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Freedom From Domestic Violence as a Human Right:
Evaluation of the use of the Due Diligence Standard
within Local Contexts across the United States

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Abstract

Following the Inter-American Commission's decision against the United States in the case *Gonzales v. U.S.* and the issuance of the Special Rapporteur on Violence Against Women's country report on the United States detailing systemic faults in the way the country treats victims of domestic violence, localities across the country sought to alter their own approach towards domestic violence by issuing local resolutions that proclaim freedom from domestic violence as a human right. As the due diligence standard has reached the standing of customary international law, these resolutions should detail specific means of abiding by the due diligence framework and fully encompass the core principles of the standard. Upon analysis, while the majority of the resolutions adequately address means of preventing incidences of domestic violence from occurring and ways localities are protecting victims, they do not consistently provide specific guidelines detailing local commitments for the standards of investigation and punishment for incidences of domestic violence, accountability mechanisms for perpetrators and state officials, or appropriate remedies for victims. In order to fully encompass the due diligence standard, localities could potentially look to utilize model language contained in the Council of Europe's Istanbul Convention on the Action Against Violence Against Women and Domestic Violence which clearly covers each of the core areas of the due diligence standard thoroughly.

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1. Introduction

On December 23, 2005 Jessica Gonzales¹, a domestic violence survivor from Castlerock, Colorado, whose three children were killed when local police failed to enforce a restraining order against her estranged husband, submitted a petition to the Inter-American Commission on Human Rights² with the hope of spurring important legislative and policy changes that would more affectively address the issue of domestic violence within the United States. Ms. Gonzales sought this obscure, but promising legal avenue after her §1983 lawsuit in federal court was dismissed³ and the Supreme Court found that she had no personal entitlement under the Due Process Clause to police enforcement of her restraining order.⁴ In her claim to the IACHR, Ms. Gonzales alleged that both the Castle Rock Police Department's actions and the U.S. Supreme Court decision violated her human rights as contained in the American Declaration of the Rights and Duties of Man⁵ and the Organization of American States' Charter.⁶⁷⁸⁹

In August 2011, following an admissibility and merits hearing, the IACHR issued a decision in favor of Ms. Gonzales finding the United States responsible for the human rights

¹ Ms. Gonzales has since remarried and now goes by "Jessica Lenahan." For consistency reasons, I refer to her here as "Jessica Gonzales," the name used in her legal filings..

² Hereafter referred to as the "IACHR"

³ 42 U.S.C. § 1983 creates a federal remedy against a state official for the violation of federal rights. See 42 U.S.C. § 1983 (2000).

⁴ *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 768 (2005).

⁵ Hereafter referred to as the "American Declaration"

⁶ Hereafter referred to as the "OAS Charter"

⁷ American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, Int'l Conference of Am. States, 9th Conference, OEA/Ser.L/V/I.4 Rev. XX (May 2, 1948);

⁸ Charter of the Organization of American States, Apr. 30, 1948, 119 U.N.T.S. 3 (entered into force December 13, 1951); Statute of the Inter-American Commission on Human Rights, art. 1(2)(b).

⁹ Ms. Gonzales claimed that her rights to life and freedom from inhumane treatment (Article I); equal protection/non-discrimination (Article II); Special protections for women and children (Article VII); privacy, family unity, and safety in the home (Articles V, VI, and IX); and an adequate and effective remedy (Articles XVIII and XXIV) had been violated as contained in the American Declaration.

violations suffered by both her and her children.¹⁰ Contained within its decisions, the IACHR made seven recommendations to the United States concerning both Ms. Gonzales' case and the systemic issues with the United States' domestic violence law and policy. Three of these recommendations focused individually on Ms. Gonzales to provide her with compensation and closure for her tragic loss while the remaining four recommendations related to improvements that could be made to federal and state, legislative and policy remedies for victims of domestic violence. Most notably the Commission encouraged the United States to adopt or reform legislation and other measures that mandate the enforcement of protection orders, create effective implementation mechanisms to monitor domestic violence laws and polices and take action to reshape stereotypes of domestic-violence victims with the aim of ending their discriminatory treatment at large.¹¹ Unfortunately, unlike contemporary human rights treaties, the American Declaration, does not contain a "general obligations" clause, requiring states to respect, ensure, and promote guaranteed rights and freedoms through the adoption of appropriate or necessary measures, which significantly weakens the strength of the recommendations made by the IACHR.¹²

However, a country report issued by the Special Rapporteur on Violence Against Women in 2011¹³ which examined the situation of violence against women in the United States, contained complimentary recommendations to those found in the decision of the IACHR in *Gonzales v. US*, thus adding additional weight and pressure for the United States to shift its legal

¹⁰ The Inter-American Commission on Human Rights found violations of several articles of the American Declaration on the Rights and Duties of Man: Article I (Right to Life); Article II (Right to Nondiscrimination and Equal Protection); Article VII (Special Protection for Children); and Article XVIII (Right to Judicial Protection). The claims on Articles V, VI and IX were unfounded by the Commission.

¹¹ *Lenahan v. United States*, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11, 11 170, 199 (2011).

¹² See generally Melish, Tara J. "The Inter-American Commission on Human Rights." *Emerging Trends in International and Comparative Law* (2008): 339-371.

¹³ Hereby referenced as "U.S. country report of 2011"

and policy frameworks on domestic violence. In her report, the Special Rapporteur, Ms. Rashida Manjoo, noted that despite positive legislative and policy initiatives to reduce the prevalence of violence, there was little in the form of legally binding substantive provisions that provide protection for acts of domestic violence committed against women. With these conditions in mind, Ms. Manjoo recommended that the United States explore more uniform remedies for victims of domestic violence, sexual assault and stalking; expand federal causes of action under the Violence Against Women Act¹⁴, where possible, to mitigate current discrimination; increase uniformity and accountability at the state and local levels; establish meaningful standards for enforcement of protection orders and impose consequences for a failure to enforce protection orders and; initiate more public education campaigns that condemn all forms of violence against women whether that violence is initiated in the public or private spheres of life.¹⁵

Both the U.S. country report of 2011 and the decision in *Gonzales v. U.S.* provide a critical analysis of the issue of domestic violence within the United States through a human rights lens. Particularly, both critique the State's response to incidences of domestic violence utilizing the principles of the internationally recognized standard of due diligence. The due diligence standard, which has been applied to evaluate a state's responsibility to prevent, protect, investigate, punish and provide remedy for incidences of violence against women since the early nineties, now has clearly defined core components and has come to be understood as customary international law. Disappointingly and despite this extensive guidance provided by the international community, nearly five years have passed without any substantive legal or policy action on the national level in the United States that alters the country's existing approach to

¹⁴ Hereafter referred to as "VAWA"

¹⁵ A/HRC/17/26/Add.5

domestic violence.¹⁶

However, actions on the local level across the United States have taken root, which at first glance, appear to be a more promising way of promoting the integration of a human rights approach to domestic violence law and policy across the United States. As of October 2015, twenty-three cities across the country have adopted a total of 26 local resolutions that recognize freedom from domestic violence as a human right. Unfortunately, close analysis of these resolutions, uncovers an uneven attempt by localities to localize the principles of due diligence enshrined in the human rights framework. While the majority of the resolutions adequately address the means of preventing violence from occurring and ways the locality is protecting victims, collectively they do not consistently provide specific guidelines detailing local commitments for the standards of investigation and punishment for incidences of domestic violence nor do they address appropriate remedies for victims. Further, only a handful of the resolutions address the need for some form of an accountability framework, which is the key ensuring that the human rights approach is consistently being integrated across the service response systems in the local communities. In order for these resolutions to fully integrate a human rights approach and empower victims of domestic violence they each must fully address and detail specific means of abiding by the due diligence framework. Only then, can these local communities fully empower victims and survivors¹⁷ of domestic violence.

¹⁶ The major developments on the national level following the decision include, President Barack Obama issuing two proclamations on violence against women reaffirming the "basic human right to be free from violence and abuse" while celebrating the re-authorization of the Violence Against Women Act and Democratic Leader Nancy Pelosi issuing a statement recognizing October as Domestic Violence Awareness Month declaring that "[f]reedom from abuse is a basic human right -and all victims of violence deserve our support." Also, the Department of Justice commensed investigations into a number of police departments response to domestic violence.

¹⁷ Both the terms victim and survivor will be utilized throughout this paper to ensure proper recognition and identification of all those individuals which have faced domestic violence. Identification is a personal choice for those individuals and this choice should be actively considered and recognized.

2. The Human Rights Framework and the Due Diligence Standard

The human rights framework is a set of internationally recognized and accepted set of norms and values that promote dignity, fairness and opportunity for all people with the aim of enabling all individuals to meet their basic needs.¹⁸ Within the framework, the standard of due diligence plays a pivotal role in promoting positive state obligations to prevent, protect, investigate, punish and provide remedies for acts of violence regardless of whether these are committed by private or state actors.¹⁹ Although the due diligence standard has a long extenuated history, it has only been applied actively to the context of domestic violence within the past 20 years. However, due to its large acceptance and numerous benefits for victims of gender-based violence, the due diligence standard in the domestic violence context has advanced to the status of customary international law according to the Special Rapporteur on Violence Against Women as observed through *oppino juris* in multiple international legal forums. Therefore the due diligence standard should be fully incorporated across local contexts, such as within the local resolutions in the United States, as a strategy to ensuring the rights of individuals that face domestic violence.

2.1 The Origins of the Due Diligence Standard to Non-State Acts

The due diligence standard can be traced as far back as the 17th century where writers such as Grotius were stepping away from doctrine of attribution and moving towards the present

¹⁸ Domestic Violence and Sexual Assault in the U.S.: A Human Rights Based Approach and Practice Guide. Available at: <https://www.aclu.org/domestic-violence-sexual-assault-us-human-rights-based-approach-practice-guide>

¹⁹ IBID

concept of responsibility due to lack of due diligence.²⁰ As the feudal structure of medieval times dissolved in the 18th century, the concept of the sovereign as the responsible entity was eradicated and responsibility was shifted to the state. However, it was not until the late 18th century that the state became seen as responsible for not only the acts of its citizens but for those foreigners operating within its territory as well.²¹ Finally, it was in the 19th when the state became viewed as the entity responsible for all acts of its agents, thus bringing the concept of due diligence into modernity. During this time period, the standard was used in the context of several international arbitration claims, including the Alabama Claims (1871) as well as other arbitral awards concerning the responsibility of the State for protection failures in relation to injuries to aliens and their property from private violence.²²

However, the concept of due diligence regarding state responsibility for non-state acts has a far more recent origin. In 1988, the IACHR heard *Velasquez Rodriguez v. Honduras*, within which the Court considered for the first time the responsibility of states for enforced disappearances.²³ Specifically, the case related to the abduction and disappearance of a graduate student, Angel Manfredo Velasquez Rodriguez. Utilizing evidence that showed a pattern of similar disappearances tied to government suppression of dissidents, the Court found that Velasquez Rodriguez's disappearance was "carried out by agents who acted under cover of public authority." Moreover, the Court went to observe that even if it could not confirm that the

²⁰ U.N. Econ. & Soc. Council, Comm'n on Human Rights, Special Rapporteur on Violence Against Women, its Causes and Consequences, Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women: The Due Diligence Standard as a Tool for the Elimination of Violence Against Women , ¶ 29 (Jan. 20, 2006) (prepared by Yakin Ertürk in accordance with Commission on Human Rights Resolution 2005/41)

²¹ Hessbruegge, Jan Arno. "Historical Development of the Doctrines of Attribution and Due Diligence in International Law, The." *NYUJ Int'l. L. & Pol.* 36 (2003): pg. 287.

²² U.N. Econ. & Soc. Council, Comm'n on Human Rights, Special Rapporteur on Violence Against Women, its Causes and Consequences, Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women: The Due Diligence Standard as a Tool for the Elimination of Violence Against Women , ¶ 29 (Jan. 20, 2006) (prepared by Yakin Ertürk in accordance with Commission on Human Rights Resolution 2005/41)

²³ *Velasquez Rodriguez v. Honduras*, 1988 Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 172 (July 29, 1988).

agents acted under the cover of public authority, the State's inaction was clearly proven and was a failure on the part of Honduras to fulfill its duties assumed under the American Convention on Human Rights, which creates a positive obligation to ensure Rodriguez his "free and full exercise of his human rights."²⁴

Furthering their analysis, the Court found that an illegal act "which violates human rights and which is initially not directly imputable to a State ... can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the [American Convention on Human Rights]."²⁵ In other words, the Court confirmed that where rights are guaranteed, in this case by the American Convention on Human Rights, the state is obligated to exercise "due diligence" to ensure their fulfillment. As a consequence of this duty, "States must prevent, investigate and punish any violation" of rights. This allowed the court to conclude that the existence of a legal system is not enough; the government must also "conduct itself so as to affectively ensure" the enjoyment of rights.²⁶ It is this same conception of the due diligence standard to non-state acts that spread beyond the Inter-American System and is now applied to non-state acts of domestic violence.

2.2: History of Due Diligence in the Domestic Violence Context

Beginning in 1993, the international community began formalizing the use of the due diligence standard within the context of domestic violence through the issuance of the Declaration on the Elimination of Violence Against Women²⁷ by the United Nations General

²⁴ IBID, ¶ 182

²⁵ IBID, ¶ 172

²⁶ IBID, ¶ 166

²⁷ Hereinafter referred to as "DEVAW"

Assembly. This declaration formally adopted the “due diligence” standard, contained in General Recommendation 19²⁸, as a tool to assess a State’s obligations with regard to all forms of violence against women.²⁹ In incorporating this standard, the DEVAW declared that all U.N. member states have a duty to “pursue by all appropriate means and without delay a policy of eliminating violence against women,” including “due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetuated by the State or by private persons.”³⁰ Additionally, in 1994, the due diligence standard was adopted in The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém Do Pará), which stated that “every woman has the right to be free from violence in both the public and private spheres” and that states should undertake to “apply due diligence to prevent, investigate and impose penalties for violence against women;” and “refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;”³¹

During this same time period, the newly appointed Special Rapporteur on Violence Against Women, Radhika Coomaraswamy, was actively investigating violence against women in the family. According to her report issued in 1996³², “State-tolerated violence intended to control women in their so called private lives has thus far not been accounted for” and that the public

²⁸ As CEDAW did not directly address violence against women, General Recommendation 19 adopted in 1992 incorporated violence against women into its reading. The document identified the “due diligence” standard for determining whether states have fulfilled the objectives of the recommendation.

²⁹ Meyersfeld, Bonita. "Domestic Violence, Health, and International Law." *Emory Int'l L. Rev.* 22 (2008): 61.

³⁰ Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, art. 4, U.N. Doc. A/RES/48/104 (Feb. 23, 1994) (DEVAW)

³¹ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, “Convention of Belém Do Pará”, art 3 and art 7.

³² Hereafter referred to as “The Special Rapporteur Report of 1996”

versus private dichotomy had “fundamentally affected perceptions of women’s rights.”³³ She went on to argue that “the role of State inaction in the perpetuation of the violence combined with the gender-specific nature of domestic violence require that domestic violence be classified and treated as a human rights concern rather than merely as a domestic criminal justice concern.” Additionally, Coomaraswamy’s report referenced the principles of due diligence articulated in General Recommendation 19 and DEVAW, as well as the foundation for state responsibility established in *Velasquez Rodriguez v. Honduras*, ultimately arguing that “a State that does not act against crimes of violence against women is as guilty as the perpetrators.”³⁴

2.2.1: Interpretation of the Due Diligence Standard in the Domestic Violence

Context

In the wake of the articulation of the due diligence standard in the context of gender based violence, quasi-judicial and treaty monitoring bodies began to grapple with interpreting the specific requirements of the standard, as the guidance dispatched through DEVAW and the Special Rapporteur report of 1996 were incredibly vague. Therefore, quasi-judicial and treaty monitoring bodies sought to give the due diligence standard meaning through its application to individual cases. The Inter-American Commission, the Commission on the Elimination of all forms of Discrimination Against Women Committee³⁵ and the European Court of Human Rights³⁶ each heard domestic violence cases throughout the 2000s through which they developed increasingly clear guidelines to ensure access to protection orders, prosecution, and appropriate

³³ U.N. Econ. & Soc. Council, Comm’n on Hum. Rts., Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, pt. II, ¶ 26, U.N. Doc. E/CN.4/1996/53 (Feb. 5, 1996) (prepared by Radhika Coomaraswamy, in accordance with Comm’n on Hum.Rts. Res. 1995/85)

³⁴ IBID, ¶ 120.

³⁵ Hereafter referred to as the “CEDAW” committee

³⁶ Hereafter referred to as the “ECHR”

remedies for victims of domestic violence. The opinions and recommendations in these cases overlapped, ultimately building off of and from each other and in doing so, they reflected a growing consensus on the due diligence standard.

2.2.1 a) The Inter-American Commission:

Maria da Penha Maia Fernandes v. Brazil

In 2001, the Inter-American Commission on Human Rights heard a complaint from Maria da Pehna Maia Fernandes alleging that the Brazilian government had implicitly condoned the violence perpetrated against her by her husband, Heredia Viveiros, due to their failure to sufficiently protect her or punish Viveiros for his crimes.³⁷ Attempted murder charges had been filed against Viveriros by the local public prosecutor, but the court took 8 years to file their initial guilty verdict. The initial verdict was appealed but when a second trial commenced, the court, at which time Mrs. Fernandes filed a complaint with the Commission, also reached a guilty verdict. It had been more than 15 years since the violence Mrs. Fernades had experienced at the hands of Viveriros and there had been no judicial resolution. Viveiros had also remained free the entire time.³⁸

The Commission looked to several controlling documents to determine that Brazil had failed to exercise due diligence in the plight of Mrs. Fernandes including the American Convention on Human Rights and the Convention of Belém Do Pará.³⁹ In its report, the Commission found that the violence suffered by Mrs. Fernandes was “part of a general pattern of negligence and lack of effective action by the State in prosecuting and convicting aggressors”

³⁷ *Maria da Penha Maia Fernandes v. Brazil*, Case 12.051, Inter-Am. C.H.R., Report No. 54/01, OEA/Ser.L/V/II.111, doc. 20, rev. 16 (2000).

³⁸ IBID, ¶¶ 1-20

³⁹ IBID, ¶¶ 1-20

and that the “general and discriminatory judicial ineffectiveness” created a “climate that is conducive to domestic violence.”⁴⁰

Specifically, the Commission found Brazil to be in violation of Articles VIII⁴¹, XXIV⁴², and XXV⁴³ of the American Convention allowing the Commission to find Brazil complicit.⁴⁴ By allowing Mr. Viverios to enjoy impunity with no threat of prosecution or punishment, the Commission felt that Mrs. Fernandes right to a fair trial and judicial protection had been violated.⁴⁵ Further, the Commission pointed to evidence from studies showing that in Brazil women are affected by family violence in significantly disproportionate numbers to men and that their complaints of domestic violence are often not investigated or prosecuted to the fullest extent thereby inhibiting any woman’s right to equal protection before the law. Thus, the Commission was able to find Brazil’s failure to respond to domestic violence as a case of wide spread gender discrimination. Accordingly the Commission viewed Brazil’s systematic failure on the part of a state to meet a due diligence standard in ensuring the right of women to be free from violence is tantamount to gender-based discrimination.⁴⁶

2.2.1 b) The CEDAW Committee:

A.T. v. Hungary

In 2005, the CEDAW Committee heard a similar complaint in *A.T. v. Hungary* and like

⁴⁰ IBID, ¶¶ 56

⁴¹ Article 8 of the American Convention on Human Rights details the civil and political right to a fair trial.

⁴² Article 24 of the American Convention on Human Rights details the civil and political right to equal protection.

⁴³ Article 25 of the American Convention on Human Rights details the civil and political right to judicial protection.

⁴⁴ Organization of American States (OAS), *American Convention on Human Rights, "Pact of San Jose", Costa Rica*, 22 November 1969.

⁴⁵ IBID, ¶¶ 60(2)

⁴⁶ IBID, ¶¶ 47

the IACHR, found that the state had failed to act with due diligence in providing the maximum protection of the law to victims of domestic violence.⁴⁷ In the complaint, the petitioner described years of abuse from her former common law husband and argued that Hungarian authorities had failed to provide effective protection for her and her children.⁴⁸ Due to the lack of a legal mechanism for obtaining a protection or restraining order the criminal proceedings dragged on for years. As the petitioner's son was disabled she could not flee her circumstances to a shelter, as the shelters were not able to accommodate her disabled son.⁴⁹

In her complaint, the petitioner alleged violations of Articles 2, 5, and 16 of CEDAW, which include the right to equality before the law, equality in marriage, and the duty of states to adopt measures to eliminate discrimination against women.⁵⁰ Additionally, the petitioner alleged that these same violations affected many Hungarian women, and called for the CEDAW Committee to recommend changes in the Hungarian legal system to protect and support victims of domestic violence.⁵¹

The CEDAW Committee determined that Hungary had indeed failed in its obligations under the articles cited by the petitioner.⁵² The CEDAW Committee pointed to Hungary's own admissions that domestic violence cases do not enjoy high priority in court proceedings and that there was a lack of resources available to the petitioner, even at the time of her complaint to the CEDAW Committee.⁵³ The CEDAW Committee concluded that the state's inadequate response constituted a "violation of the author's human rights and fundamental freedoms, particularly her

⁴⁷ *A.T. v. Hungary*, CEDAW Comm., No. 2/2003, ¶ 9.4, U.N. Doc. CEDAW/C/32/D/2/2003 (2005).

⁴⁸ *IBID*, ¶ 3.1

⁴⁹ *IBID*, ¶¶ 3.1-3.2

⁵⁰ CEDAW, art. 2, 5, 16

⁵¹ *A.T. v. Hungary*, CEDAW Comm., No. 2/2003, ¶ 3.4. Doc. CEDAW/C/32/D/2/2003 (2005).

⁵² *IBID*, ¶¶ 9.2-9.3

⁵³ *IBID*, ¶ 9.3.

right to security of person.”⁵⁴ Additionally, the CEDAW Committee commented that the state’s failure to act in this case was emblematic of the general attitude in Hungary regarding victims of domestic violence. Referencing a CEDAW country report from 2002, the CEDAW Committee noted there was concern about the “persistence of entrenched traditional stereotypes regarding the role and responsibilities of women and men in the family” in Hungary and that such a concern was borne out in this case.⁵⁵

The CEDAW Committee concluded by recommending that Hungary should immediately ensure that the petitioner and her two children will be secure and will receive services and support, including legal assistance, shelter, and potential reparations.⁵⁶ The CEDAW Committee also recommended that Hungary should “assure victims of domestic violence the maximum protection of the law by acting with due diligence to prevent and respond to such violence against women” and “investigate promptly, thoroughly, impartially and seriously all allegations of domestic violence and bring the offenders to justice in accordance with international standards.”⁵⁷ In addition, the CEDAW Committee called for Hungary to “implement expeditiously and without delay” a prior recommendation to introduce a specific law “prohibiting domestic violence against women, which would provide for protection and exclusion orders.”⁵⁸

2.2.1 c) The European Court on Human Rights:

Bevacqua and S. v. Bulgaria and Opuz v. Turkey

⁵⁴ IBID, ¶ 9.3.

⁵⁵ IBID, ¶ 9.4.

⁵⁶ IBID, ¶ I(a)(b).

⁵⁷ IBID, ¶¶ II (a), (b), (f), (g).

⁵⁸ IBID, ¶ II(e).

The ECHR furthered the due diligence standard beyond the decisions in *AT v. Hungary* and *Maria da Penha Maia Fernandes v. Brazil* by enumerating several identifiable minimums which gave practical substance to judging a state's adherence to the principles of protection, investigation and prosecution contained in the due diligence standard through its decisions in *Bevacqua and S. v. Bulgaria* and *Opuz v. Turkey*. Specifically, the cases recognized the minimum standard of the existence of a judicial mechanism for obtaining protection orders and the availability of prosecution in the public interest for all crimes of domestic violence. Additionally, the Court recognized that a state's failure to exercise due diligence constitutes gender-based discrimination.⁵⁹

First, in 2008, the ECHR heard the case *Bevacqua and S. v. Bulgaria*. The petitioner, Valentina Nickolaeva Bevacqua, experienced a number of delays in her divorce proceedings from her husband and while seeking custody of their son, S. Ms. Bevacqua had left the home in March of 2000 and did not receive a divorce or obtain custody of her son until May of 2001. During the time between her leaving the home and receiving the Court's decision in the divorce and custody cases, Ms. Bevacqua experienced multiple incidents of violence at the hands of her husband, Mr.N.⁶⁰

When bringing her case to the ECHR, Ms.Becacqua argued that Bulgarian government officials had violated her right to respect for private and family life as guaranteed by Article 8 of the European Convention by failing to take the necessary measures to provide an adequate legal framework that would protect her and her young son from the violent behavior of her former

⁵⁹ Hasselbacher, Lee. "State obligations regarding domestic violence: The European Court of Human Rights, due diligence, and international legal minimums of protection." *Nw. UJ Int'l Hum. Rts.* 8 (2009): 190.

⁶⁰ *Bevacqua v. Bulgaria*, App. No. 71127/01, ¶¶ 11-18, 21, 22-24, Eur. Ct. H.R. (2008), available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Bevacqua%20%7C%20v.%20%7C%20Bulgaria&sessionid=55485783&skin=hudoc-en>.

husband. She also challenged the relevant Bulgarian law governing prosecution of crimes of bodily harm under Articles 3,13, and 14 as the laws of bodily harm disproportionately and discriminatorily impacted women, and trivialized domestic violence as a private family matter.⁶¹

Ultimately, Ms. Becacqua succeeded with her claim under Article 8 of the European Convention as the Court found that Article 8 of the Convention had previously been interpreted to encompass “positive obligations inherent in effective ‘respect’ for private and family life and these obligations may involve the adoption of measures in the sphere of the relations of individuals between themselves.”⁶² Further, the Court indicated that since the concept of “private life” included a person’s “physical and psychological integrity,” these positive obligations might include a “duty to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals.”⁶³

In the second case, *Opuz v. Turkey*, decided in 2009 by the ECHR, the applicant in the case Nahide Opuz, as well as her mother, endured years of physical abuse and threats from Ms. Opuz’s husband, “H.O.,” who eventually killed the mother. Ms. Opuz and her mother had complained to law enforcement authorities on numerous occasions, but the authorities had done little in response. Ms. Opuz argued that the ineffectiveness of the Turkish authorities had violated her mother’s right to life under Article 2 of the Convention and her own right to be free from torture and ill treatment under Article 3 of the Convention. She also contended that the inadequate response by law enforcement were a result of gender-based discrimination and thus a violation of Article 14.⁶⁴

⁶¹ IBID, ¶¶63-93

⁶² European Convention, art. 8.

⁶³ *Becacqua v. Bulgaria*, App. No. 71127/01, ¶¶ 64, 21, 22-24, Eur. Ct. H.R. (2008)

⁶⁴ *Opuz v. Turkey*, App. No. 33401/02, ¶¶ 65-69. Eur. Ct. H.R. (2009), available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=851046&portal=hbkm&source=externalbydcnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

In deciding the case, after reviewing the extensive history of violence experienced by Ms. Opuz and her mother, the Court observed that it was critical to consider whether the local authorities displayed due diligence to prevent violence against the applicant and her mother, in particular by pursuing criminal or other appropriate preventive measures against H.O. despite the withdrawal of complaints by the victims.⁶⁵ The Court’s historic judgment found that there had indeed been violations and that Turkey had failed to exercise due diligence in providing effective protection measures and prosecution and that such failures indeed came as a result of gender discrimination in violation of Article 14.⁶⁶ Significantly, the Court referenced the 2006 report issued by the Special Rapporteur on Violence Against Women, Yakin Ertürk, which provided firmer guidance on the standards of due diligence by quoting her conclusion stating that there is a rule of customary international law that “‘obliges States to prevent and respond to acts of violence against women with due diligence.’”⁶⁷

2.3 Guidance on Implementing the Due Diligence Standard

In 2006, in light of the growing consensus surrounding the norms on violence against women, United Nations Secretary-General Kofi Annan issued a strongly worded report on domestic violence in which he officially endorsed the due diligence standard. In his report, the Secretary General drew on a number of rights guaranteed to women under a range of human rights treaties and declared that “‘violence against women is a form of discrimination and a violation of human rights.’”⁶⁸ Additionally, the Secretary General noted that the result of

⁶⁵ *Opuz v. Turkey*, App. No. 33401/02, ¶¶ 77. Eur. Ct. H.R. (2009)

⁶⁶ *Opuz v. Turkey*, App. No. 33401/02, ¶¶ 200. Eur. Ct. H.R. (2009)

⁶⁷ *Opuz v. Turkey*, App. No. 33401/02, ¶¶ 77. Eur. Ct. H.R. (2009)

⁶⁸ THE SECRETARY-GENERAL, ENDING VIOLENCE AGAINST WOMEN: FROM WORDS TO ACTION, U.N. Sales No. E.06.IV.8 (2006), at http://www.un.org/womenwatch/daw/public/VAW_Study/VAWstudyE.pdf

unchecked impunity for perpetrators “is not only denial of justice to the individual victims/survivors, but also reinforcement of prevailing inequalities that affect other women and girls as well.”⁶⁹

Most notably, however, the second Special Rapporteur on Violence Against Women, Yakin Ertürk, issued an important report entitled “The Due Diligence Standard as a Tool for the Elimination of Violence Against Women.” The report provided the necessary firmer guidance on using the due diligence standards as the means of judging efforts of states in addressing domestic violence and achieving justice for victims and survivors. Within the report, Ertürk provided a comprehensive survey of international law, including human rights documents from cases outlined above, as evidence that there is a rule of customary international law that obliges States to prevent and respond to acts of violence against women with due diligence.⁷⁰ She echoed and reinforced the language of the due diligence standard articulated in these documents, ultimately calling for states to “prevent, protect, prosecute and provide compensation and map out the parameters of responsibility for State and non-State actors alike in responding to violence.”⁷¹ Ultimately, Ertürk was able to conclude that these basic principles – prevent, protect, prosecute, and redress – define the standard of due diligence, and certain essential practical reforms can give effect to these principles.

In terms of prevention, Ertürk encouraged the empowerment of women through education, skills training, legal literacy, and access to community resources that would encourage women’s self-reliance, develop self esteem and self confidence and allow them to

⁶⁹ IBID 6-7

⁷⁰ U.N. Econ. & Soc. Council, Comm’n on Human Rights, Special Rapporteur on Violence Against Women, its Causes and Consequences, Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women: The Due Diligence Standard as a Tool for the Elimination of Violence Against Women , ¶ 29 (Jan. 20, 2006) (prepared by Yakin Ertürk in accordance with Commission on Human Rights Resolution 2005/41)

⁷¹ IBID, ¶103

negotiate “the terms of their existence in public and private spheres.”⁷² Ertürk indicated allocating resources towards and promoting such an enabling environment for women’s empowerment would be a way for States’ to fulfill their duties under the ICCPR, the ICESCR, and CEDAW when combatting violence against women.⁷³

Concerning the principle of protection, Ertürk noted that under the due diligence standard, States should “ensure that women and girls who are victims or at risk of violence have access to justice as well as to health care and support services that respond to their immediate needs, protect against further harm and continue to address the ongoing consequences of violence for individual woman.”⁷⁴ To this end, Ertürk concluded that “States are required to develop appropriate legislative frameworks, policing systems and judicial procedures to provide adequate protection for all women, including a safe and conducive environment for women to report acts of violence against them and measures such as restraining or expulsion orders and victim protection procedures” and that “in situations where particular women and girls are at known risk of violence, law enforcement agencies have an obligation to set up effective and appropriate protective mechanisms to prevent further harm from occurring.”⁷⁵ In implementing such initiatives at the State level, Ertürk emphasized that consistency is key and that states should also be sure to consider how they can offer long-term assistance to vulnerable women so that they may avoid revictimization.⁷⁶

In directly addressing the “punishment” facet of the due diligence standard, Ertürk noted that punishment “is an obligation [of States] to adopt or modify legislation while reinforcing the

⁷² IBID, ¶80

⁷³ IBID, ¶79

⁷⁴ IBID, ¶82

⁷⁵ IBID, ¶82

⁷⁶ IBID, ¶49

capacities and powers of police, prosecutors and magistrates” to allow for the appropriate investigation and punishment for acts of violence against women.⁷⁷ Specifically, she qualified that there are still “alarming numbers of instances of judges handing down reduced or inappropriate sentences” for domestic violence crimes. Thus, women who experience domestic violence are not being equally protected under the law.

Therefore, concerning remedies, Ertürk noted that Government should ensure “ the rights of women to access both criminal and civil remedies as well as the establishment of effective protection and support services” for those affected by violence. Ertürk further suggested that “compensation for acts of violence against women may involve the award of financial damages for any physical and psychological injuries suffered, for loss of employment and educational opportunities, for loss of social benefits, for harm to reputation and dignity as well as any legal, medical or social costs incurred as a consequence of the violence.”⁷⁸ Further she indicated that, “ States are also required to ensure that women victims of violence have access to appropriate rehabilitation and support services” and that reparations may also include an element of restorative justice.⁷⁹

By declaring the establishment of a rule of customary international law, Special Rapporteur Ertürk concluded that the due diligence standard had reached such a level of international consensus that it should be universally recognized and applied. Her suggested provisions clarified the obligations of a state when implementing the due diligence standard and provided more concrete standards than those expressed in the *opinio juris*. Despite the United States not being bound to human rights treaties beyond their responsibilities as signatories to

⁷⁷ IBID, ¶50

⁷⁸ IBID, ¶84

⁷⁹ IBID, ¶84

ICCPR, the United States can be found to be held responsible to the due diligence standards as articulated by the Special Rapporteur as it is customary international law.

3. Evaluation of the Due Diligence Standards in United States within the context of Domestic Violence

The previous cases undertaken by the quasi-judicial and treaty monitoring bodies in addition to the guidance contained in the reports of the Special Rapporteur on Violence Against women issued in 1996 and 2006 have provided great insight on how states can successfully implement the due diligence standard in the context of domestic violence. Notably, further guidance has also been provided to the United States on how it can implement this standard via the Inter-American Commission on Human Rights' decision in *Gonzales v. US* as well as the country report on the United States addressing the issue of violence against women by the Special Rapporteur on Violence Against Women in 2011. Together, the recommendations contained in *Gonzales v. US* and the United States country report have laid a solid foundation for the understanding of domestic violence as a human rights concern in the United States and provide explicit measures through which the country can incorporate the human rights framework into both the national and local contexts.

In order to properly evaluate the effectiveness of the translation of international human rights standards to the local level in the United States within the resolutions that proclaim freedom from domestic violence as a human right, it is necessary to understand the way through which acts of domestic violence in the United States were critiqued through the lens of the human rights frame. Therefore, a comprehensive review of both the IACHR decision and the

recommendations from the Special Rapporteur on Violence against Women follow.

3.1 The Gonzales Case

In June of 1999, Jessica Gonzales's estranged husband, Simon Gonzales, abducted their three young daughters - Leslie, 7, Kathryn, 8, and Rebecca, 10- in violation of a domestic protection order. Following their abduction, Ms. Gonzales contacted the Castle Rock Colorado Police Department repeatedly to report the incident. Her calls went unheard despite the fact that Colorado has a "mandatory arrest law" in place and that Mr. Gonzales had several interactions with the Castle Rock Police Department related to domestic violence in the preceding months. Nearly 10 hours after Jessica Gonzales' first call to the police, Simon Gonzales arrived at the police station and opened fire. The police shot and killed Mr. Gonzales and subsequently discovered the bodies of the three young Gonzales daughters in his truck. No subsequent investigation into the girls' deaths took place, despite repeated request from Ms. Gonzales.⁸⁰

Following the incident, Ms. Gonzales filed a §1983⁸¹ lawsuit against the police in federal court, alleging violations of the procedural and substantive components of the Fourteenth Amendment's Due Process Clause. Her procedural due process claim rested on the assertion that the restraining order, coupled with Colorado's mandatory arrest law, entitled her to a response from the police. Gonzales substantive due process claim was filed on behalf of her daughters, who's rights were violated when the police failed to take reasonable steps to protect them from the real and immediate risk posed by their father. Before reaching discovery, the district court

⁸⁰ Bettinger-Lopez, Caroline. "Introduction: Jessica Lenahan (Gonzales) v. United States: Implementation, Litigation, and Mobilization Strategies." *American University Journal of Gender, Social Policy & the Law* 21, no. 2 (2012): 207.

⁸¹ A Section 1983 creates a federal remedy against a state official for the violation of federal rights.

dismissed both claims.

On appeal, the Tenth Circuit Court of Appeals, sitting en banc, reversed the district court's dismissal of the procedural due process claim, but affirmed the dismissal of the substantive due process claim. In rejecting the substantive due process claim, the Tenth Circuit relied on *DeShaney v. Winnebago County Department of Social Services*⁸², a U.S. Supreme Court case holding that the government, in most circumstances, has no duty to protect individuals from private acts of violence. *DeShaney* concerned the failure of child protection services to respond to calls from a child's mother expressing concern over potential abuse by the child's father. Ultimately, the father inflicted grave injury upon his son Joshua. The Tenth Circuit analogized the case to circumstances of the *Gonzales* case, which involved the failure of the police to respond to a domestic violence victim's claims that her restraining order had been violated and her children kidnapped.

Upon appeal by the Town of Castle Rock, the Supreme Court granted *certiorari* to review the procedural due process claim. In June 2005, Justice Scalia, writing for the 7-2 majority, reversed the Tenth Circuit's decision and held that Ms. Lenahan had no personal entitlement under the Due Process Clause to police enforcement of her restraining order.⁸³ The court essentially picked apart the language in the Colorado statute. Despite the repeated use of the word "shall" present in the mandatory arrest law, the court found that it "[did] not believe that these protections of Colorado law truly made enforcement of restraining orders mandatory."⁸⁴ The court also questioned whether the preprinted notice on the back of Ms. Gonzales' restraining

⁸² *DeShaney V. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 195 (1989).

⁸³ See *Castle Rock IV*, 545 U.S. 748, 768 (2005).

⁸⁴ Bettinger-Lopez, Caroline., "Introduction: Jessica Lenahan (*Gonzales*) v. United States: Implementation, Litigation, and Mobilization Strategies." *American University Journal of Gender, Social Policy & the Law* 21, no. 2 (2012): 211.

order required police to arrest Mr. Gonzales, seek a warrant for his arrest, or enforce the order in some other way. This uncertainty, according to the majority, was further evidence of police discretion over enforcement.⁸⁵

The Court also drew a distinction between the public interest and an individual's personal entitlement of protection. They found orders of protection to be "novel and vague" and questioned whether a true property interest was at stake in accordance to the Due Process Clause. They again cited the DeShaney case in their decision and found that in "the benefit that a third party may receive from having someone else arrested for a crime generally does not trigger protections under the Due Process Clause, neither in its procedural nor in its 'substantive' manifestations." Rather, the Court asserted, aggrieved individuals in such situations must seek relief via state common-law or statutory tort claims.⁸⁶

In his dissent, Justice Stevens, joined by Justice Ginsburg, scolded the majority for ignoring the clear language and intent of the Colorado statute, which, like other domestic violence mandatory arrest statutes nationwide, was passed in response to a persistent pattern of non-enforcement of domestic violence laws. The dissenting Justices asserted that the language of the statute was "'unmistakable[ly]" intended to remove police discretion over whether to arrest perpetrators. They found that regardless of whether enforcement was called for in this case, be it arrest or an arrest warrant, the crucial point is that under Colorado's statute the police were required to take action and lacked the discretion to do nothing in response. The statute clearly provided that when police have probable cause that a violation has occurred, enforcement consists of making an immediate arrest or issuing a warrant and then executing an arrest. This

⁸⁵ Bettinger-Lopez, Caroline., "Jessica Gonzalez v. United States: An Emerging Model for Domestic Violence & (and) Human Rights Advocacy in the United States." *Harv. Hum. Rts. J.* 21 (2008): 187

⁸⁶ Bettinger-Lopez, Caroline., "Jessica Gonzalez v. United States: An Emerging Model for Domestic Violence & (and) Human Rights Advocacy in the United States." *Harv. Hum. Rts. J.* 21 (2008): 190.

provided that recipients of such orders are therefore entitled to police enforcement of their orders. The dissenting judges also concluded that the majority had divorced the statute from its obvious context through its formalistic analysis, which disjoined the concern for protection of the community at large. Finally, the dissenting opinion asserted the majority drew a false distinction between an entitlement to police protection and entitlements to other government services protected by the Due Process Clause, such as public education and utility services, when it suggested that an entitlement to police enforcement of a restraining order is simply not the sort of "concrete" and "valuable" property that the Due Process Clause protects. The dissenters concluded that Ms. Lenahan had an entitlement to police enforcement of her protective order, and because the state had failed to give her any process whatsoever in depriving her of this entitlement, she had "clearly allege[d] a due process violation" under the Fourteenth Amendment of the United States Constitution.

In reversing the Tenth Circuit's decision, the Supreme Court denied Jessica Gonzales the opportunity to engage in a meaningful discovery process and upheld the decision in the *Deshaney* case which provided that states had no obligation to protect citizens from private acts of violence. Following this disheartening decision, actors across a range of sectors took action. Women's civil right lawyers and domestic violence advocates decried the decision saying that it sent the wrong message to batterers and law enforcement and risked creating a culture of impunity for lazy, rogue or misguided police officers. They also pointed criticism to the majority who found restraining orders to be "vague and novel", despite the express language and clear legislative history behind mandatory arrest laws in the United States.

Following the disappointing decisions issued in the U.S. domestic courts, Ms. Gonzales elected to take her case to the Inter-American Commission for Human Rights, with the hope that

such international pressure could help facilitate a change in the way that the United States' treats victims of domestic violence. Despite the fact that the United States has not ratified any human rights treaties beyond the International Covenant on Civil and Political Rights, the complaints were able to be brought before the Inter American Commission under the American Declaration on the Rights and Duties of Man and the OAS Charter as the United States are signatories to the two documents. While the Declaration does not contain a "general obligations clause", its signatories are held responsible for the provisions contained within the Declaration itself and the Commission has also consistently applied a "general obligations" principle when interpreting the wide spectrum of civil, political, economic, social, and cultural rights set forth in the Declaration.⁸⁷ Before the Inter-American Commission, Gonzales challenged the core principle of U.S. law embodied in *DeShaney v. Winnebago City Department of Social Services*: that government generally has no duty to protect individuals from private acts of violence. Gonzales argued that the United States must adhere to international standards on state responsibility to exercise due diligence to prevent, investigate, and punish human rights violations and protect and compensate victims.⁸⁸

After a successful admissibility and merits hearing, a decision regarding the Gonzales' case was issued on August 17, 2011 in which the court found that the United States was responsible for violations of the American Declaration under articles I, II, VII and XVIII and for the human rights violations suffered by Ms. Gonzales and her children.⁸⁹ In its decision, the Commission

⁸⁷ Bettinger-Lopez, Caroline., "Introduction: Jessica Lenahan (Gonzales) v. United States: Implementation, Litigation, and Mobilization Strategies." *American University Journal of Gender, Social Policy & the Law* 21, no. 2 (2012): 220.

⁸⁸ Schneider, Elizabeth M., et al. "Implementing the Inter-American Commission on Human Rights' Domestic Violence Ruling." *Schneider, Elizabeth M. et al., Implementing the Inter-American Commission on Human Rights' Domestic Violence Ruling* 46 (2012).

⁸⁹ *Lenahan v. United States*, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11, 11 170, 199 (2011).

specifically highlighted the relevance of the due diligence standard noting that “the evolving standards related to the due diligence principle are relevant to interpret[ing] the scope and reach of States’ legal obligations under Articles I, II, and VII of the American Declaration in cases of violence against women and girl-children taking place in the domestic context.”⁹⁰ The commission also utilized the application of the due diligence standard contained in both the Fernandes Case and the Orbiz case to justify its own application of the standard in the Gonzales Case.⁹¹

Concerning the specific violations, the Commission found that the United States “was not duly organized, coordinated, and ready to protect these victims from domestic violence by adequately and affectively implementing the restraining order at issue.”⁹² According to the Commission this constituted a form of discrimination in violation of Article II of the American Declaration as the failure was illustrated to be systematic in the country and took place in a context where there had been a historical problem with the enforcement of protection orders particularly for women. As a member of the Organization of American States, the Commission iterated the United States has a legal obligation to protect women from domestic violence as it is a human rights issue that is widely recognized by the international community as an extreme form of discrimination. Therefore the United States must respect and ensure the rights of these victims of domestic violence as to not perpetuate discrimination and provide them with equal protection of the law.⁹³

The Commission also found that the United States failed to undertake reasonable measures

⁹⁰ IBID

⁹¹ IBID

⁹² IBID

⁹³ IBID

to protect the lives of Leslie, Katheryn and Rebecca Gonzales, and that this failure constituted a violation of their right to life established in Article I of the American Declaration, in relation the Commission also found that their right to special protection contained in Article VII of the American Declaration was violated. Specifically, the Commission established that the failure of the United States to adequately organize its state structure to protect them [Leslie, Katheryn and Rebbeca] from domestic violence was not only was discriminatory, but also constituted a violation of their right to life under Article I and their right to special protection as girl-children under Article VII of the American Declaration. As with other obligations under the American Declaration, States are not only required to guarantee that no person is arbitrarily deprived or his or her life. They are also under a positive obligation to protect and prevent violations to this right, through the creation of the conditions that may be required for its protection. In the case of Leslie, Katheryn and Rebecca Gonzales, the State had a reinforced duty of due diligence to protect them from harm and from deprivations of their life due to their age and sex, with special measures of care and prevention. The State's recognition of the risk of harm and the need for protection – through the issuance of a protection order which included them as beneficiaries – made the adequate implementation of protection measures even more critical.⁹⁴

With regard to the violation of Article XXV, the Commission found that the United States violated the right to judicial protection of Jessica Gonzales and her next-of-kin under Article XVIII, for omissions at two levels. First, the State failed to undertake a proper inquiry into systemic failures and the individual responsibilities for the non-enforcement of the protection order. Second, the State did not perform a prompt, thorough, exhaustive and impartial investigation into the deaths of Leslie, Katheryn and Rebecca Gonzales, and failed to convey

⁹⁴ IBID

information to the family members related to the circumstances of their deaths.⁹⁵

In addition to the report on the violations, the Commission also provided seven recommendations to the United States based on the analysis and conclusions of the Gonzales case. Of the seven recommendations, three pertained to the appropriate reparations the State should pursue in light of the violations Ms. Gonzales and her children suffered. They were to:

- “1. Undertake a serious, impartial and exhaustive investigation with the objective of ascertaining the cause, time and place of the deaths of Leslie, Katheryn and Rebecca Gonzales, and to duly inform their next-of-kin of the course of the investigation;
2. Conduct a serious, impartial and exhaustive investigation into systemic failures that took place related to the enforcement of Jessica’s protection order as a guarantee of their non-repetition, including performing an inquiry to determine the responsibilities of public officials for violating state and/or federal laws, and holding those responsible accountable and;
3. Offer full reparations to Jessica and her next-of-kin considering their perspective and specific needs;”⁹⁶

The remaining four recommendations pertained to law and policy improvements the United States should enact to correct the systematic inadequacies that contributed to the tragedy experienced by Ms. Gonzales. Specifically, the Commission recommended that the United States:

- “4. Adopt multifaceted legislation at the federal and state levels, or to reform existing legislation, making mandatory the enforcement of protection orders and other precautionary measures to protect women from imminent acts of violence, and to create effective implementation mechanisms. These measures should be accompanied by adequate resources destined to foster their implementation; regulations to ensure their enforcement; training programs for the law enforcement and justice system officials who will participate in their execution; and the design of model protocols and directives that can be followed by police departments throughout the country;
5. Adopt multifaceted legislation at the federal and state levels, or reform existing legislation, including protection measures for children in the context of domestic

⁹⁵ IBID

⁹⁶ IBID

violence. Such measures should be accompanied by adequate resources destined to foster their implementation; regulations to ensure their enforcement; training programs for the law enforcement and justice system officials who will participate in their execution; and the design of model protocols and directives that can be followed by police departments throughout the country;

6. Continue adopting public policies and institutional programs aimed at restructuring the stereotypes of domestic violence victims, and to promote the eradication of discriminatory socio-cultural patterns that impede women and children's full protection from domestic violence acts, including programs to train public officials in all branches of the administration of justice and police, and comprehensive prevention programs and;

7. Design protocols at the federal and state levels specifying the proper components of the investigation by law enforcement officials of a report of missing children in the context of a report of a restraining order violation."⁹⁷

Through the issuance of the decision and recommendations, the IACHR critiqued the existing civil rights law and policy standards in the United States that inform the national understandings of justice for domestic violence victims.⁹⁸ By framing domestic violence as a human rights violation, the IACHR challenged advocates and policymakers to re-think the country's approach to domestic violence, and asked whether fundamental rights-to life, security, family, due process, equality, truth, and freedom from torture and cruel, inhuman, and degrading treatment-are being respected and fulfilled in the country.⁹⁹ Additionally, Ms. Gonzales's case allowed the world to critically apply the international standard of state responsibility to exercise "due diligence" to prevent, investigate, and punish human rights violations and protect and compensate victims. The international human rights principle of "due diligence"-in contrast to U.S. constitutional jurisprudence-makes clear that the government has an affirmative obligation to protect individuals from private acts of violence, to investigate alleged violations and publicly report the results, and to provide an adequate and effective remedy when these duties are

⁹⁷ IBID

⁹⁸ Bettinger-Lopez, Caroline. "Human rights at home: Domestic violence as a human rights violation." *Columbia Human Rights Law Review* 40 (2008): 19-77.

⁹⁹ IBID.

breached.¹⁰⁰ Overall, this human rights and due diligence framework was utilized to push the United States to consider whether the country's response to domestic violence, based largely upon a criminal justice model, is really a one-size-fits-all solution for ensuring the rights of victims.¹⁰¹

3.2 Special Rapporteur on Violence Against Women Country Mission to the United States

On June 6, 2011, two months prior to the Inter-American Commission releasing their decision in the Gonzales case, the Special Rapporteur on Violence Against Women, Ms. Rashida Manjoo, released the country visit report from her mission to the United States. At the invitation of the U.S. Government, Ms. Manjoo examined violence against women broadly including specific cases such as violence in custodial settings, domestic violence, violence against women in the military, and violence against women who face multiple, intersecting forms of discrimination.¹⁰² Within her report, Ms. Manjoo highlighted the positive legislative and policy initiatives undertaken by the Government to reduce the prevalence of violence against women, including the enactment and subsequent reauthorizations of the Violence against Women Act and the establishment of dedicated offices on violence against women at the highest level of the Executive. Despite these positive measures, Ms. Manjoo noted that there was still a lack of substantive protective legislation and an inadequate implementation of some laws, policies and programmes which have resulted in the continued prevalence of violence against women and the discriminatory treatment of victims, with a particularly detrimental impact on poor, minority and

¹⁰⁰IBID

¹⁰¹IBID

¹⁰² A/HRC/17/26/Add.5

immigrant women. Noting these issues, Ms. Manjoo then concluded her report by providing specific recommendations to address these issues, including specific recommendations that focus on providing remedies for women victims of violence.¹⁰³

On the issue of domestic violence, the country visit report noted that despite positive legislative and policy initiatives to reduce the prevalence of violence, there was little in the form of legally binding substantive provisions that provide substantive protection or prevention for the acts of domestic violence against women. Ms. Manjoo indicated that without any solid national scheme at the federal level, mandating legislation and training programmes, there is little protection afforded for domestic violence victims in various jurisdictions and many women still therefore suffered from inadequate protection. With these conditions in mind, Ms. Manjoo recommended that the United States Explore more uniform remedies for victims of domestic violence, sexual assault and stalking, expand federal causes of action under the Violence Against Women Act (VAWA), where possible, to mitigate current discrimination, and increase uniformity and accountability at the state and local levels, establish meaningful standards for enforcement of protection orders and impose consequences for a failure to enforce them, and initiate more public education campaigns that condemn all forms of violence.

4. The Resolutions¹⁰⁴

Between 2011 and 2015, government bodies throughout the United States have passed local resolutions that recognize freedom from domestic violence as a human right. Most of these resolutions cite and are responding to the call of international human rights law, the landmark

¹⁰³ IBID

¹⁰⁴ To see a geographical distribution of the resolutions, see map in the annex.

case *Gonzales v. United States*, and the country report issued by the Special Rapporteur on Violence Against Women, all of which have provided and illustrated clear standards concerning the rights of individuals that face domestic violence. As these resolutions clearly seek to place the issue of domestic violence within the human rights framework, they should embody, promote, and undertake the principles of due diligence within their response systems as due diligence is the internationally accepted strategy to ensure that the rights of victims and survivors are realized. The following section provides background as to the origin of the resolutions and evaluates them collectively in their effectiveness to adopt the four principles of due diligence standard as dictated by the Special Rapporteur on Violence Against Women's report from 2006.

4.1 Back Ground: General Characteristics and Format

A total of 26 local resolutions that proclaim freedom from domestic violence as a human right have been adopted within 23 different counties, towns and municipal governments at both the legislative and executive levels across the United States since 2011. A large number of these resolutions have been adopted in the North Eastern part of the country, with the most resolutions having been adopted in New York State. Notably, the city of Seattle, Washington, is the only city to have adopted a local resolution on the West Coast, resulting in the remaining resolutions being scattered in the Southeastern and Mid-Western parts of the country.

All of the resolutions are composed within a standard structure, with each resolution being divided into a pre-ambular section followed by an operative section. The purpose of the pre-ambular section of the resolution is to clarify the context within which the operative portion of the resolution is acting. It is often utilized to highlight the development of the issue at hand, clarify definitions or principles key to the operative section, and state the motives for the actions

contained within the operative section.

In contrast, the operative section of the resolutions contains commitments that the local government intends to initiate concerning the issue at hand. In the case of the local resolutions that proclaim freedom from domestic violence as a human right, each of the pre-ambular sections contain nearly four times the number of paragraphs on average than the number of paragraphs contained in the operative section of the resolutions. Thus, the design of the resolutions as a whole, are more reflective than action oriented.

4.2 Involvement of Law School Clinics

The majority of these resolutions were drafted and adopted with the support of local law school clinics, such as the Cornell Law School Global Gender Justice Clinic, the Columbia Law School Human Rights Institute and the University of Miami School of Law Human Rights Clinic. While assisting with the drafting process of the resolutions, two legal clinics developed “White Papers” in cooperation with Community Organizations to advocate for the passage of the local resolutions.¹⁰⁵ Specifically, the “White Papers” articulated the numerous benefits that community would experience by adopting a human rights framework within the context of domestic violence. These benefits are representative of the ideal benefits any community would experience by passing a comprehensive resolution proclaiming freedom from domestic violence as a human right.

First, both the “White Papers” noted that a local resolution could serve as a positive confirmation of government support for the members of the community who are survivors of domestic violence. Such a resolution would recognize the societal harm of domestic violence and

¹⁰⁵ White Papers available here: <http://www.lawschool.cornell.edu/womenandjustice/DV-Resolutions.cfm>

note the measures the government is taking to protect and prevent future acts of domestic violence that effect community, further assuring community members that the government is actively looking at ways to address the issue of domestic violence in the community. Relatedly, it was also noted that a local resolution had the potential to serve as a tool to empower survivors, as the local government would thereby recognize that individuals that experience domestic violence are not only victims, but also individuals with rights. Second, the “ White Papers” saw that reframing the harm of domestic violence as a human rights issue recognizes that domestic violence is a societal problem requiring a societal solution, which would be a first important step in moving this issue from the private sphere. Finally, the resolution would position the locality as a leader in the movement to recognize that freedom from domestic violence is a fundamental human right which could open doors to opportunities for shared strategies and collaboration across communities in the effort to eradicate this devastating human rights problem that is at once intensely local and deeply global.

Not only did the “White Papers” highlight the advantages from the standpoint of community members, but they also addressed the numerous practical benefits for the functionality of the community. Practically speaking, a local resolution was believed to create a foundation for continually strengthening a community’s response to domestic violence by recognizing the responsibility of local government, at all levels, to protect its citizens from domestic violence. Further, in realizing this responsibility, the government would then collaborate with its citizens to support and protect them. Additionally, it was hoped that such a resolution would provide the localities with a unified approach to working with domestic violence survivors to ensure that all survivors receive the same standard of care from all local service providers.

In addition to the drafting and advocacy process, the legal clinics were also heavily involved in the tracking and monitoring of all the resolutions. However, several of the resolutions appear to have no ties to a local law school and as a result these resolutions are far less extensive than those with well-documented clinic support. Following the adoption of the resolutions, several clinics have been assisting the communities with implementation plans to incorporate the principles from the resolutions into the local context. The assistance provided by the legal clinics appears to be critical in this process to make the resolution's tiny and vague operative section come to light.¹⁰⁶ For example, the Avon Global Center for Women and Justice at Cornell Law School is assisting with the creation of domestic violence and the workplace guidelines for government employers in Tompkins County and is conducting a study of the current landscape of county, local, government, and community responses to domestic violence and delivery of services to survivors which will culminate in recommendations to prevent domestic violence, and strengthen and improve service provisions to domestic violence survivors.¹⁰⁷

4.3 Prevention

According to the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, effective prevention should target the underlying factors that perpetuate gender-based violence and a culture where perpetrators are not always held accountable. To this end, “proactive measures that include education and awareness campaigns, training programs and additional complementary strategies to overcome gender

¹⁰⁶ More information available at: <http://www.lawschool.cornell.edu/Clinical-Programs/global-gender-justice/Legislative-and-Community-Based-Advocacy-in-Tompkins-County-NY-Seeking-Recognition-of-Freedom-from-Domestic-Violence-as-a-Human-Right.cfm>

¹⁰⁷ IBID

stereotypes, biases and societal norms that treat gender-based violence as a private matter, are essential to curbing abuse and impunity and empowering women”.¹⁰⁸ Elaborating on this, Ms. Ertürk noted in her 2006 report that in order to address the root causes of gender-based violence, it is vital to address gender inequality and cultural perceptions of women, poverty and economic independence. Further, she stated that states should undertake strategies to ensure women’s empowerment through education, skills training, legal literacy, and access to community resources that would encourage women’s self-reliance, develop self esteem and their self confidence which would allow them to be in control of their lives.¹⁰⁹

Overall, the resolutions are a strong tool to promote educational awareness on the issue of domestic violence in the localities that pass them. The pre-ambular sections of the resolutions provide a significant amount of information on domestic violence in both the national and local context thus informing the communities on the severity and gravity of the issue of domestic violence. A number of resolutions also utilize language to address the negative stereotypes and beliefs concerning victims of domestic violence thus laying a foundation for overcoming the biases that treat gender based violence as a private matter.

In order to inform the communities on the severity of the issue of domestic violence within the local context the majority of the resolutions utilize locally collected data and statistics.¹¹⁰ For example, the Miami-Dade County resolution highlighted that “according to the

¹⁰⁸ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, “Convention of Belém Do Pará”

¹⁰⁹ U.N. Econ. & Soc. Council, Comm’n on Human Rights, Special Rapporteur on Violence Against Women, its Causes and Consequences, Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women: The Due Diligence Standard as a Tool for the Elimination of Violence Against Women , ¶ 29 (Jan. 20, 2006) (prepared by Yakin Ertürk in accordance with Commission on Human Rights Resolution 2005/41)

¹¹⁰ Cincinnati (2011), Baltimore (2012), Miami Springs (2012), Prattville (2012), Albany County [legislature] (2012), Albany County [executive] (2012), Albany City (2012), Miami-Dade (2012), Montgomery City and Montgomery County (2012), Washington, D.C. (2013), Travis County (2014), Austin (2014), Boston (2014), Jacksonville (2014), Chicago (2014), Tompkins County [legislature] (2014), Ithaca [town] (2014), Lansing [town]

2011 Uniform Crime Reports of the 111,681 reported domestic violence offenses statewide, 9,313 of those offenses occurred in Miami-Dade County, representing the highest number of domestic violence cases of anywhere in Florida.”¹¹¹ A slightly different angle was taken in the State College resolution which noted that “there were 1,678 domestic violence fatalities in Pennsylvania from 2004-2014” and that “State College Police reported 338 domestic violence cases in 2014” alone.¹¹² While such statistics are often regularly collected at the local level, the resolutions allow the statistics to have a place of visibility and inform the community.¹¹³

Several resolutions also utilize statistics that reflect the national reality of domestic violence. Eight resolutions cite an eye opening statistic collected by the Center for Disease Control and Prevention which estimates “that more than one in three women and one in four men in the United States will experience rape, physical violence, and/or stalking by an intimate partner at some point in their lives”¹¹⁴ Several resolutions also included a statistic from the National Crime Victimization Survey that estimates that “every 9 to 15 seconds a woman is battered in the United States, and every 2.5 minutes someone is sexually assaulted in the United States.”¹¹⁵ Highlighting both the national and local realities of the issue of domestic violence reinforces the notion that domestic violence is a universal global problem that needs to be addressed.

Concerning biases and stereotyping, a number of resolutions include paragraphs dedicated to debunking stereotypical beliefs about domestic violence and domestic violence survivors. Two resolutions include a pre-ambular paragraph highlighting that domestic violence

(2014), Tompkins County [council of local governments] (2014), Ithaca City [legislature] (2015), State College [executive] (2015).

¹¹¹ Miami-Dade (2012).

¹¹² State College [executive] (2015).

¹¹³ It is recognized however, that incidences of domestic violence are largely underreported.

¹¹⁴ Miami Springs (2012), Albany County [legislature], Albany City (2012), Miami-Dade (2012), Washington, D.C. (2013), Jacksonville (2014), Tompkins County [legislature] (2014), Ithaca City [legislature] (2015).

¹¹⁵ Jacksonville (2014).

is more than simple quarreling or a routine argument, but rather is cycle of violence that is “spawned by a perpetrator’s desire for power and control”.¹¹⁶ Further, two additional resolutions recognize that the domestic violence can take many forms including “physical, sexual, psychological, or economic abuse, intimidation, isolation, and coercive control by intimate partners or family members”¹¹⁷ and one resolution recognized that such abuse “is often marginalized as a private concern with its impact is felt across the entire community as a whole.”

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The image of the stereotypical domestic violence victim is also addressed in six resolutions, which explicitly state that “domestic violence affects individuals and families from every race and walk of life, age, nationality, religion, and economic status.”¹¹⁹ Even more prominently featured in the resolutions were the types of negative consequences domestic violence survivors experience as a result of their victimization. Nineteen resolutions highlighted that victims of domestic violence may not only experience physical abuse but may also experience long term emotional harm, financial instability, homelessness, and chronic fear.”¹²⁰ The Boston resolution also noted that domestic violence encompasses various forms of abuse not always recognizable to members of the community, nor do victims or

¹¹⁶ Prattville (2012), Montgomery City and Montgomery County (2012).

¹¹⁷ Tompkins County [legislature] (2014), Tompkins County [council of local governments] (2014).

¹¹⁸ Washington, D.C. (2013) .

¹¹⁹ Jacksonville (2014), Tompkins County [legislature] (2014), Ithaca [town] (2014), Tompkins County [legislature] (2014), Tompkins County [council of local governments] (2014), Ithaca City [legislature] (2015).

¹²⁰ Cincinnati (2011), Baltimore (2012), Miami Springs (2012), Prattville (2012), Albany County [legislature] (2012), Albany County [executive] (2012), Albany City (2012), Miami-Dade (2012), Montgomery City and Montgomery County (2012), Washington, D.C. (2013), Travis County (2014), Austin (2014), Boston (2014), Jacksonville (2014), Chicago (2014), Tompkins County [legislature] (2014), Ithaca [town] (2014), Lansing [town] (2014), Tompkins County [council of local governments] (2014), Ithaca City [legislature] (2015), State College [executive] (2015).

perpetrators of domestic violence fit a particular stereotype associated with the issue.”¹²¹

Finally, education and community awareness is highlighted, with three of the resolutions proclaiming the month of October as domestic violence awareness month. In this regard, the Chicago resolution even noted that the city reaffirms their “commitment to disseminate domestic violence information and to collaborate with non-governmental organizations and local businesses in combating domestic violence.”¹²²¹²³ Additionally, the Prattville Alabama resolution specifically noted that “the lens of human rights heightens its [domestic violence’s] gravity and lends weight to the importance of awareness and education in public and private sectors.”¹²⁴

4.4 Protection

Keeping potential victims of violence safe from harm is a key component of the due diligence standard. Adequate legislative frameworks, policing systems and judicial procedures are all critical to creating a safe environment that enables women to report acts of violence and obtain effective measures of protection from harm. According to Special Rapporteur Ertürk, such measures should be based on the needs of survivors, whilst guaranteeing the rights of those accused of perpetrating violence, and could include the adequate provision of restraining or expulsion orders.¹²⁵ Special Rapporteur Coomaraswamy also indicated that where violence has occurred that it is important to avoid recurrences and ensure that victims receive adequate and timely support services.¹²⁶ Governments must therefore ensure that survivors of gender-based

¹²¹ Boston (2014).

¹²² Montgomery City and Montgomery County (2012), Erie County (2012), Chicago (2014).

¹²³ Chicago (2014).

¹²⁴ Prattville (2012).

¹²⁵ Special Rapporteur on Violence Against Women, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, ¶ 82, U.N. Doc. E/CN.4/2006/61

¹²⁶ See *Report of the Special Rapporteur on violence against women, its causes and consequences, submitted in accordance with Commission on Human Rights resolution 1995/85, A framework for model legislation on domestic*

violence, including those that face domestic violence, have access to justice, as well as basic support services including health care, counseling and housing that respond to their immediate needs, help protect them against further harm and address the longer-term consequences of that violence.¹²⁷

Notably, ten resolutions recalled the United States Country Report issued by the Special Rapporteur on Violence Against Women that urged the United States government to reassess existing mechanisms for protecting domestic violence survivors.¹²⁸ Even more recognized the Inter-American Commission on Human Rights decision that found the United States in violation of Articles I, II, VII, and XVII of the American Declaration for breaching its duty to protect Jessica Lenahan and her children from domestic violence, and determined that the United States' failure to protect women from gender-based violence constitutes discrimination and denies women their right to equality.¹²⁹

Concerning the issue of access to justice for domestic violence survivors, many resolutions indicated the number of protective orders that were administered within a given year. For example, the Chicago resolution stated that “the Circuit Court of Cook County issued more than 5,600 Emergency Orders of Protection and 4,100 Plenary Orders of Protection in 2013.”

¹³⁰ Three of the resolutions in New York State also indicated that the percentage of required protection orders issued had increased within the locality by “6 percent from 2009-2010 and 34

violence, E/CN.4/1996/53/Add.2 (Feb. 2, 1996) (by Radhika Coomaraswamy), available at <http://www1.umn.edu/humanrts/commission/thematic52/53-add2.htm>.

¹²⁷ Special Rapporteur on Violence Against Women, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, ¶ 82, U.N. Doc. E/CN.4/2006/61

¹²⁸ Baltimore (2012), Albany County [legislature], Albany City (2012), Miami-Dade (2012), Seattle (2012), Washington, D.C. (2013), Travis County (2014), Austin (2014), Jacksonville (2014), Ithaca City [legislature] (2014),

¹²⁹ Baltimore (2012), Albany County [legislature], Albany City (2012), Miami-Dade (2012), Seattle (2012), Washington, D.C. (2013), Travis County (2014), Austin (2014), Jacksonville (2014), Tompkins County [council of local governments] (2014), Ithaca City [legislature] (2014), State College [executive] (2015).

¹³⁰ Chicago (2014).

percent from 2007”¹³¹ Two resolutions also commented on the legal representation utilized by survivors of domestic violence and the provision of pro-bono legal services available to domestic violence victims. Shedding light on the issue of legal representation the Baltimore, M.D. indicated that “the petitioner requesting protection from abuse was represented by an attorney in only 23 of 369 proceedings observed at the Baltimore City Eastside District Court by University of Baltimore Family Law Clinic Court Watch Project between September 19, 2011 and October 14, 2011.”¹³²

Additionally, of the twenty six resolutions passed since 2011 sixteen recognized the critical role that social services play in responding to domestic violence by stating that “police and sheriff’s departments, courts, cities, counties, social services agencies, and other local government entities constitute the first line of defense against domestic violence.”¹³³ Two resolutions also included “ providers of medical services” within that listing. The majority of the resolutions then further elaborated on the number of individuals served by the various service agencies. Within this context, seven resolutions indicated the number of domestic violence hotline calls the locality had received in a given year and eleven indicated the number of individuals served at domestic violence shelters (the Chicago resolution further indicated that the number of beds available at their shelters had significantly increased).¹³⁴¹³⁵ The Chicago

¹³¹ Albany County [legislature], Albany County [executive] (2012), Albany City (2012).

¹³² Baltimore (2012).

¹³³ Cincinnati (2011), Baltimore (2012), Prattville (2012), Albany County [legislature] (2012), Albany County [executive] (2012), Albany City (2012), Montgomery City and Montgomery County (2012), Boston (2014), Jacksonville (2014), Chicago (2014), Tompkins County [legislature] (2014), Ithaca [town] (2014), Lansing [town] (2014), Tompkins County [council of local governments] (2014), Ithaca City [legislature] (2015), Laredo City and Webb County (2015).

¹³⁴ Albany County [legislature] (2012), Albany County [executive] (2012), Albany City (2012), Miami-Dade (2012), Washington, D.C. (2013), Chicago (2014), Ithaca City [legislature] (2015).

¹³⁵ Cincinnati (2011), Baltimore (2012), Albany County [legislature] (2012), Albany County [executive] (2012), Albany City (2012), Miami-Dade (2012), Washington, D.C. (2014), Tompkins County [legislature] (2014), Lansing (2015), Tompkins County [Council of local governments] (2015), Ithaca City [legislature] (2015).

resolution also highlighted the availability of counseling services for victims of domestic violence within their communities.¹³⁶ Finally, a number of resolutions recognized that domestic violence victims and survivors “face many challenges, some of which directly or indirectly relate to services “ provided by the locality and Tompkins County specifically noted that the “county would consider participating in a study of the local causes of domestic violence, strengthening the county’s response to domestic violence and improving the provisions of services to survivors.”

4.5 Investigation, Punishment and Accountability

Due diligence also demands that federal, state and local authorities duly investigate alleged rights violations, punish perpetrators appropriately, and adhere to principles of accountability and non-impunity. Human rights experts have noted that in the U.S., there is generally a “lack of adequate enforcement by police and the judiciary of civil remedies and criminal sanctions for violence.”¹³⁷ As there is a strong correlation between the prevalence of domestic violence and “effective and responsive accountability measures”, effective government responses are critical to ending gender-based violence like domestic violence.¹³⁸ Special care must therefore be taken to prioritize investigations into incidents of gender-based violence, which have historically been deprioritized by law enforcement agencies, schools, the military, and other governmental entities. Adequate investigation, and, where appropriate, arrest, prosecution and punishment of perpetrators of domestic violence, are important measures of

¹³⁶ Chicago (2014).

¹³⁷ Special Rapporteur on Violence against Women, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, ¶ 65, U.N. Doc. E/CN.4/2006/61

¹³⁸ Special Rapporteur on Violence against Women, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, ¶ 76, U.N. Doc. E/CN.4/2006/61

accountability and indicators of compliance with the due diligence framework. Perpetrators of such acts must be punished in a manner that is consistent with the right to due process and that also emphasizes the dignity of survivors. Additionally, governmental agents who fail to respond appropriately to acts of gender-based violence (as was so often the case historically and unfortunately continues with frequency) must also be held accountable.¹³⁹

Collectively, the resolutions do not adequately address the critically important principles of investigation, punishment and accountability contained within the due diligence standard. These principles are critically important because the failure to carry out an appropriate investigation undermines the accountability process for both the perpetrator as well as the officials conducting the investigation, which then ultimately prevents effective remedies being provided to the survivors of violence.¹⁴⁰ Investigations that are diligent, serious, prompt, thorough and impartial reassure victims that the quality of their lives and their rights are being prioritized by the government, thus sending a strong signal to victims that they may seek and rely on government assistance to stop the violence without fear of any negative repercussions. Additionally, a lack of accountability for individual perpetrators perpetuates recidivism and reinforces a culture that normalizes gender-based violence. Further, the impunity due to lack of punishment often leads to countless cycles of violence within homes, families and law enforcement agencies.¹⁴¹

While numerous resolutions highlighted the number of protection orders administered within each locality, only one resolution detailed the types of punishments being administered to

¹³⁹ Special Rapporteur on Violence against Women, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, ¶ 76, U.N. Doc. E/CN.4/2006/61

¹⁴⁰ Domestic Violence and Sexual Assault in the United States: A Human Rights based Approach and Practice Guide. (2014).

¹⁴¹ IBID

perpetrators that committed domestic violence. Within the Cincinnati resolution the locality indicated that of the 1,098 perpetrators sentenced in 2012, 73 percent received probation whereas 23 percent were sentenced to jail.¹⁴² A small collection of resolutions did indicate though the creation of specialized domestic violence courts in their communities that would ensure special attention to domestic violence survivors' needs.¹⁴³ In addition, twelve resolutions highlighted the Special Rapporteur's report indicating that the United States needed to "reassess its law and policies for punishing abusers"¹⁴⁴ Disappointingly though, not a single resolution indicated any concern over the types of investigations being conducted on domestic violence cases nor did any of the resolutions detail the due diligence standard of what constitutes a proper investigation.¹⁴⁵

Accountability is also hazily considered in these resolutions. While a collection of resolutions indicate that the localities have established "domestic violence" task forces, only one of these resolutions indicated that the task force is actively seeking to integrate and evaluate the support services provided to victims utilizing a human rights approach, noting that the task force established a "human rights sub-committee."¹⁴⁶¹⁴⁷ Perhaps more disappointingly though, is the clear lack of recognition that there is no engaging accountability framework within the United States, which holds government officials responsible for inadequate responses of protection for domestic violence victims. While thirteen resolutions cite the Gonzales case and recognize that the IACHR urged the United States "to enact law and policy and reforms at all levels to protect

¹⁴² Cincinnati (2011).

¹⁴³ Chicago (2014), Tompkins County [legislature] (2014), Ithaca [town] (2014), Lansing [town] (2014), Tompkins County [council of local governments] (2015), Ithaca City [legislature] (2015).

¹⁴⁴ Baltimore (2012), Albany County [legislature], Albany City (2012), Miami-Dade (2012), Seattle (2012), Washington, D.C. (2013), Travis County (2014), Austin (2014), Jacksonville (2014), Tompkins County [council of local governments] (2014), Ithaca City [legislature] (2014), State College [executive] (2015).

¹⁴⁵ The due diligence standard specifies that a proper investigation must be diligent, serious, prompt, thorough and impartial.

¹⁴⁶ Prattville (2012), Austin (2014), Chicago (2014), Tompkins County [legislature] (2015).

¹⁴⁷ Austin (2014).

survivors of domestic violence and their children”, none recognized the context of this Gonzales decision.¹⁴⁸ Ultimately, Ms. Gonzales had to resort to the IACHR because the United States refused to hold its officials accountable for the severe violations experienced by herself and her children. Had the United States had an appropriate accountability system for its officials, involvement by the IACHR would have been far less likely if the United States issued proper remedies to Ms. Gonzales.

4.6 Remedies and Compensation

While effective criminal justice responses ensure that perpetrators of gender-based violence face the consequences of their actions, remedy and compensation focus on the needs of victims and survivors. The aim of remedies and compensations is to address the harm or losses suffered and mitigate the effects of violence suffered by victims to the greatest extent possible.¹⁴⁹ In order to provide adequate reparations for domestic violence survivors, governments must provide access to both meaningful criminal and civil remedies for survivors to utilize. In addition, governments must also facilitate access to appropriate rehabilitation and support services that complement the protective services. Further, appropriate remedies should include, where appropriate, compensation for physical and psychological injuries, loss of employment, educational opportunities and other benefits, as well as any legal, medical and other costs incurred as a consequence of the violence.¹⁵⁰ While five of the local resolutions note the

¹⁴⁸ Baltimore (2012), Albany County [legislature] (2012), Albany City (2012), Miami-Dade (2012), Seattle (2012), Washington, D.C. (2013), Travis County (2014), Austin (2014), Jacksonville (2014), Tompkins County [legislature] (2014), Tompkins County [council of local governments] (2015), Ithaca City [legislature] (2015), State College [executive] (2015).

¹⁴⁹ Domestic Violence and Sexual Assault in the United States: A Human Rights based Approach and Practice Guide. (2014).

¹⁵⁰ Domestic Violence and Sexual Assault in the United States: A Human Rights based Approach and Practice Guide. (2014).

availability of counseling services for victims of domestic violence within their communities and nineteen of the resolutions recognize that social service entities “constitute the first line of defense”, no other consideration of reparations or compensations are made throughout the resolutions that meet the due diligence standard.¹⁵¹¹⁵²

5. Conclusion: A New Inspiration for Resolution Language

Initially the local resolutions that proclaim freedom from domestic violence as a human right looked to be a promising way to incorporate the human rights framework into the U.S. context regarding the issue of domestic violence. However, analysis has demonstrated that the majority of the resolutions take an unbalanced approach when integrating the due diligence standard. As the due diligence standard has been continuously applied across the globe in multiple quasi-judicial and treaty bodies and has been undertaken by UN System as the best approach to ensure the rights of domestic violence victims and survivors, the United States should seek to apply this standard when addressing the issue of domestic violence at all levels as the standard has reached the status of customary international law. While the majority of the resolutions adequately address means of preventing incidences of domestic violence from occurring and ways localities are protecting victims, they do not consistently provide specific guidelines detailing local commitments for the standards of investigation and punishment for incidences of domestic violence, accountability for perpetrators and state officials, or appropriate remedies for victims.

¹⁵¹ Albany City (2012), Chicago (2014), Tompkins County [legislature] (2015), Ithaca City [legislature] (2015), Laredo City and Webb County (2015).

¹⁵² Cincinnati (2011), Baltimore (2012), Prattville (2012), Albany County [legislature] (2012), Albany County [executive] (2012), Albany City (2012), Montgomery City and Montgomery County (2012), Boston (2014), Jacksonville (2014), Chicago (2014), Tompkins County [legislature] (2014), Ithaca [town] (2014), Lansing [town] (2014), Tompkins County [council of local governments] (2014), Ithaca City [legislature] (2015), Laredo City and Webb County (2015).

In order for these resolutions to fully integrate a human rights approach and empower victims of domestic violence they each must fully address and detail specific means of abiding by the due diligence framework. One source of model language that future resolutions could pull from to ensure that the locality fully addresses each of the components of the due diligence framework is the Council of Europe Convention on preventing and combating violence against women and domestic violence (also known as the Istanbul Convention.)¹⁵³ The Istanbul Convention came as a result of the Council of Europe feeling that there needed to be a comprehensive and concrete standard set for preventing and combating violence against women and domestic violence. Specifically, the Convention, as a legally binding document, aims to hold State parties accountable to the core components of the due diligence standard by spelling out the ways States should ensure that domestic violence is prevented, victims are protected and provided remedy and that perpetrators of such violence are appropriately punished. Considering the weaknesses of the enacted local resolutions, language from the Istanbul Convention that could particularly be altered to suit the U.S. context come from Articles 5, 29 and 30 of the Convention.¹⁵⁴

Article 5 of the Istanbul Convention details the State Obligation of due diligence. As the resolutions do not clearly lay out the due diligence framework, a paragraph detailing the core components of the standard would be useful. Paragraph 2 of Article 5 within the Convention, notes that State “parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by

¹⁵³ Treaty No.210, *Council of Europe Convention on preventing and combating violence against women and domestic violence*. Information Available here: <http://www.coe.int/en/web/istanbul-convention/home>

¹⁵⁴ IBID

the scope of this Convention that are perpetrated by non-State actors.”¹⁵⁵ Such a paragraph adapted for the local resolutions would put government actors on notice concerning the specific areas States should intervene in concerning the issue of domestic violence.

Article 29 of the Istanbul Convention details the necessity of civil lawsuits and remedies for domestic violence victims. Particularly paragraph 2 of Article 29 indicates that “parties shall take the necessary legislative or other measures to provide victims, in accordance with the general principles of international law, with adequate civil remedies against State authorities that have failed in their duty to take the necessary preventive or protective measures within the scope of their powers.”¹⁵⁶ While the localities themselves may not be able to create such a standard on their level, recognizing this degree of accountability as the international standard within the resolutions would be a way of recognizing the systemic deficiency in the U.S. and could serve as a call for change on the federal level.

Last, but not least, language based on Article 30 of the Convention, could be utilized within the local resolutions to address remedies and compensation for survivors of domestic violence. Article 30 states that State “parties shall take the necessary legislative or other measures to ensure that victims have the right to claim compensation from perpetrators for any of the offences established in accordance with this Convention.” More useful though is paragraph 2 of Article 30, which indicates that: “adequate State compensation shall be awarded to those who have sustained serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources such as the perpetrator,

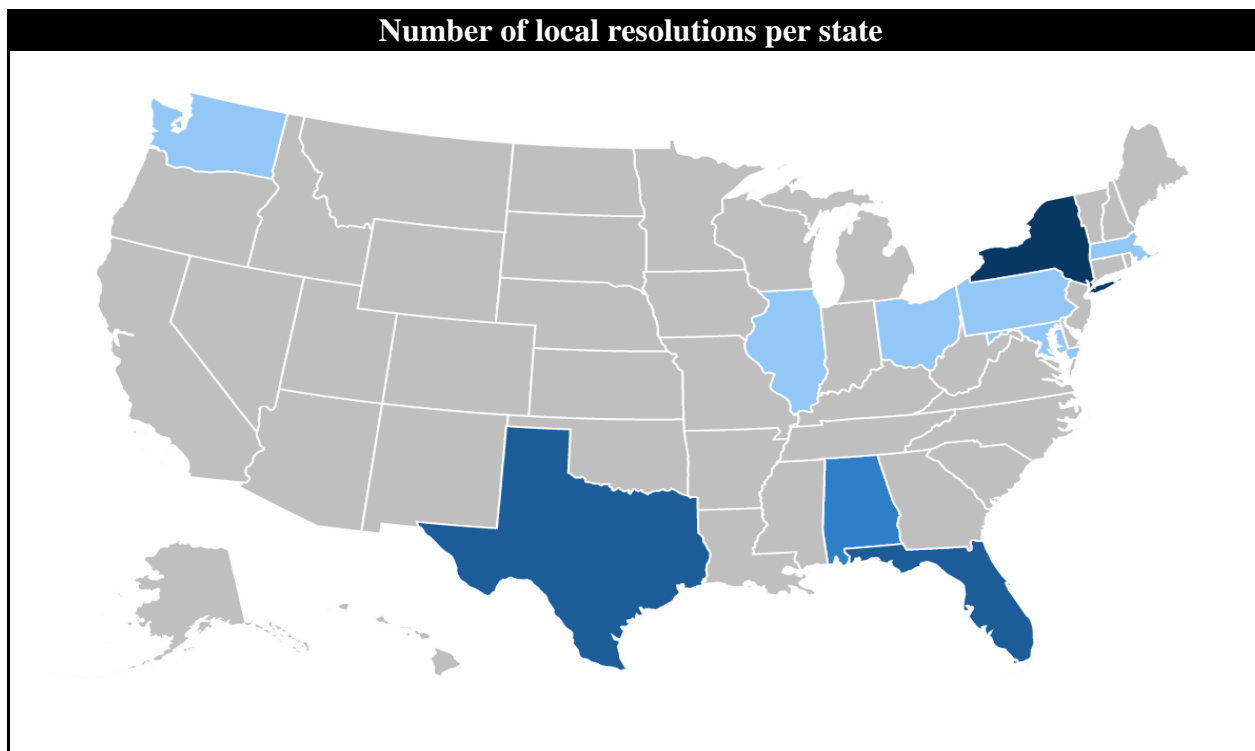
¹⁵⁵ Treaty No.210, *Council of Europe Convention on preventing and combating violence against women and domestic violence*, Article 5.

¹⁵⁶ Treaty No.210, *Council of Europe Convention on preventing and combating violence against women and domestic violence*, Article 29.

insurance or State-funded health and social provisions.”¹⁵⁷ A paragraph like this one in the context of the local resolutions would provide a standard for the availability of specific forms of compensation for victims of domestic violence. Additionally, such a paragraph would detail when a State should supply this compensation. Such a high standard for allocating remedy and compensation would be a challenge to implement on the local level, but recognizing this newly developed standard could prod action at the federal level. If such a standard for compensation were enacted, it would ultimately provide strong support to the victims of domestic violence and could foster their strong recovery.

¹⁵⁷ Treaty No.210, *Council of Europe Convention on preventing and combating violence against women and domestic violence*, Article 30.

Annex:



2011	2012	2013	2014	2015
1. Cincinnati, OH	2. Baltimore, MD 3. Miami Springs, FL 4. Prattville, AL 5. Erie County, NY	12. Washington, D.C	13. Travis County, TX 14. Austin, TX 15. Boston, MA 16. Jacksonville, FL	20. Lansing (Town), NY 21. Tompkins County, NY (Council of Local

	6. Albany County, NY (Legislature)		17. Chicago, IL	Governments)
	7. Albany County, NY (Executive)		18. Tompkins County, NY (Legislature)	22. Cayuga Heights, NY
	8. Albany City, NY		19. Ithaca (Town), NY	23. Ithaca (City), NY (Legislature)
	9. Miami Dade, FL			24. Ithaca (City), NY (Executive)
	10. Montgomery City and Montgomery County, AL			25. Laredo (City) and Webb County, TX
	11. Seattle, WA			26. State College, PA (Executive)

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U.N. Econ. & Soc. Council, Comm'n on Hum. Rts., Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, pt. II, ¶ 26, U.N. Doc. E/CN.4/1996/53 (Feb. 5, 1996) (prepared by Radhika Coomaraswamy, in accordance with Comm'n on Hum.Rts. Res. 1995/85)

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Resolutions:

1. Cincinnati, OH (2011)
2. Baltimore, MD (2012)
3. Miami Springs, FL (2012)
4. Prattville, AL (2012)
5. Erie County, NY (2012)
6. Albany County, NY (Legislature) (2012)
7. Albany County, NY (Executive) (2012)
8. Albany City, NY (2012)
9. Miami-Dade County, FL (2012)
10. Montgomery City and Montgomery County, AL (2012)
11. Seattle, WA (2012)
12. Washington, D.C. (2013)
13. Travis County, TX (2014)
14. Austin, TX (2014)
15. Boston, MA (2014)
16. Jacksonville, FL (2014)
17. Chicago, IL (2014)
18. Tompkins County, NY (Legislature) (2014)
19. Ithaca (Town), NY (2014)
20. Lansing (Town), NY (2015)
21. Tompkins County, NY (Council of local governments) (2015)
22. Cayuga Heights, NY (2015)
23. Ithaca (City), NY (Legislature) (2015)
24. Ithaca (City), NY (Executive) (2015)
25. Laredo (City) and Webb County, TX (2015)
26. State College, PA (Executive) (2015)

