



Commission on the Status of Women

Written statement submitted by the American Civil Liberties Union (“ACLU”), a non-governmental organization in special consultative status¹

We welcome the opportunity to present this statement to the Commission on the Status of Women (“CSW”) on the priority theme of its 57th session: elimination and prevention of all forms of violence against women and girls. We urge the CSW to encourage states to take effective measures at the national, state and local levels to promote and proactively incorporate international human rights standards into domestic policies, programs, outreach, and education that address and prevent violence against women and girls. This statement focuses on the need to integrate human rights standards into governmental responses to domestic violence in the United States and makes recommendations for how this could be done.

Recent Human Rights Developments Relating to Domestic Violence in the United States

Violence against women and girls is a serious criminal, public health, economic, and social issue in the U.S. Nearly one in five women are raped at some point in their lives, and more than one in three women have experienced violence perpetrated by an intimate partner. Ctrs. for Disease Control, *National Intimate Partner and Sexual Violence Survey: 2010 Summary Report* (2011).

Advocates in the U.S. increasingly have employed international human rights standards and mechanisms to combat domestic violence. Two significant developments warrant discussion.

First, the U.N. Special Rapporteur on Violence Against Women, Rashida Manjoo, made a country visit to the U.S. and issued a report in June 2011. The report highlights a number of systemic impediments to adequately addressing domestic violence. UN Human Rights Council, *Report of the Special Rapporteur on violence against Women, its causes and consequences - Addendum - Mission to the U.S.*, A/HRC/17/26/Add.5 (June 2011), <http://www.unhcr.org/refworld/docid/4ef1ad5d2.html> (“Rapporteur Report”). The Rapporteur specifically called for the creation of uniform remedies for victims. “[W]ithout any solid and binding national scheme at the federal level, mandating legislation and also training programs, there is little protection afforded for domestic violence victims in various jurisdictions, and many women in different parts of the country continue to suffer from inadequate protection.” *Id.* at ¶ 71.

Second, in August 2011, the Inter-American Commission on Human Rights issued a landmark decision in the case of *Jessica Lenahan (Gonzales) v. United States*. *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Inter-Am. Comm’n H.R., Report No. 80/11 (July 2011),

¹ Columbia Law School’s Human Rights Institute also shares the views expressed in this statement.

<http://www.oas.org/en/iachr/decisions/2011/USPU12626EN.doc> (“IACHR decision”). The decision found that the U.S. violated the American Declaration on the Rights and Duties of Man in its failure to respond to the domestic violence perpetrated against Jessica Lenahan and her three daughters, including violating their rights to life, non-discrimination, and judicial protection. *Id.* at ¶¶ 5, 107. The IACHR decision recommended that the U.S. implement several individual and systemic remedies. *Id.* at 56-57.

These findings offer an important perspective on the role of the national government to affirmatively promote women’s and children’s rights at a time when domestic protections are being curtailed. U.S. Supreme Court decisions have eliminated federal remedies for victims. *Castle Rock v. Gonzales*, 545 U.S. 748 (2005); *United States v. Morrison*, 529 U.S. 598 (2000); *DeShaney v. Winnebago City Dept. of Soc. Servs.*, 489 U.S. 189 (1989). Notably, the IACHR decision came after the U.S. Supreme Court ruling concluding that Ms. Lenahan had no constitutional right to police enforcement of a government-issued protective order.

Despite these valuable findings, little action has been taken by the U.S. to ensure that current practices are consistent with international human rights obligations. To the extent the Rapporteur Report and IACHR decision have been discussed domestically, civil society has been the primary driver of these conversations and the piecemeal implementation that has taken place. *See, e.g.*, Elizabeth M. Schneider et al., *Implementing the Inter-American Commission on Human Rights’ Domestic-Violence Ruling*, 46 Clearinghouse Rev. 113 (July-Aug. 2012).

In contrast, the U.S. has expressed its strong commitment to women’s human rights on the international stage. In a welcomed step, the U.S. pledged before the U.N. to take steps to reduce violence against women, including domestic violence fatalities. United States of America, *Statement of the United States of America On the Occasion of the 67th Session UN General Assembly’s Rule of Law High Level Meeting* (Sept. 24, 2012), <http://unrol.org/files/Pledges%20by%20the%20United%20States%20of%20America.pdf>. The pledges demonstrate a recognition by the U.S. of its human rights obligations to survivors of gender-based violence. However, the U.S. lacks any coordinated mechanisms to communicate how its human rights commitments and obligations should shape domestic violence policy, programming, education and outreach to governmental and nongovernmental actors within the U.S. The failure to communicate these standards and their value in designing policy compounds the likelihood that serious violations will persist.

The Due Diligence Standard Is Not Considered When Formulating State Responses to Domestic Violence

It is well-established in international human rights law that states have a “due diligence” obligation to adopt measures aimed at preventing violence against women and girls from occurring in the first instance, investigating violence when it does occur, and punishing perpetrators – an obligation that applies equally whether the perpetrator is a state or private actor. This standard also requires that states provide redress for victims and survivors. In the U.S., few governmental actors are aware of the due diligence standard, and there is no coordinated effort to ensure its consideration when designing domestic violence prevention and responses. Incorporating the due diligence standard is essential for women and girls, because, as described

by the Special Rapporteur and shown by the Supreme Court decision in Ms. Lenahan's case, U.S. constitutional law does not impose upon the government affirmative obligations to prevent violence.

Human Rights Principles and Findings Are Not Disseminated or Explained to U.S. Governmental Actors

The U.S. has taken important steps toward ensuring that its policies advance its human rights obligations to end violence against women abroad. In August 2012, the U.S. released an ambitious plan bringing together different federal departments in order to increase coordination between agencies and stakeholders and strengthen its gender-based violence prevention and response work in other countries. U.S. Agency for International Development, *U.S. Dept. of State, United States Strategy to Prevent and Respond to Gender-based Violence Globally* (2012), <http://www.state.gov/documents/organization/196468.pdf>. The strategy explicitly recognizes gender-based violence globally as a human rights problem that must be addressed in accordance with human rights standards. *Id.* at 7.

However, in the domestic arena, the U.S. has not engaged in any meaningful communications with other governmental actors regarding the applicability of human rights standards to its efforts to prevent and address domestic violence in the U.S. Following the Rapporteur Report and IACHR decision, the U.S. did not disseminate any explanation of the findings to relevant federal, state, or local governmental actors or offer guidance on implementation of the recommendations. Overall, the U.S. has failed to address how applicable human rights standards should be integrated into governmental approaches to domestic violence.

The State Has Not Yet Systematically Engaged with Relevant Stakeholders in Implementing Human Rights Standards

As co-counsel for petitioner Lenahan, the ACLU has had the opportunity to meaningfully engage with the federal government through the formal IACHR implementation process. To our knowledge, there has been no parallel process for facilitating discussions with civil society following the Rapporteur Report. Proactive engagement with a range of stakeholders would more effectively ensure that the U.S. is meeting its human rights obligations to domestic violence survivors. It would allow the U.S. to identify programmatic areas that could benefit from the incorporation of international human rights standards, institute mechanisms for accountability and ongoing community input, and evaluate best practices that could serve as models. Such engagement would foster a preventive approach that comports with the U.S.' human rights commitments.

We therefore recommend:

The CSW should call on the U.S. and other states to take effective measures at the national, state and local levels to promote and proactively incorporate international human rights standards into domestic policies, programs, outreach, and education that address and prevent violence against women and girls, with special attention to carrying out these steps:

- Understanding the due diligence standard and integrating it into governmental responses to domestic violence, particularly where domestic law may set a lower standard for the legal responsibility imposed on the government;
- Disseminating accessible and actionable information about human rights standards to federal, state and local governments and all agencies that provide protection, services, and remedies to survivors, including the courts and agencies focused on law enforcement, housing, economic and employment issues, and child welfare, among others; and
- Engaging governmental and nongovernmental stakeholders, including advocates and survivors, in identifying programmatic areas that could be strengthened through the use of international human rights standards, instituting accountability mechanisms, and creating and evaluating best practices.

We appreciate the CSW's work on the crucial issue of violence against women and girls. Communication may be directed to Sandra Park, Senior Staff Attorney, ACLU Women's Rights Project; 125 Broad Street 18th Fl., New York, NY 10004; spark@aclu.org.

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