

**Inter-American Commission on Human Rights**

**Hearing Submission**

*Jessica Lenahan (Gonzales) v. United States*



**Presented by Prof Rashida Manjoo**

**UN Special Rapporteur on Violence against Women,**

**its Causes and Consequences**

**and Prof in Public law, University of Cape Town**

**27 October 2014**

Honourable Members of the Commission, Delegates and Colleagues

I would like to thank the petitioners in the Lenahan case for inviting me to participate in this hearing regarding state compliance with the Commission's recommendations in *Jessica Lenahan (Gonzales) v. United States*, and to express my appreciation to the Inter-American Commission on Human Rights for consenting to my participation as an independent expert, in my capacity as United Nations Special Rapporteur on violence against women, its causes and consequences. It is an honour and a privilege to share my work and thoughts with you today.

Pursuant to United Nations Human Rights Council Resolution 23/25, I act under the aegis of the Human Rights Council without remuneration as an independent expert within the scope of my mandate and appear at these proceedings without prejudice to, and my participation should not be considered as a waiver, express or implied, of the privileges and immunities of the United Nations, its officials and experts on missions, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations.

As the United Nations Special Rapporteur on violence against women, I am tasked with seeking and receiving information on violence against women and its causes and consequences from Governments, treaty bodies, specialized agencies, other special rapporteurs, intergovernmental, and non-governmental organizations. It is my mandate to respond effectively to such information by recommending measures at the local, nation, regional, and international level to eliminate all forms of violence against women and remedy its consequences. I strive to support the adoption of a comprehensive and universal approach to the elimination of violence against women, including causes of violence against women relating to the civil, cultural, economic, political and social spheres.

Opportunities for exchanges like this one are welcome, as they allow for a space to share some of my findings on the issue of violence against women from a global perspective and to reflect on how States can effectively fulfil their international obligations to prevent, protect, investigate, prosecute, punish and provide effective remedies for acts of violence against women.

## Introduction

Globally, violence against women is acknowledged as a pervasive and widespread human rights violation. Since its establishment in 1994, the mandate of the UN Special Rapporteur on violence against women has studied the forms, prevalence, causes and consequences of violence against women; it has analysed legal and institutional developments in the protection of women against violence and has provided key recommendations to Governments and to the international community to overcome remaining challenges. My mandate has taken into account the intersectionality and the continuum of violence approach to analyse causes and consequences, thereby blurring the distinction between the public and the private spheres.

My work as Special Rapporteur has allowed me to conduct thematic research, to conduct official visits to a wide range of countries, to address individual allegations that I receive, and to evaluate current trends, challenges and proposed solutions. The mandate looks at violence through both a spatial and a temporal lens. As regards the spatial, I look at violence in four spheres: the home, the community, violence perpetrated and/or condoned by the State, and violence linked to the transnational sphere. In terms of the temporal, I look at violence in times of peace, conflict, post-conflict and also during times of transitions and displacement.

In 2011, I produced a report for the Human Rights Council looking at how the violence experienced by women, is generally rooted in multiple and intersecting forms of discrimination and inequalities, and is a reflection and reinforcement of the discrimination, inequality and oppression to which many women are subjected, in public and private spaces. In this report, I argue that violence against women cannot be fully understood without also considering interpersonal, institutional and structural forms of violence that perpetuate gender inequalities. This is usually reflected in laws, policies and practices that maintain one group's advantage over another in the home, in places of employment, in terms of educational opportunities, access to resources, protection by the police and other State authorities, and access to services and benefits. Violence violates the equality and non-discrimination rights of women and girls in ways that are contingent, amongst others, on women's material conditions, individual attributes and social locations.<sup>1</sup>

1. **Material reality**, such as educational attainment, housing, and access to land, water, food and work, all play a role in how and to what extent women experience violence. Not only

---

<sup>1</sup> A/HRC/17/26, para.19

does violence disproportionately target the most vulnerable women in society, but the conditions in which women live can also position them as being especially vulnerable to gender-based violence; and to the lack of adequate and effective remedies.<sup>2</sup>

2. **Individual aspects** of women's bodily attributes such as race, skin color, intellectual and physical abilities, age, language skills and fluency, ethnic identity and sexual orientation, further contribute to risk factors for violence; and to the lack of adequate and effective remedies.<sup>3</sup>
3. **Social location** refers to the different positions occupied by individual women that give rise to both inter-gender and intra-gender differences. Factors such as geographic location, level of education, employment situation, household size, marital relationships, and access to political and civic participation, all impact women's vulnerability to violence; and to the lack of adequate and effective remedies.<sup>4</sup>

My report argues that due to the lack of adoption of a holistic approach, which includes an intersectional and multiple discrimination understanding, a one-size-fits-all programmatic approach is the norm. The multiplicity of forms of violence against women, as well as the fact that this violence frequently occurs at the intersection of different types of discrimination, makes it necessary to adopt multifaceted strategies within a holistic approach. The holistic approach counters efforts that focus on violence against women as solely a woman's issue, as such an approach risks minimizing the role that socio-economic, cultural, religious, racial, ethnic, ability, education, sexual orientation, access to citizenship rights and resource allocation inequalities play in maintaining epidemic levels of violence against women; and also impunity for crimes against women.

### **State responsibility to act with due diligence to eliminate violence against women**

The focus of my 2013 report to the Human Rights Council was on State responsibility to act with due diligence to eliminate violence against women. As a general rule, state responsibility is based on acts or omissions either committed by state actors or by actors whose actions are attributable to the state. A longstanding exception to this rule is that a state

---

<sup>2</sup> A/HRC/17/26, para.73

<sup>3</sup> A/HRC/17/26, para.22

<sup>4</sup> Ibid.

may incur responsibility where there is a failure to exercise due diligence to prevent or respond to violations committed by non-state actors.

I have studied the measures undertaken by Governments to try to address violence against women, mainly through: a) legislative measures, such as the ratification of international human rights instruments, the harmonization of national legislation, or the adoption of specific legislation on violence against women; b) institutional and policy measures, such the introduction of specialized mechanisms to investigate and prosecute violence against women, developing national action plans, providing support and services to victims, enhancing cooperation and information-sharing between authorities and service providers; and c) awareness raising and capacity-building activities, including gender training for civil servants, campaigns aimed at raising awareness on violence against women, and the integration of a gender equality perspective into policies and programs. With diverse levels of commitment, resources and political will, most countries have put in place measures in an attempt to curb the prevalence of violence against women. However, and despite these efforts, violence against women remains a pervasive and widespread phenomenon, and no single country can claim that there is progressive elimination occurring.

Under international human rights standards, States are compelled to prevent and respond to all acts of violence against women. General Recommendation 19 of the Convention on the Elimination of all Forms of Discrimination against Women and the 1993 Declaration on the Elimination of Violence against Women urge States to exercise due diligence to “prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons”. The Declaration also establishes that States should “develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and to just and effective remedies for the harm that they have suffered; and States should also inform women of their rights in seeking redress through such mechanisms”.<sup>5</sup> The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (the “Belém do Pará Convention”) is the first human rights treaty that explicitly prohibits gendered violence, and it codifies the

---

<sup>5</sup> Resolution 48/104, art. 4 (c).

“right of every woman to be free from violence which includes ... [t]he right of women to be free from all forms of discrimination....” (Art. 6). The Belém do Pará Convention contains both immediate and progressive initiatives for the effective implementation of reparations.

States’ efforts to comply with their due diligence obligation should not only focus on legislative reform, access to justice and the provision of services for victims, but must also address the structural causes that lead to violence against women. The enactment of adequate legislation on violence against women is a first preventative step. Shortcomings in legislation have particularly negative effects in contexts where women’s subordinate status within intimate relationships, their economic dependence on male partners, their fear of being abandoned or further assaulted, and also their prior experiences with the justice system make them more vulnerable to intimate partner violence.

Studies show that there is a correlation between prevalence rates and effective and responsive accountability measures. The exercise of due diligence requires that States have a responsibility to: (a) conduct effective investigations of the crime, and prosecute and sanction acts of violence perpetrated by State or private actors; (b) guarantee *de jure* and *de facto* access to adequate and effective judicial remedies; (c) include in the obligation of access to justice, a requirement to treat women victims and their relatives with respect and dignity throughout the legal process; (d) ensure comprehensive reparations for women victims of violence and their relatives; (e) identify certain groups of women as being at particular risk for acts of violence due to having been subjected to discrimination based on more than one factor, including women belonging to ethnic, racial and minority groups; and (f) modify the social and cultural patterns of conduct of men and women and eliminate prejudices, customary practices and other practices based on the idea of the inferiority or superiority of either of the sexes, and on stereotyped roles for men and women.

Due diligence requires that investigations should be conducted with a gender perspective and consider a victim’s special vulnerability. It also requires the establishment of an independent and efficient judicial system, and penalties for violence against women to be sufficiently severe, so as to act as a deterrent to future conduct. Judicial proceedings aimed at preventing violence against women must also be finalized within a reasonable period of time, in order to be effective preventative and protective measures *de facto*.<sup>6</sup>

---

<sup>6</sup> See A/HRC/23/49, para. 74

State responsibility to act with due diligence, mandates that the State has an obligation to investigate all acts of violence against women, including systemic failures to prevent violence against women. Where a specific incident of violence takes place in the context of a general pattern of violence against women, there is a wider scope required to comply with the due diligence obligation.<sup>7</sup> The pervasiveness of patriarchal attitudes in law enforcement and justice systems, coupled with a lack of resources and insufficient knowledge about existing applicable legislation, leads to inadequate responses to cases of violence against women and the persisting social acceptance of such acts.<sup>8</sup> Low levels of prosecution for crimes against women reinforce the belief among victims that there is no systematic and guaranteed judicial response to violence against women and that there might be no punishment for their abusers.<sup>9</sup>

State responsibility in respect of remedies cannot be just about returning women to the situation they were in before the individual instance of violence, but instead should strive to have a transformative potential. Remedies should aspire, to the extent possible, to subvert instead of reinforce pre-existing patterns of structural subordination, gender hierarchies, systemic marginalization and structural inequalities that may be at the root cause of the violence that women experience. As I argued in my 2010 report, the notion of a right to reparation is located within the framework of the law of remedies and can serve both individual and societal goals. The underlying purposes of the law of remedies includes among others, corrective justice, deterrence, retribution and restorative justice.<sup>10</sup> Reparations should include a gender perspective, more so when dealing with women victims of acts of discrimination and violence, including in the spheres of satisfaction, rehabilitation, guarantees of non-repetition and compensation.

As regards the due diligence standard, I argue in my report that this must be separated into two categories: individual due diligence and systemic due diligence. Individual due diligence refers to the obligations States owe to particular individuals, or groups of individuals, to prevent, protect, punish and provide effective remedies on a specific basis. Individual due diligence places an obligation on the State to assist victims in rebuilding their lives and moving forward, and can include monetary compensation, as well as assistance in relocating or in finding a job. Individual due diligence also requires States to

---

<sup>7</sup> See A/HRC/23/49, para. 73

<sup>8</sup> See A/HRC/17/26/Add.2, para. 59.

<sup>9</sup> See A/66/215, para. 63

<sup>10</sup> A/HRC/14/22, para. 12

punish not just the perpetrators, but also those who fail in their duty to respond to the violation.

Systemic due diligence on the other hand refers to the obligations States must take to ensure a holistic and sustained model of prevention, protection, punishment and reparations for acts of violence against women. It is the responsibility of States to create good and effective systems and structures that address the root causes and consequences of violence against women. At a systemic level, States can meet their responsibility to protect, prevent and punish by, among other things, adopting or modifying legislation; developing strategies, action plans and awareness-raising campaigns and providing services; reinforcing the capacities and power of police, prosecutors and judges; adequately resourcing transformative change initiatives; and holding accountable those who fail to protect and prevent, as well as those who perpetrate violations of human rights of women. Last but not least, States have to be involved more concretely in overall societal transformation to address structural and systemic gender inequality and discrimination<sup>11</sup>

## **The United States' Response to Violence Against Women**

### **Site Visit to the U.S.**

In 2011, I conducted a site visit to the United States and subsequently issued a report that broadly examined the situation of violence against women in the country. I noted positive legislative and policy initiatives undertaken by the Government to reduce the prevalence of violence against women, including the enactment and subsequent reauthorizations of the Violence against Women Act, and the establishment of dedicated offices on violence against women at the highest level of the Executive. Nevertheless, I also observed a lack of legally binding federal provisions providing substantive protection against or prevention of acts of violence against women. This lack of substantive protective legislation, combined with inadequate implementation of some laws, policies and programmes, has resulted in the continued prevalence of violence against women and the discriminatory treatment of victims, with a particularly detrimental impact on poor, minority and immigrant women. In the light of my findings, I offered specific recommendations that, *inter alia*, focused on

---

<sup>11</sup> See A/HRC/23/49, para. 70-71



providing remedies for women victims of violence and tackling the multiple forms of discrimination faced by certain groups of women that make them more vulnerable to violence.

In my report on my site visit to the United States, I examined the landmark Violence Against Women Act (VAWA), which aims to address the high incidence of violence against women in the United States. VAWA has steadily expanded funding to address domestic violence and with each reauthorization has included historically underserved groups, such as Native-American and immigrant women. My report states that although VAWA's intentions are laudable, **there is little in terms of actual Federal substantive protection or prevention for domestic violence.** This has been further exacerbated by U.S. Supreme Court jurisprudence emanating from cases such as *DeShaney v. Winnebago Dep't of Soc. Servs.*, *United States v. Morrison* and *Town of Castle Rock v. Gonzalez* (the last of which is the case that is the subject of this hearing). 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. It has been argued 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.<sup>12</sup> At the conclusion of my visit, I recommended that the United States "should reassess existing mechanisms for protecting victims and punishing offenders, and establish meaningful standards for the enforcement of protection orders and also impose consequences for a failure to enforce them."<sup>13</sup>

---

### **Concluding Observations of United Nations Treaty Monitoring Bodies**

Two United Nations treaty monitoring bodies—the Human Rights Committee and the Committee on the Elimination of Racial Discrimination—have recently reviewed the United States and echoed several of the concerns I expressed in 2011. (The UN Committee Against Torture will review the United States in November). The Human Rights

---

<sup>12</sup> Special Rapporteur on Violence Against Women, *Addendum: Mission to the United States of America*, U.N. Doc. A/HRC/17/26/Add.5 (June 6, 2011) (by Rashida Manjoo).

<sup>13</sup> UN News Centre, *US must do more to protect women from domestic violence, UN rights expert warns*, (August 23, 2011), online at <http://www.un.org/apps/news/story.asp?NewsID=39362#.VEaq2UuZMYp>.

Committee's Concluding Observations expressed concern "that domestic violence continues to be prevalent in the State party, and that ethnic minorities, immigrants, American Indian and Alaska Native women are at particular risk. The Committee is also concerned that victims face obstacles to obtain remedies, and that law enforcement authorities are not legally required to act with due diligence to protect victims of domestic violence and often inadequately respond to such cases."<sup>14</sup> The Committee recommended that the U.S. "strengthen measures to prevent and combat domestic violence and ensure that law enforcement personnel appropriately respond to acts of domestic violence."<sup>15</sup> It went on to advise that the U.S. "should ensure that cases of domestic violence are effectively investigated and that perpetrators are prosecuted and sanctioned....[and] ensure remedies for all victims of domestic violence and take steps to improve the provision of emergency shelter, housing, child care, rehabilitative services and legal representation for women victims of domestic violence."<sup>16</sup>

Similarly, in its 2014 Concluding Observations on the United States, the Committee on the Elimination of Racial Discrimination expressed concern about "the disproportionate number of women from racial and ethnic minorities, particularly African American women, immigrant women, and American Indian and Alaska Native women, who continue to be subjected to violence, including rape and sexual violence."<sup>17</sup> The Committee called upon the United States "to intensify its efforts to prevent and combat violence against women, particularly against American Indian...women, and ensure that all cases of violence against women are effectively investigated, perpetrators prosecuted and sanctioned, and victims provided with appropriate remedies." It echoed its previous recommendation that the U.S. "provide sufficient resources for violence prevention and service programmes; provide specific training for those working within the criminal justice system, including police officers, lawyers, prosecutors, judges and medical personnel; and undertake awareness raising campaigns on the mechanisms and procedures available to seek remedies for violence against women."<sup>18</sup>

---

<sup>14</sup> Human Rights Committee, Concluding observations on the fourth periodic report of the United States of America, U.N. Doc. CCPR/C/USA/CO/4 9 (April 23, 2014), online at <http://www.refworld.org/publisher/HRC/CONCLOSURES/USA/5374afcd4,0.html>.

<sup>15</sup> *Id.* at 8

<sup>16</sup> *Id.*

<sup>17</sup> Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States of America*, U.N. Doc. CERD/C/USA/CO/7-9 (August 29, 2014), online at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cerd\\_concluding\\_observations2014.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cerd_concluding_observations2014.pdf).

<sup>18</sup> *Id.* at 9

## **Past Communications Between the Rapporteurship on Violence Against Women and the United States re the *Lenahan* case**

Ms. Lenahan's case first came to the attention of the office of the Special Rapporteur on Violence Against Women in 2006 when my predecessor, Special Rapporteur Yakin Erturk, sent a communication to the United States concerning Ms. Lenahan's Supreme Court case, *Town of Castle Rock v. Jessica Gonzales*. Special Rapporteur Erturk expressed concern "that women facing domestic violence may choose to refrain from seeking a protective order (which may escalate the conflict with the violent partner) if they are not guaranteed that police will enforce the protective order and if they have no access to judicial remedy in case the police fail to act in cases of violations."<sup>19</sup> She urged the United States to "take all necessary measures to guarantee that the rights and freedoms of [Ms. Lenahan] are respected and she is assured compensation for any human rights violations suffered."<sup>20</sup>

The United States responded one year later to this communication, asserting that the facts have yet to be proven or disproven in court, and that the United States is among the world's strongest protectors of victims of domestic abuse. It also attached its brief to the Inter-American Commission on Human Rights (IACHR) that responded to Ms. Lenahan's IACHR petition. Special Rapporteur Erturk, in her report on communications with the government, iterated that she would "follow with interest the deliberation of the [Commission] on this case."<sup>21</sup> My office has continued to follow developments in the Lenahan case and also the broader issue of protection for domestic violence victims in the United States.<sup>22</sup>

### **Conclusion**

My predecessors' and I have constantly stressed that the responsibility to protect women and girls from violence and discrimination is primarily the responsibility of the State, as the ultimate duty bearer. I strongly believe that the lack of a holistic approach to violence against women has been an obstacle in identifying, preventing, and ultimately ending, all forms of

---

<sup>19</sup> Special Rapporteur on Violence Against Women, *Allegation Letter to the United States*, U.N. Doc. AL/G/SO/214 (89-11) (July 19, 2006) (by Yakin Erturk).

<sup>20</sup> *Id.*

<sup>21</sup> Special Rapporteur on Violence Against Women, *Addendum: Communications to and from Governments*, U.N. Doc. A/HRC/6/Add.1 (February 27, 2008) (by Yakin Erturk), online at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/109/83/PDF/G0810983.pdf?OpenElement>.

<sup>22</sup> Special Rapporteur on Violence against Women, *Addendum: Mission to the United States of America*, *supra*.

violence against women, as is evident in States' responses to their due diligence obligations. I have repeatedly argued that the failure in response and prevention measures stems from States' inability and/or unwillingness to acknowledge and address the core structural causes of violence against women. Linkages should be made between violence against women and other systems of subordination and oppression prevalent within societies.

A legislative and policy approach will not bring about substantive change if it is not implemented within a holistic approach that simultaneously targets the accountability deficit that continues to exist; the empowerment of women; broad social transformation; and the provision of remedies that ultimately break the continuum of discrimination and violence that women continue to experience.

Determining how best to protect, promote and fulfill women's rights to non-discrimination, equality and freedom from violence, also requires States to respect their international law commitments, including the obligation to act with due diligence in efforts towards elimination. Furthermore, holding responsible the perpetrators of such violence, as well as state authorities who fail in their duty to protect and prevent violations, should be the rule and not the exception.

A holistic approach requires:

- 1) Treating human rights as universal, interdependent and indivisible, yet taking into consideration the specificities of violence against women and engaging at a local level to adequately recognize the diverse experiences of oppression faced by women;
- 2) Situating violence on a continuum that spans interpersonal and structural violence and acknowledging that violence against women is not the root problem, but that it occurs because other forms of discrimination have been allowed to flourish;
- 3) Accounting for individual, institutional and structural discrimination, thus considering not only how individual lives are affected by the immediate impact of abuse, but how structures of discrimination and inequality perpetuate and exacerbate gender, racial and other inequalities;
- 4) Analyzing not only the social and/or economic hierarchies between women and men (inter-gender), but also among women (intra-gender), to identify how discrimination affects women in different ways - depending on how they are positioned within social, economic and cultural hierarchies, and incorporating this into anti-violence efforts.

Thank you once again for the opportunity to participate in this hearing and thank you for your attention.