges in cases where they claim self-defense. First, in most jurisdictions, the legal definition of self-defense implicates a need for the danger to be imminent or immediate.⁸⁰ As a result of their abuse, many survivors know that their safety is in danger based on their knowledge of and experience with their abusers’ behavior as well as the dynamic of their relationship.⁸¹ Yet, the facts of a case might not meet the required legal standard. Oftentimes, the facts of their cases fail to meet the standard that the fear be objectively reasonable.⁸² Additionally, the facts as presented may fail to meet the standard that the threat be imminent or that the danger be life threatening.⁸³ A trauma trigger or trauma response may lead a survivor to believe that they are in present danger, though this belief or fear may not fit within the legal standard of objectively reasonable belief or life-threatening danger.⁸⁴ Some states have developed laws which include defenses for survivors of domestic violence acting in self-defense,

⁷⁷ Wayne King, *Right of Women to Self-Defense Gaining in ‘Battered Wife’ Cases*, N.Y. TIMES (May 7, 1979), <https://www.nytimes.com/1979/05/07/archives/right-of-women-to-selfdefense-gaining-in-battered-wife-cases.html>.

⁷⁸ *Id.*

⁷⁹ See, e.g., *Some Issues to Consider When DV Survivors Are Charged with DV-Related Crimes*, KING CNTY. COAL. AGAINST DOMESTIC VIOLENCE (Dec. 2003), <https://endgv.org/wp-content/uploads/2016/03/Vic-DefIssuesforJudges1.pdf>; Belinda Robinson, *Revealed: How Judge Withheld These Abuse Pictures that Could Have Saved Mother-of-Two from 25-Year Jail Sentence by Proving She Did Not Shoot Dead Violent Husband in Cold Blood*, DAILY MAIL (Aug. 10, 2015), <https://www.dailymail.co.uk/news/article-3167410/Mother-said-shot-unarmed-ex-husband-four-times-self-defense-convicted-25-years-prison-murder.html>; *Addimando Gets Reduced Sentence After Appeal*, MID HUDSON NEWS (July 14, 2021), <https://midhudsonnews.com/2021/07/14/addimando-gets-reduced-sentence-after-appeal>; Goodmark, *supra* note 16; Lee, *supra* note 16.

⁸⁰ CHARLES E. TORCIA, WHARTON’S CRIMINAL LAW § 14:4 (16th ed. 2022).

⁸¹ *Why Do Victims Stay?*, *supra* note 59.

⁸² Caroline Gillis, *Domestic Violence and Self-Defense: Respecting Women’s Autonomy by Creating a Woman-Centered Law of Self-Defense*, DIG. COMMONS @ AM. U. WASH. COLL. OF L. 7–9 (2002), https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1035&context=stu_upperlevel_papers.

⁸³ *Id.*

⁸⁴ *Id.*

such as the Battered Woman Syndrome defense.⁸⁵ However, scholars argue that there is a “gender disparity in self-defense law.”⁸⁶ Battered Woman Syndrome, though often “deployed as a defense in cases in which a woman has killed her abuser . . . is based on the idea of female irrationality.”⁸⁷ The theory suggests that a woman acted wrongly but cannot be held accountable for her act because of some sort of defect or problem that she has.⁸⁸ Similarly, “Stand Your Ground” laws⁸⁹ implicate discriminatory beliefs about women. Stand Your Ground laws, in theory, allow individuals to use deadly force “to protect themselves from death or great bodily harm in any place they are lawfully allowed to be without first needing to attempt to flee the situation.”⁹⁰ However, men are much more likely to prevail at trial when employing these defenses than women are.⁹¹ These laws still do not account for the fact that the threat that led the survivor to act in self-defense is often one that others might not see as a crime.⁹² Thus, these laws often fail to protect survivors of domestic violence.

Legal remedies do exist that should, in theory, protect survivors who act in self-defense against their abusive partners. These include legal defenses like the traditional right of self-defense, which can be defined as “the use of force to protect oneself, one’s family, or one’s property from a real or threatened attack.”⁹³ The defense can be asserted by people charged with a number of crimes including assault, battery, and homicide, which are crimes that survivors of domestic violence could be arrested for when acting to protect themselves from an abusive partner.⁹⁴

⁸⁵ See *Criminal Law: The Battered Woman Defense*, 34 AM. JUR. 2D *Proof of Facts* 1 (1983) (updated Aug. 2022).

⁸⁶ Elizabeth Flock, *How Far Can Abused Women Go to Protect Themselves?*, THE NEW YORKER (Jan. 13, 2020), <https://www.newyorker.com/magazine/2020/01/20/how-far-can-abused-women-go-to-protect-themselves>.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ See *Self Defense and “Stand Your Ground”*, NAT’L CONF. OF STATE LEGISLATURES (Feb. 9, 2022), <https://www.ncsl.org/civil-and-criminal-justice/self-defense-and-stand-your-ground>.

⁹⁰ Shelley Flannery, *Do Stand Your Ground Laws Apply to DV Survivors?*, DOMESTICSHELTERS.ORG (Sept. 7, 2020), <https://www.domesticshelters.org/articles/legal/do-stand-your-ground-laws-apply-to-dv-survivors>.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Self-Defense*, BLACK’S LAW DICTIONARY (11th ed. 2019).

⁹⁴ *Self-Defense*, LEGAL INFO. INST., <https://www.law.cornell.edu/wex/self-defense> (last visited Mar. 21, 2023).

Battered Woman Syndrome is a defense designed specifically to protect survivors of domestic violence.⁹⁵ It is recognized in many states (including South Carolina) and stands for the proposition that “a battered woman is virtually held hostage in a violent household by a man who isolates and terrorizes her, convincing her that if she leaves he will track her down and kill her.”⁹⁶ This defense is often used by women who kill their abusive partners and argue that their only way to escape the dangerous situation was to kill their abusive partner.⁹⁷ When using this defense, attorneys often use expert testimony and focus on how a history of abuse impacts the woman’s perception of threat and danger.⁹⁸ Moreover, sentencing mitigation bills exist in some states, which are designed to protect survivors by allowing or requiring judges to consider a domestic violence survivor’s history of abuse in determining their sentence.⁹⁹

Even with these protections in place, many survivors are still being incarcerated for protecting themselves.¹⁰⁰ One survey found, through gathering data from several hundred incarcerated women across the country, that “[thirty] percent [of respondents] reported that they . . . were in prison for trying to protect themselves or loved ones from physical or sexual violence.”¹⁰¹ Because existing self-defense laws do not effectively account for circumstances of survivors and thus fail to protect them, many criminalized survivors are facing convictions and harsh sentences for serious criminal offenses like murder, aggravated assault, and possession of a deadly weapon (including during the commission of a crime).¹⁰²

Relatedly, sentencing issues often impact criminalized survivors of gender-based violence. As previously discussed, because survivors face convictions for crimes such as murder and aggravated assault, they are given the

⁹⁵ Ola W. Barnett & Alyce D. LaViolette, *Battered Woman Syndrome Is a Legitimate Defense*, in *VIOLENCE: OPPOSING VIEWPOINTS* 158 (Scott Barbour & Karin Swisher eds. 1996).

⁹⁶ ALYCE D. LAVIOLETTE & OLA W. BARNETT, *IT COULD HAPPEN TO ANYONE: WHY BATTERED WOMEN STAY* 164 (3d ed. 2014).

⁹⁷ Barnett & LaViolette, *supra* note 95.

⁹⁸ *Id.*

⁹⁹ See, e.g., *DVSJA*, N.Y. STATE DEFS. ASS’N PUB. DEF. BACKUP CTR., <https://www.nysda.org/page/DVSJA> (last visited Jan. 3, 2023) (describing New York’s Domestic Violence Survivors Justice Act).

¹⁰⁰ See Gilfus, *supra* note 64; *Analysis & Vision*, *supra* note 65.

¹⁰¹ Justine van der Leun, ‘No Choice But to Do It’, *THE APPEAL* (Dec. 17, 2020), <https://theappeal.org/criminalized-survivors-survey>.

¹⁰² PENAL REFORM INT’L, EXECUTIVE SUMMARY: WOMEN WHO KILL IN RESPONSE TO DOMESTIC VIOLENCE: HOW DO CRIMINAL JUSTICE SYSTEMS RESPOND? 4 (2016), https://cdn.penalreform.org/wp-content/uploads/2016/04/Women_who_kill_in_response_to_domestic_violence_Executive_summary.pdf; see also *Analysis & Vision*, *supra* note 65.

harsh sentences that accompany these serious crimes.¹⁰³ Additionally, due to the wide discretion afforded to judges in sentencing, mitigation in sentencing based on survivors' histories of abuse and trauma is often inconsistent.¹⁰⁴ In United States federal courts, judges utilize the Federal Sentencing Guidelines that provide a specific method for calculating a person's sentence based on the crime of which they were convicted and other factors related to the offense and to the defendant.¹⁰⁵ These sentencing guidelines are not binding on judges.¹⁰⁶ Thus, judges have the discretion to account for other factors and make a decision outside the guidelines if they deem another sentence more appropriate, so long as they explain the factors that went into their sentencing decision.¹⁰⁷ When evaluating a sentence, courts of appeal review the decision with a presumption that the sentence is reasonable.¹⁰⁸ Most states employ non-binding sentencing guidelines as well, meaning that judges at the state level also have the authority to issue sentences that fall outside of the guidelines.¹⁰⁹ Thus, judges at both the federal and state levels have the authority to account for survivors' histories of abuse in determining their sentences after a conviction is issued, though they often choose not to do so.¹¹⁰ Judges at the federal level must abide by mandatory minimum sentencing requirements for certain crimes, including murder, kidnapping, crimes against children, and specified crimes involving firearms or certain weapons that often implicate criminalized survivors of gender-based violence, specifically those acting to protect their safety or that of their children.¹¹¹

¹⁰³ See, e.g., *Sentencing*, OFFS. OF THE U.S. ATT'YS, U.S. DEP'T OF JUST., <https://www.justice.gov/usao/justice-101/sentencing> (last visited Mar. 21, 2023); *The Domestic Violence Survivors Justice Act [DVSJA]*, SANCTUARY FOR FAMS., <https://sanctuaryforfamilies.org/our-approach/advocacy/justice-for-incarcerated-survivors-ny> (last visited Apr. 13, 2023); *State First Degree Murder Laws*, FINDLAW (June 20, 2016), <https://www.findlaw.com/state/criminal-laws/first-degree-murder.html>; *Assault and Battery Penalties and Sentencing*, FINDLAW, <https://www.findlaw.com/criminal/criminal-charges/assault-and-battery-penalties-and-sentencing.html> (Dec. 22, 2022).

¹⁰⁴ See PENAL REFORM INT'L, *supra* note 102, at 69–70.

¹⁰⁵ *Federal Sentencing Guidelines*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/federal_sentencing_guidelines (last visited Jan. 3, 2023).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ See generally NEAL B. KAUDER & BRIAN J. OSTROM, NAT'L CTR. FOR STATE CTS., STATE SENTENCING GUIDELINES (2008).

¹¹⁰ See, e.g., PENAL REFORM INT'L, *supra* note 102, at 69–88; *Addimando Gets Reduced Sentence After Appeal*, *supra* note 79.

¹¹¹ *Federal Mandatory Minimums*, FAMS. AGAINST MANDATORY MINIMUMS, <https://famm.org/wp-content/uploads/Chart-All-Fed-MMs.pdf> (last visited Jan. 3, 2023).

Some states have mandatory minimum sentencing laws for certain crimes, as well.¹¹² These laws not only lead to long, harsh sentences for survivors, but also prevent judges from considering the context of the crime and history of abuse and trauma to the fullest extent.¹¹³ This rigid structure prevents judges from issuing sentences that they find appropriate if they are lower than the mandatory minimum.¹¹⁴ In addition, for attorneys, activists, and survivors seeking post-conviction relief (such as resentencing or sentence commutation) mandatory minimum sentencing laws prevent access to this remedy after a harsh or unjust sentence has been issued.¹¹⁵

Several states have identified how sentencing issues impact criminalized survivors and have passed legislation that allows for sentencing mitigation for criminalized survivors of abuse by taking into account a defendant's history of abuse or the abuse that gave rise to the act.¹¹⁶ In 2016, the Illinois state legislature passed an amendment to a 2015 state "law that added abuse as a ground to consider in sentencing."¹¹⁷ In 2019, New York Governor Andrew Cuomo signed the Domestic Violence Survivors Justice Act (DVSJA), which gives survivors the chance to be resentenced if their crime was a result of abuse they experienced.¹¹⁸ In South Carolina, a domestic violence victim who acts in self-defense may become eligible for parole after serving 25% of their sentence, which is shorter than the standard portion¹¹⁹ of a sentence that must be served before parole eligibility.¹²⁰

However, these laws come with challenges and still fail survivors. For example, in the Illinois state law previously discussed, "petitions must be filed no more than two years after someone's judgment."¹²¹ The time limit and lack of a retroactivity clause in the Illinois law, and similar provisions in other sentencing mitigation bills, mean that these bills effectively fail to protect survivors. In these states, survivors with harsh and unjust convictions must remain incarcerated if their sentence was issued outside of the short time period provided in the statute or before the statute came into effect. Additionally, these laws fail survivors when judges either improperly apply them (for

¹¹² *Sentencing 101*, FAMS. AGAINST MANDATORY MINIMUMS, <https://famm.org/our-work/sentencing-reform/sentencing-101> (last visited Jan. 3, 2023).

¹¹³ *See Analysis & Vision*, *supra* note 65.

¹¹⁴ *See Sentencing 101*, *supra* note 112.

¹¹⁵ *Repeal Mandatory Minimums: A Racial Justice & Domestic Violence Issue*, FREE MARISSA NOW, <https://www.freemariissanow.org/repeal-mandatory-minimums.html> (last visited Jan. 3, 2023).

¹¹⁶ *See Lee*, *supra* note 16.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *See* S.C. CODE ANN. § 16-25-90 (2022); S.C. CODE ANN. § 24-21-610 (2022); *see also* Coello, *supra* note 15.

¹²⁰ *See* Coello, *supra* note 15.

¹²¹ *See Lee*, *supra* note 16.

example, by failing to adequately account for a survivor's history of abuse) or fail to apply them altogether.¹²² For example, in the Nicole Addimando case in New York, the trial court judge improperly determined that the DVSJA did not apply in her case, though there was plenty of evidence to support a decision to the contrary.¹²³ However, an appellate court agreed with Addimando's argument that the DVSJA should have been applied in her case and reduced her sentence accordingly.¹²⁴

Improper consideration of or failure to include evidence of abuse at trial is another significant issue that criminalized survivors face while navigating criminal legal proceedings. In some jurisdictions, knowledge of the deceased's character, reputation, or prior acts of violence can be admitted as evidence, particularly in homicide cases.¹²⁵ Although, when:

the question to be determined is the truth or falsity of the defendant's claim that the defendant acted solely upon an honestly and reasonably entertained belief that there was an imminent danger of death or great bodily harm at the hands of the deceased, the defendant, to show the bad character of the deceased or prior acts of violence, must establish knowledge of that character or reputation or of the specific acts of violence at the time of the homicide.¹²⁶

Additionally, when the defendant shows that they knew of prior acts of violence, threats, or statements at the time of the act, "evidence of such prior acts of violence, threats, and even hearsay evidence of such acts and threats, may be admissible if offered to prove that the defendant so feared the victim that the defendant believed it was necessary to use physical force in self-protection."¹²⁷

Thus, there are laws that should, in theory, allow survivors to demonstrate why they feared for their lives; however, there are significant challenges that prevent these laws from being effective. First, abuse is often not well-documented. Survivors of domestic violence are "often the only witness[es] to the abuse" which happens in private.¹²⁸ Additionally, survivors often struggle to document abuse because of the power and control abusers exert over their

¹²² *Addimando Gets Reduced Sentence After Appeal*, *supra* note 79.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ 40A AM. JUR. 2D *Homicide* § 280 (1983) (updated Aug. 2022).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Jane H. Aiken & Jane C. Murphy, *Evidence Issues in Domestic Violence Civil Cases*, 34 GEO. FAM. L.Q. 43, 44 (2000).

day-to-day activities.¹²⁹ Attorneys and judges commonly seek police reports as a form of documentation in domestic violence cases.¹³⁰ However, domestic violence survivors often do not call the police out of “fear that contacting law enforcement may actually make [their] situation more dangerous,”¹³¹ because their abuser blocks access to phones in order to exert power and control, or out of fear of being arrested themselves, to name a few reasons.¹³² Immigrant survivors may fear contacting law enforcement because they are afraid of what will happen to their immigration status as a result.¹³³ Additionally, people of color may have previous experience with law enforcement and their communities that can create a fear of calling the authorities.¹³⁴ Thus, police reports are scant when police are called infrequently or not at all. Additionally, many forms of domestic violence do not leave physical evidence. Sometimes, physical abuse—even extremely dangerous forms such as strangulation—does not leave marks on the victim.¹³⁵ Further, sexual abuse often leaves no marks. Lastly, the lack of witnesses and the private nature of abuse mean that there is often little to no documentation of threats of physical violence, killing, or suicide, though these indicate severe danger and lethality.¹³⁶ Therefore, though the law allows for the admission of this relevant evidence, there is often little to no evidence to present in court.

While laws governing the admission of evidence in these cases exist, judges often improperly rule on such issues, and prosecutors fail to admit relevant evidence.¹³⁷ For example, in Alabama in 2012, Tracey Grissom shot and killed her ex-husband who had previously severely physically abused and

¹²⁹ See *Understanding the Power and Control Perspective Wheel*, ROCKLAND CMTY. COLL.: ST. UNIV. OF N.Y., <https://sunyrockland.edu/about/dei/domestic-violence/understanding-the-power-and-control-perspective-wheel> (last visited Apr. 14, 2023).

¹³⁰ See Aiken & Murphy, *supra* note 128, at 52.

¹³¹ Anna Fagan, *Why Didn't She Call the Police?*, GENESIS SHELTER (May 11, 2020), <https://www.genesisshelter.org/why-didnt-she-call-police>.

¹³² *Id.*

¹³³ *US: Immigrants 'Afraid to Call 911'*, HUM. RTS. WATCH (May 24, 2014), <https://www.hrw.org/news/2014/05/14/us-immigrants-afraid-call-911>.

¹³⁴ Rick Jervis, *Who Are Police Protecting and Serving? Law Enforcement Has a History of Violence Against Many Minority Groups*, USA TODAY (June 13, 2020), <https://www.usatoday.com/story/news/nation/2020/06/13/mistrust-police-minority-communities-hesitant-call-police-george-floyd/5347878002>.

¹³⁵ *Can You Strangle Someone and Not Leave a Mark?*, FLA. FORENSIC SCI. (Aug. 10, 2016), <https://www.floridaforensicscience.com/can-strangle-someone-not-leave-mark>.

¹³⁶ *Assessing Lethal and Extremely Dangerous Behavior*, MINN. ADVOC. FOR HUM. RTS. (2003), <http://hrlibrary.umn.edu/svaw/domestic/training/materials/LethalityModule.PDF>.

¹³⁷ Char Adams, *These Women Survived Abuse and Assault. Now They're Behind Bars. Should They Be?* (Aug. 30, 2019), <https://www.vox.com/the-highlight/2019/8/23/20828367/cyntoia-brown-sexual-domestic-abuse-prison-pipeline>.

raped her.¹³⁸ The judge did not admit the photos of rape and abuse, which depicted severe, bloody injuries.¹³⁹ After the trial, “one of the jurors later saw the images in the newspaper and said that she would have ‘hung the jury’ if she’d seen them [in court],”¹⁴⁰ demonstrating the effect that this evidence can have on the outcome of a trial and the severe impact judges can have by excluding such evidence. Similarly, in Nicole Addimando’s case in New York, “prosecutors and [the judge] improperly excluded evidence central to Addimando’s defense”¹⁴¹ that demonstrated that the deceased (Addimando’s abusive partner) had a profile on a pornography website where he posted videos of her and which spoke to his character and propensity for acting violently.¹⁴² Other evidentiary issues include judges’ improper consideration of evidence and their failure to properly acknowledge the defendant’s history of abuse (even after such evidence has been admitted at trial).¹⁴³

Thus, even when laws exist surrounding admission of evidence of abuse history in domestic violence cases, criminalized survivors are nonetheless not adequately protected by the criminal legal system, as there is often a lack of evidence in domestic violence cases, and judges and prosecutors often fail to include or choose to exclude relevant, pertinent evidence in these cases.

III. LEGAL FRAMEWORK

With an understanding of the issues faced by criminalized survivors of interpersonal violence, it is important to address the legal issues and injustices survivors face when navigating the criminal justice system. While their cases are proceeding through the criminal justice system, criminalized survivors often experience discrimination on the basis of gender, failure to receive equal protection under the law, and violations of their right to a fair trial, all of which are addressed by international law that is—or should be—binding on the United States.

¹³⁸ Robinson, *supra* note 79.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Lucy Brewster, *Nikki Addimando’s Appeal Argued in Front of NY State Supreme Court Appellate Division*, THE MISCELLANY NEWS (Apr. 29, 2021), <https://miscellanynews.org/2021/04/29/news/nikki-addimandos-appeal-argued-in-front-of-ny-state-supreme-court-appellate-division>.

¹⁴² *Id.*

¹⁴³ See sources cited *supra* note 79.

A. *The Convention on the Elimination of All Forms of Discrimination Against Women*

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is a multilateral agreement that was adopted by the United Nations (U.N.) General Assembly¹⁴⁴ in 1979 and entered into force in 1981.¹⁴⁵ By 1989, almost one hundred countries had agreed to be bound by the terms of this treaty.¹⁴⁶ The goals of the Convention are “rooted in the goals of the United Nations: to reaffirm faith in fundamental human rights, in the dignity . . . and worth of the human person, in the equal rights of men and women.”¹⁴⁷ The Convention lays out what equality is and how to achieve it,¹⁴⁸ “establish[ing] not only an international bill of rights for women, but also an agenda for action by countries to guarantee the enjoyment of those rights.”¹⁴⁹ Articles 2 and 15 of the Convention are particularly relevant to gender-based violence and criminalized survivors.¹⁵⁰ Article 2¹⁵¹ provides that the parties to CEDAW undertake to protect women from discrimination on the basis of gender and ensure that national tribunals and public institutions provide proper protection from discrimination, ensure that public authorities and institutions act to protect women from gender-based discrimination, and take measures including modification of legislation and practices which are discriminatory

¹⁴⁴ G.A. Res. 34/180, Convention on the Elimination of All Forms of Discrimination Against Women (Dec. 18, 1979).

¹⁴⁵ Convention on the Elimination of All Forms of Discrimination Against Women, entered into force Sept. 3, 1981, 1249 U.N.T.S. 13 [hereinafter CEDAW].

¹⁴⁶ *Convention on the Elimination of All Forms of Discrimination Against Women New York, 18 December 1979*, UNITED NATIONS HUM. RTS. OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ CEDAW, *supra* note 145, at arts. 2, 15.

¹⁵¹ *Id.* at art. 2 states:

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

. . .

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; . . .

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

against women.¹⁵² Additionally, Article 15 states that parties should hold and treat men and women equally before the law and in legal matters.¹⁵³ Though the United States has not ratified CEDAW and thus is not bound by its terms, organizations such as the American Civil Liberties Union have recommended that the United States vote to ratify and implement the treaty.¹⁵⁴ Additionally, the United States is a member state of the U.N., the broader organization overseeing CEDAW,¹⁵⁵ and it should thus be persuaded by the U.N. General Assembly's adoption of this treaty and the decision of many member states to ratify this treaty.

The Committee on the Elimination of Discrimination Against Women (the Committee), which oversees the implementation of CEDAW,¹⁵⁶ issued a decision in a case against Timor-Leste in which a survivor of domestic violence stabbed and killed her partner.¹⁵⁷ In this case, during an incident of abuse, the survivor tried to stand up, after which her partner:

kicked her in the forehead with his military boots, causing her to fall to the ground and lose consciousness. As she regained consciousness, she saw him approaching her again. She was genuinely fearful for her life and thought that he was going to kill her. While on the ground, the [woman] grabbed a kitchen knife, and stabbed D.S. once in the chest

¹⁵² *Id.*

¹⁵³ *Id.* at art. 15 states in full:

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

¹⁵⁴ *CEDAW: Fact Sheet*, ACLU (Mar. 2010), <https://www.aclu.org/other/cedaw-fact-sheet>.

¹⁵⁵ *Member States*, UNITED NATIONS, <https://www.un.org/en/about-us/member-states> (last visited Jan. 3, 2023).

¹⁵⁶ *Convention on the Elimination of All Forms of Discrimination Against Women New York, 18 December 1979*, *supra* note 146.

¹⁵⁷ U.N. Comm. on the Elimination of Discrimination Against Women, Views Adopted by the Committee Under Article 7(3) of the Optional Protocol, Concerning Communication No. 88/2015, CEDAW/C/69/D/88/2015 (Apr. 25, 2018) [hereinafter Views Adopted by the Committee].

as he came towards her. As he fell, he tried to kick the [woman] again. He died instantly.¹⁵⁸

She called for help immediately and was detained when the police arrived.¹⁵⁹ In evaluating the case and its trial, the Committee concluded that the judges “allowed gender stereotypes and bias to affect the weighing of evidence in the second trial, in particular by lending the [woman]’s voice less credence than that of her nephew, who had not been present at all relevant times.”¹⁶⁰ In addition, during her trial, the survivor was told that “as a wife, you must protect your husband”¹⁶¹ which demonstrated “a pattern of deeply held bias that continued into [her] retrial and has been enormously detrimental to the life of the [survivor] and her son.”¹⁶² The Committee, in their commentary, emphasizes the importance of fulfilling obligations to protect women from gender-based discrimination and to promote equality as well as to react to discrimination.¹⁶³ In this analysis, the Committee references its own recommendation on women’s access to justice, which convincingly states that:

Often, judges adopt rigid standards about what they consider to be appropriate behavior for women and penalize those who do not conform to those stereotypes. Stereotyping also affects the credibility given to women’s voices, arguments and testimony as parties and witnesses. Such stereotyping can cause judges to misinterpret or misapply laws ... In all areas of law, stereotyping compromises the impartiality and integrity of the justice system, which can, in turn, lead to miscarriages of justice, including the revictimization of complainants.

Judges, magistrates and adjudicators are not the only actors in the justice system who apply, reinforce and perpetuate stereotypes. Prosecutors, law enforcement officials and other actors often allow stereotypes to influence investigations and trials, especially in cases of gender-based violence, with stereotypes undermining the claims of the victim ... Stereotyping can, therefore, permeate both the investigation and trial phases and shape the final judgement.¹⁶⁴

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* § 6.5.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.* § 6.6.

The Committee stated that member States must adopt measures to combat and prevent gender-based violence by both state and non-state actors, and that failures to do so not only “provide[] tacit permission or encouragement to perpetrate acts of gender-based violence against women”¹⁶⁵ but also “constitute human rights violations.”¹⁶⁶ In its conclusion, the Committee analysis states:

In the present case, the Committee considers the authorities of the State party, by their failure to address the issue of ongoing domestic violence, in the collection of evidence, the treatment of the [victim], the support and counsel that she received, the treatment of her testimony and the sentencing decision relating to a vulnerable breastfeeding mother, failed to discharge their obligations under articles 2 (c), (d) and (f) and 15 of the Convention.¹⁶⁷

The analysis conducted by the Committee of this Timor-Leste decision has broad applicability to cases involving criminalized survivors and the way that courts often engage in gender-based discrimination in these cases. In handling cases involving criminalized survivors, judges and lawyers often violate international human rights law that should be applied in the United States.

B. International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR)—a component of the International Bill of Human Rights—is an international human rights treaty that offers various protections for civil and political rights.¹⁶⁸ The governments of countries which have ratified this treaty are required to “take administrative, judicial, and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy.”¹⁶⁹ The ICCPR is binding on the United States, as the United States ratified the treaty in 1992, and under the Supremacy Clause of the U.S. Constitution acts as

¹⁶⁵ *Id.* § 6.7.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* § 6.9.

¹⁶⁸ *FAQ: The Covenant on Civil & Political Rights (ICCPR)*, ACLU (Apr. 2019), <https://www.aclu.org/other/faq-covenant-civil-political-rights-iccpr>.

¹⁶⁹ *Id.*

federal law.¹⁷⁰ The ICCPR is applicable to all government entities and agents at the federal, state, and local levels, as well as to government contractors.¹⁷¹

Article 26 of the ICCPR requires that all people be provided equal protection under the law.¹⁷² The ICCPR states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁷³

Entities such as the Office of the High Commissioner for Human Rights have interpreted the ICCPR to include gender-based stereotyping, labeling it discriminatory in various cases.¹⁷⁴ Thus, as the ICCPR requires equal protection against gender-based discrimination, meaning that the government may not discriminate on the basis of gender and is required to take action to protect individuals against gender-based discrimination by other entities. Failing to properly account for gender-based violence can often constitute discrimination on the basis of gender, as noted by the Committee in its work to note the connection between gender-based stereotyping and violence against women, identifying actions that states must take under CEDAW to respond to or prevent gender stereotyping as it pertains to violence against women, and working to ensure these steps are taken.¹⁷⁵ Thus, the ICCPR applies to many cases involving criminalized survivors of domestic violence.

¹⁷⁰ *Id.*; U.S. CONST. art. VI. However, the United States adopted the ICCPR subject to several reservations, understandings, and declarations (or RUDs), which limits the amount of force the ICCPR has over the United States. U.S. Reservations, Declarations, and Understandings, International Covenant on Civil and Political Rights, 138 CONG. REC. S4781-01 (1992).

¹⁷¹ *FAQ: The Covenant on Civil & Political Rights (ICCPR)*, *supra* note 168.

¹⁷² International Covenant on Civil and Political Rights art. 26, *entered into force* Mar. 23, 1976, 999 U.N.T.S. 171.

¹⁷³ *Id.*

¹⁷⁴ *Gender Stereotyping as a Human Rights Violation*, OFF. OF THE HIGH COMM'R FOR HUM. RTS., 36–38 (Oct. 2013), <https://www.ohchr.org/en/women/gender-stereotyping> (citing *Yilmaz-Dogan v. The Netherlands*, U.N. Doc. CERD/C/36/D/1/1984 (1988)).

¹⁷⁵ *Id.* at 21–25; *see also* Karen Tayag Vertido v. Philippines, Communication No. 18/2008, U.N. Doc. CEDAW/C/46/D/18/2008 (Sept. 22, 2010); Rashida Manjoo, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, U.N. Doc. A/HRC/23/49 (May 14, 2013); Rashida Manjoo, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, U.N. Doc. A/67/227 (Aug. 3, 2012); Rikki Holtmaat, *Article 5*, in THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: A COMMENTARY 141, 142 (2012); Rikki

C. *Universal Declaration of Human Rights*

The Universal Declaration of Human Rights (UDHR)¹⁷⁶ “is a milestone document in the history of human rights.”¹⁷⁷ It was adopted in 1948 by the U.N. General Assembly.¹⁷⁸ Although the UDHR does not impose legal obligations, the U.S. has repeatedly stated its commitment to uphold the UDHR’s values.¹⁷⁹ The UDHR is also a component of the International Bill of Human Rights.¹⁸⁰

The UDHR mandates that all people have the right to a fair trial.¹⁸¹ It states that “[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”¹⁸²

IV. ANGELA VAUGHN’S CASE

“I was in fear for my life. That’s all I know,”¹⁸³ said Angela Vaughn during one of her post-conviction relief hearings. “I was in fear for my life. And I know, beyond a shadow of a doubt, had I not made that one shot, I would not be here talking to you today . . . I have no doubt in my mind about this and I loved that man.”¹⁸⁴

Vaughn’s powerful statement demonstrates the expertise and knowledge she alone had on October 24, 2003, not only because was she the only person who experienced the abuse in her relationship with Ronald Grant, but also because she had lived through a lifetime of abuse by many different people.¹⁸⁵

Vaughn knows what would have happened that day if she had not defended herself, and it is clear that various actors, including the prosecutor, the

Holtmaat, *Preventing Violence Against Women: The Due Diligence Standard with Respect to the Obligation to Banish Gender Stereotypes on the Grounds of Article 5 (a) of the CEDAW Convention*, in *DUE DILIGENCE AND ITS APPLICATION TO PROTECT WOMEN FROM VIOLENCE* 63 (Carin Benninger-Budel ed., 2009).

¹⁷⁶ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) (hereinafter UDHR).

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*; see, e.g., Proclamation No. 10321, 86 Fed. Reg. 71127 (Dec. 9, 2021); Robert Destro, *United States Remains Committed to Universal Declaration of Human Rights*, U.S. EMBASSY & CONSULATES IN BRAZIL (Dec. 10, 2019), <https://br.usembassy.gov/united-states-remains-committed-to-universal-declaration-of-human-rights>.

¹⁸⁰ *FAQ: The Covenant on Civil & Political Rights (ICCPR)*, *supra* note 168.

¹⁸¹ UDHR, *supra* note 176, at art. 10.

¹⁸² *Id.*

¹⁸³ Transcript of PCR Hearing, *supra* note 2, at 49.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 6–25.

judge, and Vaughn's trial attorney failed to adequately account for her significant history of abuse, leading to violations of several bodies of international human rights law.

A. Angela Vaughn's History of Abuse

Angela Vaughn has a lifelong history of abuse that is more severe than the average person is able to fathom. When Angela was three years old, her brother began sexually abusing her.¹⁸⁶ This sexual abuse continued for seven years.¹⁸⁷ As a result of the abuse, Vaughn describes that she "felt helpless, ashamed, guilt-ridden, embarrassed, [and] worthless."¹⁸⁸

Vaughn began dating and became pregnant by her boyfriend at age fourteen.¹⁸⁹ At the same age, she married the father of her child.¹⁹⁰ Her husband was both mentally and physically abusive to Vaughn; she describes that he "beat me black and blue, literally. Busted lips, black eyes, choke rings around my neck[.] [H]e used to beat my head against the chest of drawers[;] he's hit me across the shin with a hot metal poker . . . simply for waking him up."¹⁹¹ This same husband was very controlling, maintaining control over where Vaughn went, any money coming into the home, and Vaughn's relationships with friends and family.¹⁹² He was addicted to drugs and alcohol,¹⁹³ which often contributes to and enhances violent behavior.¹⁹⁴ Her husband was also sexually abusive, having raped her by sodomy at age fifteen and continuing to do so throughout the marriage.¹⁹⁵

Angela entered her second marriage around age nineteen or twenty.¹⁹⁶ During an argument with her second husband, Vaughn was injured but says it was an accident.¹⁹⁷ In commenting on this incident at one of her post-conviction relief hearings, Vaughn explained:

But see the thing about it was, the – because of the prior abuse, when I see somebody that's angry, whether they intend abuse or not, I kind of look for it to happen, because that's what I'm used

¹⁸⁶ *Id.* at 5–6.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 6.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 6–7.

¹⁹¹ *Id.* at 7–8.

¹⁹² *Id.* at 8.

¹⁹³ *Id.*

¹⁹⁴ GARCIA-MORENO ET AL., WORLD HEALTH ORG. [WHO], INTIMATE PARTNER VIOLENCE 4 (2012).

¹⁹⁵ Transcript of PCR Hearing, *supra* note 2, at 8, 12.

¹⁹⁶ *Id.* at 12–13.

¹⁹⁷ *Id.* at 13–15.

to. You see what I am saying? Like, if you was [sic] to come at me in a verbal rage, whether you intend to physically hurt me or not, in my mind, that's your next step, because that's what I'm used to.¹⁹⁸

This demonstrates Vaughn's lifelong history of abuse and how it impacted the way she views relationships. Because of prior abuse, she anticipates that abuse is about to occur. She left in the middle of the night to escape her first husband while he was not home.¹⁹⁹ Vaughn and her first husband divorced, and the grounds for divorce were physical cruelty, adultery, and habitual drinking.²⁰⁰

After the divorce, Vaughn had a significant romantic relationship with a man named Jason Eugene Hammonds.²⁰¹ Hammonds was verbally abusive to Vaughn.²⁰² She once obtained an Order of Protection against Hammonds because he threatened to harm Vaughn and Caleb, their son.²⁰³ Hammonds threatened to light their mobile home on fire while Vaughn and Caleb were sleeping and have them burn inside.²⁰⁴ Hammonds had a history of perpetrating arson, having lit his grandmother's house on fire when he was a teenager.²⁰⁵ Vaughn iterated that Hammonds would make casual threats to burn down the house while she was inside of it even at times when he was not angry.²⁰⁶ Vaughn made Hammonds leave the home.²⁰⁷

Vaughn has a history of struggling with mental illnesses, many of which are either confirmed or presumed to be a result of her abuse.²⁰⁸ She has been treated for depression since she was nine years old, including medication.²⁰⁹ Vaughn was also diagnosed with Bipolar Disorder in 1990 and has taken medication to manage this illness.²¹⁰ Moreover, Vaughn has been treated for PTSD since 1989, which resulted from the sexual abuse that she experienced as a child.²¹¹

¹⁹⁸ *Id.* at 14.

¹⁹⁹ *Id.* at 9.

²⁰⁰ *Id.* at 11.

²⁰¹ *Id.* at 14.

²⁰² *Id.* at 15.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 16.

²⁰⁷ *Id.* at 16–17.

²⁰⁸ *Id.* at 17–20.

²⁰⁹ *Id.* at 17–18.

²¹⁰ *Id.* at 18.

²¹¹ *Id.* at 19–20.

B. Angela Vaughn's Relationship with Ronald Grant

After her relationship with Hammonds ended, Vaughn entered a relationship with Ronald Grant.²¹² Over the course of their relationship, Grant was physically violent toward Vaughn.²¹³ He would start with verbal abuse that would come on suddenly and without provocation.²¹⁴ This verbal abuse often escalated to physical abuse, including Grant pushing Vaughn into walls and onto the floor, twisting her arms around to the point where it felt like they would break, getting on top of her while holding her arms down with his knees, and sitting on her and not letting her get up.²¹⁵ Grant once “got [her] by the hair of [her] head and . . . knocked [her] head into the floor . . . bust[ing] [her] chin open.”²¹⁶ He would hit her arms, causing bruises up and down them.²¹⁷ He would also abuse her in ways that caused bruising in her rib area.²¹⁸ Grant also threatened physical violence against Vaughn, sometimes saying, for example, “I will just knock the hell out of you.”²¹⁹

Grant was very controlling of Vaughn; he did not want her to have friends, did not want her parents to know her phone number or where she lived, and did not want her to have contact with her family.²²⁰ He would control the clothes she wore, including by saying that she could not wear red because it drew too much attention to her and that she could not wear black because it was too sexy.²²¹ He would require her to style her hair in certain ways and dye it particular colors.²²²

Moreover, Grant was sexually abusive to Vaughn.²²³ He struck her with a paddle and would frequently make her perform sexual acts with which she was uncomfortable.²²⁴ Vaughn felt that she had no choice but to comply with what Grant forced her to do; she was afraid of him because he was very strong.²²⁵ Vaughn commented that Grant initially treated her well during their relationship, but as time went on, she felt that she had no control over the relationship or Grant's over-consumption of alcohol.²²⁶

²¹² *Id.* at 20.

²¹³ *Id.* at 22.

²¹⁴ *Id.*

²¹⁵ *Id.* at 22–23.

²¹⁶ *Id.* at 22.

²¹⁷ *Id.* at 23.

²¹⁸ *Id.*

²¹⁹ *Id.* at 23.

²²⁰ *Id.* at 24.

²²¹ *Id.*

²²² *Id.* at 25.

²²³ *Id.* at 26–27.

²²⁴ *Id.*

²²⁵ *Id.* at 27.

²²⁶ *Id.* at 28–29.

Grant struggled with alcohol and substance abuse, beginning around February 2002.²²⁷ He also used methamphetamine and acted violently while intoxicated.²²⁸ His drinking was heavy and escalated his violent behavior (common in abusive relationships²²⁹), particularly when he drank liquor.²³⁰ He had previously lost his license because of a DUI and was ordered by a court to attend Alcoholics Anonymous meetings and behavioral health sessions as a result.²³¹

In late March of 2002, Vaughn first called 911 seeking help from Grant's abuse, prompted by an incident involving Grant's physical abuse and violent behavior after he had been drinking.²³² On this night, Vaughn and Grant were going out to dinner; Grant had to approve Vaughn's outfit before they went to the restaurant.²³³ They had not been arguing at dinner, but Grant went to the bathroom and returned to the table with a changed demeanor—angry and serious in a way that he was not earlier in the evening.²³⁴ Grant looked Vaughn in the eye and said “I ought to just kill you.”²³⁵ When they went home, they had a heated discussion that continued throughout the night.²³⁶ Grant commonly fluctuated suddenly between being angry and being calm.²³⁷ Vaughn does not recall what the substance of the argument was by the time they got home, but Grant grabbed Vaughn's wrists and twisted them, knocked her to the floor, and shoved her against the wall in the hallway.²³⁸ Next, he sat on her and twisted her arms behind her back.²³⁹ He knocked her head against the floor and would not get off of her or release her arms though she begged him to let her go.²⁴⁰ When Grant went to the bathroom, Vaughn called the police; when police arrived, she pressed charges for Criminal Domestic Violence (CDV).²⁴¹ Grant fled before police arrived because he saw Vaughn using the phone and knew she had called the police.²⁴² The police could not find him,

²²⁷ Transcript of Record, *supra* note 1, at 257.

²²⁸ *Id.* at 258.

²²⁹ *Who Facts on: Intimate Partner Violence and Alcohol*, U.S. DEP'T OF JUST.: OFF. OF JUST. PROGRAMS (2006), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/who-facts-intimate-partner-violence-and-alcohol>.

²³⁰ Transcript of Record, *supra* note 1, at 265.

²³¹ *Id.* at 274.

²³² Transcript of PCR Hearing, *supra* note 2, at 29.

²³³ *Id.* at 29–30.

²³⁴ *Id.* at 30.

²³⁵ *Id.*

²³⁶ *Id.* at 31.

²³⁷ Transcript of Record, *supra* note 1, at 279.

²³⁸ Transcript of PCR Hearing, *supra* note 2 at 31–32.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.* at 32.

²⁴² *Id.* at 32–33.

but took photos of Vaughn's injuries.²⁴³ The police sent a letter to Vaughn and Grant's home, letting Grant know that Vaughn had pressed charges, that there was a warrant, and that he had a bond hearing.²⁴⁴ Vaughn was scared to give the letter to Grant and waited until the morning of the bond hearing.²⁴⁵ Grant told Vaughn that she would be sorry for calling the police.²⁴⁶ Despite her request to participate, Vaughn was not effectively notified of the bond hearing.²⁴⁷ After the bond hearing, Grant was sent back to Vaughn's home where he resided.²⁴⁸ This created danger for Vaughn because Grant knew that she had reached out for help, including through pressing charges, making him angry and giving him knowledge that his power and control over Vaughn was threatened.²⁴⁹ Vaughn notes that Grant's demeanor changed after the bond hearing and in anticipation of the next court date.²⁵⁰ He was more serious and violent toward Vaughn during this period of time, threatening her and making sure she knew that he would get revenge.²⁵¹ Vaughn drove Grant to the bond hearing, hoping that he would be incarcerated and thus away from her home, which would allow her to safely leave the relationship.²⁵²

C. Ronald Grant's Death: October 24, 2003

On October 24, 2003, Grant and Vaughn were running errands.²⁵³ Grant made Vaughn stop at various stores where he bought beer and liquor.²⁵⁴ He proceeded to drink throughout the day, and Vaughn noted that his demeanor was different than she had seen before.²⁵⁵ At one point in the afternoon, Grant was screaming, cussing, and yelling at Vaughn.²⁵⁶ He stopped this behavior for short periods of time, indicating that the argument was going to end, but

²⁴³ *Id.*

²⁴⁴ *Id.* at 34.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 32 (responding to a question about whether she had to go to court for any sort of hearing, Vaughn replied "I wanted to, but I wasn't called back into the bond hearing. I had – when you press charges on somebody, there's a question on that paper, 'Do you want to be present at the bond hearing?' and I had checked 'Yes.'").

²⁴⁸ *Id.* at 47.

²⁴⁹ Transcript of Record, *supra* note 1, at 371–72 ("I was praying that they would enforce that warrant and lock him up and keep him there and keep him out of my home. But instead they gave him a letter for a court date before November 4th, but to come back home with me and think about it and live and sleep with me.").

²⁵⁰ Transcript of PCR Hearing, *supra* note 2, at 47.

²⁵¹ *Id.* at 47–48.

²⁵² Transcript of Record, *supra* note 1, at 371.

²⁵³ *Id.* at 279–82.

²⁵⁴ *Id.* at 262–64.

²⁵⁵ *Id.* at 265.

²⁵⁶ *Id.* at 266.

he would then begin the behavior again.²⁵⁷ After returning home, Grant and Vaughn were arguing in the bedroom, where Vaughn's gun was covered by a cloth in an upper shelf of a closet so that her child could not reach it.²⁵⁸ During the argument, Grant was, in a way that was obvious to Vaughn, "eyeballing" the gun over and over again.²⁵⁹ He then moved his hands up toward the closet shelf where the gun was stored and reached toward it.²⁶⁰ Vaughn reached for the gun to prevent Grant from getting it.²⁶¹ Grant then went into the living room,²⁶² and Vaughn kept the gun by her side (not pointed at Grant) so that he could not access it and so that she could later hide it from him.²⁶³ They continued arguing in the living room, with Grant accusing Vaughn of lying about her work schedule.²⁶⁴ Grant was sitting on the couch in the living room and looked like he was coming toward Vaughn (about to lean forward and lunge at her), in what she thought was going to be an attempt to get the gun.²⁶⁵ Because Grant had a pattern of twisting Vaughn's arm in incidents of physical abuse, she thought he would do that and gain access to the gun, putting her in severe danger.²⁶⁶ She then raised the gun and shot it once, killing Grant.²⁶⁷ Vaughn explained that she was in fear of her life because Grant was violent, strong, and fast.²⁶⁸ She said at trial, "I knew if he made it to my wrist, it would be me. Everyone said that. That was everyone's first comment. Angie, I thought it was going to be you."²⁶⁹

Following the events of October 24, 2003, Angela Vaughn was indicted for murder and possession of a weapon during the commission of a violent crime.²⁷⁰ On January 19, 2006, she was convicted of murder and sentenced to thirty years in prison.²⁷¹ She was also convicted of possession of a weapon during the commission of a violent crime and sentenced to five years to be

²⁵⁷ *Id.*

²⁵⁸ *Id.* at 265–66.

²⁵⁹ *Id.*

²⁶⁰ *Id.* at 267.

²⁶¹ *Id.*

²⁶² *Id.* at 267. Vaughn stated that it "seem[ed] like that we went on into the living room from there" after she grabbed the gun, indicating the potential impact of trauma on her ability to remember every detail of the event, and that Grant was screaming and yelling on and off. *See id.*

²⁶³ *Id.*

²⁶⁴ Transcript of Record, *supra* note 1, at 268.

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.* at 269.

²⁶⁹ *Id.*

²⁷⁰ *Vaughn v. State*, No. 2016-CP-00534, at 1 (S.C. Ct. C.P. Jan. 6, 2021) (order denying State's motion to dismiss Vaughn's Post Conviction Relief Petition).

²⁷¹ *Id.*

served concurrently with her murder sentence.²⁷² She appealed her case to the South Carolina Court of Appeals, which affirmed the trial court's decision, and then to the South Carolina Supreme Court, which denied her petition for a writ of certiorari.²⁷³ She filed two Post-Conviction Relief matters, neither of which were successful.²⁷⁴ She also filed a federal habeas corpus petition that was dismissed.²⁷⁵ Vaughn also filed another petition for Post-Conviction Relief to determine on the merits whether or not she is a battered spouse and thus eligible for early parole under South Carolina Code § 16-25-90.²⁷⁶

V. ANALYSIS

A. *Violations of CEDAW*

The State of South Carolina (and thus the United States) discriminated against Angela Vaughn on the basis of gender and failed to provide her with protection from gender-based discrimination, thus violating CEDAW.²⁷⁷ As described previously, Article 2 of CEDAW requires that countries subject to it protect women from gender-based discrimination and ensure that public institutions provide protection from discrimination and act to protect women from gender-based discrimination.²⁷⁸ Moreover, Article 15 requires parties to hold and treat men and women equally before the law and in legal matters.²⁷⁹ Additionally, as described previously, in an analysis of a Timor-Leste decision in a case involving a survivor of gender-based violence, the Committee expresses how stereotyping by various actors in the system (including prosecutors) can impact trials and can cause misinterpretation or misapplication of the law, miscarriage of justice, and compromise of the justice system's integrity.²⁸⁰ In this analysis, the Committee also iterates that states must act to prevent gender-based discrimination by non-state actors.²⁸¹ Moreover, the Committee comments that collection of evidence, counsel that the victim of domestic violence received, the treatment of the survivor's testimony, and the sentencing decision in this particular case failed to uphold what is required in Article 2 (c), (d), and (f) and Article 15 of CEDAW.²⁸²

²⁷² *Id.*

²⁷³ *Id.* at 2.

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ Vaughn v. State, No. 2016-CP-00534, at 2 (S.C. Ct. C.P. Jan. 6, 2021) (order denying State's motion to dismiss Vaughn's Post Conviction Relief Petition).

²⁷⁷ See CEDAW, *supra* note 145.

²⁷⁸ *Id.* at art. 2.

²⁷⁹ *Id.* at art. 5.

²⁸⁰ Views Adopted by the Committee, *supra* note 158, § 6.6.

²⁸¹ *Id.* § 6.7.

²⁸² *Id.* § 6.9.

Similarly, many actors discriminated against Angela Vaughn on the basis of gender at her trial, specifically Prosecutor Catherine Huey. First, Prosecutor Huey minimized the abuse that Vaughn experienced at the hands of Grant by focusing on the fact that he had never specifically threatened her with a gun, as if to suggest that Vaughn had no reason to be fearful as a result.²⁸³ Huey also called Grant's Criminal Domestic Violence charge "bogus" during cross-examination of Vaughn, further minimizing and negating the abuse that she experienced.²⁸⁴ This perpetuates the myth and stereotype that survivors exaggerate their abuse, and that certain types of abuse are bad behavior but not legitimate abuse.

Moreover, Prosecutor Huey asked Vaughn many questions about why she did not ask Grant to leave her home, such as "Do you kick him out? It was your house, right?"²⁸⁵ Vaughn explained in detail at her Post-Conviction Relief hearing how difficult it would have been for her to leave,²⁸⁶ as is very common for many survivors of domestic violence.²⁸⁷ When asked why she had not left the relationship prior to the shooting incident, Vaughn explained: "Where would I go? And he would hunt me down. I wouldn't have had time. I had . . . a three-year-old."²⁸⁸ She also explained that she worked part-time earning minimum wage; she had very little money and a car that constantly needed repair work.²⁸⁹ Further, she said "he told me before, you know, if I ran he would find me. He would find me wherever I went."²⁹⁰ Moreover, she explained that she had previously considered leaving the state but had never lived outside of Anderson County, South Carolina, and was scared to leave.²⁹¹ Lastly, she was scared that if she went to other relatives' homes, Grant would harm them as well.²⁹² Vaughn's numerous reasons for not leaving are common among survivors. "Why doesn't she just leave?" is one of the questions most commonly asked of domestic violence survivors and implicitly blames victims for the situation they are in.²⁹³ Prosecutor Huey's questioning of Vaughn as to why she did not leave the relationship furthers the stereotype and victim-blaming myth that victims are at fault for remaining in abusive

²⁸³ Transcript of Record, *supra* note 1, at 276.

²⁸⁴ *Id.* at 278.

²⁸⁵ *Id.* at 277–78.

²⁸⁶ Transcript of PCR Hearing, *supra* note 2, at 38.

²⁸⁷ See discussion *supra* Section II; *50 Obstacles to Leaving*, *supra* note 43; *Why People Stay*, *supra* note 44.

²⁸⁸ Transcript of PCR Hearing, *supra* note 2, at 38.

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² Transcript of Record, *supra* note 1, at 361.

²⁹³ Carol A. Lambert, *Putting to Rest "Why Doesn't She Just Leave?"*, PSYCH. TODAY (June 12, 2018), <https://www.psychologytoday.com/us/blog/mind-games/201806/putting-rest-why-doesnt-she-just-leave>.

relationships because they could easily choose to leave, which is far from the truth. Furthering this victim-blaming stereotype is a form of gender-based stereotyping, thus constituting discrimination on the basis of being a survivor of gender-based violence, and thus on the basis of gender.²⁹⁴ As gender-based discrimination and stereotyping are violations of CEDAW, and states are pushed by CEDAW to prevent and address gender-based discrimination and stereotyping, the state failed to uphold the requirements of CEDAW.

Further, Prosecutor Huey questioned Ms. Vaughn about why she did not call the police that night.²⁹⁵ As noted in Part II, there are a number of reasons survivors do not call the police, such as logistical challenges, finances, fear, and the emotional impact of abuse.²⁹⁶ During Vaughn's sentencing, Defense Attorney Robert Gamble explained the significant difficulties Vaughn previously had when reaching out for help.²⁹⁷ He explained that when Vaughn called the police they "would tell . . . Vaughn that they were common law [married] and would have to handle it in Family Court."²⁹⁸ He continued to explain that "Family Court said, you're not married, so we won't go there. . . . Probate Judge, said we don't have jurisdiction either. . . . She attempted to get him out [of her home] on four different occasions."²⁹⁹ Prosecutor Huey implied that because Vaughn did not call law enforcement, she failed to act to protect herself.³⁰⁰ Huey also indicated that this meant that the abuse must not have been real or severe.³⁰¹ Huey's implications and accusations perpetuate the stereotype or myth that calling law enforcement or having police reports is one of the only ways to demonstrate that abuse occurs. These implications also perpetuate the myth that survivors have the power to smoothly exit abusive relationships by calling the police. Law enforcement often fails to provide the help that survivors need, and calling law enforcement can actually increase the danger that survivors face.³⁰² Further, Vaughn explained that she did not call the police when Grant reached for the gun because there was no phone in

²⁹⁴ See sources cited *supra* note 175; Views Adopted by the Committee, *supra* note 158, § 6.5.

²⁹⁵ Transcript of Record, *supra* note 1, at 277–78 ("Did you call the police at that point?").

²⁹⁶ See Jervis, *supra* note 134; Fagan, *supra* note 131.

²⁹⁷ Transcript of Record, *supra* note 1, at 360–61.

²⁹⁸ *Id.* at 360.

²⁹⁹ *Id.* at 360–61.

³⁰⁰ *Id.* at 277–80.

³⁰¹ *Id.*

³⁰² See Claudia Boyd-Barrett, *Alternatives to Calling the Police for Domestic Violence Survivors*, CAL. HEALTH REP. (Dec. 11, 2020), <https://www.calhealthreport.org/2020/12/11/alternatives-to-calling-the-police-for-domestic-violence-survivors>; R.E. Fleury et al., "Why Don't They Just Call the Cops?": *Reasons for Differential Police Contact Among Women with Abusive Partners*, 13 VIOLENCE & VICTIMS 333, 333–46 (1998).

the bedroom.³⁰³ She also explained that she did not call the police later because she would have had to walk past Grant and that she was scared he would hurt her.³⁰⁴ Moreover, Vaughn's intimate knowledge of her relational dynamic with Grant and of Grant's behavior played a strong role when she explained that "if he ever knew [she] was going to call the [police] . . . he [had] tor[n] up two or three telephones of . . . [hers] to keep her from calling the [police]."³⁰⁵ Further, Vaughn knew that Grant became angry when she sought help because of the way he reacted to the CDV charge against him earlier that month.³⁰⁶ Thus, Vaughn knew that calling law enforcement would put her in more danger, as do many victims.³⁰⁷

Huey's questioning and correlated implicit blame of Vaughn surrounding why she did not leave the relationship or call law enforcement perpetuates the victim-blaming stereotype that victims should just leave their relationships, and that it is their fault if they are still in said relationships.³⁰⁸ It also perpetuates the stereotype that calling law enforcement is something that victims always "should" do and that doing so is one of the only ways to credibly demonstrate that they were abused.³⁰⁹

Moreover, in closing, Prosecutor Huey asserted that twisting someone's wrist behind their back is a defense mechanism to restrain someone from harming you rather than a form of physical abuse used by a primary aggressor.³¹⁰ This assertion furthers an incorrect stereotype that physical abuse has to take a particular form, whereas in reality, abusers are often creative and perpetrate abuse in many different ways—within the context of physical abuse and beyond physical abuse into emotional, psychological, and financial abuse.

Further, Prosecutor Huey questioned Vaughn in depth when she did not remember details of the incident such as who entered the bedroom first,³¹¹ the position of Grant's body when she shot the gun, and what happened immediately after she shot him.³¹² In response to being asked about who entered the bedroom first, Vaughn said "[t]o be honest, I'm not really sure. I was in hysterics. I should have been [taken] to a hospital. I was in – you know, you can't remember every little detail."³¹³ Additionally, when asked at trial about what happened immediately after the gun fired, Vaughn replied, "I don't remember.

³⁰³ Transcript of Record, *supra* note 1, at 278.

³⁰⁴ *Id.* at 280.

³⁰⁵ *Id.* at 278.

³⁰⁶ *Id.* at 35–36.

³⁰⁷ See sources cited *supra* note 302.

³⁰⁸ See Lambert, *supra* note 293.

³⁰⁹ Fleury et. al, *supra* note 302, at 343.

³¹⁰ Transcript of Record, *supra* note 1, at 313.

³¹¹ *Id.* at 274–75.

³¹² *Id.* at 269–70.

³¹³ *Id.* at 274–75.

I don't remember seeing his body fall. I don't remember dropping the gun."³¹⁴ Vaughn does remember calling 911; when describing her emotional state while calling, she said, "I was in hysterics. I didn't want to have to do that. I never hurt anybody."³¹⁵ Survivors of trauma often have a difficult time recalling every aspect or detail of the traumatic event and have trouble remembering the sequence of events in chronological order.³¹⁶ Their body also often goes into fight, flight, or freeze mode in response to the trauma.³¹⁷ Thus, it is normal that Vaughn does not remember certain aspects of the traumatic event or the order in which they happened. A common myth or stereotype is that women make up stories of domestic violence, when in reality, false reports are rare.³¹⁸ Further, judges, attorneys, and other community members often accuse survivors of trauma (including domestic violence) of being difficult to work with, dishonest, or uncooperative when they do not share every detail of the traumatic event in order; when in reality, this is a product of the brain's response to trauma.³¹⁹ In Vaughn's case, Prosecutor Huey continuing to press Vaughn about her memory of the event and framing it as though Vaughn was being dishonest perpetuates myths or stereotypes about people making up allegations of domestic violence and about survivors of domestic violence being dishonest or uncooperative.

Perpetuating each of these stereotypes or myths amounts to discrimination against someone on the basis of their victimization of gender-based violence. As noted previously, it has been established that perpetuating myths and stereotypes regarding gender, including gender-based violence, constitutes discrimination on the basis of gender in the context of interpreting CEDAW.³²⁰ Gender-based discrimination is a violation of the requirements of CEDAW,³²¹ which prohibits discrimination and requires protection of women's rights that is equal to that of men's, and CEDAW requires government entities to work actively to prevent and address gender-based discrimination, which was not done in this case. Thus, the State of South Carolina and the United States acted in violation of CEDAW in Angela Vaughn's case.

³¹⁴ *Id.* at 269–70.

³¹⁵ *Id.* at 270.

³¹⁶ See sources cited *supra* notes 23–29.

³¹⁷ See *Fight, Flight, Freeze Responses*, *supra* note 29.

³¹⁸ Keir Starmer, *False Allegations of Rape and Domestic Violence Are Few and Far Between*, THE GUARDIAN (Mar. 13, 2013), <https://www.theguardian.com/commentisfree/2013/mar/13/false-allegations-rape-domestic-violence-rare>.

³¹⁹ *Successful Trauma Informed Victim Interviewing*, INT'L ASS'N OF CHIEFS OF POLICE, <https://www.theiacp.org/sites/default/files/2020-06/Final%20Design%20Successful%20Trauma%20Informed%20Victim%20Interviewing.pdf> (last visited Apr. 19, 2023).

³²⁰ See sources cited *supra* notes 157, 174–75.

³²¹ See CEDAW, *supra* note 145.

B. *Violations of the ICCPR*

The State of South Carolina (and thus the United States) failed to provide Angela Vaughn with equal protection under the law, violating the ICCPR. As explained in Section III, Article 26 of the ICCPR requires that all people are provided equal protection of the law.³²² The ICCPR requires equal protection against gender-based discrimination, meaning that the government may not discriminate on the basis of gender and is required to protect individuals against gender-based discrimination from other entities.³²³

The State of South Carolina discriminated against Angela Vaughn on the basis of gender through the handling of her case at trial, and it failed to take adequate action to provide protection from gender-based discrimination to her when Prosecutor Huey perpetuated many stereotypes and myths about survivors of domestic violence over the course of Vaughn's trial, which constitutes discrimination on the basis of gender, as discussed in Section V(D) of this Note. This discrimination on the basis of gender constitutes a failure of the State of South Carolina to provide equal protection under the law from gender-based discrimination, as is required under the text of the ICCPR, noting that the law must both forbid discrimination and provide protection against it.³²⁴ Therefore, the State of South Carolina (and thus the United States) violated the ICCPR, which applies to all government entities in the United States, both state and federal.

C. *Violations of the UDHR*

The judge and attorneys involved in Angela Vaughn's trial failed to adequately account for her history of abuse, failing to provide her with a fair trial, making the State of South Carolina (and thus the United States) in violation of the UDHR. As noted in Section III, the United States has committed to uphold the UDHR, which mandates that all people have a right to a fair trial.³²⁵ However, as made clear by Vaughn's filing of multiple ineffective assistance of counsel claims, Vaughn was not given a fair trial or provided with her right

³²² International Covenant on Civil and Political Rights, *supra* note 172, at art. 26.

³²³ *Id.*

³²⁴ *Id.* (“In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”); CEDAW, *supra* note 145, at art. 2(c) (“To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.”).

³²⁵ UDHR, *supra* note 176, at art. 10.

to be represented effectively by counsel in a criminal proceeding. The ICCPR also states that:

In the determination of any criminal charge against him, everyone is entitled to the following minimum guarantees, in full equality: . . . (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.³²⁶

The statement that one has a right to representation by an attorney typically is accompanied by the assumption that assistance of counsel is effective and fair, as noted by the Sixth Amendment to the United States Constitution.³²⁷ Thus, the ineffectiveness of Ms. Vaughn's attorney (explained in detail in the remainder of this section) constituted a violation of her rights under the UDHR, specifically to a fair trial and to effective representation by counsel.

Vaughn's trial attorney failed to include significant amounts of evidence of Vaughn's abuse history at trial and at sentencing in the context of Vaughn's and her defense attorney's self-defense argument. As noted in Section IV(A), Angela Vaughn has a lifelong history of abuse, starting in her childhood and continuing into all of her adult romantic relationships.³²⁸ She made her trial attorney aware of all of this, but at trial he did not present evidence of "childhood abuse, the marital and significant relationships, [her] psychiatric history, mister Grant's probation and [her] attempts to have something done about getting him out of the house."³²⁹ There was a video from an earlier investigation of her sexual abuse as a child that her attorney did not submit as evidence,³³⁰ and her attorney admitted at a Post-Conviction Relief hearing that he was aware of her history of child sex abuse.³³¹ Vaughn also wanted to present the history of domestic violence she experienced in previous relationships as well as in her relationship with Grant.³³² At a Post-Conviction Relief hearing, Vaughn's trial attorney also admitted that he knew many details of the physical, emotional, and sexual abuse she experienced at the hands of Grant

³²⁶ See International Covenant on Civil and Political Rights, *supra* note 172, at art. 14(3).

³²⁷ U.S. CONST. amend. XI.

³²⁸ Transcript of PCR Hearing, *supra* note 2, at 6–37.

³²⁹ *Id.* at 43.

³³⁰ *Id.* at 41.

³³¹ Transcript of Record, *supra* note 1, at 51.

³³² *Id.* at 44.

and prior romantic partners.³³³ However, her attorney neither presented any of this evidence, nor asked her any questions to elicit responses speaking to these experiences.³³⁴ Further, Vaughn expressed at her sentencing hearing that she was concerned that this evidence was not presented at trial.³³⁵

During the jury charge at Vaughn's trial, the judge explained various aspects of the elements of the defense of self-defense in South Carolina, including that "[w]ords accompanied by hostile acts may, depending on the circumstances, establish self-defense."³³⁶ He continued to explain that "[e]vidence of prior difficulties between the . . . [d]efendant and the victim may be considered in deciding whether a threat existed, whether the Defendant had a reason to believe a threat existed and how serious that threat was."³³⁷ Moreover, the judge explained that:

The relative size, ages and the weights of the Defendant and the alleged victim may be considered in deciding the apparent or actual need for force in self-defense and the amount of force needed. Prior instances of violence by the alleged victim may be considered in deciding whether the Defendant actually believed she was in imminent danger of death or serious bodily injury or was actually in imminent danger. Threats made by the alleged victim may be considered in determining whether the Defendant actually was or believed she was in imminent danger. The intoxication of the alleged victim may be considered in deciding whether the Defendant's fear of death or bodily injury was reasonable.³³⁸

Given the available evidence surrounding Vaughn's history of abuse and trauma, much of this evidence would have certainly supported her self-defense argument if her trial attorney had included it. There is evidence of prior instances of violence (or "prior difficulties") that Grant perpetrated against Vaughn, such as the contents of Vaughn's testimony at a Post-Conviction Relief hearing that details many instances of physical, sexual, and verbal abuse,³³⁹ as well as photos of severe injuries from the incident that led her to press CDV charges in October 2003.³⁴⁰ Moreover, threats made by the alleged victim may be considered to determine if the defendant was in danger or had

³³³ *Id.* at 52–53.

³³⁴ Transcript of PCR Hearing, *supra* note 2, at 55.

³³⁵ *Id.*

³³⁶ Transcript of Record, *supra* note 1, at 340.

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ *See* Transcript of PCR Hearing, *supra* note 2, at 22–37.

³⁴⁰ *Id.* at 32.

an objectively reasonable belief she was in danger.³⁴¹ “The intoxication of the alleged victim may be considered in deciding whether the Defendant’s fear of death or bodily injury was reasonable.”³⁴² Because Vaughn’s attorney failed to present evidence, significant in both substance and quantity, that would likely have changed the outcome of Vaughn’s case in the context of the self-defense argument, she was not given a fair trial, as the jury was unable to impartially evaluate all available evidence to make a decision about her case on the merits. Since Vaughn was not given a fair trial as required by the language of the UDHR,³⁴³ the State of South Carolina (and thus the United States) violated the terms of the UDHR.

Not only did Vaughn’s trial attorney fail to present this evidence in the context of the self-defense argument, but he failed altogether to assert the defense of Battered Woman Syndrome.³⁴⁴ As explained in Section II, Battered Woman Syndrome is a defense recognized in many states (including South Carolina) that is employed by survivors of domestic violence.³⁴⁵ This defense is often used by women who kill their abusive partners and argue that their only way to escape the dangerous situation was to kill their abusive partner.³⁴⁶

Vaughn’s trial attorney did not attempt to raise this defense at trial. At a Post-Conviction Relief hearing, he stated that Vaughn underwent an evaluation with the Department of Mental Health to determine if she was competent to stand trial and if there was evidence to support a claim that she was experiencing Battered Woman Syndrome.³⁴⁷ Her trial attorney said that though she was found competent to stand trial, the evaluators found no evidence to support the claim that she experienced Battered Woman Syndrome.³⁴⁸ He explained that he did not assert this defense for this reason, and also because Battered Woman Syndrome was new in South Carolina and he thought it was better to “keep it simple” because everyone knows about self-defense, and hardly anyone was familiar with Battered Woman Syndrome.³⁴⁹

However, there is no documentation indicating that Vaughn’s trial attorney explained to her the difference between self-defense and Battered Woman Syndrome, or explained his reasoning for not introducing evidence to support the Battered Woman Syndrome defense.³⁵⁰ Vaughn disagreed with the

³⁴¹ Transcript of Record, *supra* note 1, at 340.

³⁴² *Id.*

³⁴³ UDHR, *supra* note 176, at art. 10 (“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”).

³⁴⁴ Transcript of PCR Hearing, *supra* note 2, at 55, 63.

³⁴⁵ See *supra* Part II(C); Barnett & LaViolette, *supra* note 95.

³⁴⁶ *Id.*

³⁴⁷ Transcript of PCR Hearing, *supra* note 2, at 53–54.

³⁴⁸ *Id.*

³⁴⁹ *Id.* at 55, 63.

³⁵⁰ *Id.* at 62–63.

conclusion of the evaluation—that she did not suffer from Battered Woman Syndrome.³⁵¹ Moreover, between Vaughn's daughter's testimony about the abuse at a Post-Conviction Relief hearing,³⁵² photo evidence of Grant's physical abuse of Vaughn,³⁵³ video evidence surrounding Vaughn's sexual abuse as a child,³⁵⁴ Grant's CDV charge, and testimony by Vaughn's neighbor about the abuse she witnessed,³⁵⁵ there seems to be plenty of evidence that Vaughn's trial attorney could have asserted the Battered Woman Syndrome defense, even absent a psychiatric evaluation or determination by a mental health professional.³⁵⁶ Moreover, Vaughn's daughter testified at a Post-Conviction Relief hearing that Vaughn's trial attorney told her to not bring up on her own the bruises and evidence of abuse she had witnessed, demonstrating his unwillingness to attempt to use the Battered Woman Syndrome defense,³⁵⁷ as does Vaughn's attorney's comment that he wanted to "keep it simple."³⁵⁸

Vaughn's trial attorney's failure to even attempt to assert the Battered Woman Syndrome defense led to Vaughn not experiencing a fair trial. The combination of Vaughn's attorney's failure to present the Battered Woman Syndrome defense at trial and failure to introduce evidence of Vaughn's abuse likely had a strong impact on the outcome of her trial; it is likely that Vaughn's trial would have had a different outcome and that she would not be serving the incarceration sentence that she is now, if she would even be incarcerated at all, had necessary evidence been presented and Battered Woman Syndrome defense been asserted. Therefore, Vaughn was not given a fair trial because, without Vaughn's attorney presenting all relevant and important evidence and asserting all relevant defenses, the jury was unable to impartially evaluate and consider all available evidence and arguments, and she arguably received ineffective assistance of counsel. Because Vaughn was not given a fair trial or effective representation by counsel as required in the text of the UDHR, the

³⁵¹ *Id.* at 40–41.

³⁵² *Id.* at 65–68.

³⁵³ *Id.* at 32–33.

³⁵⁴ *Id.* at 41.

³⁵⁵ Transcript of Record, *supra* note 1, at 246–48. A neighbor testified at trial that in early October 2003, she saw Grant hold Vaughn by the throat or shirt with his arm drawn back as if he were about to hit her. She then saw Grant shove Vaughn up against the garage. The neighbor had also heard lots of yelling coming from Vaughn and Grant's house—much more often by Grant than by Vaughn. *Id.*

³⁵⁶ See S.C. CODE ANN. § 17-23-170 (2022) (showing admissibility of evidence apart from psychiatric evaluations or evaluations by mental health professionals); Richard A. McDowell, *Battered Spouse Syndrome: Testing the Traditional Limits of South Carolina Law*, 48 S.C. L. REV. 673 (1997) (demonstrating that expert witness testimony is supportive but not dispositive).

³⁵⁷ Transcript of PCR Hearing, *supra* note 2, at 70.

³⁵⁸ *Id.* at 63.

State of South Carolina (and thus the United States) violated the terms of the UDHR.

Further, the judge failed to address concerns raised by Vaughn at her sentencing hearing regarding her abuse and her attorney's failure to present evidence of it. Vaughn expressed that her daughter was not allowed to testify at trial about the bruises all over her body and gashes on her head.³⁵⁹ She also expressed that there were photos of this abuse that were brought into evidence at the sentencing hearing.³⁶⁰ Nevertheless, the judge did not do anything to address the fact that these were not brought in at trial, though they were certainly relevant to the conduct at issue. Moreover, Vaughn expressed that Grant threatened to kill her the morning of the day that he died, and that he made the same threat before she filed the CDV charge against him, which is not something she had previously had the opportunity to address at trial.³⁶¹ She also presented evidence of abuse and control that was not presented at trial.³⁶² The judge failed to address the fact that none of this evidence had been brought in at trial, or that her lawyer might have acted ineffectively. The judge's failure to address the issues Vaughn raised at her sentencing hearing or the new evidence that she presented constitutes a lack of a fair trial. Had the judge adequately addressed these issues, it is likely that Vaughn's trial would have had a different outcome, such as an exoneration, a different conviction, or a shorter sentence than the one she is currently serving.³⁶³ Therefore, Vaughn was not given a fair trial, and the State of South Carolina (and thus the United States) violated the terms of the UDHR.

VI. CONCLUSION

"In our world, the only good victim is a dead one."³⁶⁴ This chilling quote from *Believe Her*, a podcast about the Nicole Addimando case, accurately pinpoints the nature of the treatment of criminalized survivors (including Angela Vaughn) in society and in the American legal system. Over the course of Angela Vaughn's trial for murder and possession of a weapon during the commission of a violent crime, the State of South Carolina and the United States violated three different bodies of international human rights law. This

³⁵⁹ Transcript of Record, *supra* note 1, at 362.

³⁶⁰ *Id.*

³⁶¹ *Id.* at 365.

³⁶² *Id.* at 372.

³⁶³ Victoria Law, *When Abuse Victims Commit Crimes*, THE ATLANTIC (May 21, 2019), <https://www.theatlantic.com/politics/archive/2019/05/new-york-domestic-violence-sentencing/589507>.

³⁶⁴ *Believe Her, Chapter 1: Chris Is Dead*, APPLE PODCASTS (Oct. 21, 2021), <https://podcasts.apple.com/us/podcast/chapter-1-chris-is-dead/id1588789400?i=1000539259721>.

highlights the brokenness of the criminal justice system in the United States and its failure to protect society's most vulnerable.

South Carolina (and other states) could take action in several ways to improve outcomes of criminalized survivors. First, South Carolina could introduce a sentencing mitigation bill that requires judges to consider a defendant's history of abuse at sentencing, similar to the Domestic Violence Survivor Justice Act in New York.³⁶⁵ Vaughn is facing a sentence of thirty years.³⁶⁶ Introducing a sentencing mitigation bill would allow her to serve a shorter term on the basis of her history of abuse and its impact on her "criminal acts," even if she still faced a conviction.³⁶⁷ This sentencing mitigation bill would ideally include a retroactivity clause, allowing for resentencing of incarcerated criminalized survivors under the new sentencing criteria.

Second, South Carolina could introduce a training and education program on domestic violence that judges, public defenders, prosecutors, and private attorneys are required to attend. If these individuals better understood the dynamics of domestic violence, they could work in each of their roles to better protect survivors. Public defenders and private practice criminal defense attorneys could ensure that evidence of a defendant's history of abuse and violence is properly introduced at trial. Proper use of the dynamics of domestic violence and the neurobiology of trauma in arguments and witness questioning to explain phenomena—such as victims' often inability to remember every detail of a traumatic event—would lead to improvement of survivors' outcomes. Prosecutors could avoid victim-blaming in their case development, and judges could better instruct juries and better inform sentencing decisions (even with current sentencing criteria and absent a new sentencing mitigation bill).

Lastly, South Carolina could create a new self-defense statute that applies to survivors of domestic violence to account for the way that elements of self-defense, including the objectively reasonable belief that one's life is in danger and the imminent threat of harm requirement, should be evaluated differently when a person is acting in self-defense against a person who has a history of abusing them or when the defendant has a significant history of trauma and abuse from other individuals over the course of their life.

At a post-conviction relief hearing, the Court can determine on the merits whether Vaughn is a battered spouse. If the Court finds that she is a battered

³⁶⁵ Lee, *supra* note 16.

³⁶⁶ See Return and Motion to Dismiss at 1, Vaughn v. State, Case No. 2012-CP-04-375 (S.C. Ct. C.P. July 26, 2013) (Respondent's motion to dismiss plaintiff's PCR action).

³⁶⁷ See, e.g., Ben Felder, *She Killed Her Abuser. An Oklahoma House Committee Passed a Bill That Could Set Her Free.*, THE OKLAHOMAN (Mar. 1, 2023), <https://www.oklahoman.com/story/news/politics/government/2023/03/01/oklahoma-house-bill-1639-could-help-imprisoned-domestic-violence-victims/69957617007>; N.Y. Crim. Pro. Law § 440.47 (McKinney 2019).

spouse, under South Carolina Code § 16-25-90, she will be eligible for early parole (after serving 25% of her prison term).³⁶⁸ Hopefully, the Court will determine that she is a battered spouse and afford her early parole eligibility. Though this would not fully remedy the harm done to her by the criminal justice system, it would provide some acknowledgment of her experience and show a degree of mercy and compassion toward her for the severe abuse that she has endured.

It is often forgotten that the criminal justice system consists of more than the black letter law. The criminal justice system determines outcomes of humans—with families, with stories, and with lived experiences that make them who they are. Humans are anything but black and white. They are complex and messy. By failing to create laws and procedures that account for this complexity and for the individual circumstances of each person who comes through the criminal justice system, we fail to achieve the healing, safety, and justice that the criminal justice system is designed to provide and promote. There is much that needs to be done to adequately protect survivors of domestic violence and to prevent injustice which amounts to incarcerating survivors for being abused.

Nicole Addimando poignantly described her experience as a criminalized survivor when she stated: “I wish more than anything it ended another way. I wouldn’t be in this courtroom right now, but I wouldn’t be alive either. This is why women don’t leave. They so often end up dead or where I’m standing — alive, but still not free.”³⁶⁹

Moving forward, we must be motivated by mercy and compassion, and we must strive for reform that will allow us to achieve better outcomes for criminalized survivors so that survivors can finally be both alive and free.

³⁶⁸ S.C. CODE ANN. § 16-25-90 (2013).

³⁶⁹ *About Nikki Addimando*, WE STAND WITH NIKKI, <https://westandwithnikki.com> (last visited Jan. 4, 2023).