



HUMAN RIGHTS INSTITUTE

December 14, 2015

Associate Commissioner, Family and Youth Services Bureau
Administration for Children and Families
1250 Maryland Avenue, S.W.
Washington, D.C., 20024

Submitted via regulations.gov

Re: RIN 0970-AC62, 45 CFR Part 1370: Family Violence Prevention and Services Programs; Proposed Rule

Dear Sir or Madam,

The Columbia Law School Human Rights Institute, founded in 1998, draws on the law school's deep human rights tradition to support federal, state, and local government efforts to promote and protect core human rights of dignity, equality, and opportunity.

The Institute respectfully submits this comment to inform the Department of Health and Human Services of the human rights principles relating to government obligations to ensure freedom from domestic violence as the Department considers adopting The Family Violence Prevention Services Program Proposed Rule (RIN 0970-AC62) ("The Proposed Rule"). As detailed below, we propose the inclusion of specific preamble language that clarifies how this rule furthers the government's efforts to ensure the human right to be free from domestic violence.

The Right to Be Free from Violence and Abuse

Part IV ("the Background") of the Proposed Rule offers welcome acknowledgement that the President has affirmed the basic human right to be free from violence and abuse – a right that is increasingly recognized at the local level as well. In the past several years, over two dozen city and county governments have declared support for a human rights based-approach to domestic violence, and emphasized the corollary responsibility of local government to secure the right to be free from domestic violence.ⁱ Several cities, including San Francisco and Los Angeles, have also incorporated universal human rights principles into local law to address gender equity, including issues of violence against women.ⁱⁱ

Federal agencies, like the Department of Housing and Urban Development, have already taken some action to highlight how basic needs such as housing are critical to the right to

live free from violence.ⁱⁱⁱ Federal efforts to prevent domestic violence and to meet the needs of all survivors, regardless of sex, gender, race, ethnicity, sexual orientation, gender identity, language, national origin, disability, age, or other factor, represent important steps in fulfilling the right to be free from violence and abuse. This right is grounded in core international human rights principles,^{iv} which provide a framework for laws, policies, and programs to address gender-based violence and a means to assess the effectiveness of existing efforts.

Fulfilling human rights requires government to take action to create conditions where all individuals, including individuals who experience violence and abuse, can meet their basic needs, such as adequate housing and access to health care.

The human rights framework calls for government to take proactive steps to prevent and address acts of gender-based violence committed by both private and governmental actors. Further, it emphasizes laws and policies that empower victims and prioritize survivor dignity, including access to adequate services and support to enable individuals to leave violent circumstances without putting basic needs, like housing, at stake.

In particular, “due diligence” represents the internationally accepted standard to guide government efforts to address gender-based violence. The due diligence standard is drawn from a number of human rights agreements focused specifically on the rights of women,^v and international human rights treaties that the United States has ratified.^{vi}

The Due Diligence Standard

Due diligence calls for laws, policies, programs, and practices to alleviate discrimination that can occur on an individual or systemic level—whether intentional or unintentional. Due diligence underscores the importance of changing attitudes, policies, and structures that are reflective of gender bias and that perpetuate gender-based violence. It shifts the focus from addressing violence after it occurs to addressing the systemic causes of domestic violence and preventing it from occurring in the first place.

The United Nations Special Rapporteur on Violence Against Women—an independent expert on human rights—has articulated the core components of governments’ due diligence obligations with respect to violence against women. Under this framework, governments must: (1) take all appropriate measures to prevent gender-based violence from occurring; (2) offer appropriate protections to potential targets; (3) investigate violence when it does occur; (4) hold offenders to account for their actions; and (5) provide remedies and compensation for victims.^{vii} This multipronged, proactive approach, grounded in the right to be free from discrimination in all its forms, aims to address and alleviate the systemic causes of gender-based violence, and to ensure redress.

Experts’ Recommendations to the United States

Over the past two years, international human rights experts have made several recommendations to the United States to strengthen its approach to preventing violence

against women, with a particular emphasis on African American women, immigrant women, and American Indian and Alaska Native women.

U.N. experts have noted a number of positive developments, including the Tribal Law and Order Act of 2010, the reauthorization of VAWA, and passage of Family Violence Prevention and Services Act (FVPSA). However, they have also called on the U.S. to “intensify its efforts to prevent and combat violence against women”^{viii} by taking action to:

- create and adequately fund prevention and assistance programs;
- enhance survivor access to services, including counseling and temporary shelters, housing, childcare, and legal representation;
- carry out training for law enforcement officers, medical personnel, and court representatives that work with survivors;
- ensure prompt and thorough investigations and accountability for acts of sexual violence; and
- support tribal authorities in addressing domestic violence against Native American Women.^{ix}

Recommendations for Clarifying the Proposed Rule’s Connections to Human Rights

The United States has taken important steps towards being a leader in recognizing the right to be free from domestic violence as a human right, and taking action to ensure this right through laws, policies, and programs that reflect universal human rights principles, including the due diligence standard. We urge the Department of Health and Human Services to deepen these efforts, including through the Proposed Rule.

In particular, we urge the Agency to consider the inclusion of preamble language that explicitly captures how the Proposed Rule fosters human rights and meets basic needs. Possible language includes:

Furthering federal recognition of the basic human right to be free from violence and abuse, this rule takes steps towards fulfilling the government’s duty to act with due diligence through a multi-pronged, proactive approach to preventing violence, protecting those vulnerable to abuse and providing adequate remedies when violence does occur. Policies and programs designed to meet survivors’ basic needs, including shelter, are essential to empower women and help prevent future harm.

While the current language contained in the Background is an important reaffirmation of the human right to be free from domestic violence, additional language would clarify the specific ways that government policy can fulfill this right.

Thank you for considering this comment. Please feel free to contact JoAnn Kamuf Ward, Associate Director of the Institute’s Human Rights in the U.S. Project, at jward@law.columbia.edu if you have any further questions.

ⁱⁱ For a complete list of local resolutions, see Cornell University Law School Global Gender Justice Clinic, Columbia Law School Human Rights Institute & University of Miami School of Law Human Rights Clinic, *Freedom from Domestic Violence as a Fundamental Human Right Resolutions, Presidential Proclamations, and Other Statements of Principle* (2015), <http://www.lawschool.cornell.edu/womenandjustice/DV-Resolutions.cfm>.

ⁱⁱⁱ S.F., Cal., Admin. Code § 12K (2001); L.A., Cal., Ordinance 175735 (Dec. 24, 2003).

ⁱⁱⁱ U.S. Department of Housing and Urban Development's Official Blog, *The right to live in a home free from violence* (March 27, 2015), <http://blog.hud.gov/index.php/2015/03/27/live-home-free-violence/>.

^{iv} This testimony draws heavily from research and findings by the Human Rights Institute on human rights as they apply to gender-based violence, detailed in *Domestic Violence and Sexual Assault in the United States* (2014), written by the University of Miami School of Law Human Rights Clinic, Columbia Law School Human Rights Institute & ACLU Women's Rights Project, available at http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/dv_sa_hr_guide_reduce.pdf.

^v Declaration on the Elimination of Violence Against Women, art. 4(c), U.N. Doc. A/RES/48/104 (Dec. 20, 1993), available at <http://www.un.org/documents/ga/res/48/a48r104.htm>; Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, U.N. Doc. A/34/46, entered into force Sept. 3, 1981. [hereinafter CEDAW]. These instruments and subsequent "General Comments" published by the CEDAW Committee call on countries ("States" or "States Parties" under international law) to prevent, investigate and punish acts of violence against women, whether by government or private actors. See Comm. on the Elimination of All Forms of Discrimination Against Women, General Recommendation No.19, Violence Against Women, ¶ 19, U.N. Doc. A/47/38 (Jan. 29, 1992), available at <http://www1.umn.edu/humanrts/gencomm/gener19.htm>.

^{vi} The International Covenant on Civil and Political Rights (ICCPR) has been interpreted to include an obligation to "exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities." Human Rights Comm., General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, ¶ 19, U.N. Doc. CCPR/C/21/Rev.1/Add. 13 (May 26, 2004), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/419/56/PDF/G0441956.pdf>. The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) also includes an obligation for States to prohibit discrimination by private parties and recognizes the right to protection by the State against violence, "whether inflicted by government officials or by any individual, group, or institution" as well as the right to protection from housing discrimination. International Convention on the Elimination of all Forms of Racial Discrimination, arts. 2, 5(b), 5(e)(iii), Dec. 21, 1965, 660 U.N.T.S. 195, U.N. Doc. A/6014, entered into force Jan. 4, 1969.

^{vii} See e.g., Special Rapporteur on Violence against Women, The Due Diligence Standard as a Tool for the Elimination of Violence Against Women, ¶ 17, U.N. Doc. E/CN.4/2006/61 (Jan. 20, 2006) (by Yakin Ertürk), available at <http://daccess-ddsny.un.org/doc/UNDOC/GEN/G06/103/50/PDF/G0610350.pdf?OpenElement>; Special Rapporteur on Violence against Women, Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to the United States, U.N. Doc. A/HRC/17/26/Add.5 (Jun. 6, 2011), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/138/26/PDF/G1113826.pdf?OpenElement>.

^{viii} The CERD Committee, which reviews compliance with the CERD, has expressed particular concern with violence against women in the United States. Comm. on the Elimination of Racial Discrimination, *Concluding Observations—United States of America*, ¶ 19, U.N. Doc. CERD/C/USA/CO/7-9 (Sept. 25, 2014).

^{ix} Id.; The U.N. Human Rights Committee, the body responsible for monitoring compliance with the ICCPR, has expressed its concern "that domestic violence continues to be prevalent in the [United States] [...] and that law enforcement authorities are not legally required to act with due diligence to protect victims of domestic violence." Human Rights Comm., Concluding observations on the fourth periodic report of the United States of America, ¶ 16, U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FUSA%2FCO%20F4 (regarding domestic violence, the Human Rights Committee stated that the United States of America "should, through the full and effective implementation of the Violence against Women Act and the Family Violence Prevention and Services Act, strengthen measures to prevent and combat domestic violence and ensure that law enforcement personnel appropriately respond to acts of domestic violence.

The [United States] should ensure that cases of domestic violence are effectively investigated and that perpetrators are prosecuted and sanctioned. The [United States] should 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.”).