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Statement submitted by American Civil Liberties Union, a non-governmental organization in consultative status with the Economic and Social Council

The Secretary-General has received the following statement, which is being circulated in accordance with paragraphs 36 and 37 of Economic and Social Council resolution 1996/31.



Statement

The American Civil Liberties Union welcomes the opportunity to present this statement to the Commission on the Status of Women on the priority theme of its fifty-seventh session: elimination and prevention of all forms of violence against women and girls. We urge the Commission 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, programmes, 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 of America and makes recommendations on 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 United States. Nearly one in five women is raped at some point in her life, and more than one in three women have experienced violence perpetrated by an intimate partner (Centers for Disease Control, National Intimate Partner and Sexual Violence Survey: 2010 Summary Report 2011).

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

First, the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, made a country visit to the United States, and issued a report (A/HRC/17/26/Add.5 and Corr.1) in June 2011. The report highlights a number of systemic impediments to adequately addressing domestic violence. The Special 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 programmes, 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” (ibid., para. 71).

Second, in August 2011, the Inter-American Commission on Human Rights issued a landmark decision in the case of *Jessica Lenahan (Gonzales) et al. v. The United States of America* (report No. 80/11, case 12.626). The Commission found that the United States had 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 (ibid., paras. 5 and 107). The decision recommended that the United States implement several individual and systemic remedies (ibid., paras. 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. United States Supreme Court decisions have eliminated federal remedies for victims, e.g., in *Castle Rock v. Gonzales*, 545 U.S. 748 (2005); *United States v. Morrison*, 529 U.S. 598 (2000); *DeShaney v. Winnebago City Department of Social Services*, 489 U.S. 189 (1989). Notably, the

Inter-American Commission on Human Rights decision came after the United States 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 United States to ensure that current practices are consistent with international human rights obligations. To the extent the Special Rapporteur's report and Inter-American Commission on Human Rights decision have been discussed domestically, civil society has been the primary driver of the conversations and the piecemeal implementation that has taken place: see, for example, the article by Elizabeth M. Schneider and others, "Implementing the Inter-American Commission on Human Rights' domestic-violence ruling", in *Clearinghouse Review*, vol. 46 (July-August 2012).

In contrast, the United States has expressed its strong commitment to women's human rights on the international stage. In a welcome move, the United States, at the high-level meeting of the General Assembly on the rule of law on 24 September 2012, pledged to take steps to reduce violence against women, including domestic violence fatalities. The pledge demonstrates a recognition by the United States of its human rights obligations to survivors of gender-based violence. However, the United States 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 non-governmental actors within the United States. 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 United States, 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 in its decision in Ms. Lenahan's case, United States constitutional law does not impose upon the Government affirmative obligations to prevent violence.

Human rights principles and findings are not disseminated or explained to United States governmental actors

The United States has taken important steps towards ensuring that its policies advance its human rights obligations to end violence against women abroad. In August 2012, the United States released the United States Strategy to Prevent and Respond to Gender-based Violence Globally, 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. The strategy explicitly recognizes gender-based violence globally

as a human rights problem that must be addressed in accordance with human rights standards.

However, in the domestic arena, the United States 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 United States. Following the Special Rapporteur's report and Inter-American Commission on Human Rights decision, the United States 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 United States 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 American Civil Liberties Union has had the opportunity to meaningfully engage with the federal Government through the formal Inter-American Commission on Human Rights implementation process. To our knowledge, there has been no parallel process for facilitating discussions with civil society following the Special Rapporteur's report. Proactive engagement with a range of stakeholders would more effectively ensure that the United States is meeting its human rights obligations to domestic violence survivors. It would allow the United States 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 United States' human rights commitments.

We therefore recommend:

The Commission on the Status of Women should call on the United States 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, programmes, outreach and education that address and prevent violence against women and girls, with special attention to carrying out the following 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
- Engaging governmental and non-governmental 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 work of the Commission on the Status of Women on the crucial issue of violence against women and girls. Communication may be directed to Sandra Park, Senior Staff Attorney, American Civil Liberties Union Women's Rights Project; 125 Broad Street, 18th floor., New York, NY 10004; spark@aclu.org.
