

**Guidelines for Reporting on Human Rights Compliance:
Law Enforcement Responses to Domestic Violence**



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This report does not represent the official position of the School of Law or of the University of Texas, and the views presented here reflect only the opinions of the individual authors and of the Human Rights Clinic.

Statement of Purpose:

This policy paper is intended to aid in the implementation of a reporting process mandated by a Resolution passed by the Austin City Council and Travis County Commissioners Court.¹ The Resolution declares freedom from domestic violence a human right, and conveys an acknowledgment that, in accordance with international human rights law, local agencies have a binding obligation to take action to protect all members of the community from domestic violence. It signals a unified philosophical and practical commitment on behalf of Austin and Travis County to addressing the problem of domestic violence. To this end, the Resolution includes a requirement that a biannual report (henceforth: ‘the Report’) be prepared by the Austin/Travis County Family Violence Task Force. The Report, which is to reflect the ideals and goals of a human rights perspective on domestic violence, will identify “gaps and barriers in service delivery to survivors of domestic violence” and describe “challenges faced by survivors of domestic violence”, and will provide “recommendations on how to improve services to those survivors.”² The Report will be comprised of three parts, each concerning a different service group. These are:

1. Law Enforcement and Probation
2. Mental and Physical Healthcare, and
3. Criminal Prosecution.³

This policy paper is dedicated to providing a human rights framework and guidelines for the production of the Law Enforcement component of the Report. It will:

- Provide an accessible introduction to human rights theory as it applies to law enforcement responses to domestic violence; and
- Guide the reporting process by providing analysis and concrete recommendations concerning what, on a human rights perspective, should be monitored in assessing law enforcement services.

Given its motivation and content, this policy paper will be of most interest to those tasked with researching and writing the Report, to domestic violence policy makers, and to those working in law enforcement.

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I. Definitions

Domestic Violence:

'Domestic violence' is defined, following the definition adopted by the United States Department of Justice, the definition supplied in Article 2(a) of the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* ('Convention of Belém do Pará'), and the definition supplied in Article 3(b) of the *Council of Europe Convention on preventing and combating violence against women and domestic violence* ('Istanbul Convention'), as abusive behavior in any domestic relationship (a relationship between intimate partners, members of a domestic unit, or family members, "whether or not the perpetrator shares or has shared the same residence with the victim,")⁴ where the abusive behavior is used by one person to gain or sustain power or control over another. As such, domestic violence can involve "physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person."⁵ Behavior that constitutes domestic violence may include "any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone."⁶

Law enforcement agencies:

'Law enforcement agencies' refers to the State and local agencies engaged in the work of law enforcement. In Austin and Travis County these include: County Sheriffs, Police, Constables and Rangers.

The Report:

'The Report' refers to the biannual report mandated by the Resolution. The paper at hand has been written prior to the production of the first Report, and is intended to guide and aid the reporting process.

The Resolution:

'The Resolution' refers to the identical Resolutions passed by the Austin City Council and Travis County Commissioners Court in 2014, declaring freedom from domestic violence a human right, and providing a call for action on the part of local government agencies.⁷

Victim of Domestic Violence:

A 'Victim of Domestic Violence' is any person who suffers physical, psychological or emotional harm as a result of an act of domestic violence. This definition includes the person who is the primary target of the violence as well as all people who experience secondary harm arising from the abuse of the primary target (e.g. where children or others in the household suffer psychological harm from witnessing an attack on a family member, or encounter physical harm through intervention).⁸

II. Introduction

“If you have come here to help me, you are wasting your time. But if you have come here because your liberation is bound up with mine, then let us work together” - Lilla Watson⁹

In 2014, the City of Austin and Travis County recognized freedom from domestic violence as a human right. This recognition on the part of city and county came at a welcome time, given the prevalence of domestic violence in the USA, in Texas, and in the Austin and Travis County region.¹⁰ But what precisely does it mean for freedom from domestic violence to be recognized as a human right?

By framing the problem of domestic violence in terms of human rights, certain considerations that are neglected by traditional approaches to domestic violence, (approaches that treat domestic violence as a private matter, or as a matter to be dealt with solely on the terms of criminal law), are brought into view.

On a human rights perspective, domestic violence becomes a matter of public concern and State responsibility. Human rights are those rights that people enjoy equally and inalienably, simply in virtue of their participation in humanity.¹¹ And the defense and realization of human rights, being bound up with the basic dignity of all human beings as human beings, is of concern to all people.¹² The human rights tradition emphasizes State responsibility for upholding human rights, and governments are said to have a special and binding duty to protect human rights and prevent their violation: “human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments.”¹³ So, by framing freedom from domestic violence in terms of human rights, we pull the issue of domestic violence out of the private sphere to which it has historically been relegated, and confront it as a matter possessed of universal *public* significance. The protection of human rights is a matter of concern *for all*. And governments are held responsible for ensuring the freedom of human beings from the experience of domestic violence.

There are other benefits to the human rights approach as well. Domestic violence situations are amongst the most socially complex situations law enforcement agencies confront. They frequently involve issues of health and wellbeing, of family, of home, of personal freedom, of gender, of social origins, culture and financial security. Law enforcement officers who respond directly to incidents of domestic violence are traditionally tasked to determine whether a discrete crime has been committed. But as law enforcement agencies have increasingly and

commendably acknowledged through evolving practices and policies, the reality is that the victims of domestic violence often cannot be afforded the full protection of the law against a perpetrator or cannot be assisted in their own safety planning without attention to both the particular prehistory of the situation and a complex of social considerations. Human rights law and theory is uniquely situated to aid in the promotion and development of holistic, socially engaged and individually sensitive responses to domestic violence.¹⁴

A human rights perspective on a domestic violence situation is one that holds all persons involved to be equals, equals who are due respect and dignity.¹⁵ It enshrines the rights of persons to be secure and free of fear, oppression, degrading and inhuman treatment.¹⁶ It emphasizes and values the freedom of individuals and communities to engage in self-determination.¹⁷ It affirms pluralism and aims to commence from a place of mutual respect.¹⁸ It recognizes the importance of home, family and community.¹⁹ And it holds the rights to these various things - home, family, community, security, dignity, freedom - to be interrelated, interdependent and indivisible.²⁰

The body of human rights law and theory is rich and growing, and it offers a valuable resource to those in Austin and Travis County who work in domestic violence prevention and response. By adopting a human rights perspective on domestic violence, and by undertaking to conduct a biannual Report to assist in the pursuit of a practical human rights approach, the communities of Austin and Travis County have not only availed themselves of the resources of a rich tradition of legal and social thought, they have situated themselves at the forefront of a united and inspired global effort to eradicate domestic violence.²¹

This paper is intended to furnish the authors of the Report with the tools necessary to apply a human rights perspective in their research. It provides an accessible introduction to human rights theory as it applies to law enforcement responses to domestic violence; and offers practical guidance for the reporting process by identifying, in the form of concrete recommendations, the questions that should guide data gathering in order to identify the presence (or absence) of effective and human rights promoting practices, services and remedies in the law enforcement response to domestic violence.

This paper begins with a discussion of the significance of human rights law and discourse for domestic violence. Relevant legal principles, reports of international agencies and human rights jurisprudence are invoked. This groundwork in place, the paper moves to address the significance of a human rights approach for law enforcement agencies in their responses to domestic violence. Next, broad human rights motivated recommendations are made in order to guide the Report writers in their survey of law enforcement responses to domestic violence.

Then, in recognition of the fact that many victims of domestic violence face intersectional barriers to justice and service, some of the distinctive barriers to assistance that might confront victims of domestic violence with respect to age, sexuality, race, immigration status or disability are addressed in light of their human rights' significance, and further specific considerations are recommended to the authors of the Report.

III. Human Rights Law and Theory

A. Preliminary Remarks on State Responsibility and the Standard of Due Diligence

In the past three decades, there has been a growing movement amongst international courts, international organizations and legal scholars to acknowledge that domestic violence (a problem historically neglected by international law as being a matter proper to the private realm) constitutes a human rights violation; a violation, moreover, for which State actors bear responsibility. This development has been memorialized and formalized by several international conferences and resolutions, in the jurisprudence of international courts and by the reporting work of the UN Special Rapporteur on Violence Against Women.

In 2003, the General Assembly of the United Nations passed a resolution calling for the elimination of domestic violence and declaring that “domestic violence is of public concern and requires States to take serious action to protect victims and prevent domestic violence.”²² In 2010, with reference to domestic violence and other forms of violence against women and girls, the United Nations Human Rights Council stressed to States that they have “the obligation to promote and protect all human rights and fundamental freedoms of women and girls, and must exercise due diligence to prevent, investigate, prosecute and punish the perpetrators of violence against women and girls and provide protection to the victims, and that failure to do so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms.”²³ In the same year, the UN Special Rapporteur on Violence Against Women acknowledged, in a report on the causes and consequences of violence against women in the United States of America, that domestic violence represents “a pervasive human rights violation” that continues to affect people across the United States and called for renewed State action to prevent domestic violence and implement effective remedies.²⁴ And, again in 2010, in a report presented to the UN Commission on the Status of Women, the Secretary General acknowledged that domestic violence is now recognized by the international community as a violation of human rights and as “a form of gender-based discrimination.”²⁵

For, in addition to the general recognition that domestic violence constitutes a human rights abuse for which States bear responsibility, there is a growing international consensus that domestic violence against women should be addressed as a form of gender-based discrimination; a consensus given voice in recent treaties, in reports by the UN Special Rapporteur on Violence Against Women, in resolutions made by the UN General Assembly and Human Rights Council and in court verdicts in international human rights cases concerning domestic violence.²⁶ As the United Nations Committee on the Elimination of Discrimination against Women has stated: the “definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately.”²⁷ Although not all victims of domestic violence are women, domestic violence has been shown to disproportionately affect women, and domestic violence against women and the traditional failure of governments to provide for adequate protective and preventative measures may be said to represent “a manifestation of the historically unequal power relations between women and men.”²⁸

The growing international recognition of State responsibility for domestic violence, and of the role played by domestic violence as a form of gender-based discrimination, is accompanied by the realization that domestic violence is not to be addressed simply as a matter of violence between individuals, but must also be confronted as a chronic social problem.²⁹ Thus, the UN General Assembly acknowledged that: “domestic violence against women is, inter alia, a societal problem and a manifestation of unequal power relations between women and men.”³⁰ The Secretary General of the United Nations has endorsed research showing that domestic violence emerges across cultures and is a pervasive problem worldwide, comprising “the most common form of violence experienced by women globally.”³¹ The central authorities on international human rights law have made it clear that States must take responsibility for the pervasiveness of the problem.³² States effectively tolerate, normalize, and permit the rights abuses perpetrated through domestic violence where they fail to provide effective protections against domestic violence and fail to undertake effective measures to address the root causes of domestic violence in society.³³ The decision of the Inter-American Commission on Human Rights in the case of Jessica Lenahan (which will be considered in more depth shortly) provides an example of the application of this understanding of State responsibility for domestic violence to the American context.³⁴

International recognition of State responsibility for domestic violence has been accompanied by the articulation and adoption of a general standard of international human rights law which State agencies must meet in their responses to domestic violence: a standard

of 'due diligence'.³⁵ The standard serves as a tool for identifying State responsibility in cases of potential or actual rights abuses. It supplies a means of analyzing a State's actions and omissions for evidence of "effective" fulfillment of the State's human rights obligations.³⁶ With respect to the problem of domestic violence, the standard of due diligence has broad application. It serves to express both a "systemic-level responsibility, i.e. the responsibility of States to create good and effective systems and structures that address the root causes and consequences of violence against women" and also "an individual-level responsibility, i.e., the responsibility of States to provide each victim with effective measures of prevention, protection, punishment and reparation."³⁷

The scope and application of the standard of due diligence (especially as it relates to the work of law enforcement agencies), will be expanded upon in subsequent sections of this paper. In establishing the scope of this standard, the various sorts of rights violation that domestic violence may give rise to will be discussed. But first, the relationship between international human rights law and domestic US law must be addressed, and the grounds established for recourse to human rights law as an independent and persuasive source of moral and legal authority with respect to Texas law and policy.

B. Human Rights Law and the USA: Applicable International Law

The international law of human rights has developed in two principal ways: by means of the formal adoption of international treaties and other legal instruments by State actors, and by means of its emergence in customary law, where 'customary law' may be defined as a general practice amongst States in the international community that is accepted by those States as law.³⁸ Some human rights were first articulated in treaties, others emerged through customary law, and some are recognized in both traditions. An example of a human rights norm that has been recognized both in treaty law and in customary law, is the prohibition on torture. The USA, as a member of the international community, is bound by the norms of customary international law.³⁹ It is also bound by those treaties to which it is a party by ratification. Where a treaty has been signed, but not yet ratified, the USA is subject to a good faith obligation not to act in ways that contravene the treaty's central purpose.⁴⁰

The international human rights treaties (with relevance to domestic violence) that have been *ratified* by the USA include the:

- *International Covenant on Civil and Political Rights* ('ICCPR')
- *International Convention on the Elimination of All Forms of Racial Discrimination* ('CERD')
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* ('CAT')

The international human rights treaties (with relevance to domestic violence) that have been *signed (but not yet ratified)* by the USA include the:

- *American Convention on Human Rights* ('ACHR')
- *International Covenant on Economic, Social and Cultural Rights* ('ICESCR')
- *Convention on the Elimination of All Forms of Discrimination against Women* ('CEDAW')
- *Convention on the Rights of the Child* ('CRC')
- *Convention on the Rights of Persons with Disabilities* ('CRPD')

Two significant international human rights instruments that are not treaties but are, rather, influential *declarations* made by international organizations of which the USA is a member, should also be acknowledged. These are the:

- *Universal Declaration of Human Rights* ('UDHR')
- *American Declaration of the Rights and Duties of Man* ('ADRDM')

The declarations above were adopted by the United Nations ('UN') and the Organization of American States ('OAS') respectively.⁴¹ Despite their lack of treaty status, the *UDHR* and *ADRDM* are of central importance to international human rights law and are considered customary law and binding on all member States of the organizations to which they apply (including the USA). Thus, the Inter-American Commission on Human Rights holds the *ADRDM* to be a source of binding obligation on all OAS member States, and enforces the provisions of the *ADRDM* against the USA and other member States.⁴² And adherence to the *UDHR* is acknowledged as "an obligation for the members of the international community."⁴³ The principles of human rights law set forth in the *UDHR* have also entered into customary international law, and are echoed in many international treaties, including the *ICCPR*,⁴⁴ which the USA has ratified.

As a party to human rights treaties, and in virtue of its responsibilities under international customary law, the USA has binding international legal obligations to respect and uphold human

rights. These international human rights obligations extend to all of the USA's constituent parts. As a state of the USA, Texas (and any local governing entities within it), is bound by the USA's commitments under international law. The *ICCPR*, one of the key human rights treaties ratified by the USA, contains a provision to render this responsibility explicit. Article 50 of the *ICCPR* holds that the provisions of the treaty "shall extend to all parts of federal states without any limitations or exceptions." The domestic efficacy of the international treaty obligations of the USA are guaranteed by Article VI of the *US Constitution*, which holds that: "all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the *Constitution* or laws of any state to the contrary notwithstanding."⁴⁵

However, the USA's federal and state treaty obligations may be limited through the use of reservations, understandings, and declarations (generally referred to as "RUDs").⁴⁶ These reservations come in a variety of forms, serving different purposes. For example, RUDs may be substantive reservations to certain treaty provisions, interpretive conditions for understanding provisions, non-self-execution declarations, federalism understandings, or International Court of Justice jurisdiction reservations.⁴⁷ In relation to the *ICCPR* specifically, the USA Senate's consent to ratification was subject to five main reservations, five understandings, four declarations, and one primary proviso objection.⁴⁸ The fifth "understanding" specifically maintains that the Federal government shall implement the *ICCPR* "to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein" and state and local governments will otherwise do the implementing.⁴⁹ This serves to limit the Federal government's duty under the *ICCPR* to solely federal matters. Furthermore, the understanding clarifies that for non-federal matters, Federal government measures to implement the *ICCPR* will be taken only in proportion to state and local government action on those non-federal issues. It states: "to the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall take measures appropriate to the Federal system to the end that the competent authorities of the state or local governments may take appropriate measures for the fulfillment of the Covenant."⁵⁰ Thus, state and local government action to implement the provisions of the *ICCPR* are imperative in order to generate broader systemic changes that combat domestic violence nationally through federal action.

More recently, the USA has become a powerful international advocate for human rights, especially with respect to domestic violence (standardly addressed in terms of 'gender-based violence'). In the current multi-year 'Strategy' (a policy document produced in response to an executive order of the President that serves to coordinate and inform the response of the US

government to the global problem of gender-based violence)⁵¹ employed by the State Department and USAID to ‘combat gender-based violence globally’, the problem of gender-based violence is introduced and acknowledged in terms of its human rights significance:

The United States has a strong interest in preventing and responding to gender-based violence around the world. Regardless of the form that gender-based violence takes, it is a human rights violation or abuse... Gender-based violence undermines not only the safety, dignity, overall health status, and human rights of the millions of individuals who experience it, but also the public health, economic stability, and security of nations.⁵²

The Strategy also commits the US State Department to pursuing the adoption of policies and programs in other countries that serve to:

Support civil society and community-level approaches to change behaviors and attitudes concerning violence and to facilitate discussion among families, community organizations, and religious, traditional, and other community leaders around human rights and gender-based violence, and effective ways to address these issues...[and to] Address the causes, including root causes, of gender-based violence, especially violence against women and girls. This includes reducing barriers between women and men and girls and boys in economic, political, and civic arenas and implementing initiatives that protect human rights...

Although the USA is legally accountable under international law to uphold and defend human rights within its borders (as well as internationally), and although Article VI of the US Constitution declares the USA’s treaty obligations to be the ‘supreme law of the land’ (and thereby makes the human rights treaties ratified by the USA the ‘supreme law of the land’), the USA’s numerous RUDs to human rights treaties weakens domestic duty to comply with certain human rights norms.⁵³ There have been some efforts to enhance federal legislation prohibiting violence against women, such as the Violence Against Women Act of 1994 (VAWA). Unfortunately, in 2000 the Supreme Court later struck down the part of VAWA giving individuals a federal cause of action, or right to sue in federal court, for gender-motivated crimes in the case *United States v. Morrison*.⁵⁴ The Court believed that Congress did not have the authority to regulate violent conduct at the federal level, making it more difficult to implement nationally protective legislation to combat domestic violence and violence against women.⁵⁵

This has not, however, stopped a vibrant human rights discourse from continuing to grow at the grassroots level through activism that seeks to inform future social policy and effect social change. Of particular note, in the context of this policy paper, is the grassroots movement that has worked to encourage governments at the local and national level to implement human rights resolutions concerning domestic violence. Several American communities, including those in Austin, Travis County, and now Laredo, have shown their support for this initiative by formally acknowledging their responsibility to ensure freedom from domestic violence as a human right. They have recognized, in so doing, not merely their international responsibilities, but the helpful contribution a human rights approach can make to existing strategies for combating domestic violence. The next section of this paper contains a discussion of some of these perceived benefits of the human rights approach; it addresses ways in which a human rights perspective can be used to supplement, augment and enhance existing protections against domestic violence.

C. Human Rights Law and the USA: Enhancing Existing Protections and Joining the International Community in the Global Struggle Against Domestic Violence, and the Human Rights it Violates

As noted in the introduction to this paper, a human rights perspective can enhance and contribute value to traditional methods of addressing domestic violence. A human rights perspective recognizes an act of domestic violence as an indication of a larger social problem, as well as a criminal matter requiring a remedial response, and places an emphasis on preventative measures and the need to provide long-term and empowering support to victims of domestic violence and their families. Moreover, through its use of the strong standard of 'due diligence', a human rights approach promises to improve the efficacy and quality of a State's remedial responses to incidents of domestic violence. Given this paper's focus on law enforcement, it will be worthwhile to reflect on the value that a human rights approach thereby adds to existing measures for responding to domestic violence.

The grassroots campaign mentioned in the paragraph above arose, in part, in response to the legal demonstration of the inadequacy of existing federal remedies available to victims of domestic violence. Two decisions of the US Supreme Court served to demonstrate just how limited the avenues of relief available to victims of domestic violence in the USA really are.

In *DeShaney v Winnebago Department of Social Services*, a case involving a child's abuse by his father, the Supreme Court ruled that the due process clause of the 4th

Amendment of the *Constitution* does not provide for a remedy where a State fails to take reasonable steps to prevent the violation of a citizen's rights by another citizen, nor does it impose a general duty on States to provide members of the public with a minimum standard of protective services.⁵⁶ And, in 2005, in the case of the *Town of Castle Rock v Gonzales*, in which a victim of domestic violence sought redress for the repeated failure of police to enforce a protective order, the Supreme Court ruled that the *Constitution's* due process clause does not provide for any remedy in the event of a government agency's failure to enforce a domestic violence protective order. As the UN Special Rapporteur acknowledges: "The effect of these cases is that even where local and State police are grossly negligent in their duties to protect women's right to physical security, and even where they fail to respond to an urgent call, there is no federal level constitutional or statutory remedy." The Rapporteur continues, noting that "without any solid and binding national scheme at the federal level, mandating legislation and also training programs, there is little protection afforded for domestic violence victims in various jurisdictions, and many women in different parts of the country continue to suffer from inadequate protection."⁵⁷

When Austin and Travis County resolved to adopt the Resolution, they resolved to observe and uphold human rights according to the exacting standard of due diligence set forth in international human rights law. Their decision will serve to strengthen the protections available to the inhabitants of the area, by supplementing, informing and strengthening local responses to domestic violence. By recognizing State responsibility for the protection of human rights, these communities have started to lay the groundwork for a more effective, respectful and holistic approach to the needs of victims of domestic violence and of the community at large.

The next section of this paper elaborates upon the specific human rights affected by domestic violence.

D. Domestic Violence and the Human Rights it Violates

Human rights are "the equal and inalienable rights of all members of the human family."⁵⁸ They provide, without discrimination, for fundamental, interdependent and indivisible, freedoms and protections in all major domains of human life,⁵⁹ extending from the civil and political to the economic, social, cultural and collective. Because human rights protections are so extensive, and are posited as interdependent and indivisible, human rights law provides a broad and holistic moral framework for thinking about the sorts of wrongs that constitute domestic violence,

and about the sorts of social services that are due its victims. As such, it provides an effective basis for State protection and care for the victims of domestic violence.

Any act of domestic violence, on the definition provided in this paper, will necessarily give rise to human rights violations. In what follows, the example of human rights that domestic violence may directly and indirectly violate (human rights that the USA and its states have a legally binding duty to uphold, on the terms of international law) are listed and discussed.

Domestic violence is understood in terms of the definition adopted by this paper:

...as a pattern of abusive behavior in any domestic relationship (a relationship between intimate partners or family members) where the abusive behavior is used by one person to gain or sustain power or control over another. As such, domestic violence can involve physical, sexual, emotional, financial or psychological acts (or threats of acts). The pattern of behaviors that constitutes domestic violence may include behaviors that: cause injury, operate to intimidate, manipulate, isolate, coerce, shame, threaten or terrorize.⁶⁰

It stands to violate many of the basic human rights enshrined in the *UDHR*, the *ICCPR*, the *ADRDM* and the other human rights instruments. In particular, domestic violence is liable to result in violations of the following (non-exhaustive) list of rights, which have been grouped thematically for the purposes of subsequent analysis:

(1) *Physical and Psychological Security*

- Right to life, liberty and security of person
Article 3, *UDHR*; Article 6, *ICCPR*; Article I, *ADRDM*;
- Right to freedom from torture, cruel, inhuman or degrading treatment
Article 5, *UDHR*; Article 7, *ICCPR*; Articles 1,2,4,13 and 14, *CAT*;
- Right to the preservation of health and well-being
Article 25, *UDHR*; Article XI, *ADRDM*.

(2) *Equality, Non-Discrimination and Access to Justice*

- Right to freedom from discrimination
Articles 1, 2 and 7 *UDHR*; Articles 4, 20, 26, *ICCPR*;
- Right to equal access to justice and the right to equal recognition before law
Articles 6 and 7 *UDHR*; Articles 14 and 16, *ICCPR*; Article II, *ADRDM*;
- Right to effective remedies for rights violations

Article 8 *UDHR*; Articles 14 and 16, *ICCPR*.

(3) *Freedom and Social Life*

- Right to liberty of movement and to freedom to choose place of residence
Article 13, *UDHR*; Article 12, *ICCPR*; Article VIII, *ADRDM*;
- Right to freedom of expression
Article 19, *UDHR*; Article 19, *ICCPR*; Article IV, *ADRDM*;
- Right to free participation in cultural life
Article 27, *UDHR*; Articles 1 and 27, *ICCPR*; Article XIII, *ADRDM*;
- Right to social security and an adequate standard of living
Articles 22 and 25, *UDHR*; Article XVI, *ADRDM*;
- Right to freedom of association
Article 20, *UDHR*; Article 22, *ICCPR*; Article XXII, *ADRDM*;
- Right to property
Article 17, *UDHR*; Article XXIII, *ADRDM*;
- Right to protection of family life
Articles 16 and 25, *UDHR*; Article 23, *ICCPR*; Articles V and VI, *ADRDM*;

That domestic violence, on the definition adopted in this paper, can result in many of these rights violations will be quite intuitive. But it is worth pausing for a moment to briefly analyze a few of these rights and their bearing on the issue of domestic violence. In this way certain useful principles may be distilled and employed to guide human rights observant responses to domestic violence.

1. Physical and Psychological Security

As acknowledged above, several human rights exist to maintain the security, physical and mental safety and wellbeing of persons, and since domestic violence standardly interferes with its victim's physical and mental wellbeing (as well as the victim's ongoing sense of security against threats to wellbeing and life), it standardly constitutes a violation of these rights. In some extreme cases, domestic violence results in the deaths of its victims and thereby, the violation of one of the most basic of the human rights, the right to life (as several of the cases addressed later in this paper illustrate).

In considering how domestic violence may impact human rights pertaining to physical and psychological security and wellbeing, it is especially interesting to note the emerging international consensus that domestic violence is a form of torture or sufficiently similar to torture to be regarded with common severity. Torture constitutes an especially profound violation of human rights and dignity. It represents “one of the worst possible human rights violations and abuses human beings can inflict upon each other”, for “once it is established that torture has been inflicted, one is dealing with a very serious crime and an ill-treatment of human beings who will most likely suffer from its consequences for the rest of their lives, if not physically then mentally.”⁶¹ As such, the prohibition on torture holds a privileged position in international law, as the UN Special Rapporteur on Torture explains:

The prohibition of torture is one of the few absolute and non-derogable human rights, a standing shared only with the prohibition of slavery, slave trade, servitude, and the retroactive application of criminal law. Article 2(2) *CAT* holds in unambiguous terms that “[n]o exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.” Its absolute nature is further embodied in article 7 *ICCPR*.⁶²

Understood in terms of the definition adopted in this paper, domestic violence bears a close affinity to the established understanding of torture under international human rights law (where torture is understood as an instrumental act intended to cause severe pain to a relatively powerless victim where the perpetrator is either an agent of the State or is enabled by the acquiescence of the State or a lack of State intervention),⁶³ and the similarity between domestic violence and torture is increasingly being acknowledged by international legal agencies and experts. Domestic violence has been explicitly recognized as a form of torture by the UN Special Rapporteur on Torture, who acknowledges that victims of domestic violence can be subjected to “severe ill-treatment amounting to torture” and thereby suffer the “same” deleterious impacts on physical and mental health as victims of State torture in detention.⁶⁴ The UN Committee Against Torture has in recent years engaged with several NGO submissions regarding domestic violence as torture and has started to issue recommendations with respect to gender-based violence and domestic violence.⁶⁵ Likewise, the UN Special Rapporteur on Violence Against Women has started, in recent reports, to consider domestic violence in terms of torture and the prohibition on torture.

The relationship of commonality between domestic violence and torture may have special significance for State responsibility under international law when it comes to efforts to address and prevent domestic violence. Under international law, States are not permitted, under any circumstances, to “derogate from their obligation to respect and ensure the absolute prohibition of torture.”⁶⁶ Given the strong similarity between domestic violence and torture, it is likely that a similarly strong duty holds in the case of domestic violence, and that States are subject to an *absolute* duty to prevent its commission. The UN Committee on Torture has provided some insight into how this duty might operate with respect to the prevention of domestic violence. If State officials know or have reasonable grounds to believe that private actors are committing acts that amount to torture or ill-treatment, then they must exercise due diligence and “prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention,” and “provide remedies to victims.” If State officials fail to exercise this standard of due diligence, then “the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts.” For “the State’s indifference or inaction provides a form of encouragement and/or de facto permission.”⁶⁷

2. Equality, Non-Discrimination and Access to Justice

Domestic violence is, as many studies have demonstrated, disproportionately likely to impact women and members of minority groups with established histories of social marginalization and oppression. It is now widely recognized under human rights law (see especially the following case studies including *Lenahan* and *Gonzalez*), that domestic violence standardly gives rise to problems of discrimination and inequality for the States in which it occurs. In order to uphold the human rights that provide for equality, non-discrimination and access to justice, the State response to domestic violence must serve to provide full protection to the members of marginalized groups that domestic violence disproportionately affects, and must ensure equal access to justice for those persons who remain impacted by domestic violence. As the UN Special Rapporteur on Violence against Women has recognized:

1. States have a duty, governed by the notion of due diligence, to “prevent, investigate and punish international law violations” and to “pay just compensation” to victims of violations and,⁶⁸

2. States must ensure that the State response to domestic violence is non-discriminatory and provides for equality before the law (this especially relevant to cases in which gender plays a role).

Many of the situations in which discrimination or structural inequality should be an active concern for the State in its efforts to respond to and prevent domestic violence are discussed in detail in the second part of the paper.

3. Freedom and Social Life

International human rights law, in providing basic protections for the dignity of human beings, contributes protections to several aspects of social life that may be considered fundamental to the dignity and wellbeing of persons. These include the right to a family life, to liberty of movement, to freedom to choose one's place of residence, to an adequate standard of living, to property, and to freedom of association and cultural expression.⁶⁹ Domestic violence, as a pattern of controlling behaviors exercised by one person over another, frequently involves the transgression of the free enjoyment of these rights. It is quite typical for abusers to withhold control of finances and property from the victim, to isolate the victim from a social circle and cultural activities, to violate the peaceful enjoyment of family life, and to limit the victim's liberty of movement and of residence. Law enforcement responses to domestic violence often neglect these aspects of the victim's experience, since they frequently fail to amount to evidence of criminal activity on the part of the abuser under American law. Yet these forms of abuse are nonetheless an assault on the victim's dignity and human rights, and contribute greatly to the ongoing oppression and subjection of the victim to violence. For example, the UN Special Rapporteur has stressed that securing independent control of property for victims plays a "crucial preventative role in deterring domestic violence", and "failure to ensure equal property rights... discourages women from leaving violent marriages, as women may be forced to choose between violence at home and destitution in the street."⁷⁰

By employing a human rights perspective in their work, law enforcement officers can regard these forms of abuse with due severity: as human rights violations. And, even if officers are unable to seek criminal penalties under domestic law as it stands, they may communicate with the victim about their human rights in the domain of social life, and help the victim to seek redress of these rights through social services, and strengthened protections against the abuser. Victims of domestic violence are entitled to a safe place to live, to social security, to healthy ongoing relationships with non-abusive family members, to personal liberty, to their

property, to freedom of association and expression, and as officers of the State it is the responsibility of law enforcement officers to act to protect and secure their enjoyment of these human rights.

E. Domestic Violence and The Standard of Due Diligence

The standard to be applied when examining whether the State has fulfilled its duty in upholding the human rights of victims and community members, in light of domestic violence, is the standard of due diligence. This standard provides a means of examining State responsibility for acts committed by private individuals. Where the State fails to take sufficient steps to prevent a potential rights violation, such as an act of domestic violence from occurring, or where the State fails to investigate, prosecute or punish domestic violence, or fails to secure redress and remedies for a victim of domestic violence, the State may be said to have violated the standard of due diligence. We may therefore refer to three elements of the State duty under the standard of due diligence. The State must:

1. prevent domestic violence,
2. investigate, prosecute and punish domestic violence, and
3. provide appropriate remedies and compensation to the victims of domestic violence.⁷¹

A State's due diligence may be assessed with reference to the steps it takes to realize the three elements of the duty set out above. The Special Rapporteur on Violence Against Women has observed that the measures a State adopts in pursuit of these elements must be both 'effective' and 'responsive' (responsiveness includes a requirement to collect data and monitor the successes and shortcomings of existing measures and to seek to improve upon them).

The prevention of, and protection against, domestic violence will require the State "to establish or promote institutional arrangements that provide services vital to respond... such as counseling, shelter, health care, crisis support, restraining orders, and financial aid to victims of violence, ensuring their accessibility to women from marginalized groups." Preventative and protective steps may also include the creation of targeted "policies, programmes, creation of special mechanisms such as ombudspersons/commissions, public education campaigns, sensitization of agencies engaged with operationalizing women's rights programmes, or collection of data to assess the de facto status of the problem."⁷² The due diligence of States with respect to investigating and punishing domestic violence is assessed "in terms of action taken by various State agencies in relation to investigating and prosecuting cases of violence or

abuse, observance of the rule of law, convictions and sentencing.”⁷³ The Special Rapporteur emphasizes the need for these measures to comprise part of a broader, organized and holistic effort to eradicate domestic violence and to ensure the rights of its victims.

In the next section of this paper, some of the cases most relevant to the application of the standard of due diligence are canvassed, and the operation of the standard is thereby elaborated and illustrated.

1. Case Law and Jurisprudence

- a) IACHR: Case No. 12.626, Jessica Lenahan (formerly Jessica Gonzales)

This case, which was heard by the Inter-American Commission on Human Rights (IACHR),⁷⁴ and involves the application of the standard of due diligence, was brought to the Commission by a United States citizen, Jessica Lenahan. (Lenahan’s matter has already been briefly addressed in this paper, albeit in an earlier incarnation; as *Town of Castle Rock v Gonzales*, where it was the subject of a Supreme Court decision that established the lack of a federal remedy for a State’s failure to enforce a domestic violence protective order. It was on losing this Supreme Court appeal, that Jessica Lenahan took her case to the IACHR).

The facts of the case are as follows: Jessica Lenahan was the victim of domestic violence at the hands of her husband, Simon Lenahan for many years. Eventually, they separated and she secured a protective order against him. In 1999, he abducted their three children from her house. Jessica Lenahan repeatedly contacted law enforcement agencies who were repeatedly dismissive of her requests for help, which she made several times both by phone and in person. The police failed to make any attempt to retrieve the children and enforce the protective order against Simon Lenahan. The next day, Simon Lenahan opened fire on a police station and was shot dead. The three children were found dead in the back of his truck.

In its decision, the IACHR found that the protective order was the only means of State protection Jessica Lenahan and her daughters in the context of a history of domestic violence and mentally unstable behavior on the part of Simon Lenahan. The State failed to exercise due diligence, because the police failed to adequately investigate Jessica Lenahan’s complaints or effectively enforce the protective order. The police were not “duly organized, coordinated, and ready to protect these victims from domestic violence by adequately and effectively implementing the restraining order.” Furthermore, these failures also constituted a form of discrimination since “they took place in a context where there has been a historical problem with

the enforcement of protection orders; a problem that has disproportionately affected women since they constitute the majority of the restraining order holders.”⁷⁵ The Commission also noted that the police failed to mount an adequate investigation in the aftermath of the murders, so that Jessica Lenahan and others were left with lingering questions about the modes of her daughters’ deaths. So, in failing to exercise due diligence and provide effective protections against domestic violence, the USA was found to have “failed to undertake reasonable measures to prevent the deaths... in violation of the right to life...” and to have “violated the right to judicial protection.”⁷⁶ It was also found, further to have violated “its obligation not to discriminate, and to provide for equal protection before the law.”⁷⁷

b) Inter-American Court of Human Rights: *Gonzalez et al. (“Cotton Field”) v. Mexico* (2009)

This case concerned the application of the standard of due diligence in the ‘Cotton Field’ case: *Gonzalez et al. v Mexico* (2009).⁷⁸ This case involved the abduction, torture and murder of multiple women in Ciudad Juarez, and the failure of Mexican authorities to provide those women with adequate protections, or to conduct satisfactory investigations into the circumstances of the disappearances and murders of the women. The Inter-American Court of Human Rights found the State of Mexico responsible for multiple rights violations arising from “the lack of measures for the protection of the victims...in spite of full awareness of a pattern of gender-related violence”, and resulting from the failure of the State to exercise due diligence: the state failed to comply with its obligation to investigate gender-based crimes in the Ciudad Juarez region, and thereby had failed to “guarantee the rights to life, personal integrity and personal liberty” in the American Convention on Human Rights.⁷⁹

Stereotypes and generalized beliefs about women influenced the effectiveness of the State’s investigation into the disappearances in *Gonzalez*.⁸⁰ The “culture of gender-based discrimination” which the State allowed to persist “had an impact on both the motives and method of the crimes,” contributing to an overall increase in the number of women murdered since 1993.⁸¹ The Court highlighted the fact that “even though the State was fully aware of the danger faced by these women of being subjected to violence, it has not shown that, prior to November 2001, it had adopted effective measures of prevention...” despite a 1998 warning from the Mexican National Human Rights Commission (*Comisión Nacional de los Derechos Humanos*) about the pattern of gender-based violence in Ciudad Juarez.⁸² Additionally, the

State failed to adopt “reasonable measures” in order to respond promptly to reports of disappearances, creating “unjustified delays” in which revealed “that the State did not act with the required due diligence to prevent the death and abuse suffered by the victims...”⁸³

Thus, the State neglected its due diligence responsibilities to implement both preventative policies and policies to ensure adequate and prompt investigation.⁸⁴ The Court ultimately held that the human rights violations against the women in this case constituted the definition of violence provided by the American Convention and the Convention of Belém do Pará.⁸⁵ More specifically, the state’s failure to adequately investigate and implement protective legislation constituted a violation of: the “rights to life, personal integrity, and personal liberty” under Articles 4(1), 5(1), 5(2), and 7(1) of the American Convention; the state duties to apply due diligence and implement appropriate preventative measures Articles 7(b) and 7(c) of the Convention of Belém do Pará; the “obligation not to discriminate” under Article 1(1) of the American Convention; and, the rights of the child under Article 19 of the American Convention.⁸⁶

c) IACHR: *Maria Da Penha v. Brazil* (2000)

The case of *Maria Da Penha v. Brazil* (2000) is another important case heard by the IACHR regarding the duty of judiciary bodies in upholding due diligence obligations. The complainant was a victim of ongoing domestic violence who suffered paraplegia, among other injuries, after an attempted murder by her husband in 1983.⁸⁷ Subsequently, there was a delay of eight years until an appropriate investigation was launched and the first trial did not occur until 1991.⁸⁸ Even after the trial, and the 1996 jury decision to condemn the husband to ten years of prison confinement, a 1997 appeal resulted in further delays that allowed the accused to remain free over the course of seventeen years since the attempted murder.⁸⁹ The Commission held that domestic judicial behavior revealed “inefficiency, negligence, and failure to act on the part of the part of the Brazilian judicial authorities and unjustified delay in the prosecution of the accused” in violation of the “Articles 8 and 25 of the American Convention on Human Rights in relation to Article 1(1) thereof and the corresponding Articles of the Declaration.”⁹⁰ The Commission also believed that the state failed to uphold its due diligence obligations listed in Articles 7(b), (d)-(f), and (g) of the Convention of Belém do Pará.⁹¹

- d) CEDAW: *A. T. v Hungary*, *Şahide Goekce (deceased) v Austria*, *Fatma Yildirim (deceased) v Austria*

Other important cases concerning failure by State agencies to act with due diligence in protecting the human rights of victims of domestic violence include the following complaints heard by the UN Committee on the Elimination of Discrimination Against Women: *A. T. v Hungary*, *Şahide Goekce (deceased) v Austria*, *Fatma Yildirim (deceased) v Austria*. These cases, **resulted in findings of failure to exercise due diligence and findings of State violations of human rights, arising out of the exposure of the complainants to domestic violence**. In *A.T. v Hungary*, the Committee advised Hungary of the obligation to establish effective investigative, legal and juridical processes for dealing with domestic violence, and instructed the State to increase the provision of treatment and support resources to victims of domestic violence. In *Fatma Yildirim (deceased) v Austria*, the Committee found that Austria had breached the standard of due diligence and had failed to provide effective protection to Fatma Yildirim, who was murdered by her abuser. As such, it was found that the State had violated the victim's rights to life and personal integrity.

- e) ECHR: *Kontrovà v. Slovakia*, *Bevacqua and S. v. Bulgaria*

Moreover, the European Court of Human Rights has consistently upheld the duty of States to prevent, investigate, and provide remedies for victims of domestic violence. In *Kontrovà v. Slovakia*, a mother complained that the police's failure to offer adequate protection to her children despite knowledge of her husband's violent behavior, which resulted in the murder of her son and daughter. The Court held that the Slovakian Government's failure to launch an immediate criminal investigation and monitor the domestic situation, as well as its assistance in modifying the mother's initial complaint "so that it could be treated as a minor offence calling for no further action" was a violation of the right to life under Article 2 of the European Convention on Human Rights.⁹² In *Bevacqua and S. v. Bulgaria*, the Court held that the State's failure to provide assistance to the complainant during her divorce from her husband and failure to "adopt interim custody measures" for the complainant's three-year-old son was a violation of the right to respect for family life under Article 8 of the European Convention.⁹³ Additionally, when the complainant was battered by her ex-husband after their divorce, the State's description of the battery as a "private matter" was deemed "incompatible with the authorities' obligation to protect the applicants' family life."⁹⁴

IV. The Role of Law Enforcement Agencies with respect to Domestic Violence

A. Preliminary Remarks

The Lenahan case, and the other cases addressed above, bring many important human rights principles into view. The terrible experiences of the victims in these cases also amply demonstrate the need for human rights observant responses to domestic violence. Central to the State's culpability in each of these cases, is the behavior of law enforcement agencies, which are shown to be critical to the success (or failure) of an effective, human rights observant, State response to domestic violence.

Given the analysis conducted earlier in this paper concerning the application of human rights principles to domestic violence situations and of the standard of due diligence that is to be employed, several important prongs of a human rights inspired law enforcement response to domestic violence may be identified. On a human rights view, law enforcement agencies should:

- Acknowledge the responsibility of law enforcement agencies and the State for domestic violence.
- Adopt and employ 'effective' and 'responsive' measures (per the standard of due diligence) to prevent, investigate, punish, prosecute domestic violence, and to provide redress to its victims.
- Act with due diligence.
- Adopt a holistic approach to the problem of domestic violence.
- Recognize that victims of domestic violence are human beings possessed of fundamental dignity and rights, and seek to ensure that they are accorded autonomy and treated with respect (this includes seeking to ensure that the basic rights dealt with under 'freedom and social life' are provided for).
- Promote and embrace practical efforts to recognize the equality of persons and to eradicate discriminatory practices in the response to domestic violence, and commit to fighting stereotyping and bias in social attitudes to domestic violence.
- Attend to the root causes of domestic violence in society as well as to the remedial work of responding to incidents of domestic violence.
- Seek to empower and educate victims and the community in combating and overcoming domestic violence.

These principles will need to be applied in the practical, quotidian work of law enforcement agencies.

Law enforcement agencies in Texas come into contact with victims of domestic violence in several ways. First contact is generally made through a 911 call (for police or ambulance services) or a walk-in complaint, where a victim arrives at a police or sheriff's station seeking help. It may also occur during a standard patrol or a community outreach and education program. When law enforcement agencies respond to a report of domestic violence, they will assess the situation and decide whether or not to open an investigation.

The first responders and investigating officers in domestic violence cases may be specialized police officers or detectives who work on a team dedicated to family violence, or they may be drawn from a pool of officers devoted to responding to crime more generally. Investigating officers in a domestic violence case may either be assigned at the time of a complaint, or may begin working on a case as a result of case review (where for example a situation was not immediately identified as a situation involving domestic violence).

If officers are dispatched to a scene, or commence to investigate, then the victim may also come into contact with victims' services counselors. These are people employed by law enforcement agencies to act as advocates and supporters for victims of crime and other calamities. Where a victims' services counselor attends the scene this is known as crisis intervention. They may assist the victim, help to facilitate the police interview and work with the victim on safety planning; and, in doing so, they may provide victims with information about relevant social services. Whether or not a counselor is dispatched to a domestic violence incident, victims' services counselors may also follow up with victims after the event, usually by phone (and again, they may provide support and assistance with safety planning).

Other law enforcement agencies are important to the protection of victims and to the prevention of domestic violence. In Travis County, Constables are tasked with serving court orders such as ex-parte protective orders on respondents in domestic violence cases. They may be responsible for evicting a respondent in a domestic violence case from their home. They may also be called upon to accompany victims to their homes, so that they can safely collect belongings, to monitor supervised visitation arrangements, or to remove children from the custody of one parent and into the custody of another or of protective services. Probation and parole officers also play an important role in monitoring the behavior of offenders, and in enforcing conditions that reduce the chances of future offending.

Furthermore, many law enforcement agencies in Texas play an important role in the prevention of domestic violence, through community policing and the conduct of public education campaigns.

So, with respect to law enforcement, the Report must consider the work of:

- 911 operators
- Help-desk operators for law enforcement agencies
- Officers working in community outreach and education
- First responders (including patrol and EMS personnel)
- Detectives and criminal investigators
- Victim support counselors
- Constables
- Probation officers
- Parole officers

The following considerations are inspired by the practical principles of human rights observance that are set forth above, and are intended to guide the assessment of law enforcement services as they relate to domestic violence. These examples are general considerations for particular law enforcement personnel, but they are not intended to serve as an exhaustive list of relevant considerations. They will facilitate the identification of human rights observant practices (and motivate their strengthening and expansion) and aid the identification of gaps and challenges in service provision for certain positions. These considerations should be relevant to those law enforcement agencies and officers whose professional duties put them in a position to provide domestic violence services, whether preventative, investigative, supportive or protective. Again, they are organized according to officer role:

B. Considerations for the Report: Audit Framework Questions⁹⁵

1. Law Enforcement Education and Training

- 1.1 Have officers been trained on how to integrate a basic understanding of human rights into their domestic violence response work?
- 1.2 Do officers understand the difference between domestic violence and violence against women (VAW)?
- 1.3 Is there a department understanding, or approved approach, for using 'trauma-informed' responses? Is such training voluntary or mandatory?

- 1.4 Do officers use 'person first', accessible, and respectful, language in communicating with (and within hearing of) potential victims?
- 1.5 Do officers appreciate the challenges of gender inequality in relation to domestic violence, or understand domestic violence specifically as a gender equality issue?
- 1.6 Are officers aware of the particular domestic violence objectives, targets, and indicators of their departments?
- 1.7 Do officers engage in trainings or regular meetings with other domestic violence service providers?

2. Law Enforcement Strategy

- 2.1 Does law enforcement collaborate with other government or civil society partners in developing a strategy for domestic violence response?
- 2.2 Do officers follow a published protocol, or plan of action, for domestic violence response? Does this protocol reflect an understanding, or consideration, of domestic violence as a human rights issue?
- 2.3 Do agencies have a community outreach program (or programs) specific to the problem of domestic violence? What is the role and scope of any such program?
- 2.4 Do law enforcement departments publish clear and detailed targets or goals related to domestic violence?

3. Law Enforcement Funding

- 3.1 Is the current level of funding adequate for domestic violence response?
- 3.2 Is the funding for domestic violence work independent from other funding sources?

4. Law Enforcement Data Collection and Research

- 4.1 Are statistics regularly gathered regarding the incidence of domestic violence? How is this data disaggregated?
- 4.2 Have officers, or the relevant units, requested research on issues specific to domestic violence or violence against women?
- 4.3 How do officers monitor and evaluate their effectiveness in preventing and intervening in domestic violence cases?

- 4.4 Are members of law enforcement held responsible for the quality of work related to domestic violence response?

C. Considerations for the Report: Personnel Guiding Questions

1. 911 and Helpdesk Operators

- 1.1 Are operators trained to recognize the characteristics of domestic violence situations (is training voluntary or mandatory)?
- 1.2 Do operators dispatch police if any reported situation suggests the presence of domestic violence (does a policy or rule make this an affirmative duty of operators)?
- 1.3 Do operators dispatch police if reports of violation of a protective order are made?
- 1.4 Are law enforcement help-desks, such as those in police stations, easily accessible to the community (are they, for example, serviced by public transport, are translator services readily available, do facilities exist for people with disabilities)?

2. Community Outreach

- 2.1 Do agencies adopt a community policing model with respect to the prevention, protection and responses to domestic violence?
- 2.2 Do agencies run educational programs concerning domestic violence and the services law enforcement can provide in schools?
- 2.3 Do agencies organize or participate in town hall style community meetings concerning the problem of domestic violence?
- 2.4 Do agencies work alongside and support community organizations in combating domestic violence?

3. First Responders

- 3.1 Are all potential first responders trained to recognize the characteristics of domestic violence situations (is training voluntary or mandatory)?
- 3.2 Do first responders respond to a report of domestic violence or of the breach of a protective order in a timely fashion?

- 3.3 Do first responders immediately separate all parties at a potential scene of domestic violence?
- 3.4 Do first responders ensure that the basic needs of potential victims (such as for warmth, water, and comfort) have been met before commencing an interview?
- 3.5 At what point and on what grounds do first responders call in detectives and/or victims services counselors?

4. Detectives and Criminal Investigation

- 4.1 Are all potential criminal investigators trained to recognize the characteristics of domestic violence situations (is training voluntary or mandatory)?
- 4.2 Do investigators ensure that the basic needs of potential victims (e.g. for warmth, water, and comfort) have been met before commencing an interview?
- 4.3 Do investigators respond to reports of domestic violence in a timely fashion?
- 4.4 Do investigators endeavor wherever possible to secure the services of a victims' services counselor before conducting interviews with a potential victim?
- 4.5 Do investigators work cooperatively with victims' services counselors in interviewing and interacting with the victim?
- 4.6 Do investigators clearly communicate the potential legal significance of the situation, and of making formal and informal statements, to the victim?
- 4.7 Do investigators endeavor, wherever possible, to gather sufficient evidence so that victim participation will not be required for the successful prosecution of the case?
- 4.8 What priority are the investigations of cases of domestic violence given (in comparison to other sorts of violent crime)?
- 4.9 Are there enough members of staff to guarantee that all domestic violence cases that are considered to warrant investigation are subject to prompt and thorough investigation?
- 4.10 Is the victim kept informed about the progress of their case, and the likely timeframe of any criminal matter arising from it?
- 4.11 Under what circumstances will investigators seek emergency protective orders?

5. Evidence Gathering and Analysis

- 5.1 Do investigators have access to all resources and tools necessarily to thoroughly document and gather evidence from a domestic violence crime scene?
- 5.2 When it is necessary for an officer to document injuries or evidence on or about a victim's person, what procedures are in place to ensure that this is a respectful, minimally traumatic and consensual process?
- 5.3 If forensic or laboratory work is required to analyze elements from a domestic violence crime scene, is analysis performed, and is it performed in a timely and efficient fashion?
- 5.4 Are assault and sexual assault kits stored appropriately and processed in a timely fashion?
- 5.5 Do officers keep victims informed about both the process involved in gathering evidence and the processing (including providing a reliable timeframe) of evidence?

6. Victim Support Counselors

- 6.1 Are there enough members of staff to guarantee that a crisis support counselor can be present at any domestic violence scene where their services are required?
- 6.2 Do victim support counselors communicate honestly and effectively with victims of domestic violence about the victim's legal and personal situation?
- 6.3 Do victim services counselors provide victims with company for as long as the victim feels it is needed?
- 6.4 Do victims' services counselors cooperate with and facilitate access to other community organizations and services that may be of assistance to victims.
- 6.5 Do counselors use human rights language in talking with victims (e.g. 'you have certain basic human rights, such as a right to be free of degrading treatment' etc.)?

7. Constables

- 7.1 Do constables act with due diligence in serving protective orders?
- 7.2 Are protective orders served in a timely manner?
- 7.3 Is the person served with the protective order made fully aware of their responsibilities under the order?

8. Probation and Parole Officers

- 8.1 Do officers act with due diligence in enforcing probation or parole conditions?

Are officers given training about the characteristics of domestic violence offending and the significant risk of recidivism?

V. Groups of Special Concern

Victims of domestic violence may encounter many obstacles in securing State services and protection. Some of these obstacles might arise for any victim of domestic violence, others are more likely to arise for people who are members of certain socially determined groups. Thus, for example, the United Nations Special Rapporteur for Violence Against Women notes the particular vulnerability of women at the intersection of race, gender and immigration status, noting that the Committee on the Elimination of Racial Discrimination reported that women from these categories reported an increased incidence of violence. People who are more likely to face complex or aggravated obstacles in virtue of their membership of a particular social group, will have distinctive needs for services from law enforcement. It is important, therefore, that the Report give particular attention to groups that face special obstacles in accessing justice, in order to investigate the presence and/or need for specific policies and services to cater to members of these groups.

The discussion and recommendations that follow deal with the problem of domestic violence as it relates to several groups of special concern. Special attention is given to the situation for women, people with disabilities, for elderly persons, for LGBTQI identifying persons, for members of racial minorities, for people associated with the law enforcement community and for immigrants (documented and undocumented). Some of the particular obstacles members of these groups may face in accessing protection and justice are highlighted, and further relevant human rights principles and human rights based observations are introduced. Each discussion is concluded with a list of considerations that the authors of the Report should bear in mind as they consider the human rights successes and shortcomings of law enforcement agencies.

A. Domestic Violence and Gender

Domestic violence disproportionately affects women. The Inter-American Commission has described domestic violence as an “extreme form of sex-discrimination”,⁹⁶ confirming that gender and entrenched patriarchal traditions of discrimination against women play a crucial role in this form of abuse. Domestic violence is the leading cause of injury to women in the United States.⁹⁷ The equality of women is an important precept of human rights law and is acknowledged in the UDHR, ICCPR and ADRDM. The *Convention on the Elimination of All Forms of Discrimination* (‘CEDAW’) also reflects and gives voice to international consensus (to date, it has been ratified by 188 States, but not the USA) concerning the equality of women, and sets forth the affirmative duties of States to undertake effective measures to ensure that this equality is realized in substantive terms.

Because acts of domestic violence (and State responses to them) frequently have a significant gender component, the human rights norms concerning equality and non-discrimination provide an important source of guidance to law enforcement agencies. The Inter-American Commission acknowledges that a State’s response to the crime of domestic violence can violate the right to equal protection before the law⁹⁸, if their response does not meet the requirement of due diligence.⁹⁹ On the basis of the Commission’s analysis, when taking a human rights approach, it is necessary that law enforcement follows practices which aim to combat gender discrimination and ensure that officers provide an efficient response regardless of gender stereotypes.

The United Nations Working Group on Discrimination against women in Law and Practice¹⁰⁰ has contemplated concerns that members of law enforcement may impose their cultural attitudes with regards to domestic violence in their conduct of their domestic violence work and this has deleterious effects on the provision of due process to victims. According to a report by the Due Diligence Project, in its submission to the Working Group, the “state has an obligation and must take action based on the due diligence principle to combat and eliminate gender discrimination.”¹⁰¹

The UN Special Rapporteur has noted that there is a tendency for State agencies to treat women’s issues, including domestic violence, as a private matter to be dealt with from within the family sphere.¹⁰² According to the Rapporteur, this attitude frustrates efforts to provide effective protection for victims/survivors of domestic violence. By contrast, viewing domestic violence

through the lens of human rights requires that it be treated as a public matter, requiring decisive State intervention.¹⁰³

The UN Special Rapporteur has also recognized that additional pressures exist for women who have children, and that law enforcement must be sensitive to these pressures in their responses to domestic violence. The Rapporteur observes that women in violent homes often fear that if they leave a violent home they will have no way of supporting their children.¹⁰⁴ Economic dependency has a crucial role in deterring women from relying on the State for protection and so in order to afford these women the protection of the State in a human rights compliant manor, it is necessary that law enforcement take steps to empower them to find alternatives to relying for support on the abusive party.

A further deterrent for women (and indeed all victims of domestic violence) when it comes to reaching out for help to law enforcement officers is the possibility of, or a past experience of, double victimization.¹⁰⁵ Double victimization occurs where a victim suffers a loss arising from a crime in two distinct ways. First, they suffer directly from the criminal act and its impact on their person and psychological wellbeing. Then, when they reach out to law enforcement and the judicial system for support they suffer from a further harm, whether due to perceived indifference of officers, added costs of the court process, lack of assistance to avoid costs associated with avoiding further violence, or most seriously, accusations from authorities of distinct offenses observed at the scene of assault or determined through its assessment (where for example an officer attending a domestic violence scene accuses a victim of an offense such as assault on the abusive partner, or actions are brought alleging child endangerment, drug possession or immigration offenses). Where a domestic violence victim experiences double victimization they are much less likely to reach out to authorities in the event of future violence and may be less likely to assist in the prosecution of the abusive party.

As previously discussed, law enforcement have the obligation to protect women from gender based crimes of domestic violence and this obligation must be carried out with respect to the principle of due diligence.

The following considerations should be read as relevant to those law enforcement agencies and officers whose professional duties might put them in a position to identify or respond to domestic violence against women.

Reporting Considerations:

1. *What practices are in place to ensure law enforcement are aware of the nuances particular to crimes of domestic violence which are as a result of gender discrimination?*

- a. Are there specialized units of officers dedicated to crimes of domestic violence?
- b. Is there training in place to provide officers with an understanding of the role that power imbalance resulting from gender stereotyping plays in incidents of domestic violence?
- c. Are law enforcement officers given training to give them an understanding of the concept of primary and predominant aggressors?
- d. Building on this, what steps do officers take on arrival at the scene to identify the true victim and afford them respect in accord with their human rights?
- e. What is the composition of the force? Do they recruit for diversity?

2. *What steps does law enforcement take to combat the culture which promotes gender stereotyping and of women within society and therefore fosters violence against women?*

- a. Do law enforcement take part in community outreach programs that condemn forms of domestic violence?
- b. Are there practices in place for law enforcement agencies to empower women within the community to reach out for help?
- c. In their response to incidents of domestic violence, what do members of law enforcement do in order to ensure women feel respected and treated as equal to men throughout the reporting and follow up stages?

3. *What steps are taken by law enforcement to address power imbalances resulting from gender stereotyping and consider economic dependency of women?*

- a. Are there emergency funds and support available for women who make the decision to leave violent homes?
- b. Are there protocols in place to facilitate coordination with city and county social service providers?
- c. Does law enforcement have a comprehensive understanding of resources available for women facing gender discrimination?

- d. Are there policies in place to ensure that when law enforcement encounter victims/survivors of domestic violence that they provide them with information relating to community organizations such as shelters who can provide support for a transitional period?
- e. Does law enforcement collaborate with community partners to promote education for women and provide skills classes which could help facilitate economic independence?

B. Children and Domestic Violence

The UN Special Rapporteur for the rights of the child has noted that there is a strong link between violence against women and violence against children.¹⁰⁶ If domestic violence occurs then there is an increased chance that children in that family setting will also be victims of violence. It has also been recognized that domestic violence “may be the most important precursor to child maltreatment fatalities.”¹⁰⁷ Globally, between 133 and 275 million children witness domestic violence in their homes globally every year, and in developed countries the figures are between 4.6-11.3 million children.¹⁰⁸ The Special Rapporteur notes that witnessing domestic violence has an adverse psychological effect on children, impacting their development and social interactions. In taking a holistic, human rights approach to the problem of domestic violence it is crucial to take all potential victims into consideration when formulating an efficient and coordinated State response. Additionally, the US has the duty to adopt special measures to ensure everyone equal enjoyment of their rights.¹⁰⁹ Following from this, law enforcement must consider vulnerabilities of children involved in domestic violence in order to afford protection and a coordinated response for all victims of domestic violence.

Additionally, it has been recognized that domestic violence not only leaves children vulnerable to violence at home but also increases the likelihood of further victimization and leaves them particularly vulnerable to future acts of violence. For example, studies have drawn a link between children who experience domestic violence in the home and children who are bullied at school.¹¹⁰ In order to protect victims of domestic violence in a human rights compliant manner it is key that law enforcement are aware of the effects that it can have on children and provide an efficient response to prevent and protect children from the violence which leaves them vulnerable to further incidents of violence. The UN Special Rapporteur also cites studies that suggest a link between childhood exposure to domestic violence and later offending and victimization. However, the Rapporteur also notes that if children are provided with adequate support they are less likely to pick up violent characteristics. In light of this, in complying with due diligence standards to prevent and protect victims of domestic violence, it is key for law enforcement to ensure children are supported. Essentially, by protecting children who are victims of domestic violence in the home, law enforcement would also be preventing the chances of future occurrences of domestic violence.

Taking the above discussion into consideration, the effects of domestic violence on children include both the immediate danger they are faced with and the threat of future

vulnerability to both violence and its perpetration. In order to combat domestic violence and provide a response that meets standards of due diligence, the following list of considerations concerning specific vulnerabilities of children should be taken into account.

Reporting Considerations:

1. What measures are taken to ensure first responders are able to tend to the needs of children victims? Are there policies in place with regards to children when first responders arrive on a scene?

- a. Are there special training programs to educate officers about the special vulnerabilities of children and how to cope with them?
- b. Do first responders remove children from the scene on arrival?
- c. Are measures taken to ensure the immediate well being of the child and to make them feel comfortable?
- d. Are questions asked to gauge to what extent these children are exposed to the violence?
- e. How does law enforcement interact with other agencies whose role is to support children in violent homes?
- f. Is it mandatory for first responders to report children who are in violent homes to these agencies?

2. What practices are in place to ensure effective continual care and wellbeing for children victims of domestic violence?

- a. Are there victim services available to children to help support those who are exposed to domestic violence? Is this mandatory or discretionary? B. How are these services communicated to the family?
- b. How are these services communicated to the children?
- c. Is there community outreach programs to reach children victims?
- d. Is there on going support available for children after domestic violence is reported from their home?

C. Domestic Violence and Age

The United Nations' *International Plan of Action on Ageing* identifies the significance of elder abuse ("emotional, financial, physical and sexual abuse and neglect of persons of age 65 and older") within the framework of human rights theory. It calls for States to eliminate elder abuse in all its forms and to deploy targeted support services to address elder abuse.¹¹¹ The *Toronto Declaration*, adopted by the World Health Organization,¹¹² emphasizes the importance of cooperation amongst all sectors of society in addressing elder abuse, and the importance of identifying, and promoting sensitivity to, the role of culture and gender in elder abuse, and of undertaking widespread public education on elder abuse.¹¹³ The World Health Organization's 2002 publication, *Missing Voices*, identifies the need for culturally competent responses to elder abuse, and for the recognition that elder abuse traverses cultural, racial and class boundaries.¹¹⁴

Elder abuse is, in the majority of cases, a family violence problem. According to a national study of the scope of elder abuse in the USA, approximately 90% of perpetrators were family members, most often adult children or partners of the victim.¹¹⁵ A 2010 study estimates that 11% of Americans experience elder abuse each year.¹¹⁶ Research also suggests that most instances of elder abuse never come to the attention of the authorities or social agencies. In one study of the prevalence of elder abuse, it was found that for every one case of abuse known to law enforcement or social agencies, another 24 were unknown.¹¹⁷ Studies suggest that being a woman, advanced age, dementia, isolation, mental health problems and substance abuse issues are all risk factors for becoming a victim of elder abuse.¹¹⁸

Given the prevalence of elder abuse, its underreported character, and the special vulnerability of many of its victims, it is important that all law enforcement officers who might come into contact with elderly persons in the course of their duties are trained to identify the signs of elder abuse. It is also crucial that, when law enforcement officers communicate with potential victims of elder abuse, or commence investigations into possible elder abuse, the necessary support services are made available to ensure that potential victims are treated with respect, that potential victims are accorded the opportunity to relate their story (where possible), and that the situation is assessed by respectful and competent professionals trained in identifying elder abuse and in working with the elderly.

The following recommendations are in the spirit of the *Plan of Action*, of the *Toronto Declaration*, and of *Missing Voices*.

The following considerations should be read as relevant to those law enforcement agencies and officers whose professional duties might put them in a position to identify or respond to elder abuse.

Reporting Considerations:

1. Is there evidence of adequate cooperation between law enforcement agencies and community organizations, health services and other relevant agencies, to the end of developing and implementing community and law enforcement based initiatives to aid in the identification and prevention of elder abuse?
2. Do law enforcement agencies participate in or contribute to attempts to educate and raise awareness of elder abuse, and its characteristics, amongst the general public?
3. Are officers given targeted training concerning the special characteristics of elder abuse and the potential for the presence of particular vulnerabilities and needs amongst its victims (and is that training mandatory or voluntary)?
4. Do any specific policies or practices for dealing with potential victims of elder abuse exist? If so, what are they and are they consistent with human rights norms (especially as they relate to respect, equality, anti-discrimination, wellbeing and access to care)?
5. Are interviews with elderly persons conducted in safe environments that foster the health, welfare, self-respect, dignity and autonomy of the person and that take into account their specific needs?
6. Are officers adequately prepared to assist victims of elder abuse to situations of safety?
7. Are officers aware of and prepared to assist access to appropriate social services for victims of elder abuse?
8. Are there strategies in place to ensure that persons of diminished cognitive capacity are identified?
9. Are there strategies in place to ensure that persons of diminished cognitive capacity are not left in an unsafe environment or without a responsible carer?
10. Are officers trained to be sensitive to the significant roles that gender and cultural context can play in the incidence, reporting, and experience of elder abuse (and is that training mandatory or voluntary)?
11. Are affirmative measures in place to ensure victims of elder abuse have equal access to justice (with respect to law enforcement operations)?

12. Are there internal and external measures in place to facilitate the critical assessment of the law enforcement agency's performance specifically as it relates to elder abuse?

D. Domestic Violence and People with Disabilities

The international law of human rights holds that all people, without distinction, are entitled to security of person, to freedom from cruel, inhuman and degrading treatment and to equality before the law and to equal protection from the law.¹¹⁹ These requirements are echoed with specific reference to people with disabilities in the *Convention on the Rights of Persons with Disabilities* (to which America is a signatory).¹²⁰ The *Convention* mandates equal recognition before the law and equal access to justice for people with disabilities, and, moreover, identifies a positive duty on the part of the State to provide any accommodation required to ensure that these rights are realized.¹²¹

Research suggests that people with disabilities are significantly more likely to experience domestic and sexual violence than people without disabilities and that, moreover, the abuse is likely to be more protracted and extreme in character.¹²² This violence is also more likely to take 'non-traditional' forms'. Women with disabilities are especially likely to face domestic violence at some point in their lives.¹²³ It has also been established that people with disabilities are significantly more likely to face barriers in accessing justice and to have fewer pathways to safety available to them.¹²⁴ It is also worth noting that domestic violence does not always need to intersect with a pre-existing disability for considerations of disability to be in play, domestic violence can be the efficient cause of temporary or permanent disability. Given the high incidence of domestic and sexual violence against persons with disabilities, and the evidence of barriers to justice for people with disabilities, it is clear that we must work harder as a community to provide for measures that truly enable equal access to protection and to justice. There is an evident need for improved training amongst law enforcement officers, for greater public and professional awareness of the problem, for targeted services for persons with disabilities facing the threat of domestic violence, and for linking disability services with domestic violence services.¹²⁵

Any such changes should be implemented in line with the growing consensus in the human rights literature (and as reflected by the *Convention*)¹²⁶ that disability should be addressed as a socially constructed concept (as opposed to the traditional emphasis on the presence of a medically determined 'personal impairment'). On this view, a disability is understood as being something generated by a lack of accessibility in social spaces. The onus then, when considering the needs of people with disabilities, should not be on the role of the disability as a limiting factor proper to that person, but rather on the shortcomings of a society that has created limitations for that person by creating environmental and attitudinal barriers to

their full participation in social life. It is the duty of society and of public agencies to work to create an environment in which all persons can participate on an equal basis. This includes being equally protected by, and equally able to access the services of, law enforcement, and the justice system more generally.

In the spirit of the *Universal Declaration of Human Rights*, and the other major rights instruments that emphasize equality, nondiscrimination and the right to social security, and in light of the *Convention on the Rights of Persons with Disabilities*, we recommend the following considerations to the authors of the Report.

The following considerations should be read as relevant to those law enforcement agencies and law enforcement officers whose professional duties might put them in a position to identify or respond to domestic violence against people with disabilities.

Reporting Considerations:

1. Is there evidence of adequate cooperation between law enforcement agencies and community organizations, disability services and other relevant agencies, to the end of developing and implementing community and law enforcement based initiatives to aid in the identification and prevention of domestic violence towards people with disabilities?
2. Do law enforcement agencies play a role in educating the community, people with disabilities and their family and caregivers on how to prevent, recognize and report instances of exploitation, violence and abuse against people with disabilities?
3. Are officers given targeted training about the following topics (and is that training mandatory or voluntary):
 - what constitutes a disability
 - how to communicate about disabilities using appropriate language etiquette (e.g. employing 'people first' language, language that acknowledges people with disabilities are *people* first)
 - how to respectfully and effectively communicate with persons with disabilities, and when to seek expert assistance
 - the correlation between disability and domestic violence
 - the importance of providing appropriate accommodations to ensure equal access to justice
 - the role of gender and age in domestic violence against people with disabilities?

4. What affirmative measures are in place to ensure victims of domestic violence who have a disability have equal access to justice (with respect to law enforcement operations)?
5. Do any specific policies or practices for dealing with people with disabilities who are potential victims of domestic violence? If so, what are they and are they consistent with human rights norms (especially as they relate to respect, equality, anti-discrimination, wellbeing and access to care)?
6. Are the services provided by law enforcement agencies and officers disability sensitive?
7. Are law enforcement facilities disability accessible?
8. Are interviews with people with disabilities conducted in safe environments that foster the health, welfare, self-respect, dignity and autonomy of the person and that take into account their specific needs?
9. Are officers adequately prepared to assist people with disabilities who are victims of domestic violence to situations of safety?
10. Are officers aware of and prepared to assist victims of domestic violence to access appropriate disability services?
11. Are there strategies in place to ensure that persons of diminished cognitive capacity are identified?
12. Are there strategies in place to ensure that persons of diminished cognitive capacity are not left in an unsafe environment or without a responsible carer?
13. Are there internal and external measures in place to facilitate the critical assessment of the law enforcement agency's performance specifically as it relates to domestic violence against people with disabilities?

E. Domestic Violence and Race

The human rights perspective provides a helpful guide for law enforcement in responding to domestic violence that involves members of ethnic minorities. The UN Special Rapporteur reports that, in the United States, women from ethnic minorities, and in particular from the African American community, are subject to experiences of racial discrimination (structural and explicit) throughout their lives and that any experience they have of domestic violence is also subject to the effects of this discrimination.¹²⁷ This experience of racial discrimination can be a factor both in a person's vulnerability to abuse, in the specific abusive relationship, and in their interactions with law enforcement when seeking assistance and protection. The UN Special Rapporteur points out that African American communities are especially reluctant to seek assistance from the police and to report relatives and acquaintances to the police, due to fear of discrimination against their person, and sometimes against the person of the assailant.

In order to combat these barriers to service and to afford equal protection to victims from these communities it is important to consider measures such as anti-discrimination training, increasing community engagement and improving the diversity of the police force. The Special Rapporteur's report suggests that the goal should be a police force that reflects and is responsive to the membership and experience of the community that is served.

As outlined above there can be reluctance from communities to reach out to the police for protection. From a human rights perspective (and in light of the IACHR's determination that domestic violence is no longer a private issue but that the responsibility has shifted to the community as a whole to address this issue) it is important for the whole community to bear the responsibility of protecting individuals from violence and so in looking at how law enforcement implements a human rights compliant approach in their interactions with these groups it could be useful to look at the success of community outreach programs that aim to empower community responses as well.

The following considerations should serve as a guide to reporting with respect to these issues:

Reporting Considerations:

1. *Have law enforcement made efforts to improve members of racial minorities' perception of law enforcement and the State generally?*
 - a. When recruiting does law enforcement recruit for diversity?
 - b. Does the racial composition of the police force reflect that of the community?
 - c. Is there a liaison within the police for groups of ethnic minorities who will understand issues which are particular to members of these groups?
 - d. Do law enforcement take part community outreach programs in areas where members of ethnic minorities live assuring the community that they aim to provide equal protection?

2. *Have law enforcement taken steps to combat racial bias from within law enforcement themselves?*
 - a. Is there special training to ensure law enforcement is aware of the particular challenges that members of ethnic minorities face with regards to domestic violence?
 - b. Again, is the law enforcement team diverse (as this can also help fight bias from within the team)?
 - c. Do law enforcement regularly engage with members of racial minorities on a semi-regular basis outside of work?

3. *Have law enforcement acknowledge the impact of disparate treatment of racial minorities?*
 - a. How are the consequences of domestic violence reflected differently in racial minority groups?
 - b. What resources are needed to increase the likelihood of providing racially sensitive support to victims of domestic violence?

F. Domestic Violence and Immigration

In discussing areas of the community that may feel alienated it is important to look to explore how law enforcement's approach to domestic violence bears upon members of the immigrant community. The UN Special Rapporteur has recognized that immigrant status acts as an aggravating factor for domestic violence and so it is important to look to how law enforcement can address this issues stemming from this specific vulnerability.

Language can create a practical barrier which strains law enforcement's efforts to protect an immigrant community from domestic violence. It would be ideal to have an officer on the scene of domestic violence who is capable of communicating directly with a victim in the language in which the victim is most comfortable in order to ensure their exact concerns are being addressed. However, as the community becomes richer in diversity this becomes more difficult to put into practice. It is therefore important to ensure members of law enforcement are equipped with the knowledge and translation mechanisms to facilitate effective communication between themselves, and members of the immigrant community.

In order to meet with the requirements of due diligence in their response to victims of domestic violence, it is key that a neutral interpreter is found. In providing a holistic, victim centered approach officers must ensure that the victim is comfortable at each stage of the process and free to give a truthful account of the events. Therefore, in looking to encourage best practices officers should look to alternative methods of interpretation such as Language Line rather than using another family member or neighbor: it is necessary to be aware that when you use a non neutral interpreter you do not know where they lie on the spectrum of support, i.e. whether they are in support of the perpetrator or the victim. Further to this, it is crucial to attempt to avoid using children to interpret their mother's complaint and this will limit the elements of the abuse that the victim is willing to talk about. On the basis of that analysis, it can be seen that a best practice to comply with the requirement of due diligence is to find a neutral interpreter with experience working with victims of domestic violence from the particular culture of the victim.

To this end, it is key to document whether interpreters with social service training are used and what resources are available to law enforcement to facilitate this. Furthermore, by accommodating these communities and having resources available in other languages, law enforcement will make themselves more accessible to the immigrant community, encouraging them to open up as a community and reach out to law enforcement for protection.

Additionally, for some members of the immigrant community, the American law enforcement system may be quite literally foreign. In order to comply with due diligence it would be a best practice to empower victims with sound knowledge of their rights through education programs for the public. Relating to some immigrants' lack of understanding of US law, their perception of law enforcement may have been impacted by the role they played in their country of origin. This in turn creates a barrier between victims and law enforcement services. Therefore, in order to comply with human rights standards law enforcement agencies have the duty to reach out to these communities to make potential victims aware of what type of abuse is illegal and that law enforcement agencies role is to prevent crimes like this happening and to protect individual's from perpetrators. To celebrate success in this area or identify areas for growth, it is key to look to whether law enforcement workers reach out in person to emphasis their role in serving the community at large and their role in protecting individuals from violence. In order to combat the idea that it is shameful to speak out about violence within your family, the UN Special Rapporteur has called for law enforcement agencies to take a public stance condemning all forms of violence against women, both public and private.

As acknowledged by the UN Special Rapporteur, women in the immigrant community are especially vulnerable to economic dependency on abusive partners.¹²⁸ Family may also be relying on them to support them both within the US and also in their country of origin. This need for their partner to support themselves and other members of their family can trap women. As previously outlined, the State has the responsibility to protect women from violence and so with regard to best practices for human rights compliancy, law enforcement should take steps to empower women in this situation to make the decision as to whether or not to leave the violent home and give them options to support their choice. These practices may involve employing trained victim services personnel who can discuss options with women and make them aware of what is available to facilitate them leaving a violent home. When looking to the success of law enforcement in this area it is necessary to take note of shelters available to women and discussion of safety planning to protect victim's in this situation who may not be ready to leave their home.

Reporting Considerations:

1. *What steps has law enforcement taken to over come the obstacles to protection that members of the immigrant community face as a result of the language barrier?*

- a. Are there practices in place for law enforcement to source a neutral interpreter?
 - b. Does law enforcement use interpreters who are specially trained in family violence?
 - c. Is there a standardized source of interpreters across all the sectors of law enforcement?
 - d. Is family violence protection information provided in multiple languages?
2. *What Steps has law enforcement taken to resolve the issue for immigrants of unfamiliarity with the law?*
- a. Are law enforcement trained on the various special legal protections for victims of domestic violence or violence against women under VAWA or other DHS and USCIS programs?
 - b. Does law enforcement take part in outreach programs to make immigrants aware of their right to protection and give them an understanding of how the US law enforcement system operates?
3. *What steps have law enforcement taken so not as to allow cultural differences to frustrate the protection of victims?*
- a. Are police given cultural immersion training?
 - b. If so, is this continual training which focuses on the groups of immigrants which are prevalent in Austin at the current time?
 - c. Have law enforcement taken any form of public stance against domestic violence?
4. *What steps have law enforcement taken to provide human rights compliant protection for victims who are economically dependent on their partner?*
- a. Does law enforcement help victims to safety plan?
 - b. Does law enforcement make victims aware of shelters and alternative accommodation available to them?

G. Domestic Violence and Undocumented Immigrants

Even within the body of the immigrant community, there is increased vulnerability to domestic violence for undocumented immigrants. The National Immigrant Justice Centre report¹²⁹ has highlighted that equal protection should be afforded to everyone and that undocumented immigrants, in particular, often feel alienated by law enforcement. One of the considerations when identifying to the best practices for law enforcement in relation to undocumented immigrants is their understanding of the police's role in enforcing immigration policies. The fear that if they report domestic violence to the police, they will then have their immigration status investigated,¹³⁰ causes many victims of domestic violence to suffer in silence. As the State has a duty of due diligence to protect all women from domestic violence, law enforcement officers must make efforts to ensure these women understand that they can come to the police for protection in spite of their immigration status.¹³¹

In monitoring whether law enforcement uses human rights as a guide to facilitate protection of these women, we must look to whether they take steps to make the public aware that, as the police, their duty is to enforce State laws, not immigration laws. Additionally, law enforcement could make information available to the public about visa status and that women who experience domestic violence can apply for U Visas. In essence, it is key to identify whether the police work within the community to ensure immigrants know they are there to protect and not to enforce immigration laws and also by making information on option regarding immigration status accessible to undocumented immigrants.

The report also highlights that enforcement of immigration policy should not become a "conduit for discriminatory policy"¹³². Regarding this in light of law enforcement's relationship undocumented immigrants, it seems that law enforcement could take steps to ensure women are aware of the different visas available to them. In monitoring this, it could be useful to look at whether officers receive training on immigration and whether there are any policies in place if the police were to come across victims who they suspect are undocumented. Additionally, when looking for success in this area it is key to look to the role of victim services and the success they have in protecting women in light of the fact that they do not ask for information on a victim's immigration status.

On the basis of the above analysis, it is evident that both documented and undocumented immigrants face hurdles particular to their group in interactions with law enforcement. As a consequence of the duty of due diligence on the part of the State to protect

individuals from domestic violence, it is necessary that law enforcement take some of the positive steps which are discussed above in order in relation to these specific groups to comply with human rights standards and norms. Below is an illustration of some best practices which are key areas for law enforcement to focus on in order to be human rights compliant, in relation to undocumented immigrants.

Reporting Considerations:

1. What steps do law enforcement take in order to ensure undocumented immigrants understand their role in protecting them is separate and apart from immigration enforcement officers?
2. Are law enforcement trained on when, and how, they may use discretion in relation to immigration issues when responding to domestic violence cases?
3. What steps has law enforcement taken to make undocumented immigrants aware of the processes available to them to receive a visa?
4. Do law enforcement collaborate with neutral interpreters?

H. Domestic Violence and LGBTQI status

The international law of human rights makes it clear that members of the Lesbian, Gay, Bisexual, Transgender, Queer and Intersex ('LGBTQI') community are entitled to equal protection before the law. And the problem of discrimination and of violence against members of the LGBTQI community has, in recent times, gained significant attention from the international human rights community. Last year, the UN Human Rights Council passed a resolution expressing concern over discrimination and violence on the basis of sexuality and gender identity, emphasizing that this represents a violation of human rights and requesting that the recent report by the High Commissioner on Human Rights on discriminatory laws be updated to include best practices for overcoming violence and discrimination on the basis of sexual orientation and gender identity.¹³³ The Inter-American Commission on Human Rights also recently issued a statement expressing its concern at the pervasiveness of violence against LGBTQI persons and urging member States to "adopt measures to prevent, investigate, punish and provide reparations concerning these acts of violence, including measures to address the underlying causes fueling this violence."¹³⁴ These resolutions recognize that LGBTQI people have historically been the targets of political and social discrimination on the basis of their sexual orientation, gender expression and gender identity, and that they continue to disproportionately suffer from discrimination and violence. Moreover, the European Court of Human Rights has recognized that States have a duty to protect, adequately investigate crimes motivated by sexual orientation bias,¹³⁵ and a duty to provide a remedy to victims.¹³⁶

Studies suggest that LGBTQI people are at greater risk of domestic violence. For example, a national study by the Centers for Disease Control and Prevention concerning the incidence of intimate partner violence in American relationships revealed that lesbian women, gay men and bisexual people experience intimate partner violence at levels equal to, or higher than, heterosexual people. In the course of their lifetime, 44% of lesbian women and 61% of bisexual women experience rape and/or physical violence and/or stalking at the hand of intimate partners (as compared to 35% of heterosexual women). And 26% of gay men and 37% of bisexual men experience rape and/or physical violence and/or stalking at the hand of intimate partners (as compared to 29% of heterosexual men).¹³⁷

Given the long history of discrimination and stereotyping of LGBTQI persons, and entrenched social attitudes surrounding gender and sexuality, it is especially important that measures are in place to prevent discrimination in the provision of domestic violence services by law enforcement agencies. It is important that agencies are also attentive to the role that the

experience of social marginalization and discrimination, especially by those in positions of social authority, might play in the preparedness of LGBTQI victims and the LGBTQI community more generally to work with law enforcement. The need to motivate and foster mutual trust and understanding is an issue that emerges repeatedly in the scholarly literature concerning interactions between members of the LGBTQI community and law enforcement. These are issues that must be addressed if the fundamental human rights of LGBTQI persons to enjoy freedom from discrimination and equal protection from the law are to be upheld (along with the other rights that might come to be violated where there is a failure to prevent, or protect against, domestic violence).¹³⁸ In the spirit of human rights law, of the Inter-American Commission on Human Rights' call, and of the Human Rights Council's Resolution, we recommend the following considerations to the authors of the Report.

The following considerations should be read as relevant to those law enforcement agencies and officers whose professional duties might put them in a position to identify or respond to LGBTQI persons who experience domestic violence.

Reporting Considerations:

1. Is there evidence of adequate cooperation between law enforcement agencies and community organizations, health services and other relevant agencies, to the end of developing and implementing community and law enforcement based initiatives to aid in the identification and prevention of domestic violence against LGBTQI persons?
2. Do law enforcement agencies participate in or contribute to attempts to educate and raise awareness of domestic violence against LGBTQI persons amongst the general public and in the LGBTQI community?
3. Do law enforcement agencies participate in or contribute to trust and understanding building exercises between law enforcement agencies and officers and LGBTQI persons?
4. Do law enforcement agencies actively recruit in the LGBTQI community and are there affirmative policies to foster a safe and supportive working environment for LGBTQI persons?
5. Do any specific policies or practices for dealing with LGBTQI victims of domestic violence exist? If so, what are they and are they consistent with human rights norms (especially as they relate to respect, equality, anti-discrimination, wellbeing and access to care)?

6. Are officers aware of and prepared to assist access to appropriate social services for LGBTQI victims of domestic violence?
7. Are officers trained to be sensitive to the significant roles that discrimination, stereotyping and social exclusion can play in the incidence, reporting, and experience of domestic violence by LGBTQI persons (and is that training mandatory or voluntary)?
8. Are there internal and external measures in place to facilitate the critical assessment of the law enforcement agency's performance specifically as it relates to domestic violence against LGBTQI persons?

I. Domestic Violence and the Law Enforcement Community

Relying on two separate studies the National Centre for Women and Policing revealed that “at least 40% of police officer families experience domestic violence, in contrast to 10% of families in the general population.”¹³⁹ Evidently, domestic violence among members of the police force leaves partners of law enforcement officers particularly vulnerable to domestic violence. As required in the *Lenahan* case,¹⁴⁰ and Article 26 of the ICCPR, everyone must be afforded equal protection before the law. The National Centre for Women and Policing note certain unique factors which make these partners particularly vulnerable by virtue of the fact they are in a relationship with a law enforcement officer.

These unique factors cause barriers for women being abused by members of law enforcement to accessing justice, namely protection from and a remedy for this human rights violation. In particular women in this situation are reluctant to report abuse as the perpetrator, is a member of the system they would need to turn to for help. As a result their colleagues who the victim has to report to may be biased and result a prejudiced investigation. Additionally, as a member of law enforcement the perpetrator would have full knowledge of the where about of shelters and exploit their knowledge of the inner workings of the system.¹⁴¹

The state’s duty to prevent domestic violence is particularly salient in the context of domestic violence committed by law enforcement. In *Eremia and Others v. the Republic of Moldova*, a mother complained that the State ignored her experience of domestic abuse at the hands of her husband, a police officer, and failed to enforce a protective binding court order.¹⁴² The European Court of Human Rights determined that the State’s responsive measures were inadequate, given the husband’s repeated breach of a protective order and suspension of the case against him in order to avoid liability, and found that “lack of decisive action by the authorities had been even more disturbing considering that [he] was a police officer” who was entrusted with “the protection of the rights of others, the prevention of crime and the protection of public order.”¹⁴³ Therefore, the State must ensure that claims against members of law enforcement are investigated in line with the standard of due diligence.

As outlined above there are unique vulnerabilities to victims who are abused by members of law enforcement and so in order to provide them equal protection in a human rights compliant manner, there are a number of steps which must be taken. The following list aims to provide guidance for those writing the report as to which areas are key to focus on when identifying successes and areas for development within the Austin system.

Reporting Considerations:

1. Is there a policy that enables people filing complaints about a member of law enforcement to contact an alternative police force from where the alleged abuser works?
2. Is there an effective policy in place which ensures that law claims of violence by enforcement officer are independently and thoroughly investigated?
3. Are training measures in place to help law enforcement officers (as members of a group at heightened risk of committing domestic violence) learn about and build healthy family and domestic relationships?

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Endnotes

¹ Austin, Tex., City Council Res. 20140417-055, (Apr. 17, 2014); Travis Cnty. Comm'rs Court, Resolution on Freedom from Domestic Violence as a Human Right (Apr. 8, 2014). Similar resolutions passed by other American communities, including Baltimore, Cincinnati, Albany and Miami may be found here: *Recognizing Freedom From Domestic Violence as a Fundamental Human Right: Local Resolutions Across the United States*. Miami: University of Miami School of Law, 2013. Accessed May 5, 2015. http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/Gonzalesdocs/2014.2.9_localdvresolutions_compressed_3.pdf.

² Call to Action, ¶ 4-6 in: Austin, Tex., City Council Res. 20140417-055, (Apr. 17, 2014).

³ Ibid.

⁴ See Article 3(a): Organization of American States (OAS), Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("*Convention of Belém do Pará*"), June 9, 1994, O.A.S.T.S. No. A-61 (Henceforth: "*Convention of Belém do Pará*"); see also Council of Europe, Convention on preventing and combating violence against women and domestic violence, art. 3(b), May 11, 2011, C.E.T.S. 101 (Henceforth: "*Istanbul Convention*").

⁵ The United States Department of Justice, *What is Domestic Violence?* 2014, accessed May 5, 2015, <http://www.justice.gov/ovw/domestic-violence>.

⁶ Ibid.

⁷ Austin, Tex., City Council Res. 20140417-055, (Apr. 17, 2014); Travis Cnty. Comm'rs Court, Resolution on Freedom from Domestic Violence as a Human Right (Apr. 8, 2014).

⁸ This inclusive definition inspired by the understanding of victim adopted in Article 24: United Nations General Assembly, International Convention for the Protection of All Persons from Enforced Disappearance, 2716 U.N.T.S. 3 (Dec. 20, 2006).

⁹ Lilla Watson is an Indigenous Australian community leader and activist, the quote used is attributed to her speech at the United Nations Decade for Women: Equality, Development and Peace World Conference in 1985. Nairobi (15 to 26 July 1985); Robinson William and Applebaum Richard (eds.), *Critical Globalization Studies*, New York: Routledge, 2005, p.425.

¹⁰ The total number of Texas family violence incidents in 2013 was 185,453. 8457 of these incidents took place within Travis County. See Texas Department of Public Safety, *Crime Report 2013: Chapter 5, Family Violence*, 2013, accessed May 5, 2015, http://www.txdps.state.tx.us/administration/crime_records/pages/crimestatistics.htm.

¹¹ U.N. General Assembly, Vienna Declaration and Programme of Action, art. 1, July 12, 1993, A/CONF.157/23 (henceforth: "*Vienna Declaration*").

¹² To relate the universality of concern with and responsibility for human rights, the Preamble to the *UDHR* holds that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world", and that: "every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction." U.N. General Assembly, *Universal Declaration of Human Rights*, G.A. Res. 217 (III) A, Doc. A/RES/3/217A, (Dec. 10, 1948) (henceforth: "*UDHR*").

¹³ *Vienna Declaration*, Article 5: "All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."

¹⁴ The U.N. Special Rapporteur on Violence Against Women emphasizes the requirement, on a human rights attitude, for "holistic" responses to domestic violence. Special Rapporteur on Violence Against Women, Its Causes and Consequences, *State Responsibility for Eliminating Violence against Women*. U.N. Doc. A/HRC/23/49 (May 14, 2013).

¹⁵ Preamble, *UDHR*: “inherent dignity and...the equal and inalienable rights of all members of the human family”; Article 1: “All human beings are born free and equal in dignity and rights,”; Article 2: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind,”; see also, Preamble, *ADRDM*: “All men are born free and equal, in dignity and in rights.”

¹⁶ *UDHR*, Article 3, 5; *ICCPR*, Article 6, 7; *ADRDM*, Article I; *CAT*, Articles 1,2,4,13 and 14; see also *UDHR*, Preamble: “the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.”

¹⁷ *ICCPR* Article 1, 12, 19, 22; *UDHR*, Article 13, 19, 20; *ADRDM*, Article IV, VIII, XXII *ADRDM*.

¹⁸ The *Vienna Declaration* emphasizes the value of pluralism and the value of cultural diversity (see preamble and Articles 19 and 20). It also contains a strong commitment in Article 8 to democracy, on the grounds that it “is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives.”

¹⁹ *UDHR*, Article 16, 20, 25, 27; *ICCPR* Articles 1, 22, 23, 27; *ADRDM*, Article V, VI, XIII, XXII.

²⁰ *Vienna Declaration*, Article 5;

²¹ The following international conventions and resolutions illustrate this growing trend: *General Comment No. 19 by the Committee on the Elimination of Discrimination Against Women* (1992), the *U.N. Declaration on the Elimination of Violence against Women* (1993), the *Belém do Pará Convention* (1995), and the *Istanbul Convention* (2011). Closer to home, this trend is illustrated by the popular movement within the United States, following the Lenahan/Gonzales case (*Castle Rock v. Gonzales*, 545 U.S. 748 (2005), and *Lenahan v. United States*, Case 12.626, Inter-Am. Comm’n. H.R. Report No. 80/11 (2011), to reframe the issue of domestic violence in terms of human rights; a movement given civic expression and affirmation by the passage of resolutions declaring freedom from domestic violence a human right in: Albany, NY (2012), Baltimore, MD (2012), Cincinnati, OH (2011), Erie County, NY (2013), Miami Springs, FL (2012), Miami-Dade, FL (2012), Montgomery City and County, AL (2012), Seattle, WA (2012), Washington, DC (2013), Austin (2014) and Travis County (2014).

²² U.N. General Assembly, Res. 58/147, Elimination of domestic violence against women, U.N. Doc. A/RES/58/147 (Feb. 19, 2004).

²³ U.N. Human Rights Council Res. 14/12, Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention, ¶ 1, U.N. Doc. A/HRC/RES/14/12 (June 23, 2010).

²⁴ U.N. Special Rapporteur on Violence Against Women, *Addendum - Mission to the United States of America*, ¶ 8, U.N. Doc. A/HRC/17/26/Add.5 (June 1, 2011).

²⁵ U.N. Secretary-General, *Intensification of efforts to eliminate all forms of violence against women: Rep. of the Secretary-General*, ¶ 8, U.N. Doc. A/65/208 (Aug. 2, 2010).

²⁶ In *Opuz v. Turkey*, the European Court found that domestic violence against women is a form of gender-based violence, and that, as such, it is a form of discrimination: *Opuz v. Turkey*, Application No. 33401/02, Council of Europe: European Court of Human Rights, June 9, 2009. Likewise, in the Lenahan/Gonzales Case, the Inter-American Commission on Human Rights found that the failure to provide the plaintiff and her daughters with adequate protections against violence constituted gender and race based discrimination: *Merits Report on Case No. 12.626, Jessica Lenahan (formerly Jessica Gonzales)*, Rep. No. 80/11 (July 21, 2011).

²⁷ U.N. Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 19: Violence Against Women*, 1992.

²⁸ Preamble, *Convention of Belém do Pará*.

²⁹ See for example, in a 2010 Resolution made by the U.N. Human Rights Council: “Recognizing that power imbalances and structural inequality between men and women are among the root causes of violence against women, and that effective prevention of violence against women and girls requires action at all levels of government, the engagement of civil society, the involvement of men and boys and the adoption and implementation of multifaceted and comprehensive approaches that promote gender equality and empowerment of women, and integrate awareness, education, training, political will, legislation, accountability, targeted policies and programmes, specific measures to reduce vulnerability, data collection and analysis, monitoring and evaluation, and protection, support and redress for victims.”: U.N. Human Rights Council, *Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*, U.N. Doc. No. A/HRC/RES/14/12 (June 23, 2010).

³⁰ U.N. General Assembly, Res. 58/147, Elimination of domestic violence against women, U.N. Doc. A/RES/58/147 (Feb. 19, 2004).

³¹ U.N. General Assembly, In-depth study on all forms of violence against women: report of the Secretary-General, ¶ 112, U.N. Doc. No. A/61/122/Add.1 (July 6, 2006).

³² See the Special Rapporteur on Violence Against Women's account of the emergence of this consensus in IIIA of *State Responsibility for Eliminating Violence against Women*, U.N. Doc. No. A/HRC/23/49 (May 13, 2013).

³³ See here, the Special Rapporteur on Violence Against Women's discussion of the argument made by the U.N. Committee Against Torture that violations of the standard of due diligence occur where: "...State authorities or others acting in an official capacity or under colour of law, know or have reasonable ground to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention. It also argues that the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation and trafficking." *Id.*

³⁴ *Lenahan v. United States*, Case 12.626, Inter-Am. Comm'n H.R. Report No. 80/11 (2011).

³⁵ *Ibid.*, ¶ 111.

³⁶ *Ibid.*, ¶ 127.

³⁷ U.N. Human Rights Council, Statement by the United Nations Special Rapporteur on Violence against Women, its causes and consequences, Rashida Manjoo, to mark the end of this year's international campaign 16 Days of Activism against gender-based violence, on Human Rights Day, Dec. 10, 2013, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14080&LangID=E>.

³⁸ Customary law requires "evidence of a general practice accepted as law." Article 38(1)(b): United Nations, *Statute of the International Court of Justice*, April 18, 1946.

³⁹ Practices by States that emerge "from a sense of legal obligation (*opinio juris sive necessitates*)" contribute to the formation of customary law and the principles from these practices are generally binding on States unless "a state declares its dissent from the principle during its development." Restatement (Third) of Foreign Relations Law § 102, Comments b-d (1987).

⁴⁰ A State will generally become a party to an international treaty through a two-stage process of 'signature' and 'ratification' (it may also become a party to an existing treaty through 'accession'). When a State signs a treaty, it makes a statement of its willingness to continue with the treaty-making process (i.e. to work towards ratification) - a statement that gives rise to a good faith obligation to avoid engaging in behaviors that serve to defeat the object of the treaty (see Articles 10 and 18 of the *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331). When a State ratifies (or accedes to) a treaty, it gives its full consent to be legally bound by the treaty. The USA has signed and ratified several of the key human rights instruments, and it is a signatory to several more (and may thereby be viewed as having expressed willingness to proceed to ratification with these treaties). The treaties that the USA has ratified give rise to binding legal obligations to follow human rights law.

⁴¹ Each Declaration was intended to clarify the operation of the charter treaty of its respective organization (the charter treaties are ratified by all full members, including the USA, and serve to constitute these organizations and to express their guiding purposes).

⁴² See, for example (in a case involving domestic violence): *Lenahan v. United States*, Case 12.626, Inter-Am. Comm'n H.R. Report No. 80/11 (2011).

⁴³ United Nations, *Final Act of the International Conference on Human Rights*, Tehran, 13 May 1968.

⁴⁴ *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

⁴⁵ *U.S. Constitution*, Article VI.

⁴⁶ Procedurally, upon receiving a treaty from the president, the Senate refers the treaty to the Committee on Foreign Relations for comments and then "considers the text of the treaty itself, just as it would consider the text of a bill in legislative session," before taking up a resolution of ratification which gives the President the ability continue with the treaty ratification. Subsequently, the only way to amend a resolution of ratification is "by attaching to it reservations, declarations, statements, or understandings that can affect the interpretation or implementation of the

treaty.” Heitshusen, Valeri, *Senate Consideration of Treaties*, Congressional Research Service (Nov. 10, 2014), accessed Sept. 27, 2015, http://www.senate.gov/CRSReports/crs-publish.cfm?pid=%26*2%3C4P%3C%3B%3F%0A.

⁴⁷ Bradley, Curtis A. and Jack L. Goldsmith, “Treaties, Human Rights, and Conditional Consent,” *University of Pennsylvania Law Review*, Vol. 149, No. 2, (Dec. 2000), http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3294&context=penn_law_review.

⁴⁸ U.S. Senate Resolution of Advice and Consent to Ratification of the ICCPR, 138 Cong. Rec. S4783 (1992).

⁴⁹ *Ibid.*, § 2(5).

⁵⁰ *Ibid.*

⁵¹ USAID, *United States Strategy to Prevent and Respond to Gender-based Violence Globally*, 2012, accessed May 5, 2015, <http://www.state.gov/documents/organization/196468.pdf>.

⁵² *Ibid.*, 7.

⁵³ Acts of Congress have limited the direct domestic application of the provisions of ratified human rights treaties, by preventing treaties from self-executing. A treaty is self-executing where it operates to impose obligations in domestic law from the moment the treaty comes into force.

⁵⁴ *United States v. Morrison*, 529 U.S. 598, 617 (2000).

⁵⁵ *Ibid.*

⁵⁶ *DeShaney v. Winnebago County Department of Social Services* (No. 87-154) 489 U.S. 189 (1989).

⁵⁷ U.N. Special Rapporteur on Violence Against Women, *Addendum - Mission to the United States of America*, ¶ 71, U.N. Doc. A/HRC/17/26/Add.5 (June 1, 2011).

⁵⁸ *UDHR*, Preamble.

⁵⁹ *Vienna Declaration*, Article 5.

⁶⁰ The United States Department of Justice, *What is Domestic Violence?* 2014, accessed May 5, 2015, <http://www.justice.gov/ovw/domestic-violence>.

⁶¹ U.N. Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Addendum*, ¶ 33, A/HRC/13/39/Add.5 (Feb. 5, 2010).

⁶² U.N. Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Addendum*, ¶ 40, A/HRC/13/39/Add.5 (Feb. 5, 2010).

⁶³ U.N. Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Addendum*, ¶¶ 30-39, A/HRC/13/39/Add.5 (Feb. 5, 2010).

⁶⁴ U.N. Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Addendum*, ¶¶ 195 and 208, A/HRC/13/39/Add.5 (Feb. 5, 2010).

⁶⁵ In 2013, the Committee advised Estonia to adopt legislation providing for prosecution of perpetrators and redress to victims in situations of domestic violence and marital rape. It has since made similar recommendations to several other States. CAT, Concluding observations on the fifth periodic report of Estonia, adopted by the Committee at its fiftieth session (6-31 May 2013); CAT, Concluding observations for the combined fifth and sixth periodic reports of Peru, adopted by the Committee at its forty-ninth session (29 October-23 November 2012), U.N. Doc. CAT/C/PER/CO/5-6, 21 Jan. 2013; CAT, Concluding observations on the second periodic report of Tajikistan, adopted by the Committee at its forty-ninth session (29 October-23 November 2012), U.N. Doc. CAT/C/TJK/CO/2, 21 Jan. 2013; CAT, Concluding observations on the second periodic report of Qatar, adopted by the Committee at its forty-ninth session (29 October-23 November 2012).

⁶⁶ U.N. Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Addendum*, ¶ 42, A/HRC/13/39/Add.5 (Feb. 5, 2010).

⁶⁷ See Special Rapporteur on Violence Against Women, *State Responsibility for Eliminating Violence against Women*, ¶ 27, U.N. Doc. No. A/HRC/23/49 (May 13, 2013).

⁶⁸ Radhika Coomaraswamy, U.N. Special Rapporteur on Violence Against Women, “Combating Domestic Violence: Obligations of the State,” *Domestic Violence Against Women and Girls, Innocenti Digest*, no. 6 (June 2000): 10, accessed Sept. 27, 2015, <http://www.unicef-irc.org/publications/pdf/digest6e.pdf>.

⁶⁹ Right to liberty of movement and to freedom to choose one’s place of residence: *UDHR*, Article 13; *ICCPR*, Article 12; *ADRDM*, Article VIII; Right to freedom of expression: *UDHR*, Article 19; *ICCPR*, Article 19; *ADRDM*, Article IV; Right to free participation in cultural life: *UDHR*, Article 27; *ICCPR*, Articles 1 and 27; *ADRDM*, Article XIII; Right to social security and an adequate standard of living: *UDHR*, Articles 22 and 25; *ADRDM*, Article XVI; Right to freedom of association: *UDHR*, Article 20; *ICCPR*, Article 22; *ADRDM*, Article XXII; Right to property:

UDHR, Article 17; ADRDM, Article XXIII; Right to protection of family life: UDHR, Articles 16 and 25; ICCPR, Article 23; ADRDM, Articles V and VI.

⁷⁰ U.N. Special Rapporteur on Violence Against Women, *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development: Political Economy of Women's Rights*, ¶ 49, U.N. Doc. No. A/HRC/11/6 (May 18, 2009).

⁷¹ s. 25: U.N. Special Rapporteur on Violence Against Women, *Its Causes and Consequences, 15 Years of The United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences (1994-2009)—A Critical Review*, U.N. Doc. No. A/HRC/11/6/Add.5 (May 27, 2009).

⁷² *Ibid.*, 26.

⁷³ *Ibid.*

⁷⁴ The Inter-American Commission of Human Rights was established by the OAS to examine allegations of human rights violations perpetrated by member States. This includes the USA, which has ratified the OAS Charter.

⁷⁵ OAS, *Media Release on Merits Decision*, http://www.oas.org/en/iachr/media_center/PReleases/2011/092.asp.

⁷⁶ *Merits Report on Case No. 12.626, Jessica Lenahan (formerly Jessica Gonzales)*, Inter-Am. Comm'n H.R., Report No. 92/11, ¶ 5 (July 21, 2011).

⁷⁷ *Ibid.*, 52-53.

⁷⁸ *González et al. ("Cotton Field") v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205 (Nov. 16, 2009).

⁷⁹ *Ibid.*, 2, 146.

⁸⁰ *Ibid.*, 42-43.

⁸¹ *Ibid.*, 47.

⁸² *Ibid.*, 71.

⁸³ *Ibid.*, 72.

⁸⁴ *Ibid.*, 71-72.

⁸⁵ *Ibid.*, 60-61.

⁸⁶ *Ibid.*, 146-147.

⁸⁷ *Maria da Penha Maia Fernandes v. Brazil*, Case 12.051, Inter-Am. Comm'n H.R., Report No. 54/01, ¶ 2 (2001).

⁸⁸ *Ibid.*, ¶ 40.

⁸⁹ *Ibid.*, ¶ 41.

⁹⁰ *Ibid.*, ¶ 44.

⁹¹ *Ibid.*, ¶¶ 58, 60(4).

⁹² European Court of Human Rights, *Factsheet-Domestic Violence*, Press Unit (April 2015), http://www.echr.coe.int/Documents/FS_Domestic_violence_ENG.pdf.

⁹³ *Ibid.*, 7.

⁹⁴ *Ibid.*

⁹⁵ Amnesty International UK, *Making the Grade? The Second Annual Independent Analysis of Government Initiatives on Violence Against Women*, 2006, London.

⁹⁶ Inter American on Human Rights, *Merits Report on Case No. 12.626, Jessica Lenahan (formerly Jessica Gonzales)*, report no. No. 92/11 (2011).

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⁹⁸ UDHR, Article 7.

⁹⁹ Inter American on Human Rights, *Merits Report on Case No. 12.626, Jessica Lenahan (formerly Jessica Gonzales)*, Report No. No. 92/11 (2011).

¹⁰⁰ Zarizana Abdul Aziz and Janine Moussa, Co-Directors, Due Diligence Project, *The Due Dilligence Principle and the Role of the State: Discrimination Against Women In family and Cultural Life* (2015).

¹⁰¹ *Ibid.*, 7.

¹⁰² U.N. Special Rapporteur for Violence Against Women, *Violence against women: Twenty years of developments within the United Nations*, p. 17, U.N. Doc. No. A/HRC/26/38 (May 28, 2014).

¹⁰³ U.N. Special Rapporteur on Violence Against Women, *Its Causes and Consequences, State Responsibility for Eliminating Violence against Women*. p. 11, U.N. Doc. A/HRC/23/49 (May 14, 2013).

¹⁰⁴ U.N. Special Rapporteur for Violence Against Women, *Addendum - Mission to the United States of America*, p.

16, U.N. Doc. No. A/HRC/17/26/Add.5, (June 1, 2011).

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¹⁰⁶ U.N. Special Rapporteur for Rights of the Child, *United Nations Secretary-General's Report on Violence against Children*, p. 38, U.N. Doc. No. A/51/299 (Aug. 29, 2006).

¹⁰⁷ Claudia Versiani, *Study on Violence Against Children: Chapter 3 – Violence Against Children in the Home and Family*, p. 70, UNICEF Report No. HQ01-0432 (2006).

¹⁰⁸ *Ibid.*, 71.

¹⁰⁹ *ADRDM*.

¹¹⁰ Versiani, *Violence Against Children in the Home*, p. 65.

¹¹¹ See Recommendations 110-111; Madrid International Plan of Action on Ageing, 2002, Adopted by the Second International Congress on Ageing. The plan remains a global guiding document for United Nations agencies, for NGOs and for States (see for example, the Report of the Asia-Pacific Intergovernmental Meeting concerning the regional implementation of the Plan of Action: http://www.unescap.org/sites/default/files/SDD-PUB_2012-Ageing-IGM-Publication.pdf).

¹¹² The World Health Organization is an official agency of the United Nations, dedicated to promoting and providing leadership on health issues of global significance. It is intended to shape the global health research agenda, to set evidence based norms and standards for health care and health policy and to monitor and assess trends in world health. As a member of the United Nations, the USA provides material assistance to the work of the World Health Organization, and US government agencies frequently rely on and refer to World Health Organization studies, recommendations and policies in domestic and foreign health work. Internationally, World Health Organization studies and declarations are highly regarded and very influential.

¹¹³ WHO and INPEA, "The Toronto Declaration on the Global Prevention of Elder Abuse," (2002), http://www.who.int/ageing/projects/elder_abuse/alc_toronto_declaration_en.pdf.

¹¹⁴ WHO and INPEA, "Missing voices: views of older persons on elder abuse," Geneva, WHO, 2002, http://whqlibdoc.who.int/hq/2002/WHO_NMH_VIP_02.1.pdf?ua=1.

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¹¹⁹ *UDHR*, Article 7; see also Articles 1, 2, 3 and 8.

¹²⁰ *Convention on the Rights of Persons with Disabilities*, G.A. Res. 61/106, U.N. Doc. A/RES/61/106 (Jan. 24, 2007). Note that although the USA became a signatory to the Convention in 2009 it has yet to ratify it. Until the USA ratifies the *Convention* it has not consented to be bound by the *Convention*, but signing a treaty is often described as the first step to ratification. It expresses the willingness of the USA to continue with the treaty process and gives rise a good faith obligation to refrain from any acts that are contrary to the treaty's object and purpose (per Articles 10 and 18 of the *Vienna Convention on the Law of Treaties*).

¹²¹ *Ibid.*; see also Articles 12 (Equal recognition before the law), 13 (Access to justice), 14 (Liberty and security of person), and 16 (Freedom from exploitation, violence and abuse).

¹²² Hughes, R., Lund, E., Gabrielli, J., Powers, L, & Curry, M. (2011). Prevalence of interpersonal violence against community-living adults with disabilities: A literature review. *Rehabilitation Psychology*, 56(4), 302-319; J. Schaller and J.L. Fieberg 'Issues of Abuse for Women with Disabilities and Implications for Rehabilitation Counseling', *Journal of Applied Rehabilitation Counseling* 29 (no.2) (1998) 9-17.

¹²³ The *Convention on the Rights of Persons with Disabilities* acknowledges and calls special attention to this fact: "women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or

abuse, neglect or negligent treatment, maltreatment or exploitation” (Preamble, q). See also Article 6 (Women with Disabilities).

¹²⁴ Ibid.

¹²⁵ The Equal Rights Center, “Serving Survivors of Domestic Violence who have a Disability,” 2010, http://www.equalrightscenter.org/site/DocServer/Serving_Survivors_of_Domestic_Violence_who_have_a_Disability.pdf?docID=261.

¹²⁶ Ibid., 5.

¹²⁷ U.N. Special Rapporteur for Violence Against Women, *Addendum - Mission to the United States of America*, ¶¶ 54-55, U.N. Doc. No. A/HRC/17/26/Add.5, (June 1, 2011).

¹²⁸ Ibid., ¶¶ 56-61.

¹²⁹ Heartland Alliance’s National Immigrant Justice Center, *CERD Shadow Report: Immigration Detainers Encourage Racial Profiling*, accessed Sept. 21, 2015, http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17787_E.pdf.

¹³⁰ Heartland Alliance’s National Immigrant Justice Center, *CERD Shadow Report: Immigration Detainers Encourage Racial Profiling*, accessed Sept. 21, 2015, http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17787_E.pdf; U.N. Special Rapporteur on Violence Against Women, *Addendum - Mission to the United States of America*, ¶ 8, U.N. Doc. A/HRC/17/26/Add.5 (June 1, 2011).

¹³¹ U.N. Special Rapporteur on Violence Against Women, *Addendum - Mission to the United States of America*, p. 16, U.N. Doc. A/HRC/17/26/Add.5 (June 1, 2011).

¹³² Heartland Alliance’s National Immigrant Justice Center, *CERD Shadow Report: Immigration Detainers Encourage Racial Profiling*, accessed Sept. 21, 2015, http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17787_E.pdf.

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¹³³ U.N. Human Rights Council, *Human Rights, Sexual orientation and gender identity*, G.A. Res. 27/32, U.N. Doc. A/HRC/RES/27/32 (Oct. 2, 2014).

¹³⁴ The IACHR is one of the human rights protecting organs of the Organization of American States, the peak international organization of the Americas (the USA is a member).

¹³⁵ In *Indentoba and Others v. Georgia*, the Georgian government failed to protect, and investigate attacks against, peaceful demonstrators celebrating the 2012 International Day Against Homophobia. The Court held that the government’s inadequate investigation into the incident was a violation of Articles 3 and 14 of the European Convention of Human Rights. European Court of Human Rights, *Factsheet – Sexual Orientation Issues*, Press Release (July 2015), http://www.echr.coe.int/Documents/FS_Sexual_orientation_ENG.pdf.

¹³⁶ The petitioners in *Perkins and R. v. the United Kingdom* and *Beck, Copp and Bazeley v. the United Kingdom* were all members of the British armed forces that were unable to challenge their discharge from the armed forces, on the basis of homosexuality, due to the ban on homosexuality in the armed forces at that time. The Court found that there was a violation of Article 13 of the European Convention on Human Rights because of the lack of an effective remedy domestically “in relation to the violation of the right to respect for their private lives.” Ibid., 8.

¹³⁷ National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Findings on Victimization by Sexual Orientation, http://www.cdc.gov/violenceprevention/pdf/cdc_nisvs_victimization_final-a.pdf.

¹³⁸ UDHR, Article 7; see also Article 1, 2, 3 and 8.

¹³⁹ National Centre for Women and Policing, Feminist Majority Foundation, “Police Family Violence Fact Sheet,” <http://womenandpolicing.com/violencefs.asp#notes>.

¹⁴⁰ *Lenahan v. United States*, Case 12.626, Inter-Am. Comm’n H.R. Report No. 80/11 (2011).

¹⁴¹ National Centre for Women and Policing, Feminist Majority Foundation, “Police Family Violence Fact,” <http://womenandpolicing.com/violencefs.asp#notes>.

¹⁴² *Case of Eremia and Others v. The Republic of Moldova*, App. No. 3564/11, Eur. Ct. H.R. (2013), <https://www.coe.int/t/dghl/standardsetting/convention-violence/caselaw/CASE%20OF%20EREMIA%20AND%20OTHERS%20v%20%20THE%20REPUBLIC%20OF%20MOLDOVA.pdf>.

¹⁴³ European Court of Human Rights, “Moldovan Authorities Failed to Prevent a Police Officer from Repeatedly Beating His Wife In Front Of Their Two Daughters,” Press Release, ECHR 159 (2013), <http://hudoc.echr.coe.int/eng-press?i=003-4371757-5247345>.