Update to the Shadow Report on Domestic Violence, Gun Violence, and “Stand Your Ground” Laws in the United States

for consideration during

the 110th Session of the United Nations Human Rights Committee

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The Human Rights Clinic at the University of Miami School of Law, Legal Momentum, Women Enabled, Inc., and The Advocates for Human Rights submit this update, as of February 7, 2014, to their previous shadow report submission:

Domestic Violence: The Case of Jessica Lenahan (Gonzales) v. United States

• On October 30, 2013, the U.S. government declined to substantively participate in a working meeting convened by the Inter-American Commission on Human Rights in the Lenahan case due to the government shutdown. The working meeting was rescheduled to January 30, 2014. At that working meeting, representatives from the federal government (represented by the U.S. State Department) read a statement indicating the government’s willingness to discuss domestic violence policy changes at the federal level (through the Department of Justice) but also expressing the government’s refusal to continue discussions regarding the individual remedies recommended by the Commission in the case (i.e. financial compensation for Jessica Lenahan and an investigation into the circumstances of the children’s deaths and the systemic policing failures that allowed the tragedy to occur). Essentially, the State Department’s position is that as a country that follows a federalist system, the United States is unable to implement international human rights principles or decisions through any governmental entity other than the federal executive branch. The State Department emphatically refused to engage with any questions concerning the application of international human rights law through federal legislative or judicial action or through state level action at any level (state executive, legislative or judicial branches). This position clearly does not comport with fundamental principles of international law that a nation-state is responsible for ensuring that all the constituent parts of government—be they federal, state, or other governmental actors—comply with their human rights obligations.

• One positive development is that a roundtable discussion on Domestic Violence and Human Rights, sponsored by the Department of Justice, has been scheduled for April 10, 2014. This roundtable was conceived by the Petitioners as a means by which the federal government could take steps toward implementing the Commission’s Lenahan decision. Representatives from multiple government agencies will be present at this
meeting, the purpose of which is to explore the utility of incorporating human rights principles into law and policy to address domestic and gender-based violence.

“Stand Your Ground” Laws, Domestic Violence, Gender and Race

• On September 26, 2013, Marissa Alexander was granted a new trial. The Florida District Court of Appeals found the trial-level judge did not properly instruct the jury on the burden for proving self-defense. The appeals court, however, upheld the trial court’s ruling that precluded Alexander from invoking the “Stand your Ground” law as a defense. Thus, in the new trial the burden is on the prosecution to prove that Alexander was not acting in self-defense, but Alexander will still be unable to invoke a “Stand Your Ground” defense. After spending 21 months in jail, Alexander was released on home detention on November 27, 2013 with a bond set at $200,000. In early January, the Florida State attorney moved to revoke Alexander’s bond, claiming that she had violated the conditions of her release and home detention. In a hearing held on January 10, 2014, the judge ruled that there had been no willful violation of the conditions of her release and allowed Alexander to remain free while waiting for her retrial.

• Some supporters of Alexander, including State Senator Dwight Bullard (D-Miami), have requested that Florida Governor Rick Scott and the members of the clemency board pardon her, but no such decision has been issued as of this update. Alexander’s new trial date is scheduled for July 28, 2014.

Immigrant Women and Domestic Violence

• On October 7, 2013, National Public Radio (“NPR”) aired a segment highlighting the importance of legislation that protects immigrant women who are victims of domestic violence. In California, a woman was arrested after neighbors reported hearing her boyfriend beating her up. Because of her immigration status, both she and her abuser were arrested. She was taken into custody by Immigration and Customs Enforcement (“ICE”), and detained for 8 months, at which point she obtained a U-Visa. This story is indicative of a larger systemic problem, and immigration reform efforts must ensure protection for victims of domestic violence.

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