



Written Testimony of the American Civil Liberties Union Women's Rights Project Before the U.N. Special Rapporteur on Adequate Housing*

November 8, 2009

The American Civil Liberties Union and Women's Right to Housing

The American Civil Liberties Union (ACLU) is a national, nonpartisan public interest organization of more than 500,000 members, dedicated to protecting the human rights of individuals in the United States and elsewhere. Through its Women's Rights Project, founded in 1972 by Ruth Bader Ginsburg, the ACLU has long been a leader in the legal battles to ensure women's full equality in the United States. This commitment includes fighting for equal housing opportunities for women and working to protect the rights of women victimized by violence. In recent years, the ACLU Women's Rights Project has taken a leading role at the local, state, and national levels in working to improve access to safe housing for survivors of domestic violence and their children. Through these efforts, the ACLU has been at the forefront of the campaign to establish that discrimination against domestic violence victims is a form of gender discrimination under federal and state civil rights laws. The ACLU also has engaged in advocacy surrounding the effects of the "war on drugs" upon poor women and their families, including barriers to housing and mistreatment of families living in public housing. In addition, through its Human Rights Program founded in 2004, the ACLU is working to bring a human rights analysis and framework to its domestic advocacy.

Much of the ACLU's work on behalf of battered women and their families has focused on securing safe housing for survivors of domestic violence. Once in a violent relationship, a lack of alternative housing can make it all but impossible for women to escape the abuse and achieve independence, even when their lives and the lives of their children are in danger. This is particularly true for women who live in government-subsidized housing, where poverty combined with public housing agency policies prohibiting the transfer of subsidies might make it impossible for domestic violence victims to re-locate. The result is that women are forced to choose between enduring abuse or becoming homeless.

The ACLU also works to counter the barriers to housing and the mistreatment of public housing residents that occur as part of the "war on drugs." This work includes efforts to combat policies in public housing that tear families apart through criminalization and banning people from residing in, or even visiting other residents in, public housing. The ACLU is currently

* Prepared by Sandra S. Park and Ariela M. Migdal of the ACLU Women's Rights Project and Steven Watt of the ACLU Human Rights Program.

For further information, please contact: Sandra Park, Staff Attorney, ACLU Women's Rights Project; 125 Broad Street, 18th Floor, New York, NY 10004; Telephone: (212) 519-7871; Facsimile: (212) 549-2580; Email: spark@aclu.org.

challenging a policy that prohibits residents of public housing in Annapolis, Maryland from visiting with certain family members and friends in the residents' homes. The policy prevents residents, many of whom are women raising families and elderly women, from having their family members take care of them and their children in their homes. The result is that women are forced to choose between their right to affordable public housing and their right to raise their families with the full participation of other family members, including their children's fathers.

Attached to this testimony are statements by three ACLU clients addressing these issues, starting at page 13.¹

Violence Against Women, Homelessness, and Housing in the United States

According to the U.S. Department of Justice's Bureau of Justice Statistics, women were the victims in about 84% of violent crimes committed by spouses and about 86% of crimes committed by boyfriends or girlfriends from 1998-2002.² These statistics are consistent with the Department of Justice's 2008 data, in which women were found to be the victims in about 85% of nonfatal violent crimes committed by intimate partners.³ Women are 74% of the victims of stalking, defined as a course of conduct directed at a specific person that would cause a reasonable person to feel fear, such as following or spying on a victim.⁴

Not only are women more likely than men to experience domestic violence, a significant percentage of women in the United States experience such violence. Nationally, 26 percent of women, compared to 8 percent of men, reported having been victimized by an intimate partner in their lifetime.⁵

Nor are all women in the United States equally likely to experience such violence. Poor women experience victimization by intimate partners at higher rates than women with higher household incomes; between 2001 and 2005, women with annual household incomes of less than \$7,500 were more than six times as likely as women with annual household incomes over \$50,000 to experience domestic violence.⁶ Data indicate that women are at much greater risk of domestic

¹ The Women's Rights Project is also concerned about the impact of the mortgage crisis and discriminatory lending practices on women, particularly on women of color. In low-income neighborhoods in cities including nearby Baltimore, MD, foreclosures have disproportionately affected women, in part because women were given a disproportionate share of subprime mortgages. The Consumer Federation of America found that among high earners, African American women were as much as five times more likely to receive subprime mortgages than white men. See John Leland, "Baltimore Finds Subprime Crisis Snags Women," New York Times (Jan. 15, 2008).

² Matthew R. Durose, Caroline W. Harlow & Patrick A. Langan et al., U.S. Dep't of Justice, NCJ 207846, *Family Violence Statistics 1* (2005), available at <http://www.ojp.usdoj.gov/bjs/abstract/fvs.htm>.

³ Shannan Catalano et al., U.S. Dep't of Justice, NCJ 228356, *Female Victims of Violence 1* (2009), available at <http://www.ojp.usdoj.gov/bjs/abstract/fvv.htm>.

⁴ Katrina Baum et al., U.S. Dep't of Justice, NCJ 224527, *Stalking Victimization in the United States 3* (2009), available at <http://www.ojp.usdoj.gov/bjs/abstract/svus.htm>.

⁵ Patricia Tjaden & Nancy Thoennes, U.S. Dep't of Justice, NCJ 181867, *Extent, Nature and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Study 9* (2000), available at <http://www.ncjrs.gov/pdffiles1/nij/181867.pdf>.

⁶ Shannan Catalano, U.S. Dep't of Justice, *Intimate Partner Violence in the United States* (Dec. 19, 2007), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ipvus.pdf>.

violence when their partners are experiencing job instability or when the couple reports financial strain.⁷

The home and intimate partner violence are inextricably linked. More than 70% of intimate partner violence occurs at or near the victim's home.⁸ Women living in rental housing experience intimate partner violence at nearly four times the rate than women who own their own homes.⁹ Women living in urban areas also experience higher rates of domestic violence.¹⁰ Women living in disadvantaged neighborhoods are more likely to be the victims of domestic violence than women in more advantaged neighborhoods.¹¹ Indeed, women in financially distressed couples who live in a disadvantaged neighborhoods are twice as likely to be victims of domestic violence than are equally financially distressed couples living in more advantaged neighborhoods.¹² While African-Americans and whites with the same economic characteristics experience similar levels of domestic violence, African-Americans experience a higher rate of domestic violence in part because they are more likely to live in disadvantaged neighborhoods and experience economic distress.¹³

Moreover, domestic violence itself tends to render women economically vulnerable. For instance, studies indicate that a large proportion of welfare recipients have been or are victims of abuse by an intimate partner.¹⁴ Violent partners often seek to limit a woman's ability to find or keep a job, and the violence itself can pose a significant barrier to employment. For all these reasons, women who are most vulnerable to the loss of housing and who are the least likely to be able to locate affordable replacement housing, are at the greatest risk of domestic violence.

Indeed, local and regional studies across the United States confirm that domestic violence is a primary cause of homelessness. Between 22 and 50 percent of homeless women report that they are homeless as a direct result of domestic violence.¹⁵ Twenty-two cities that were surveyed in

⁷ Michael L. Benson & Greer Litton Fox, U.S. Dep't of Justice, Nat'l Inst. of Justice, *When Violence Hits Home: How Economics and Neighborhood Play a Role 2* (2004), available at <http://www.ncjrs.gov/pdffiles1/nij/205004.pdf>.

⁸ Catalano, *supra* note 5.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Benson & Fox, *supra*, at 1.

¹² *Id.* at 3-4.

¹³ *Id.* at 2.

¹⁴ Callie Marie Rennison & Sarah Welchans, U.S. Dep't of Justice, NCJ 178247, *Intimate Partner Violence 3* (2000), available at <http://www.ojp.usdoj.gov/bjs/abstract/ipv.htm>.

¹⁵ See, e.g., Center for Impact Research, *Pathways to and from Homelessness: Women and Children in Chicago Shelters* (January 2004) (finding 56 percent of women in Chicago shelters had been victims of domestic violence, and domestic violence was the immediate cause of homelessness for 22 percent of women in Chicago shelters), available at <http://www.impactresearch.org/documents/homelessnessreport.pdf>; Wilder Research Center, *Homeless in Minnesota 2003* (February 2004) (finding 31 percent of homeless women in Minnesota homeless because of domestic violence), available at <http://www.wilder.org/download.0.html?report=536>; National Conference of Mayors, *Hunger and Homelessness Survey* (December 2003) (finding 36 percent of cities surveyed identified domestic violence as major cause of homelessness), available at http://usmayors.org/pressreleases/documents/hunger_121803.asp; Missouri Association for Social Welfare, *Homelessness in Missouri: The Rising Tide* (May 2002) (finding 27 percent of all homeless persons to be survivors of domestic violence and identifying domestic violence as a primary cause of homelessness), available at http://www.masw.org/publications/homeless/report_text.pdf; Institute for Children and Poverty, *The Hidden*

2008 reported that an average of 15 percent of homeless people in the last year were victims of domestic violence.¹⁶ In 2005, 50 percent of surveyed U.S. cities cited domestic violence as a primary cause of homelessness.¹⁷ Some women and children lose their homes when they flee abuse and cannot subsequently find affordable transitional or long-term housing at a time when affordable housing increasingly scarce in the United States and public housing assistance is increasingly meager.¹⁸

Domestic violence survivors also become homeless as a result of discrimination by landlords based on their status as victims. Studies report that domestic violence survivors are subjected to discrimination when they apply for housing simply because they have experienced violence.¹⁹ Many tenants who have experienced intimate partner violence are re-victimized when their landlords seek to evict them based on their abusers' criminal activity, noise disturbance, or property damage.²⁰ Indeed, federal law generally requires public housing authorities and most federally-subsidized housing providers to include provisions in all leases permitting evictions for criminal activity without regard to the fault of the tenant.²¹ Some public housing authorities and landlords have relied on this provision to evict women because they have been the victims of domestic violence in their home, thus punishing women for being battered.²² Many private landlords, especially landlords renting to low-income families, have sought to evict battered women on the basis of similar lease provisions. Such actions constitute discrimination on the

Migration: Why New York City Shelters Are Overflowing with Families (April 2002) (finding almost half of all homeless parents in New York City have been abused and one quarter of all homeless parents are homeless as a direct result of domestic violence), available at <http://www.icpny.org/PDF/reports/foster.pdf?Submit1=Free+Download>; Joan Zorza, *Woman Battering: A Major Cause of Homelessness*, 25 Clearinghouse Review 420 (1991) (citing 1990 study finding that 50 percent of homeless women and children are fleeing abuse).

¹⁶ U.S. Conference of Mayors, *Hunger and Homelessness Survey 18* (2008), available at http://usmayors.org/pressreleases/documents/hungerhomelessnessreport_121208.pdf.

¹⁷ U.S. Conference of Mayors, *Hunger and Homelessness Survey 64* (2005), available at <http://usmayors.org/hungersurvey/2005/HH2005FINAL.pdf>.

¹⁸ See *supra* note 14.

¹⁹ See Equal Rights Ctr., *No Vacancy: Housing Discrimination Against Survivors of Domestic Violence in the District of Columbia* (2008) (found significant levels of discrimination, despite the District's anti-discrimination law), available at <http://www.equalrightscenter.org/publications/novacancy.php>; Nat'l Law Ctr. on Homelessness & Poverty & Nat'l Network to End Domestic Violence, *Lost Housing, Lost Safety: Survivors of Domestic Violence Experience Housing Denials and Evictions Across the Country* (2007), available at http://www.nlchp.org/content/pubs/NNEDV-NLCHP_Joint_Stories%20February_20072.pdf; Anti-Discrimination Ctr. of Metro NY, *Adding Insult to Injury: Housing Discrimination Against Survivors of Domestic Violence* (2005), available at <http://www.antibiaslaw.com/sites/default/files/files/DVReport.pdf>.

²⁰ See 42 U.S.C. § 14043e(3) (Congressional finding that “[w]omen and families across the country are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence”); Nat'l Law Ctr. on Homelessness & Poverty, *supra*, at 7-9; Richard M. Tolman et al., *Domestic Violence and Economic Well-Being of Current and Former Welfare Recipients* 10, 12 (2001), available at http://www.northwestern.edu/ipr/jcpr/workingpapers/wpfiles/tolman_danziger_rosen_SRI2001.pdf.

²¹ “Each public housing agency shall utilize leases which . . . provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants . . . engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy.” 42 U.S.C. § 1437d(k). See *Dep't of Housing & Urban Dev. v. Rucker*, 535 U.S. 125 (2002) (holding that this provision gives a public housing authority discretion to evict a tenant regardless of the tenant's fault or knowledge).

²² See, e.g., Brief of Amici Curiae National Network to End Domestic Violence, et al., *Dep't of Housing & Urban Dev. v. Rucker*, Nos. 00-1770, 00-1781 (U.S. Sup. Ct. December 20, 2001).

basis of sex, in violation of international human rights standards including those rights guaranteed by article 26 of the International Covenant on Civil and Political Rights (“ICCPR”).²³

In 2006, the federal Violence Against Women Act (“VAWA”) was amended to address the problem of discrimination in public housing and section 8-subsidized housing.²⁴ The law bars public housing authorities (“PHAs”) and section 8 owners from discriminating against housing applicants or tenants based on status as a victim of domestic violence, stalking, or dating violence. VAWA further prohibits the eviction of public housing and section 8 tenants based on the criminal activity perpetrated against them by their batterers. PHAs are authorized to “bifurcate” a victim’s lease, thereby removing an abuser from tenancy while allowing the rest of the family to remain, and to allow a voucher holder to move with her voucher to another unit if necessary to ensure safety. To implement these protections, the law provides a mechanism by which a tenant could certify that he or she has been a victim of one of these crimes and ensures that his or her information will be confidential. VAWA also requires PHAs to provide notice of VAWA’s protections to tenants and owners. Congress obligated PHAs to describe the programs provided to child and adult victims of domestic violence, dating violence, sexual assault, and stalking in their Annual and Five-Year Plans and to identify the housing needs of these survivors in the Consolidated Plans they submit to HUD.

While these protections are an important first step in severing the connection between domestic violence and homelessness, the promise of the law has gone largely unfulfilled. A 2009 report found that service providers reported working with hundreds of victims of domestic violence, dating violence, and stalking in a one year period who have been denied housing or served with eviction for reasons relating to the abuse they suffered.²⁵ Moreover, over 40% of PHA plans that were analyzed did not meet the basic standard set out by VAWA.²⁶ In January 2009, a coalition of 38 domestic violence and housing organizations from across the United States submitted extensive comments to HUD calling on HUD to issue final regulations that give guidance to PHAs and section 8 owners about how they should be implementing the VAWA protections.²⁷ The comments noted that HUD’s guidance thus far has been both inadequate in explaining VAWA rights to PHAs and owners and has at times been inconsistent with the law. This has created a situation where some survivors have access to the protections created by Congress, while many others are unaware of them or continue to experience discrimination.

While VAWA provides some measure of protection for domestic violence survivors who live in public housing and section 8-subsidized housing, legal protections are much more limited when it comes to most private housing in this country. Only a few states have enacted laws prohibiting

²³ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976 (hereinafter “ICCPR”).

²⁴ Pub. L. No. 109-162, §§ 606, 607 (2006).

²⁵ Nat’l Law Ctr. on Homelessness & Poverty, *Insult to Injury: Violations of the Violence Against Women Act* 10-13 (2009), available at http://www.nlchp.org/content/pubs/Insult_To_Injury_VAWA_Apr_%2020095.pdf.

²⁶ *Id.* at 4-8.

²⁷ American Civil Liberties Union et al., Comments in response to Docket No. FR-5056-I-01 (Jan. 27, 2009), available at <http://www.aclu.org/pdfs/womensrights/aclucoalitioncommentstohudregardingthevawainterimrule.pdf>.

discrimination against survivors of domestic violence and sexual assault.²⁸ And in many localities, the laws have actually worsened for victims. More cities and towns are passing ordinances that penalize tenants for repeated calls to police.²⁹ Because victims of domestic violence and stalking are likely to need to reach out to police on more than one occasion, they are particularly affected by these laws. For example, Laurie Grape, a tenant in East Rochester, NY, faced the consequences of a local law that requires eviction of a tenant if the police have been called to her home three times within a year period.³⁰ She had called the police to her home twice after her former partner, Mike Baker, violently assaulted her there. After the second call, Baker allegedly continued to stalk and harass Grape, told her that he knew she and her children would lose their housing if she reported his abuse, and threatened to call the police himself if she refused to allow him into her home. Grape stated that she endured further violence because of the threat of losing her home.

Under international human rights law, States have an obligation to take reasonable measures to prevent and protect against human rights abuses perpetrated by state actors and, under certain circumstances, abuses perpetrated by private actors.³¹ The United States has failed to put in place all reasonable measures to respect and ensure the housing rights of domestic violence survivors in violation of this internationally recognized “due diligence” standard. For instance, HUD has not yet issued final regulations that fully and adequately implement the VAWA housing provisions, and it has not yet carried out all of its responsibilities under VAWA, including ensuring that PHA plans comply with the statute’s requirements. Only a handful of states have adopted housing protections for domestic violence survivors in all types of housing, and some localities have actually undermined a victim’s ability to call for police assistance through the adoption of chronic nuisance ordinances.

To meet its human rights obligations, the United States should recognize housing discrimination based on domestic violence as a form of sex discrimination that must be eliminated to ensure the safety of women. When a public housing authority or landlord evicts an individual because she has suffered abuse in her home, it sends a pernicious message to tenants: keep domestic abuse secret or risk homelessness. This message is dangerous because the steps that a victim undertakes to end an abusive relationship are the very steps likely to escalate an abuser’s violence, make the abuse public, and expose her to the risk of eviction. Some abusers will retaliate against a victim who has ended an abusive relationship by means of property damage to a victim’s home, as well as further violence, which is likely to alert a landlord to the abuse in the relationship. In other instances, victims lose their homes when they call the police for help or give a landlord a copy of a protective order. An individual who knows that she may lose her home if her landlord learns about the abuse is far less likely to bar her abuser from her home and risk angering him, call the police for help, seek a personal protection order, or alert her landlord to a need for an accommodation (such as an emergency transfer to another apartment or an improvement in building security) that will enhance her safety and that of the property, because

²⁸ D.C. Code §§ 2-1401.01-.02; Ind. Code Ann. § 32-31-9-8; N.C. Gen. Stat. § 42-42.2; Or. Rev. Stat. § 90.449; R.I. Gen. Laws §§ 34-37-1 through -4; Wash. Rev. Code § 59.18.580.

²⁹ Cari Fais, *Denying Access to Justice: The Cost of Applying Chronic Nuisance Laws to Domestic Violence*, 108 Colum. L. Rev. 1181 (June 2008), available at <http://www.columbia-lawreview.org/assets/pdfs/108/5/Fais.pdf>.

³⁰ Am. Compl. ¶¶ 30-70, *Grape v. Town/Village of E. Rochester*, 07 Civ. 6075 (W.D.N.Y. 2007).

³¹ See e.g., ICCPR, Human Rights Committee, General Comment 31, Nature of the general legal obligation on states parties to the Covenant (hereinafter “General Comment 31”), ¶ 9, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004).

these acts that expose the violence threaten her with homelessness. The abuse is thus more likely to continue, because the risk of eviction makes it impossible to take the actions necessary to change the situation. Moreover, victims who are evicted may be exposed to the physical and emotional risks of homelessness. In this way, housing discrimination against domestic violence survivors undermines a battered woman's efforts to successfully escape the abuse and enhances the danger to her and her children.

*Stories of Housing Discrimination, Domestic Violence, and Homelessness*³²

The ACLU has represented a number of women who faced eviction from public housing and Section 8 housing because of the abuse they experienced. For example:

- In 2002, the ACLU of Michigan sued on behalf of Aaronica Warren, a single mother and then-VISTA volunteer who was living in public housing run by the Ypsilanti Housing Commission (YHC) in Michigan. After her ex-boyfriend forced his way into her apartment and assaulted her, YHC attempted to evict Ms. Warren and her son because of the violence that had occurred, even though Ms. Warren was the victim.
- In 2005, the ACLU represented Rubi Hernandez, who lived in California with her children in public housing operated by the Housing Authority of the City of Stanislaus. When her abusive estranged husband repeatedly physically attacked her, she sought an emergency transfer in an attempt to flee her husband. The housing authority initially refused the request, saying that although Ms. Hernandez had obtained a protective order and fled to a domestic violence shelter, she had not proven that she was in danger from her husband. Ms. Hernandez's case demonstrates the danger posed when housing authorities demand unreasonable levels of documentation to prove that domestic violence is occurring in the household.
- Also in 2005, the ACLU represented Tina J., a resident of public housing operated by the St. Louis Housing Authority in St. Louis, Missouri. When Ms. J.'s ex-boyfriend broke her windows on multiple occasions because she refused to let him into her home, the Housing Authority attempted to evict Ms. J., despite the fact that she had obtained an order of protection against him and had consistently reported his unlawful behavior to the police and to the Housing Authority.

While the passage of VAWA should mean that many more domestic violence survivors living in public housing and Section 8-subsidized housing will be shielded from discrimination, we continue to receive reports of evictions or attempted evictions based on abuse. For example, the ACLU recently intervened on behalf of "Carla Edwards,"³³ a woman living in project-based Section 8 housing in Michigan. The father of Ms. Edwards' child, who had never been a resident of the apartment, broke into her home this past summer and assaulted her. He was arrested, and she obtained a personal protection order against him. Following the incident, Ms. Edwards received a notice of eviction from her landlord, stating that she was responsible for causing disturbance on the property and for having an "unauthorized tenant." While Ms. Edwards

³² More information about the clients the ACLU has represented is available at www.aclu.org/fairhousingforwomen.

³³ "Carla Edwards" is a pseudonym.

objected to the notice because the eviction was based on domestic violence, the landlord did not rescind the notice until the ACLU became involved. Ms. Edwards' situation illustrates that codifying legal rights is not enough; "due diligence" requires the government to take reasonable measures to ensure effective implementation and enforcement. These efforts are particularly needed in the context of project-based Section 8 housing, which is largely operated by private owners with less government oversight than in public housing or the Section 8 voucher program. Even when privately-owned housing is at issue, "due diligence" requires the government to put in place measures to guarantee rights against violation by private actors.³⁴

The vast majority of housing in the U.S. falls outside of VAWA's reach. Thus, tenants living in private housing have faced and continue to face the threat of discrimination and homelessness because they have experienced abuse. For example:

- In 2001, the ACLU successfully represented Tiffani Alvera in a first of its kind lawsuit challenging a notice to quit issued by her subsidized housing provider in Oregon based on her husband's assault. Although Ms. Alvera had obtained a protection order barring her husband from the property and was cooperating in his criminal prosecution, her landlord nevertheless sought to evict her.
- In 2004, the ACLU represented Quinn Bouley, a Vermont resident who received a notice to quit her apartment after calling the police and reporting the domestic violence perpetrated by her husband, in a federal court action challenging her eviction.
- Also in 2004, the ACLU represented Laura K., a Michigan resident whose landlord locked her and her infant son out of her apartment at her batterer's request despite the order of protection she had barring him from coming near the home, thus rendering her homeless.
- In 2007, the ACLU sued on behalf of Tanica Lewis, a Michigan tenant of a property financed by the federal Low-Income Housing Tax Credit. Ms. Lewis had obtained an order of protection against her ex-boyfriend, but when he broke into her apartment in violation of the order, her landlord blamed her for the actions of her "guest." Due to the eviction, Ms. Lewis and her children had to prolong their stay in shelter. A personal statement from Ms. Lewis is attached to this testimony.

These cases represent the tip of a much larger iceberg. In the past year alone, the ACLU has consulted on similar cases involving domestic violence victims threatened with the loss of their homes in Alabama, Arizona, California, Illinois, Maryland, Michigan, Massachusetts, and Tennessee. Legal services attorneys report that they see such cases on a regular basis. While in most of the cases described above, a solution was found that allowed the woman threatened with the loss of her home to remain, in many instances no attorney advocate is available to ensure that a battered woman is not twice victimized, first by her batterer and then by eviction from her home.

³⁴ For a comprehensive analysis of the "due diligence" standard under international human rights law *see, e.g.*, Petitioners' Final Observations Regarding the Merits of the Case, *Gonzales v. U.S.* (IACHR Mar. 24, 2008), available at <http://www.aclu.org/womensrights/violence/346341gl20080325.html>.

The “War on Drugs,” Women of Color, and Public Housing

Women have been among the front-line victims of the “war-on-drugs” policies of recent decades, including imposition of mandatory minimum sentences, prosecution of low-level drug offenses, increased use of accomplice liability and conspiracy charges to convict and imprison those with relationships to drug dealers, and criminalization of women with drug addiction and mental health problems and histories of sexual abuse.³⁵ The number of women with convictions – especially low-level drug-related convictions – has skyrocketed. Over the past two decades, the number of women in prison increased at nearly double the rate of men. Women of color are disproportionately affected: African American women “were more than three times as likely as white women to be incarcerated in prison or jail, and Hispanic women 69% more likely.”³⁶ When women or men leave prison, they face a host of barriers to obtaining housing.³⁷

Women also are affected by policies targeting members of their families who are involved in the criminal justice system. Women who live in public housing may be evicted if a member of their household engages in criminal activity, and people with criminal histories are frequently denied entrance to public housing in the first place. The U.S. Department of Housing and Urban Development reported that “46,657 applicants for conventional, project-based public housing were denied admission in 2002 because of ‘one strike’ criteria”,³⁸ however, advocates believe that this figure is grossly under representative of the number of people actually denied housing.³⁹ For example, one advocate stressed that such statistics did not accurately portray the effect that criminal convictions have on public housing, noting, “[t]hey don’t even let them turn [applications] in... They turn them away at the applications desk. They don’t let them fill it out. That way, they don’t have to count them.”⁴⁰

The barriers to housing for people who have criminal records or whose family members have criminal records are particularly onerous for residents of public housing, who are disproportionately women of color. HUD reports that ethnic or racial minorities make up 69% of public housing households,⁴¹ and women head 77% of public housing households.⁴² One report observes that, “as most of the incarcerated mothers come from impoverished communities, it is likely that many of their friends and relatives live in public housing complexes.”⁴³ As a result, women with children who are released from prisons are unable to return to the support networks that would help them most effectively reenter society.

³⁵ See generally ACLU Women’s Rights Project and Drug Law Reform Project, *Break the Chains*, Brennan Center for Justice, *CAUGHT IN THE NET: THE IMPACT OF DRUG POLICIES ON WOMEN AND FAMILIES* (2005).

³⁶ The Sentencing Project, *Women in the Criminal Justice System: Briefing Sheets 1* (May 2007), available at http://www.sentencingproject.org/doc/publications/womenincj_total.pdf.

³⁷ See generally Human Rights Watch, *No Second Chance: People with Criminal Records Denied Access to Public Housing* (2004), available at <http://www.hrw.org/en/reports/2004/11/17/no-second-chance?print>.

³⁸ “One strike” refers to the exclusion of people with criminal records from public housing and, specifically, to President Bill Clinton’s 1996 statement that “[t]he rule in public housing should be one strike and you’re out.” *Id.* at 3.

³⁹ *Id.* at 21-22.

⁴⁰ *Id.* at 22.

⁴¹ HUD USER, *A Picture of Subsidized Households*, available at <http://www.huduser.org/picture2000/index.html>.

⁴² *Id.*

⁴³ Patricia Allard, *Life Sentences: Denying Welfare Benefits to Women Convicted of Drug Sentences* 12 (Feb. 2002), available at http://www.sentencingproject.org/doc/publications/women_lifesentences.pdf.

Many public housing authorities additionally maintain lists of “banned” individuals who may not enter public housing property. Violating such a ban can result in a trespass arrest and conviction for the visitor and in eviction for the family member who invited him or her. The result is that parents can be banned from caring for their young children in the children’s homes, and adult children can be banned from coming to the public-housing homes of their elderly or ailing parents. Public housing authorities have utilized bans of this type, either as official policies or as a matter of practice, in New York, Boston, Washington State, Vermont, Illinois, Montgomery, St. Paul, Jacksonville, West Virginia, Richmond, Portland (Maine), Portland (Oregon), Annapolis, and many other localities.

The ACLU is challenging such a ban in Annapolis, Maryland’s public housing, whose residents are overwhelmingly African-American. The Annapolis Housing Authority’s ban tears families apart by preventing parents and children from spending time together at home. For example, Delray Fowlkes, a loving father, is banned from living with, or even visiting, his three-year-old son in Annapolis public housing. Delray wants to be fully involved in his son’s life and help his mother to raise him, but he can’t even take him to and from pre-school or attend parent-teacher conferences because the program Delray Jr. attends is on housing authority property.

Dalanda Moses lived in Annapolis public housing with her family from the Second Grade until recently. She and her boyfriend, James Alexander, recently had a baby girl named Mariah. Because James is on the Housing Authority’s Banned List, he was not permitted to visit Dalanda while she was pregnant. During her pregnancy, Dalanda suffered from health problems. Nonetheless, the Housing Authority told Dalanda’s mother that she and Dalanda would be evicted if James came to their home. As a result, James had to pick Dalanda up from school in order to take her to doctor’s appointments. Although Dalanda lived with her mother and sister in public housing, she was so distressed by the fact that James could not come to her home to care for her and Mariah that she ultimately moved out of public housing when Mariah was two months old, and now lives separately from her own mother and sister so that James can be a part of her family.

As these case studies illustrate, visitor bans in public housing violate residents’ and guests’ basic human rights, including their rights to privacy and family life as guaranteed by article 17 of the ICCPR. In addition, these actions also violate article 9 of the Convention on the Rights of the Child (“CRC”)⁴⁴ which provides that a state “shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine... that such separation is necessary for the best interests of the child.”⁴⁵ Yet public housing authorities in Annapolis and around the United States are separating children from their parents without making the required, reviewable determination that such separation is in the children’s best interests.

⁴⁴ Convention on the Rights of the Child, art. 9, adopted Nov. 20, 1989, G.A. Res 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/RES/44/736 (1989). The United States has signed but not yet ratified the CRC.

⁴⁵ *Id.*

Women and Housing in the United States: Some Relevant Laws

- Universal Declaration of Human Rights. Articles 2, 7, and 8 provide that the government will ensure that all individuals will enjoy equal protection and be protected against discrimination, including sex discrimination, and that any person whose rights or freedoms are violated shall have an effective remedy. Article 3 provides that everyone has the right to life, liberty and security of person. Article 12 establishes that no one shall be subjected to arbitrary or unlawful interference with her privacy or family and that everyone has the right to the protection of the law against such interference. Article 16 provides that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
- International Covenant on Civil and Political Rights. Articles 2 and 26 provide that the government will ensure that all individuals will enjoy equal protection and be protected against discrimination, including sex discrimination, and that any person whose rights or freedoms are violated shall have an effective remedy and that the government shall enforce such remedies. Article 17 establishes that no one shall be subjected to arbitrary or unlawful interference with her privacy or family and that everyone has the right to the protection of the law against such interference. Article 23 provides that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
- International Convention on the Elimination of All Forms of Racial Discrimination. Article 5 protects the right to housing free of racial discrimination.
- The Convention on the Rights of the Child. Article 9 protects the right of children to be with their parents.
- Equal Protection Clause of the U.S. Constitution, prohibiting state actors from intentionally discriminating on the basis of sex unless that discrimination is at least substantially related to an important state interest.
- The Due Process and First Amendment protections of the U.S. Constitution, which prohibit the government from interfering in intimate family relationships.
- Federal Fair Housing Act, prohibiting intentional and unintentional housing discrimination on the basis of sex, race, or the presence of children in the home.
- United States Housing Act, which requires that leases used by public housing agencies must not contain unreasonable terms and conditions.
- The Violence Against Women Act of 2005, prohibiting public housing authorities and Section 8-subsidized private landlords from evicting victims of domestic violence based on the criminal activity in their homes.
- Nonbinding guidance from the U.S. Department of Housing and Urban Development urging public housing authorities to take constructive steps to address the needs of domestic violence victims seeking or residing in public housing, including providing preferences for domestic violence victims in admission to public housing, creating emergency transfer options for domestic violence victims needing to relocate quickly, and evicting the perpetrator of domestic violence rather than the victim.
- State fair housing laws, which typically prohibit discrimination on the basis of sex and race and, in Indiana, North Carolina, Oregon, Washington, Rhode Island, and the District of Columbia, prohibit discrimination on the basis of one's status as a victim of domestic violence.

- State landlord-tenant law, which in a few states specifically offers defenses to eviction for victims of domestic violence.
- State laws allowing courts to issue protective order for victims of domestic violence, giving them possession of a residence and prohibiting abusers from entering the residence.

Recommendations for Promoting Safe and Stable Housing for Women and their Families

Recommendations for guaranteeing the housing rights of women who experience gender-based violence

- The United States should recognize that discrimination against survivors of domestic violence, sexual assault, and stalking is a form of sex discrimination. Housing policies must not exclude applicants or evict tenants based on the abuse they have experienced. The state should codify this anti-discrimination principle by extending the housing protections enacted in 2005 in the federal Violence Against Women Act (VAWA) to survivors of sexual assault and to other forms of federally-funded housing, such as housing funded by the Low Income Housing Tax Credit and USDA Rural Housing.
- To meet its “due diligence” obligations, the United States must take reasonable measures to more effectively implement VAWA so that its protections are extended to all tenants living in public housing and Section 8-subsidized housing. Further implementation of VAWA should include, after consultation with advocates for domestic violence survivors and other stakeholders, the issuance of comprehensive VAWA regulations and the designation of HUD staff who will coordinate policy-making regarding domestic violence and investigate complaints regarding violations of VAWA.
- The United States must make available more affordable, secure housing options for women and families fleeing domestic violence, so that escape from abuse does not end in homelessness. As states slash funding for domestic violence shelters, transitional housing, and long-term housing, it has become even more vital for federal housing programs to prioritize the needs of domestic violence survivors. For example, victims of abuse should be given preference for admission to public housing and Section 8 housing programs; only about a third of public housing authorities grant such preferences.
- Local ordinances that mandate or encourage the eviction of tenants, such as domestic violence and stalking survivors, because they have called the police should be repealed. These laws punish victims who seek help and burden their right to government assistance.

Recommendations for guaranteeing the housing rights of families

- The United States should guarantee all families the right to adequate housing, regardless of criminal history.
- The United States should recognize the right to family unity and the right to associate with one's family at home as fundamental, whether in private or public housing. The state must eliminate policies that ban family members from visiting and caring for one another in their homes, whether in public or private housing.
- The United States should guarantee children's rights to be raised by their parents as recognized under international human rights law, and should ensure each child's right to be visited by his or her parent at home when the parent is invited by the child and the child's primary caretaker.

Statement of Tanica Lewis

Tanica Lewis was evicted from her apartment in Detroit, Michigan because of domestic violence she experienced. She was represented by the ACLU Women's Rights Project and the ACLU of Michigan in a lawsuit challenging the eviction.



Being evicted as a single mother because of domestic violence was devastating to me. I felt that people were against me. I did not have anyone to turn to.

Mr. Thomas – my ex-boyfriend – and I had broken up January 2006. I was tired of his controlling behavior. Mr. Thomas would insult me and behave in an overprotective manner. I felt intimidated by him. He used manipulation to control me and my children.

After we broke up, he called me at work eight to ten times a day. When I was home he would call my house every hour and sometimes would just show up. Threats were made. I was very terrified. Several police reports were made. I went to obtain a personal protection order against him. I would go to work at different times so that Mr. Thomas would not know my schedule. He would come to my job and security would have to escort him off their property. I had to become anonymous.

In March 2006, Mr. Thomas came over to my apartment and caused over \$500 worth of damage. I was at work at the time. After I found out about the damage, I contacted my leasing manager, Ms. Waters, and told her I had a personal protection order against Mr. Thomas and what he had done. Ms. Waters seemed to be understanding when I spoke with her. She said she would send maintenance over to board up the windows and fix the door. I was so afraid that I went over to my parents' house to stay for a couple of days, but a day later Mr. Thomas called and said that he would kill me. The police were called and I was advised to go to a shelter. While staying at the shelter, I had my father go check on the apartment and get my mail. I had received a letter from my leasing company saying that I was being evicted because Mr. Thomas was considered to be my guest even though I had a personal protection order against him. Life could not get any worse for me. If I had known that I would be evicted, I would never have told them; I would have just paid for the damage myself. This would have been much easier and cheaper for me.

The eviction created enormous difficulties for me. Before, I lived only five minutes from my job, but after I moved, I had to drive over 45 minutes to get to work. I had to change my daycare provider to accommodate my new schedule. I had to pay over \$200 more in rent each month. I had to be more dependent on my parents.

I want to share my story because someone may be going through a similar situation and this may be something that they need to hear in order for them to find the help that they need. This story may also be informative to landlords so that they will know that it is illegal to evict someone because of domestic violence. It is terribly stressful being a victim and then being evicted.

Statement of Esther Sharps

Esther Sharps is a resident of public housing in Annapolis, Maryland. Numerous members of her family have been banned from living with or visiting her in her home. She is represented by the ACLU of Maryland and the ACLU Women's Rights Project in a lawsuit challenging the public housing authority's banning policy.



I have lived in Annapolis public housing for more than thirty years, and I raised my family there. Eight of my grandsons have been banned by the Housing Authority, and three of my sons are banned. I have been warned that if any of them visits me, I will be charged with a lease violation, which would put me in danger of eviction. One of my grandsons, Delray Fowlkes, Senior, is banned, and he is prevented from caring for and visiting with his young son who lives in public housing.

Last year, my sister passed away. I wanted to be able to have my family come to my home to grieve with me, but I was afraid that if I had my children and grandchildren in my home, I would be evicted. The Housing Authority only gave me permission to have my two eldest grandsons come to the house for one day. When the father of my grandson Delray Fowlkes was recently murdered, I had to get special permission from the housing authority for Delray to come and be with me, his mother, and his son on the day of the funeral.

I do not own a car, and I have health problems. I rely on one of my grandsons, Wayne Blair, to take me to the store and to doctor's appointments. Because Wayne was banned, I had to leave my home, walk down the street, and exit Housing Authority property so that he could pick me up, and I often had to walk back to my home alone in the dark after he dropped me off. I am 71 years old, and I felt unsafe walking home alone because of the banning policy.

My house used to be a gathering place for the whole family, but I rarely host family events anymore because it is too painful knowing that many of my kids and grandkids will not be allowed to come. On Mother's Day, my family and I had to gather at another relative's house because the ban prevented most of my family members from coming to my house.

The banning list is destroying people's families. My sons and grandsons are not criminals, but I live in constant fear that they will be arrested for visiting me. The banning policy is unfair and it violates my right to have my family visit me and take care of me at my home. Just because I live in public housing, the government should not be able to tell me that I cannot have my children and grandchildren over. I should not be threatened with eviction for spending time at home with other family members, and I should not have to ask for special permission to mourn at home with my family when tragedies occur.

Statement of Glenda Smith

Glenda Smith is a resident of public housing in Annapolis, Maryland. Her granddaughter has been banned from living with or visiting her in her home. She is represented by the ACLU of Maryland and the ACLU Women's Rights Project in a lawsuit challenging the public housing authority's banning policy.



I live in public housing in Annapolis, Maryland with my daughter, my son, and my four-year-old great-grandson, Rico Johnson. My granddaughter, Rico's mother, used to live with us, until she was arrested two years ago at age 17 and placed on the banned list. After Rico's mother was arrested, the Housing Authority told me I had 30 days to vacate my home because of the arrest. Eventually, the Housing Authority allowed me to keep my home, but only on the condition that my granddaughter would be banned from the property when she completed her program in the juvenile justice system. My granddaughter has been released and has completed a rehabilitation program, but is still banned from my home. Now, Rico only sees his mother sporadically, because she does not have access to a stable home with us, her family.

This separation has been heartbreaking for all of us. Rico misses his mother and does not understand why she cannot live with us. I want my granddaughter to be with us, so we can be a family and she can raise her son, but I am afraid that if I allow her into my home, we will all be evicted and lose our home. The Housing Authority should not have the right to make me choose between my home and what's best for our family.

The banning policy is unfair and it is tearing my family apart. Yes, my granddaughter broke the law, but she served her time and that should be the end of her punishment. She and Rico were separated long enough while she was in custody; they need to be together now to build up their mother-son relationship. The banning policy is unfair because it is punishing her beyond what the court decided her punishment should be; it is punishing our whole family. It is like a life sentence.

It is an inhuman thing to do to people, to ban people from their families. And what is more, the policy is not helping to make the community any safer; it is only making the situation worse. When the Housing Authority bans kids from their families' homes, it means they are out on the street without a family foundation to help them get back on their feet and stay out of trouble.

Would you want someone coming to your home and telling you what to do, how to raise your kids, that your grandkids can't come to your home? This is their property, but they don't own the people who live here. People like me who live in public housing are human beings just like anybody else. We work, we eat, we sleep, we have families. We live in public housing, but that doesn't mean we're any less human than anyone else.