



*The Women's Bar Association  
of the State of New York*

*presents*

*Convention 2024  
Continuing Legal Education Series*

**Comprehensive Modalities for Protecting  
Victims/Survivors of Domestic Violence**

June 1, 2024  
11:30 am - 1:30 pm

Presenters: Sarah Bahrenburg, PhD, MSc, MBA  
Allison A. Dunlop, Esq.  
Dr. Ari Niki-Tobi  
Melissa Paquette, Esq.  
Fay Y. Parris, Esq.  
Somaia Sharif Zada, Esq.

ISSN 0331-1902



# Imo State of Nigeria Official Gazette

Published by Authority

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No. 33

OWERRI – 22<sup>nd</sup> December, 2021

Vol. 45

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Printed and published by the Government Printer, Owerri 34/1221/100  
Annual Subscription: Nigeria ₦20,000.00; Overseas, ₦30,000.00 (Surface Mail), ₦8,000.00  
(2<sup>nd</sup> Class Air Mail) Present Issue (including Supplement)

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IMO STATE OF NIGERIA

LAW NO. 8 OF 2021

**A LAW TO ELIMINATE VIOLENCE IN PRIVATE AND PUBLIC LIFE, PROHIBIT ALL FORMS OF VIOLENCE AGAINST PERSONS, AND TO PROVIDE MAXIMUM PROTECTION AND EFFECTIVE REMEDIES FOR VICTIMS AND PUNISHMENT OF OFFENDERS AND FOR OTHER RELATED MATTERS.**

*Long Title*

BE IT ENACTED by the House of Assembly of Imo State of Nigeria as follows –

*Enactment*

**PART I – PRELIMINARY**

1. This law shall be cited as the Imo State Violence Against Persons (Prohibition) Law, and shall come into effect on the 15<sup>th</sup> day of December, 2021.

*Citation*

2. In this Law, unless the context otherwise requires –

*Interpretation*

“Abandonment of spouse, children and other persons” means, deliberately leaving spouse, children and other persons under the perpetrator’s care, destitute and without any means of subsistence;

“Accredited service provider” means non-government organizations, faith based organizations, voluntary and charitable associations, donor agencies, or institutions providing free medical, legal, financial, counseling, transit shelter, safe shelter, homes, or other assistance to victims of violence and are registered with the Agency under the provisions of this Law;

“Agency” means the Imo State Agency for prohibition of violence against persons, established under section 56 of this Law;

“Arms” mean any arms or any armament as defined in section 1 (1) of the Firearms Act Cap 69 Laws of the Federal Republic of Nigeria 1990;

“Civil proceedings” mean – proceedings for the making, variation or discharge of a protection order, safety order or interim protection order;

proceedings by way of appeal or case stated which are related to proceedings to which paragraph (a) applies; or

proceedings under this Law for compensation or award;

“Compensation” means money awarded against a convict of violence by the Court, payable to the victim of violence to recompense, reduce or offset the unpleasant effect of the violence;

“Damage to property” means the willful destruction or causing of mischief to any property belonging to a person or in which a person has a vested interest;

“Dangerous weapon” means any instrument or machine directed toward a person with the intention of inflicting bodily harm on such person and includes, but not limited to, gun, knife, stick, whip or other household appliance capable of inflicting bodily harm on a person or terminating a person’s life.

“Domestic relationship” means a relationship between any person and a perpetrator of violence constituted in any of the following ways –

- (a) they are or were married to each other, including marriage according to Marriage Act, custom or religion;
- (b) they are the parents of a child or children or are the persons who have or had parental responsibility for that child or children;
- (c) they are family members related by consanguinity, affinity or adoption;
- (d) they are or were in an engagement dating or customary relationship; including actual or perceived romantic, intimate or sexual relationship of any duration; or
- (e) they share or recently shared the same residence;

“Domestic Violence” means any act perpetrated on any person in a domestic relationship where such act causes harm or may cause imminent harm to the safety, health or well-being of any person;

“Economic abuse” means-

- (a) preventing a person from finding employment;
- (b) forcing a person to quit his or her job;
- (c) forcefully controlling a person’s finances;
- (d) forcing a person to work to pay back ‘debt’;
- (e) withholding money for essential items, such as food, water and medical treatment;
- (f) forced financial dependence;
- (g) the unreasonable deprivation of economic or financial resources to which any person is entitled or which any person require out of necessity, including-
  - (i) household necessities;

- (ii) mortgage bond repayments; or
- (iii) payment of rent in respect of a shared residence; or
- (h) the unreasonable disposal or destruction of household effects or other property in which any person has an interest;

“Emergency monetary relief” means compensation for monetary losses suffered by any person, arising from an act of violence and does not in any way constitute a maintenance order, including –

- (a) loss of earnings;
- (b) medical and dental expenses;
- (c) relocation and accommodation expenses;
- (d) household necessities; or
- (e) legal fees related to obtaining and serving the protection order;

“Female genital mutilation” means cutting off all or part of the external sex organs of a girl or woman on the ground of traditional or religious practices which includes –

- (a) clitoridectomy, which involves the removal of the prepuse of the hood of the clitoris itself and the posterior;
- (b) excision which involves the removal of the clitoris along with parts of the labia minora or all of it;
- (c) infibulations, otherwise known as “pharonic circumcision” which involves the removal of the clitoris, the labia minora and the adjacent media part of the labia majora in their anterior two-thirds, whether or not the two sides of the vulva are stitched together or merely an opening of the size of a pin head to allow for the flow of urine and menstrual blood;
- (d) introcision, including “gishiri cuts”;
- (e) “angurya cut”, that is, scraping or cutting of the vagina;
- (f) pricking, piercing or incising of the clitoris or labia;
- (g) cauterization, that is, searing of the clitoris, labia and vagina with hot iron or caustic, in order to make same insensitive;
- (h) introduction of corrosive substance and herbs in the vagina, in order to desensitize it; and
- (i) other forms of female genital mutilation;

“Harassment” means engaging in a pattern of conduct that induces fear of harm or impairs the dignity of a person including-

- (a) stalking;
- (b) repeatedly making telephone calls or inducing another person to make telephone calls to a person, whether or not conversation ensues; and
- (c) repeatedly sending, delivering or causing delivery of information such as letters, telegrams, packages, facsimiles, electronic mail, text messages or other objects to any person;



“Harmful traditional practices” mean, all traditional behavior, attitudes or practices, which negatively affect the fundamental rights and dignity of women, girls, or any person such as –

- (a) denial of right of inheritance;
- (b) diala, osu, ohu, ume caste system;
- (c) banishment;
- (d) trial by ordeal;
- (e) marrying or giving out underage girl into early marriage;
- (f) forced marriage to a man or woman without consent;
- (g) female infanticide;
- (h) virginity testing;
- (i) forced pregnancy;
- (j) stigmatization of pregnancy outside marriage;
- (k) trying of any person for witchcraft;
- (l) trafficking of persons;
- (m) sexual slavery;
- (n) dragging a person to any shrine for the administration of idolatrous oaths;

“House of Assembly” means Imo State House of Assembly;

“Incest” means sexual intercourse, an indecent act or an act which causes penetration with a person related by blood, who is to the person’s knowledge such as a daughter or son, grandfather or grandmother, granddaughter/son, sister or brother, mother or father, cousin, niece or nephew, aunt or uncle or granduncle;

“Indecent exposure” means the intentional exposure of the genital organs, or a substantial part thereof, with the intention of causing sexual distress or arousal to other party;

“Intimidation” means the uttering or conveying of a threat or causing any person to receive a threat which induces fear, anxiety or discomfort;

“Marriage” means a union between a man and a woman as recognized under the Marriage Act, Customary Law, Islamic Law and Christian doctrine;

“Perpetrator” means any person who has committed or allegedly committed an act of violence under this Law;

“Person” means a human being, male or female; a human life from conception to natural death;

“Physical abuse” means acts or threatened acts of physical aggression towards any person such as slapping, hitting, kicking and beating;

“Political violence” means any act or attempted act of violence perpetrated in the course of political activities, such as elections, and includes any of the following act –  
thuggery, mugging, use of force to disrupt meetings or elections, snatching of ballot boxes, result sheets and other voting materials, or the use of dangerous weapons that may cause bodily harm or injury;

“Protection officer” means an officer of the Agency, appointed under section 61 of this Law to serve at the various Local Government Areas in relation to and for the purpose of this Law;

“Protection order” means an official legal document signed by a judge, that restrains an individual or State actor from further abusive behaviours or act towards the victim;

“Sexual abuse” means any conduct which violates, humiliates or degrades the sexual integrity of any person;

“Sexual assault” means the intentional and unlawful touching, striking or causing of bodily harm to an individual in a sexual manner without the person’s consent;

“Sexual violence” means any physical, sexual, emotional or psychological violence or trauma inflicted on a person (male or female). This includes rape, violence, threat of violence, coercion, arbitrary deprivation of liberty or dignity, whether occurring in public or private;

“Sexual exploitation” occurs where a perpetrator, for financial or other reward, favour or compensation, invites, persuades, engages or induces the sexual services of a victim, or offers or performs such services to any other person. It also includes the use of a person in prostitution, pornography, or other sexually manipulative activity;

“Sexual defamation” occurs where the perpetrator maliciously posts a nude picture or video of his partner or ex partner on the social media with intent to scandalize or extort money;

“Sexual harassment” means unwanted conduct of a sexual nature or other conduct based on sex, which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment. This may include physical, verbal or non-verbal conduct;

“Sexual intimidation” means –

- (a) any action or circumstances which amount to demand for sexual intercourse with either a male or a female under any guise, as a condition for passing examination or test (otherwise called sex for grade or marks) in any public or private institution, securing employment, business patronage, or obtaining any favour in any

form whatsoever as may be defined in this Law or any other enactments;

- (b) acts of deprivation, withholding, replacing and or short-changing of entitlements, privileges, rights, benefits, examination or test marks/scores, and any other form of disposition capable of coercing any person to sexual intercourse for purpose of receiving reprieve thereto;
- (c) any other action or inaction construed as sexual intimidation or harassment under any other enactments in force in Nigeria;

“Spouse” means a male sex (husband) or a female sex (wife) as recognized under the Marriage Act, Customary Law, Islamic Law and Christian doctrine which qualifies either and both to be called spouse(s);

“Spousal battery” means the intentional and unlawful use of physical force or violence upon a spouse, including the unlawful touching, beating, kicking or striking of a spouse against their will, with the intention of causing bodily harm to them by their spouse;

“Stalking” means repeatedly-

- (a) watching or loitering outside of, or near a building or place where the victim resides, works, carries on business, studies or happens to be; or
- (b) following, pursuing or accosting any person in a manner which induces fear or anxiety;

“State” means Imo State of Nigeria;

“State actors” mean Police or other law enforcement officers or government officials at all levels in the State;

“Substance attack” means the exposure of any person to any form of chemical, biological or any other harmful liquid, with the intention to cause grievous bodily harm and includes substances such as acid, hot water or oil;

“Trafficking” means the supply, recruitment, procurement, capture, removal, transportation, transfer, harbouring, sale, disposal or receiving of a person, within or across the borders of the State for any illegal acts, including but not limited to sexual exploitation or pornography;

“Victim” –

- (a) means any person or persons, who individually or collectively, have suffered harm, including but not limited to -
  - (i) sexual-based violence;
  - (ii) physical or mental injury;
  - (iii) emotional suffering;

- (iv) economic loss; or
  - (v) substantial impairment of their fundamental rights through acts or omissions that are in violation of this Law or the criminal laws of the State; and
- (b) includes the immediate family or dependants of the direct victim and any other person who has suffered harm in intervening to assist victims in distress;

“Violence” means any act or attempted act which causes or may cause sexual, physical, psychological, verbal, emotional or economic harm to any person, whether this occurs in private, domestic or public life, in peace time and in conflict situation;

“Violence in the private/domestic sphere” means, any act or attempted act perpetrated by a spouse, member of the family, relative, neighbor or member of a community, which causes or may cause sexual, physical, psychological, verbal, emotional or economic harm to any person in private or domestic places;

“Violence in the public sphere” means any act or attempted act perpetrated by the State actors or non-state actors acting in that capacity which causes or may cause sexual, physical, psychological, verbal, emotional or economic harm or threatens peace, freedom, security and wellbeing of any person in public places;

“Violence perpetrated by State actors” include –

- (a) wrongful arrest and detention;
- (b) torture or assault;
- (c) use of force without lawful authority;
- (d) unlawful entry into the premises;
- (e) demolition of property without due process;

“Vulnerable groups” include women, children, persons living under extreme poverty, persons with disability, the sick and the elderly, ethnic and religious minority groups, refugees, internally displaced persons, migrants and persons in detention.

## PART II – OFFENCES

3.(1) A person commits the offence of rape if –

- (a) the person intentionally penetrates the vagina, anus or mouth of another person, male or female, with any other part of their body or anything else and –
  - (i) the other person does not consent to the penetration; or

*Definition of Rape  
and Punishment  
for Rape*

- (ii) the consent is obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false and fraudulent representation as to the nature of the act or the use of any substance or addictive capable of taking away the will of such person or in the case of a married person, by impersonating their spouse.
- (2) A person under the age of 14 is a minor and legally incapable of giving consent to any form of penetration under this section.
- (3) A person convicted of an offence under subsection (1) of this section, is liable to imprisonment for life except where the offender is less than 14 years of age, the offender shall be liable to a maximum of 15 years imprisonment.
- (4) Where the act described under this section is committed by a group of persons, the offence shall be known as gang rape and on conviction, the persons shall be liable jointly and severally to life imprisonment.
- (5) Where death occurs as a result of rape or the victim dies within 1 year from the injuries inflicted during the rape, the offender(s) shall be sentenced to death.
- (6) The court shall also award appropriate compensation as it may deem fit in the circumstance, to be paid by the offender to the victim.
- (7) A person who attempts to commit the act of rape provided for in subsection (1) of this section, commits an offence and is liable on conviction, to a term of imprisonment.
- (8) A person who incites or counsels another person to commit the act of rape provided for in subsection (1) of this section, commits an offence and is liable on conviction, to an imprisonment term not exceeding 14 years.
- (9) A person who being aware of his health status, willfully transmits a disease to another person (potential victim) is guilty of an offence and liable on conviction to a term of imprisonment not exceeding 14 years.
- 4.(1) A person who willfully causes or inflicts physical injury on another person by means of any weapon, substance or object, commits an offence and is liable on conviction to a term of imprisonment term not exceeding 5 years or a fine not exceeding ₦500,000.00 or to both such term of imprisonment and fine.

*Inflicting  
Physical Injury  
on a Person*

- (2) A person who attempts to commit the offence provided for in subsection (1) of this section, is guilty of an offence and is liable on conviction to a term of imprisonment not exceeding 3 years or a fine not exceeding ₦300,000.00 or to both such term of imprisonment and fine.
- (3) A person who incites, aids, abets, or counsels another person to commit the offence provided for in subsection (1) of this section is guilty of an offence, and is liable on conviction to a term of imprisonment not exceeding 2 years or a fine not exceeding ₦200,000.00 00 or to both such term of imprisonment and fine.
- (4) A person who receives or assists another who to his knowledge, is an accessory after the fact is guilty of an offence and shall be liable on conviction to imprisonment to a term of imprisonment not exceeding 5 years or a fine not exceeding ₦200,000.00 00 or to both such term of imprisonment and fine.
- (5) The court may also award appropriate compensation as it may deem fit in the circumstance to be paid by the offender to the victim.
- 5.(1) A person who –
- (a) by use of deception, coercion, financial inducement, debt bondage or any other means, induces or coerces any person to go from one place or another to do any act with the intent that such a person may be, or knowing that it is likely that the person will be forced or seduced into illicit sexual activities with another; or
  - (b) keeps, detains or harbours any other person with intent, knowing or having reason to know that such a person is likely to be forced or induced into any form of sexual exploitation with or by any person; or
  - (c) keeps, detains or harbours under aged boys or girls for prostitution; or
  - (d) operates any baby factory where persons are harboured to procreate and give birth to children that will be sold for whatever purpose;
- commits an offence and upon conviction, is liable to an imprisonment term not exceeding 10 years or a fine not below ₦500,000.00.
- (2) A person who attempts to commit any of the offences as provided for in subsection (1) of this section, is guilty of an offence and is liable to a term of imprisonment not exceeding 5 years or a fine not exceeding ₦300,000.00.

*Procurement of  
Person for Sexual  
Exploitation*

- (3) A person who aids, abets, receives or counsels another person to commit the offence provided for in subsection (1) of this section, is guilty of an offence and is liable on conviction to for a term of imprisonment not exceeding 2 years or to a fine not exceeding ₦200,000.00.
- 6.(1) A person who willfully or knowingly places a person in fear of physical injury, commits an offence and is liable on conviction to for a term of imprisonment not exceeding 2 years or a fine not exceeding ₦100,000.00 or to both such term of imprisonment and fine. *Willfully placing a person in fear of physical injury*
- (2) A person who attempts to commit the offence as provided for in subsection (1) of this section, is guilty of an offence and is liable to for a term of imprisonment not exceeding 1 year or a fine not exceeding ₦50,000.00 or to both such term of imprisonment and fine.
- (3) A person who aids, abets, receives or counsels another person to commit the offence provided for in sub-section (1) of this section, is guilty of an offence and is liable on conviction to for a term of imprisonment not exceeding 1 year or to a fine not exceeding ₦50,000.00 or to both such term of imprisonment and fine
- 7.(1) A person who compels another by force or threat to engage in any act; whether sexual or otherwise, to the detriment of the victim's physical, sexual, emotional or psychological well being, commits an offence and is liable on conviction to a term of imprisonment not exceeding 3 years or to a fine not exceeding ₦500,000.00 or to both such term of imprisonment and fine. *Coercion into Offensive Conduct*
- (2) A person who attempts to commit the offence provided for in subsection (1) of this section, is guilty of an offence and is liable on conviction, to a term of imprisonment not exceeding 2 years or to a fine not exceeding ₦300,000.00 or to both such term of imprisonment and fine.
- (3) A person who incites, aids, abets, receives or counsels another person to commit the offence provided for in subsection (1) of this section, is guilty of an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding ₦300,000.00 or to both such term of imprisonment and fine.
- 8.(1) A person who takes undue advantage of persons living with disability or exploits such a person's vulnerability by promising to provide assistance but instead engages in any conduct or sexual act, to the detriment of the person's sexual, psychological, mental, emotional, or physical wellbeing, commits an offence and is liable on conviction to a term of imprisonment not exceeding 14 years. *Taking undue advantage of persons living with disability*

- (2) A person who attempts to commit the offence provided for in subsection (1) of this section, is guilty of an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding ₦300,000.00 or to both such term of imprisonment and fine.
- (3) A person who incites, aids, abets, receives or counsels another person to commit the offence provided for in subsection (1) of this section, is guilty of the offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding ₦200,000.00 or to both such term of imprisonment and fine.
- 9.(1) Any form of genital mutilation of the girl child or woman is prohibited. *Prohibition of female genital mutilation*
- (2) A person who knowingly on the ground of traditional or religious practices, separates or surgically alters the normal healthy functioning genital tissue/organ of a female; circumcises, pricks, cuts or infibulates the whole or any part of the labia majora or minora of a female genital organ or engages another to carry out such mutilation, commits an offence and is liable on conviction to a term of imprisonment not exceeding 14 years or a fine not below ₦500,000.00 or to both such term of imprisonment and fine.
- (3) Where death occurs as a result of female genital mutilation or the victim dies within 1 year from the injuries inflicted during the act, the offender shall on conviction be liable to life imprisonment;
- (4) A person who attempts to commit the offence provided for in subsection (2) of this section, is guilty of an offence and is liable on conviction to a term of imprisonment not exceeding 7 years or a fine not exceeding ₦300,000.00 or to both such term of imprisonment and fine.
- (5) A person who incites, aids, abets, receives or counsels another person to commit the offence provided for in subsection (2) of this section, is guilty of the offence and is liable on conviction to a term of imprisonment not exceeding 5 years or to a fine not exceeding ₦200,000.00 or to both such term of imprisonment and fine.
- (6) Any female who willingly submits herself for the performance of Female Genital Mutilation, is guilty of an offence and is liable on conviction to a term of imprisonment not exceeding 3 years or to a fine not exceeding ₦200,000.00 or to both such term of imprisonment and fine.
- (7) It shall not be a defence to any offence committed under this Section, that the victim consented to have Female Genital



Mutilation performed on her or that the victim's parents or legal guardians consented to the practice.

10. A person who, with intent to defraud or conceal an offence or frustrate the investigation and prosecution of offenders under this Law or under any other enactment –
- (a) destroys, alters, mutilates, falsifies or conceals any book or documents, dress or clothing which could serve as evidence or exhibit;
  - (b) omits, or is privy to the omitting of any materials from any such document, book, dress or clothing;
  - (c) fails to comply with any lawful inquiry by any authorized Police officer, law officer or accredited service provider in accordance with the provisions of this Law; or
  - (d) refuses any Police officer, law officer or service provider access to premises where acts of violence have occurred or is suspected to be occurring;
- is guilty of an offence and is liable on conviction to imprisonment not exceeding 4 years or to a fine not exceeding ₦500,000.00 or to both term of imprisonment and fine.
11. A person who willfully makes any false statement, whether oral or documentary, in any judicial proceedings under this Law or with the aim of initiating investigation or criminal proceedings under this Law against another person, commits an offence under this Law and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding ₦300,000.00 or to both such term of imprisonment and fine.
- 12.(1) Any person who forcefully evicts their spouse from their home or refuses such a person access, commits an offence and is liable on conviction to a term of imprisonment not exceeding 3 years or a fine not exceeding ₦300,000.00 or to both such term of imprisonment and fine.
- (2) A person who incites, aids, abets, receives or counsels another person to commit the offence provided for in subsection (1) of this section, commits an offence and is liable on conviction to a term of imprisonment not exceeding one (1) year or to a fine not exceeding ₦200,000.00 or to both such term of imprisonment and fine.
- 13.(1) Except pursuant to a Court Order, any person who confines or detains another in any place against such a person's will or otherwise deprives another of their personal liberty for any purpose whatsoever including performing sexual acts is guilty of

*Frustrating  
Investigation*

*Willfully making  
false statements*

*Forceful Ejection  
from Home*

*Depriving a Person  
of his or her Liberty*

an offence and is liable on conviction to a term of imprisonment not exceeding 5 years.

(2) A person who attempts to commit the offence provided for in subsection (1) of this section, commits an offence and is liable on conviction to a term of 2 years imprisonment not exceeding 2 years or to a fine not exceeding ₦300,000.00 or to both such term of imprisonment and fine.

(3) A person who incites, aids, abets, receives or counsels another person to commit the offence provided for in subsection (1) of this section, commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding ₦200,000.00 or to both such term of imprisonment and fine.

14.(1) A person who causes mischief or destruction or damage to property of another with intent to cause or knowing that it is likely to cause distress or annoyance to the victim, commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding ₦300,000.00 or to both term of imprisonment and fine.

*Damage to  
property with  
intent to cause  
distress*

(2) A person who attempts to commit the offence provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding ₦200,000.00 or to both such term of imprisonment and fine.

(3) A person who incites, aids, abets, receives or counsels another person to commit the offence provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding ₦100,000.00 or to both such term of imprisonment and fine.

15.(1) A person who deprives another person of the right of inheritance in such a person's parents' or spouse's property, commits an offence and is liable on conviction to a term of imprisonment not exceeding 5 years and a fine not exceeding ₦500,000.00 or to both such term of imprisonment and fine.

*Deprivation of  
right of  
inheritance*

(2) A person who attempts to commit the act of violence provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 3 years or to a fine not exceeding ₦300,000.00 or to both such term of imprisonment and fine.

(3) A person who incites, aids, abets, receives or counsels another person to commit the act of violence provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding ₦200,000.00 or to both such term of imprisonment and fine.

16. A person who causes economic abuse or forced financial dependence of another commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding ₦500,000.00 or to both such term of imprisonment and fine.

*Economic abuse  
or forced financial  
dependence*

17.(1) Every woman is entitled to fundamental human rights guaranteed under the Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and as such nobody shall impose any harmful widowhood practices on any woman.

*Harmful widow-  
hood practices*

(2) Harmful widowhood practices include –

- (a) compulsory shaving or cutting of hairs on a widow's head or any part of her body in a dehumanizing or unsafe manner;
- (b) drinking the water used in washing of a widow's husband's corpse;
- (c) swearing at any shrine or before anybody;
- (d) being forced to sleep in the same room with a widow's husband's corpse;
- (e) being forced to sleep or sit on the bare floor;
- (f) forceful takeover of a widow's children without her consent;
- (g) deprivation or dispossession of a widow's husband's property;
- (h) forceful eviction from a widow's husband's property;
- (i) a widow, being forced to marry her late husband's family member or any other person against her will;
- (j) being refrained from receiving condolence visits from sympathizers during the period of mourning; and
- (k) remaining in seclusion after the death of her husband.

(3) A person who, under the guise of any tradition or religion, subjects a widow to any of these harmful widowhood practices or acts of violence provided for in subsection (2) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 3 years or a fine not below ₦500,000.00 or to both such term of imprisonment and fine.

(4) A person who attempts to commit the act of violence provided for in subsection (2) of this section, commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years

and a fine not exceeding ₦300,000.00 or to both such term of imprisonment and fine.

- (5) A person who incites, aids, abets, receives or counsels another person to commit the act of violence provided for in subsection (1) of this section, commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding ₦200,000.00 or to both such term of imprisonment and fine.

- 18.(1) A person who abandons a spouse, children or other dependants without any means of sustenance, commits an offence and is liable on conviction to mandatory payment of monthly upkeep allowance, which shall be determined by the Court based on such a person's income and the needs of the person(s) so abandoned, in addition to an imprisonment term not exceeding 1 year or a fine not exceeding ₦500,000.00.

*Abandonment of spouse, children and other dependants without sustenance*

- (2) A person who incites, aids, abets, receives or counsels another person to commit the act of violence provided for in subsection (1) of this section, commits an offence and is liable on conviction to a term of imprisonment not exceeding 6 months or a fine not exceeding ₦200,000.00 or to both such imprisonment and fine.

- 19.(1) A person who stalks another, commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding ₦500,000.00 or to both such imprisonment and fine.

*Stalking*

- (2) A person who incites, aids, abets, receives or counsels another person to commit the act of violence provided for in subsection (1) of this section, commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine of ₦200,000.00 or to both such imprisonment and fine.

- 20.(1) A person who sexually intimidates or harasses another, commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine of ₦500,000.00 or to both such imprisonment and fine.

*Sexual intimidation*

- (2) A person who attempts to commit the act of violence provided for in subsection (1) of this section, commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding ₦300,000.00 or to both such imprisonment and fine.

- (3) A person who incites, aids, abets, receives or counsels another person to commit the act of violence provided for in subsection

- (1) of this section, commits an offence and is liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding ₦200,000.00 or to both such imprisonment and fine.
- 21.(1) Any person including a State actor who intimidates another or violates the person's human rights, commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding ₦300,000.00 or to both such imprisonment and fine. *Intimidation of a Person*
- (2) A person who attempts to commit the act of violence provided for in subsection (1) of this section, commits an offence and is liable on conviction to imprisonment for 1 year or to a fine not exceeding ₦200,000.00 or to both such imprisonment and fine.
- (3) Where the act of intimidation was done by any Police officer or any law enforcement officer, the person shall in addition to imprisonment or fine as provided above, be disciplined in accordance with the provisions of Police Act or the relevant laws establishing the Service where the Law enforcement Officer belongs.
- 22.(1) A person who batters his spouse, commits an offence and is liable on conviction to imprisonment for 5 years or to a fine of ₦500,000.00 or to both such imprisonment and fine. *Spousal battery, etc.*
- (2) A person who batters a pregnant woman and it results in her having a miscarriage, commits an offence and is liable on conviction to a term of imprisonment not exceeding 7 years or a fine not exceeding ₦500,000.00 or to both such imprisonment and fine.
- (3) A person who attempts to commit the act of violence provided for in subsections (1) and (2) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding ₦300,000.00 or to both such imprisonment and fine.
- (4) A person who incites, aids, abets, receives or counsels another person to commit the act of violence provided for in subsections (1) and (2) of this section, commits an offence and is liable on conviction to a term of imprisonment for 1 year or to a fine not exceeding ₦200,000.00 or to both such imprisonment and fine.
- 23.(1) A person who carries out harmful traditional practices on another, commits an offence and is liable on conviction to a term of imprisonment not exceeding 4 years or to a fine not exceeding ₦500,000.00 or to both such imprisonment and fine. *Harmful Traditional Practices*

- (2) A person who attempts to commit the act of violence provided for in subsection (1) of this section, commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding ₦300,000.00 or to both such imprisonment and fine.
- (3) A person who incites, aids, abets, receives or counsels another person to commit the act of violence provided for in subsection (1) of this section, commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding ₦300,000.00 or to both such imprisonment and fine.
- 24.(1) A person who uses chemical, biological or any other harmful liquid on another person with intention to harm, commits an offence and is liable on conviction to life imprisonment without an option of fine. *Attack With Harmful Substance*
- (2) A person who attempts to commit the act of violence described in subsection (1) of this section, commits an offence and is liable on conviction to imprisonment for 25 years without an option of fine.
- (3) A person who incites, aids, abets, receives or counsels another person to commit the act of violence provided for in subsection (1) of this section, commits an offence and is liable on conviction to a term of imprisonment not exceeding 25 years without an option of fine.
- 25.(1) A person commits an offence if he intentionally administers or sells a substance, or causes a substance to be administered to or taken by another person with the intention of stupefying or overpowering that person so as to enable any person to engage in a sexual activity with that person. *Administering A Substance With Intent To Commit Sexual Offence*
- (2) A person who commits an offence under this section is liable on conviction to a term of imprisonment for 10 years or to a fine not exceeding ₦500,000.00 or both to both such imprisonment and fine. Such a person shall also be liable for any other offence committed under this Law.
- 26.(1) A person who knowingly and willfully has carnal knowledge and penetrates the vagina, anus or mouth of any person within the prohibited degrees of consanguinity and affinity with or without consent, commits incest and is liable on conviction, to imprisonment for 21 years. *Incest*
- (2) A person who attempts to commit the act of violence described in subsection (1) of this section, commits an offence and is liable on conviction to imprisonment for 10 years without an option of fine.

- (3) A person who incites, aids, abets, receives or counsels another person to commit the act of violence provided for in subsection (1) of this section, commits an offence and is liable on conviction to a term of imprisonment not exceeding 5 years without an option of fine.
27. A person who publishes, posts, reposts, shares pictures or video of a victim of sexual violence provided under this Law on any social media platform without the consent of the victim of sexual violence or the guardian or family member of the victim, commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding ₦300,000.00 or to both such term of imprisonment and fine.
- Posting Of Picture Or Video Of A Victim Of Sexual Violence On The Internet*
28. A person who posts nude pictures of any person or video of a current or former partner, which was recorded during their sexual relationship in the case of a former or current partner, with intent to defame, blackmail or scandalize the other person, commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding ₦500,000.00 or to both such term of imprisonment and fine.
- Posting Nude Pictures or Videos of a Current or Former Partner*
- 29.(1) A person who commits political violence as defined in the provisions of this Law, commits an offence and is liable on conviction to a term of imprisonment not exceeding 4 years or to a fine not exceeding ₦500,000.00 or to both such term of imprisonment and fine.
- Political Violence*
- (2) A person who attempts to commit the act of violence provided for in sub section (1) of this section, is guilty of an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding ₦300,000.00 or to both such term of imprisonment and fine .
- (3) A person who incites, aids, abets, receives or counsels another person to commit the act of violence provided for in sub section (1) of this section, is guilty of an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding ₦300,000.00 or to both such term of imprisonment and fine .
- 30.(1) A State actor who commits political violence, commits an offence and is liable on conviction to a term of imprisonment not exceeding 4 years or to a fine of ₦1,000,000.00 or to both such term not exceeding imprisonment and fine .
- Violence by State Actors*
- (2) A State actor who attempts to commit the act of violence provided for in subsection (1) of this section, is guilty of an offence and is

liable on conviction to a term of imprisonment not exceeding 3 years or to a fine not exceeding ₦700,000.00 or to both such term of imprisonment and fine .

- (3) A State actor who incites, aids, abets, receives or counsels another person to commit the act of violence provided for in sub section (1) of this section, is guilty of an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding ₦500,000.00 or to both such term of imprisonment and fine .
- (4) The State shall be liable for any offence committed by its agents and the Court shall award appropriate compensation commensurate with the extent and amount of damages.

### **PART III – PROTECTION ORDER AND JURISDICTION OF COURT**

31. Only the High Court of the State shall have jurisdiction to hear & grant any application brought under this Law. *Jurisdiction*
- 32.(1) An application for a protection order may be made before the Court, following a complaint of violence by the complainant or another on his or her behalf and such order, if granted, shall be effective throughout the State and no time limit shall apply in relation to a person seeking to apply for such protection order in the prescribed manner. *Application For Protection Order*
  - (2) Any complainant, may apply to the court for a protection order.
  - (3) If the complainant is not represented by a counsel, the Police officer with whom a complaint of violence has been lodged, shall inform the complainant of the remedies to be derived under this Law, including the right to lodge a criminal complaint against the perpetrator, if a criminal offence has been committed under this Law.
  - (4) Pursuant to the provisions of this Law, the application may be brought on behalf of the complainant by any other person, including a Police officer, a protection officer, an accredited service provider, a counselor, health service provider, social worker or teacher who has interest in the wellbeing of the complainant:

Provided that the application must be brought with the written consent of the complainant, except in circumstances where the complainant is –

- (a) a minor;
- (b) mentally retarded;
- (c) unconscious; or
- (d) a person who the court is satisfied is unable to provide the required consent.



- (5) A minor, or any person on behalf of a minor, may apply to the court for a protection order without the assistance of a parent, guardian or any other person and supporting affidavit(s) by a person or persons who have knowledge of the matter concerned shall accompany the application.
- (6) The application and affidavits shall be filed in Court.
- 33.(1) The court shall as soon as is reasonably possible, consider an application submitted to it in accordance with section 31 of this Law and may, for that purpose, consider such additional evidence as it deems fit, including oral evidence or evidence by affidavit, which shall form part of the record of the proceedings. *Consideration Of Application And Issuing Of Interim Protection Order*
- (2) If the court is satisfied that there is prima facie evidence that the respondent is committing, has committed or that there is imminent likelihood that the respondent may commit an act of domestic violence, the court shall, notwithstanding the fact that the respondent has not been given notice of the proceedings contemplated in subsection (1) of this section, issue interim protection order against the respondent in a prescribed manner.
- (3) An interim protection order shall be served on the respondent in the prescribed manner and shall call upon the respondent to show cause on the return date specified in the order, why a protection order should not be issued.
- (4) A copy of the application referred to in section 31 of this Law and the record of any evidence taken pursuant to subsection (1) of this section, shall be served on the respondent together with the interim protection order.
- (5) If the court does not issue an interim protection order as provided under subsection (2) of this section, the court shall direct the Registrar of the court to cause certified copies of the application concerned and any supporting affidavit to be served on the respondent in the prescribed manner, together with a notice calling on the respondent to show cause on the return date, specified in the notice why a protection order should not be issued.
- (6) The return date referred to in subsections (3) and (5) of this section may not be less than one week after service has been effected upon the respondent.
- 34.(1) If the respondent does not appear on the return dates contemplated in section 33(6) of this Law, and if the court is satisfied that – *Issuing Of Protection Order*
- (a) proper service has been effected on the respondent; and
- (b) the application contains prima facie evidence that the respondent has committed, is committing or that there is an imminent likelihood that he may commit an act of domestic violence;
- the court shall issue a protection in the prescribed form.

- (2) If the respondent appears on the return date in order to oppose the issuing of a protection order, the court shall proceed to hear the matter and consider –
    - (a) any evidence previously received under subsection (1) of this section; and
    - (b) such further affidavits or oral evidence as it may direct, which shall form part of the record of the proceedings.
  - (3) The court may, on its own accord or on the request of the complainant, if the Court is of the opinion that it is just to do so, order that in the examination of witnesses including the complainant, a respondent who is not represented by a legal practitioner –
    - (a) shall directly cross-examine the complainant or a witness; and
    - (b) shall put any question to such a complainant or witness by stating the question to the court, and the court is to repeat the question accurately to the witness.
  - (4) After hearing the matter, the court shall issue a protection order in the prescribed form, if it finds on a balance of probabilities that, the respondent has committed, is committing or that there is an imminent likelihood that he or she may commit an act of domestic violence.
  - (5) Upon the issuing of a protection order, the Registrar of the Court shall in the prescribed manner, cause –
    - (a) the original of such order to be served on the respondent; and
    - (b) a certified copy of such order, and the original warrant of arrest provided for in section 36 of this Law, to be served on the complainant.
  - (6) The Registrar of the Court shall forthwith in the prescribed manner, forward certified copies of any protection order and of the warrant of arrest referred to in section 36 of this Law, to the Police station within the jurisdiction of the Court.
  - (7) Subject to the provisions of this Law, a protection order issued in accordance with the provisions of this section, remains in force until it is set aside, and the execution of such order shall not be automatically suspended upon the filing of an appeal.
- 35.(1) The Court may by means of a protection order, prevent the respondent from –
- (a) committing any act of domestic violence;
  - (b) enlisting the help of another person to commit any such act;

*Court's Power In  
Respect Of  
Protection Order*

- (c) entering a shared household provided that the court may impose this prohibition only if it appears to be in the best interests of the complainant;
  - (d) entering a specified part of such a shared household;
  - (e) entering the complainant's residence;
  - (f) entering the complainant's place of employment;
  - (g) preventing the complainant from entering or remaining in the shared household or a specified part of the shared household;
  - (h) alienating or disposing the shared household or encumbering same;
  - (i) renouncing his or her rights in the shared household, except in favour of the complainant; or
  - (j) committing any other act as specified in the protection order.
- (2) The court may impose any additional condition which it deems reasonably necessary to protect and provide for the safety, health or wellbeing of the complainant, including an order –
- (a) to seize any arm or dangerous weapon in the possession or under the control of the respondent;
  - (b) that a Police officer shall accompany the complainant to a specified place to assist with arrangements regarding the collection of personal property;
  - (c) directing the respondent to secure alternative accommodation for the complainant;
  - (d) of a temporal relocation to any safe place as may be deemed fit in the interest of the complainant; or
  - (e) approving a mediation channel upon submission by the complainant.
- (3) In ordering a prohibition contemplated in subsection (1) (c) of this section, the court may impose on the respondent, obligations as to the discharge of rent or mortgage payments having regard to the financial needs and resources of the complainant and the respondent, and such order has the effect of a civil judgment of a court.
- (4) The Court may order the respondent to pay emergency monetary relief having regard to the financial needs and resources of the complainant and the respondent, and such order has the effect of a civil judgment of a court.
- (5) The Court may issue any direction to ensure that the complainant's physical address is not disclosed in any manner which may endanger the safety, health or wellbeing of the complainant.
- (6) If the court is satisfied that it is in the interest of any child, it may –
- (a) refuse the respondent contact with such child; or
  - (b) order contact with such child on such conditions as it may consider appropriate.

- (7) The court may not refuse to issue a protection order or to impose any condition or make any order which it is competent to impose or make under this section, merely on the grounds that other legal remedies are available to the complainant.
- (8) If the court is of the opinion that any provision of a protection order deals with a matter that should, in the interests of justice, be dealt with further under any other relevant law, including the Matrimonial Causes Law, Cap. M7 Laws of the Federation 2004 and Child Rights Law, No. 26, 2003, the court shall order such a provision to be in force for such limited period as the court may determine, in order to afford the party concerned the opportunity to seek appropriate relief under such Law.

36.(1) Whenever a court issues a protection order, the court shall make an order –

- (a) authorizing the issue of a warrant for the arrest of the respondent in the prescribed form; and
- (b) suspending the execution of such warrant, subject to compliance with any prohibition, condition, obligation or order imposed in accordance with section 35 of this Law.
- (2) The warrant referred to in subsection (1) (a) remains in force, unless the protection order is set aside, or it is cancelled after execution.
- (3) The Registrar of the Court shall issue a second or further warrant of arrest, if the complainant files an affidavit in a prescribed form and it is stated that such warrant is required for protection and that the existing warrant of arrest has been -
- (a) executed and cancelled; or
- (b) lost or destroyed.
- (4) A complainant may hand the warrant of arrest together with an affidavit in the prescribed form, stating that the respondent has contravened any prohibition, condition, obligation or order contained in a protection order, to any Police officer.
- (5) If it appears to the Police officer concerned that, subject to subsection (4), there are reasonable grounds to suspect that the complainant may suffer imminent harm as a result of the alleged breach of the protection order by the respondent, the Police officer shall arrest the respondent for allegedly committing an offence provided for under this Law.
- (6) If the Police officer concerned is of the opinion that there are insufficient grounds for arresting the respondent under subsection

*Warrant of Arrest  
Upon Issuing Of  
Protection Order*

- (5), the officer shall hand a written notice to the respondent which –
- (a) specifies the name, the residential address and the occupation or status of the respondent;
  - (b) calls upon the respondent to appear before a court, and on the date and time as specified in the notice, on a charge of committing an offence provided under this Law; and
  - (c) contains a certificate signed by the Police officer concerned to the effect that he handed the original notice to the respondent and that he explained the import therefore to the respondent.
- (7) The Police officer shall forward a duplicate copy of the notice referred to in subsection (6) of this section to the Registrar of the Court concerned, and the mere production in the court of such a duplicate shall be prima facie proof that the original thereof was handed to the respondent specified therein.
- (8) In considering whether or not the complainant may suffer imminent harm as contemplated in subsection (5) of this section, the Police officer shall take into account –
- (a) the risk to the safety, health or wellbeing of the complainant;
  - (b) the seriousness of the conduct comprising an alleged breach of the protection order; and
  - (c) length of time since the alleged breach occurred.
- (9) Whenever a warrant of arrest is handed to a Police officer in accordance with subsection (4) of this section, the Police officer shall inform the complainant of his right to simultaneously lay a criminal charge against the respondent if applicable, and explain to the complainant how to lay such a charge.
- 37.(1) A complainant or a respondent may, upon written notice to other party and Court concerned, apply for the variation or setting aside of a protection order referred to in section 35 of this Law in the prescribed manner.
- Variation Or  
Setting Aside Of  
Protection Order*
- (2) If the Court is satisfied that a good cause has been shown for variation or setting aside of the protection order, it may issue an order to that effect; provided that the Court shall not grant such application, unless it is satisfied that the application is made freely and voluntarily by whoever is applying.
  - (3) The Registrar of the Court shall, forward a notice as prescribed, to the complainant and the respondent, if the protection order is varied or set aside in accordance with subsection (1) of this section.

38.(1) A Court may discharge a protection order on an application on notice by an applicant or a respondent.

*Power To  
Discharge A  
Protection Order*

(2) The Court may discharge the order even if the Order is for the benefit of a specified person other than the applicant, or against an associated respondent.

(3) Where an order is for the benefit of a specified person or against an associated respondent, either of them may apply for the order to be discharged in so far as it applies to them.

(4) An application may be made under this section for the discharge of an interim order in which case, the Court shall fix a hearing date as soon as practicable, but not later than 30 days after the filing of the application.

39.(1) A respondent who contravenes an interim protection order or a protection order, or while an interim order is in force, refuses to permit the applicant or any dependent person to enter and remain in the place to which the order relates or does so entering or remaining, commits an offence and is liable, on summary conviction, to a term of imprisonment not exceeding 1 year or to a fine not exceeding ₦300,000.00 or to both such term of imprisonment and fine .

*Offences Relating  
to Protection  
Orders*

(2)The provision of subsection (1) shall be without prejudice to any punishment or sanction as to contempt of Court or any liability, whether civil or criminal that may be incurred by the respondent concerned.

(3) A person who willfully makes a false statement in a material respect as it relates to protection Orders referred to in this section, commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding ₦200,000.00 or to both such term of imprisonment and fine.

40. The affidavit, application and forms of protection orders referred to in this part of the Law, shall be in accordance with the schedule to this Law.

*Application and  
Forms Of  
Protection Order*

41. The Court may extend a protection order to a person specified in the order, other than the applicant, if the Court is satisfied that –

*Extension of  
Protection Order  
to other Persons*

- (a) the respondent is engaging in or has engaged in behaviour which would amount to sexual-based violence against the person specified in the order, referred to as the specified person;
- (b) the respondent's behaviour towards the specified person is due, in whole or in part, to the applicant's relationship with the specified person; or

- (c) the extension of the protection order is necessary for the protection of the specified person.

- 42.(1) Where the Court in issuing a protection order considers it expedient to issue an Occupation Order; the Court shall in the best interest of the victim of domestic violence and underage children, issue the Occupation Order mandating the respondent to forthwith vacate matrimonial home or any other specified home. *Occupation Order*
- (2) The Court shall issue the order only after the consideration of a social and psychological enquiry report prepared by a Social Welfare Officer and a Clinical Psychologist.
- (3) The Court shall consider the effect of granting such order or not granting same on the health, education of the children and development of the family where the applicant and the respondent are in a marital relationship.
- (4) A landlord shall not evict an applicant solely on the basis that the applicant is not a party to a lease or rent where the Court gave exclusive occupation of the residence which is subject to the lease to the applicant.
- 43.(1) Where there is need for special protection for a child, the Court shall refer matters concerned with the temporary custody of a child in a situation of sexual violence to a Family Court. *Referral to Family Court*
- (2) Any matter connected with sexual violence in which a child is the perpetrator or the victim, may be referred to the Family Court at the High Court level or tried by the special Court established under this Law.
- 44.(1) A Police officer at the scene of an incident of violence or to whom a report of violence has been made, shall have the duty of – *Obligations of the Police*
- (a) assisting a victim of violence to file a complaint regarding the violence;
  - (b) diligently investigating the complaint of violence brought to him under this Law and promptly taking necessary action within 31 days of the complaint;
  - (c) providing or arranging safe transport for the victim to an alternative residence, safe place or shelter where such is required;
  - (d) providing or arranging transportation for the victim to the nearest government or private hospital or medical facility for medical test and diagnoses, medical report and treatment of injuries where such treatment is needed;
  - (e) explaining to the victim(s), their rights to protection against violence and remedies available under this Law;

- (f) explaining to the victim(s) their right to lodge a criminal complaint in addition to any remedy provided under this Law;
  - (g) accompanying the victim to victim's residence to collect personal belongings;
  - (h) desisting and abstaining from the habit of mocking, embarrassing and ridiculing victims of offences under this Law and forcing or telling them to go home and settle the matter.
- (2) A Police officer may, without an order from the court or a warrant of arrest, arrest any person –
- (a) whom he suspects upon reasonable grounds to have committed any of the offences under this Law; and
  - (b) against whom a complaint has been made for having committed any of the offences under this Law.
- (3) A Police officer in carrying out his or her duties under this Law, shall have the power to –
- (a) remove or supervise the removal of a person excluded from a shared residence where the court has issued such an order under this Law;
  - (b) remove or supervise the removal of any dangerous weapon used in order to commit an act of violence as contemplated in this Law;
  - (c) collect and store fingerprints, including DNA of accused and convicted offenders; and
  - (d) perform any other act considered necessary in order to ensure the safety and well-being of the complainant.
- (4) Notwithstanding the provisions of subsections (1), (2) and (3) of this section, a Police officer shall not -
- (a) under any circumstance, persuade or compel any victim of violence under this Law to negotiate extra-judicial or monetary settlement with the offender;
  - (b) in exercising the powers provided under subsection (2) of this section, commit any act of torture or other cruel, inhuman, and degrading treatment on the offender for whatever purpose.
- (5) A Police officer who engages in the conduct or acts of violence provided in subsection (4) of this section, commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding ₦500,000.00 or to both such term of imprisonment and fine .
- 45.(1) It shall be the responsibility of the Police to ensure that any person *Responsibility*  
including the –
- (a) complainant;



- (b) service providers; or
  - (c) person seeking for protection order on behalf of the complainant, is protected against any act or form of intimidation at the Police Station where the complaint of violence was lodged;
- (2) The Police shall take reasonable measure to protect the identity of any witness who provides information or statement which may be useful in the prosecution of an offender and the statement issued shall be treated as confidential except where it is necessary to use such information or statement in Court.
46. Subject to the provisions of Police Act, a Police officer who fails to perform his or her duties under this Law or deliberately refuses to investigate or frustrates the investigation of a complaint, or frustrates the prosecution of an offender or connives with the offender to destroy or conceal evidence, commits an offence and is liable on conviction to a term of imprisonment not exceeding 3 years or to a fine not exceeding ₦500,000.00 or to both such term of imprisonment and fine. *Punishment of Offence*
- 47.(1) In addition to the rights guaranteed under Chapter IV of the 1999 Constitution of the Federal republic of Nigeria, or any other international human rights instruments to which Nigeria is a party, every victim of sexual violence as provided under this Law, is entitled to the following rights – *Rights of Victims*
- (a) to receive the necessary materials, medical, psychological, social and legal assistance through governmental agencies, service providers, civil society organizations, donor agencies and non governmental agencies providing such assistance;
  - (b) to be informed of the availability of free legal, health and social services and other relevant assistance and be readily afforded access to them;
  - (c) to rehabilitation and re-integration programme of the State, to enable victims to acquire where applicable and necessary, pre-requisite skills in any vocation of the victim's choice and also in necessary formal education or access to micro-credit facilities;
  - (d) a female victim of sexual violence, if she so desires or requests, shall be attended to by a female doctor at any hospital or medical facility where she is taken to and if there is no female doctor available, a male doctor may attend to her provided that he is supported by a female nurse;
  - (e) right to confidentiality of medical reports and pictures of victims;
  - (f) a victim of sexual violence who desires to change school away from the area of the violence, shall be free to transfer to another school. The Agency shall facilitate the transfer

- and the Ministry of Education and the relevant schools shall accede to the transfer request;
- (g) a victim of sexual violence who desires to transfer away from the State Government Ministry, Department or Agency where the violence occurred, shall be allowed to do so. The Agency shall facilitate the transfer and the Civil Service Commission and Head of Service shall accede to the transfer request.
- (h) before sharing information of victims of sexual violence, service providers or civil society organizations shall obtain the consent of the victim or parent/guardian where the victim is a minor or mentally disabled;
- (i) any rules or regulations made by any institution or organization, prohibiting or restraining the reporting of offences or complaint in accordance with the provisions of this Law, shall to the extent of the inconsistencies, be null and void.
- (j) no complainant of any offence under this Law shall be expelled, disengaged, suspended or punished in any form whatsoever by virtue of the action of compliance with the provisions of this Law.
- (2) Any head of institution who violates the provisions of this section, is guilty of an offence under this Law and shall be liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding ₦500,000.00 or to both such term of imprisonment and fine.
- 48.(1) No person shall publish in any manner, any information which might directly or indirectly, reveal the name or identity of any victim to a criminal or civil proceedings brought pursuant to this Law.
- (2) The Court, if it is satisfied that it is in the interest of justice, may direct that any further information relating to proceedings held under this Law, shall not be published; provided that no direction under this subsection applies in respect of the publication of a bona-fide law report which does not mention the names or reveal the identities of the victims to the proceedings or of any witness at such proceedings other than the convict.
- (3) A person who contravenes the provisions of this section, commits an offence and is liable on conviction, to a term of imprisonment not exceeding 1 year or to a fine not exceeding ₦300,000.00 or to both such term of imprisonment and fine.
49. A Court may declare a person who has been convicted of a sexual offence as a dangerous sex offender if such person has –

*Prohibition of  
publication of  
certain information*

*Dangerous Sex  
Offenders*

- (a) been convicted of a sexual offence against a child;
- (b) more than one conviction for a sexual offence; or
- (c) been convicted of a sex offence which was accompanied.

50.(1) Any person convicted of a sex offence shall have his or her name registered in the Sexual Offenders' Register, kept at the Secretariat of the Agency and office of the Attorney General and Commissioner for Justice of the State.

*Sexual Offenders'  
Register*

(2) The Register shall be open to the general public and shall also be published on the Agency's website to serve as caveat to the public and deterrent to would-be-offenders.

51.(1) The Court shall order an officer of the Nigerian Police Force, to seize any arm or dangerous weapon in the possession or under the control of a respondent, if the court is satisfied with the evidence placed before it, that –

*Seizure of Arms  
and Dangerous  
Weapons*

- (a) the respondent has threatened or expressed the intention to kill or injure herself or any person in a domestic relationship whether or not by means of such arm or dangerous weapon; or
- (b) possession of such arm or dangerous weapon is not in the best interest of the respondent or any other person in a domestic relationship as a result of the respondent's –
  - (i) state of mind or mental condition;
  - (ii) inclination to violence; or
  - (iii) use of or dependence on intoxicating liquor or drugs.

(2) Any arm seized in accordance with terms of sub-section (1) above, shall be handed over to the Nigeria Police Force as provided in the Police Act Cap 154 Laws of the Federal Republic of Nigeria 1990 and Firearms Act Cap 69 Laws of the Federal Republic of Nigeria 1990.

(3) Any dangerous weapon seized in compliance with sub-section (1) above –

- (a) shall be given a distinctive identification mark and retained in Police custody for such period of time as the court shall determine; and
- (b) shall only be returned to the respondent or; if the respondent is not the owner of the firearm or dangerous weapon, to the owner by order of the court and on such condition as the court shall determine; or
- (c) if the court is satisfied that it is in the interest or safety of any person concerned or in the public interest, the court shall order that the firearm or dangerous weapon be forfeited to the state.

**PART IV****SERVICE PROVIDERS AND CIVIL SOCIETY ORGANIZATION**

- 52.(1) Any voluntary association registered under the Companies and Allied Matters Act 1990 by the Corporate Affairs Commission or any other Law for the time being in force, with the objective of protecting the rights and interests of victims of violence by any lawful means, including providing free legal aid, medical aid, financial aid or other assistance, shall register itself with the Imo State Government through the Agency created under this Law as a service provider for the purposes of rendering its services to victims under this Law.
- Registration and Powers of Service Providers*
- (2) A service provider or civil society organization so registered under subsection (1), shall have the power to -
- (a) take record of a violent incident report in the prescribed form, if the victim or complainant so desires and, forward a copy thereof to the Court, the Agency and the Protection Officer having jurisdiction in the area where the violence took place;
  - (b) get the victim or complainant medically examined and forward a copy of the medical report to the Protection Officer and the Police station within the locality where the violence act took place; and
  - (c) ensure that the victim or complainant is provided shelter in a transit shelter home, if such a victim so requires and forward a report of the lodging of the victim in the transit shelter home to the Police station within the locality where the violence act took place.
- (3) The service providers shall have access to the Police and shall be allowed to monitor the process and progress of investigations of violent acts under this Law.
- (4) No suit, prosecution or other legal proceeding shall lie against any service provider who is, or who is deemed to be acting or purporting to act under this Law, for anything which is done or intended to be done in good faith in the exercise of powers or discharge of functions under this Law, towards the prevention of the commission of violence or assisting the victims of violence.
- 53.(1) A Police officer shall within 31 days of a complaint of any violence under this Law, thoroughly investigate the complaint and transmit the original case file forthwith to the Director Public Prosecutions (DPP) in the Ministry of Justice.
- Investigation of Offences*

(2) The Director Public Prosecution (DPP) shall, within 21 days from the date of transmission from the Police, meticulously vet the case file and give a legal opinion after which he shall transmit the case file if need be, to the Legal Unit of the Agency created under this Law for immediate prosecution of offenders, by the Agency.

54.(1) Subject to the powers of the Attorney-General, the Agency shall have power to prosecute offenders under this Law.

*Prosecution of Offenders*

(2) Prosecution under this Law shall be undertaken by legal officers of the Agency or any legal practitioner appointed or engaged by the Agency.

(3) Commencement of prosecution for any of the offences defined in this Law shall not be affected by limitation of time.

#### PART V – REGULATORY BODY

55.(1) There is hereby established, a body to be known as **IMO STATE AGENCY FOR PROHIBITION OF VIOLENCE AGAINST PERSONS**, herein referred to as “**The AGENCY**”).

*Establishment of the Agency*

(2) The Agency shall be -

- (a) a body corporate with perpetual succession and a common seal;
- (b) capable of suing and being sued in its corporate name;
- (c) capable of acquiring, holding or disposing of any property, movable or immovable, for the purpose of carrying out its functions.

56.(1) There is hereby established a Governing Board for the Agency hereinafter referred to as “the Board”.

*Establishment and Composition of the Governing Board of the Agency*

(2) The Board shall consist of the following members –

- (a) The Chairperson who shall be appointed by the Governor, and being a person who is experienced and knowledgeable in dealing with violence-related offences;
- (b) a representative of the Attorney General of the State from the office of the Director Public Prosecutions (DPP);
- (c) a representative of the Commissioner of Police from the Legal Unit;
- (d) an officer of the National Human Rights Commission;
- (e) a officer of the Legal Aid Council;
- (f) a representative of the Ministry in charge of Health in the State not below the rank of a Chief Medical Officer or Chief Nursing Officer;
- (g) a representative of the Ministry in charge of Gender Development and Vulnerable Affairs;

- (h) two representatives of women in rural communities;
  - (i) two representatives of the youths (male and female);
  - (j) two representatives of the religious bodies;
  - (k) three representatives of the accredited service providers;
  - (l) one representative of persons living with disabilities;
  - (m) three representatives of civil society organizations;
  - (n) one representative of the Nigeria Bar Association (NBA), Imo State Branch;
  - (o) The Director-General/Chief Executive Officer of the Agency.
- (3) The members of the Board of the Agency other than the ex-officio members shall hold office for a term of four years and may be eligible for re-appointment for another term of four years and no more.
- (4) A member of the Board shall cease to hold office if the person –
- (a) becomes of unsound mind or is incapable of carrying out his or her duties;
  - (b) becomes bankrupt;
  - (c) is convicted of a felony or any offence involving dishonesty or fraud;
  - (d) is guilty of serious misconduct relating to his or her duties;
  - (e) is absent from three consecutive meetings without good cause;
  - (f) dies;
  - (g) in the case of an ex-officio member, ceases to hold the Office on the basis of which such person became a member of the Board.
- (5) A member of the Board may resign his appointment by a notice in writing under his hand, addressed to the Governor and that member shall on the date of the receipt of the notice by the Governor of the State, cease to be a member of the Board.
- (6) Where a member of the Board ceases to hold office for any reason whatsoever, before the expiration of term for which he appointed, another person representing the same interest as that member shall be appointed to the Board for unexpired term.

57.(1) The Agency shall –

- (a) make recommendations to the Governor for the State action plan on violence against persons and other related matters provided under this Law;
- (b) advise the Governor on Policy matters and strategies to prevent and combat perpetration of offences under this Law;
- (c) monitor, supervise, formulate and provide general policy guidelines for the implementation of the provisions of this Law;

*Functions  
of the Agency*

- (d) prosecute offenders under this Law;
- (e) liaise with government agencies, service providers and civil society organizations, to promote the rehabilitation and re-integration of victims of violence under this Law;
- (f) organize regular training and seminars as provided in section 65 of this Law;
- (g) carry out and sustain regular and rigorous public enlightenment and awareness campaigns at the State, Local Government Areas and Community levels in conjunction with the service providers and other non-governmental organizations through seminars, workshops, publications, radio and television programmes, internet and social media aimed at educating the public to stem the rising waves of violence against persons in the State;
- (h) prepare the guidelines for the disbursement of the Funds of the Agency;
- (i) administer the operations of the Trust fund;
- (j) conduct research on national, international and regional development into the standards for dealing with matters on violence against persons;
- (k) establish and manage Sexual Assault Referral Centres (SARC);
- (l) offer free medical treatment, trauma counseling and support services to victims of violence;
- (m) register accredited service providers free of charge and draw up guidelines for their operations and supervise their activities;
- (n) keep a register of all accredited service providers and circulate same to all Police stations, protection officers and the courts;
- (o) keep a register of all convicted sex offenders and link it up to the NAPTIP sex offenders register and make it accessible to the public;
- (p) recruit staff and adequately train them to carry out the functions of the Agency;
- (q) pay the staff of the Agency such remuneration and allowances as may be determined by the Board and approved by the Governor;
- (r) enter into such consultancy or contract as may be necessary or expedient for the discharge of its functions and ensure the efficient performance of the functions of the Agency;
- (s) undertake such other activities as are necessary or expedient for giving full effect to the provision of this Law; and perform such other functions as may be specified by any law or enactment.

58.(1) The Board shall –

- (a) formulate and provide general policy guidelines for the discharge of the functions of the Agency;

*Functions and  
Powers of the  
Board*

- (b) monitor and ensure the implementation of the policies and programmes of the Agency; and
- (c) carry out such other functions as are necessary or expedient to ensure the efficient performance of the functions of the Agency under this Law.

(2) The Board shall have powers to:-

- (a) approve rules and regulations relating to the appointments, promotions and disciplinary measures for the employees of the Agency;
- (b) fix the remuneration, allowances and benefits of the employees of the Agency; and
- (c) regulate its proceedings and make orders with respect to holding of its meetings.

59.(1) The Board of the Agency shall meet at least once every three months. The quorum at a meeting of the Board shall be one-third of the members.

*Meetings  
of the Board*

- (2) The Chairman shall preside over the meetings of the Board and in the absence of the Chairman, a member of the Board elected by the members present shall preside.
- (3) Matters before the Board of the Agency shall be decided by a simple majority of the members present by voting and in the event of equality of votes, the person presiding shall have a casting vote.
- (4) The Board may co-opt a person to attend its meeting but the co-opted person shall not vote on a matter for decision by the Board.
- (5) Subject to the provisions of this section, the Board may determine the procedure to follow and standing orders to guide its meetings, notices to be given, the keeping of minutes of its proceedings and such other matters as the Board may from time to time, determine.

60.(1) There shall be a Director-General for the Agency who shall be the Chief Executive and Accounting Officer of the Agency.

*Director-General  
of the Agency*

- (2) The Director-General shall have experience in dealing with offences related to violence.
- (3) The Director-General shall, subject to the general direction of the Board, be responsible for –
  - (a) the day to day administration of the Agency;
  - (b) keeping the books and proper records of the proceedings of the Board;
  - (c) the administration of the Secretariat of the Board; and
  - (d) the general direction and control of all other employees of the Agency.



- 61.(1) The Agency shall have its Secretariat in Owerri and liaison offices in all the 27 Local Government Council headquarters in the State, to enable the rural dwellers easily access its services. *Secretariat of the Agency*
- 62.(1) The Agency in facilitating the performance of its functions shall, appoint such number of its officers as it may deem fit, to its liaison offices in each Local government council as Protection Officers, to assist the Agency, the Court and the Police in the discharge of their duties under this Law. *Protection officers*
- (2) The protection officers shall co-ordinate the activities of the Police, accredited service providers and civil society organizations in the Local Government Areas to ensure that a victim of violence –
- (a) is promptly taken to the Police station to report the case, have access to immediate medical treatment and obtain medical report from nearest government or private hospital;
  - (b) have easy access to accredited service providers and civil society organizations;
  - (c) have easy access to transportation to an alternative residence or a safe shelter, the nearest hospital or medical facility for treatment, if the complainant so requires;
  - (d) is able to collect her belongings or properties from a shared household or her residence, if the complainant so requires;
  - (e) is able to access the Court for orders under this Law; or
  - (f) has access to every possible assistance in the service of interim protection order on a respondent, and the enforcement of any order that may have been made by the Court under this Law.
- (3) The Protection Officer may, upon the failure of the respondent to make payment ordered by the Court under this Law, direct an employer or a debtor of the respondent or any bank in which the respondent operates any account, to directly pay to the complainant or deposit with Court, a portion of the wages or salaries or debt due to or accrued to the credit of respondent or monies in any bank account operated by the respondent, which amount may be adjusted towards the emergency monetary relief payable by the respondent.
- 63.(1) The Agency in conjunction with the service providers and other non-governmental organizations, shall provide professional sexual trauma counseling and support services to victims of violence under this Law in strategic places such as Sexual Assault Referral Centres (SARC) and health centres at Local Government Areas and other locations that can be easily accessed by the victims free of charge. *Provision of Counseling and Support Services*

- (a) The Police officer, medical officer, social worker and service providers shall inform the victim of any rights and any services including support and counseling services which may be available free of charge to the victim.
- 64.(1) The Agency shall establish Transit Shelters across the State which shall be managed and supervised as homes to cater for rescued victims of any form of violence under this law. *Establishment of Transit Shelter*
- (2) The Transit Shelters shall be run by staff of the Agency, with the aim of providing emergency safe shelter, protection, assistance, trauma counseling and support services, rehabilitation and training for the rescue victims to facilitate their reintegration into the society.
- 65.(1) The Agency shall establish within its Secretariat, a Sexual Assault Referral Centre (SARC) which shall be a one stop shop comprising of the following units- *Establishment of Sexual Assault Referral Centre (SARC)*
- (a) Sexual Violence Unit;
- (b) Medical Unit;
- (c) Legal Unit;
- (d) Counseling and Rehabilitation Unit;
- (e) Law Enforcement Unit;
- (f) Protection and Shelter Unit; and
- (g) Training and Public Awareness Unit;
- (2) Notwithstanding the provision of subsection (1) of this section, the Board has power to set up any other unit or committee as may be necessary to assist the Agency in the performance of its duties and functions under this Law.
- (3) The Sexual Violence Unit shall, together with the officers at the liaison offices in the 27 LGAs of the State, work closely with the Police, service providers and other civil society organizations to ensure that cases of sexual violence are properly handled and urgent medical attention given when necessary. The Unit shall also ensure that the dignity and identity of the victims are promptly protected at all levels.
- (4) The Medical Unit of the Agency shall be situated inside the Imo State University Teaching Hospital (IMSUTH) Orlu, Imo State Specialist Hospital Owerri and General Hospital Okigwe where victims of sexual violence are promptly treated and medical reports obtained, free of charge.
- (5) The Agency shall liaise with the Ministry of Health, management of the hospitals referred in subsection (4) and in collaboration with donor agencies to ensure that specialized and well

- experienced doctors, nurses and sexual trauma counselors are attached to the Medical Unit for prompt treatment of victims.
- (6) The Legal Unit shall –
- (a) be charged with the responsibility for prosecuting offenders under this Law;
  - (b) support the Agency and other units with legal advice and assistance whenever it is required; and
  - (c) work very closely with the Police and service providers to ensure that there is no delay in the investigation and prosecution of offenders.
- (7) There shall be appointed for each of the Units, a principal Officer who shall be known by such designation as the Board may determine.
- (8) For the purpose of this Law, medical reports can be validly obtained from a government or private hospital.
- 66.(1) There shall be regular training for Judicial officers, judicial staff, Law Enforcement Officers, Counsellors, Medical Officers, Social Welfare Officers, Service Providers, Traditional Rulers, Town Union President Generals, Religious Leaders and other major stakeholders by the Agency to equip them on how to effectively handle cases of sexual-based violence and to be fully familiar with the provisions of this Law. *Provision for training*
- (2) There shall be regular training at the community and grassroot level, by the Agency to create peoples' awareness of sexual violence and other offences under this Law so as to teach them how such cases of violence should be handled and eradicated and to encourage the victims to speak out and report the cases of violence without fear of stigmatization.
  - (3) Such training and capacity building shall be developed and carried out in close consultation with the accredited service providers, civil society organizations and donor agencies.
  - (4) Educational programs shall be initiated at each Local Government Area of the State, aimed at educating the public, community leaders, market men and women, farmers and school pupils and students. Such programs shall include dissemination of advice on reporting rape, sexual violence and other acts of violence to the Police, Agency's liaison office in the Local Government Council, service providers and other dedicated centres.
  - (5) The Agency shall use the feedbacks and reports from the trainings and educational programs to develop and implement local strategies to confront and eradicate sexual violence and other offences provided under this Law.

- 67.(1) There is established for the Agency, a support fund for victims of sexual violence as described in this Law. *Establishment of support fund*
- (2) The proceeds of the Fund shall be applied –
- (a) towards payment of medical expenses for victims;
  - (b) towards the basic material support of victims of sexual violence under this law;
  - (c) for caring for affected dependants of Sexual violence;
  - (d) for any matter connected with the rescue, rehabilitation and re-integration of victims;
  - (e) towards provision of safe homes and temporary shelters for victims of Sexual violence in different local government areas;
  - (f) for the training and capacity building of persons connected with the provision of shelter, rehabilitation and re-integration;
  - (g) for training of judicial officers, law enforcement officers and other stakeholders as provided in clause 65 of this Law; and
  - (h) for rigorous enlightenment campaigns in the communities against Sexual violence and other related matters
68. The funds and resources of the Agency shall consist of – *Funds of the Agency*
- (a) budgetary allocations approved by the State House of Assembly for the purpose of the Agency;
  - (b) State Government subvention;
  - (c) grants-in-aid and assistance from donor, bilateral and multilateral agencies;
  - (d) voluntary contributions to the fund from individuals, organizations and the private sector; and
  - (e) monies from any other source approved by the Government.
- 69.(1) The Fund shall be managed by the Agency prudently for the maximum realization of its objectives under this Law. *Management of the Fund*
- (2) Monies for the Fund shall be paid into a bank account, opened for the purpose by the Agency as approved by the Board.
- 70.(1) The Agency shall cause to be prepared, not later than 30<sup>th</sup> September each year, an estimate of income and expenditure of the Agency during the next succeeding year and when prepared, they shall be submitted to the Imo State House of Assembly through the Ministry of Women Affairs and Vulnerable Groups for approval by the Governor. *Annual Estimate and Accounts*
- (2) The Agency shall keep books of proper accounts and records in relation thereto, and when certified by the Board, such accounts shall be audited.
- (3) The accounts of the Agency shall be audited by Auditors appointed from the list of Auditors and in accordance with the guideline issued by the Auditor-General for the State.

- 71.(1) The Agency shall, not later than three months after the end of each year, submit through the Board to the Governor and State House of Assembly, a report on its activities and administration during the immediate preceding year, and shall also include the report of the audited accounts of the Agency and the auditors reports thereon.

*Annual Report of  
the Agency*

## PART VII – MISCELLANEOUS

- 72.(1) No civil action shall be commenced against the Agency or its authorized officers before the expiration of a period of 30 days after written notice of intention to commence the suit have been served on the Agency by the intending plaintiff or his agent, and the notice shall clearly state the –
- (a) cause of action;
  - (b) particulars of the claim;
  - (c) name and place of abode of the intending plaintiff; and
  - (d) relief sought.
- (2) The notice referred to in subsection (1) of this section and any summons, or other documents required or authorized to be served on the Agency under this Law or any other enactment or Law, may be served by –
- (a) delivering it to office of the Director-General of the Agency;
  - or
  - (b) sending it by registered mail to the postal address of the Agency.
73. In any action or suit against the Agency, no execution shall be levied or attachment process issued against the Agency, unless at least three months' notice of intention to execute or attach has been given to the Agency.
74. A member of the Board, Director-General, officer, staff or employee of the Agency shall be indemnified out of the assets of the Agency against any proceeding brought against him or her in his or her capacity as a member of the Board, Director-General, officer, staff or employee of the Agency, where the act complained of is not ultra vires his or her powers.

*Pre-Action Notice*

*Restriction of  
execution against  
the property of the  
Agency*

*Indemnity of  
officers of the  
Agency*

SCHEDULE

AFFIDAVIT, APPLICATION AND FORMS OF PROTECTION

FORM 1

GENERAL FORM OF APPLICATION FOR PROTECTION ORDER

In the \_\_\_\_\_ Court  
In the \_\_\_\_\_ Division  
Suit No \_\_\_\_\_ Between  
A.B \_\_\_\_\_ Complainant  
And  
C.D \_\_\_\_\_ Respondent

APPLICATION FOR PROTECTION ORDER BY THE VICTIM

The Complainant applies that he/she be protected by the Honourable Court by the issuance of a protection order against the Respondent.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 202.

\_\_\_\_\_  
Complainant /Complainant's Counsel

**FORM 2**

**GENERAL FORM OF APPLICATION FOR PROTECTION ORDER BY A PERSON  
OTHER THAN THE VICTIM**

In the \_\_\_\_\_ Court  
In the \_\_\_\_\_ Division  
Suit No \_\_\_\_\_ Between  
A.B \_\_\_\_\_ Complainant  
And  
C.D \_\_\_\_\_ Respondent  
And  
EF \_\_\_\_\_ Guardian

APPLICATION FOR PROTECTION ORDER BY A PERSON OTHER THAN THE VICTIM  
I, E.F. Guardian to A.B. the Complainant, hereby apply that A.B. be protected by the Honourable  
Court by the issuance of a protection order against the Respondent.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 202..

\_\_\_\_\_  
**Guardian/Police Officer/Social Worker etc Counsel**

**FORM 3**

**AFFIDAVIT IN SUPPORT OF APPLICATION FOR PROTECTION ORDER**

In the \_\_\_\_\_ Court  
In the \_\_\_\_\_ Division  
Suit No \_\_\_\_\_ Between  
A.B \_\_\_\_\_ Complainant  
And  
C.D \_\_\_\_\_ Respondent  
EF \_\_\_\_\_ Guardian

I, AB \_\_\_\_\_ of \_\_\_\_\_ hereby make oath and state as follows:  
1. That I am the Complainant /Guardian of the Complainant/A Police Officer/ Protection Officer/  
An Accredited Service Provider/A Counsellor/A Health Service Provider/Social Worker/Teacher  
etc.

\_\_\_\_\_ DEPONENT

Sworn to at \_\_\_\_\_ Court Registry  
This \_\_\_\_\_ day of \_\_\_\_\_, 202.

**BEFORE ME**

**COMMISSIONER FOR OATHS**



**FORM 4**

**CONSENT TO APPLICATION FOR PROTECTION ORDER IN RELATION TO A PERSON NOT BEING A MINOR, MENTALLY RETARDED PERSON, UNCONSCIOUS OR A PERSON WHO THE COURT IS SATISFIED IS UNABLE TO PROVIDE CONSENT**

In the \_\_\_\_\_ Court  
In the \_\_\_\_\_ Division  
Suit No \_\_\_\_\_ Between  
A.B \_\_\_\_\_ Complainant  
And  
C.D \_\_\_\_\_ Respondent  
EF \_\_\_\_\_ Guardian

**CONSENT TO APPLICATION FOR PROTECTION ORDER**

I, AB of \_\_\_\_\_ Complainant in the case hereby consent to the application by EF, for the issuance of a Protection Order on my behalf.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 202.

\_\_\_\_\_  
**Complainant**

**FORM 5****GENERAL FORM OF INTERIM PROTECTION ORDER**

In the \_\_\_\_\_ Court  
 In the \_\_\_\_\_ Division  
 Suit No \_\_\_\_\_ Between  
 A.B \_\_\_\_\_ Complainant  
 And  
 C.D \_\_\_\_\_ Respondent  
 And  
 EF \_\_\_\_\_ Guardian /Police Officer etc  
 To: CD \_\_\_\_\_ Respondent

**INTERIM PROTECTION ORDER**

WHEREAS the Complainant /Guardian etc has applied that the Complainant be protected by this Honourable Court against you;

AND WHEREAS there is prima facie evidence that you have committed an act or acts of domestic violence against the Complainant, or that there is imminent likelihood of you committing such violence against the Complainant;

You are hereby commanded to show cause on the \_\_\_\_\_ day of \_\_\_\_\_, 202..the return date, why a protection order should not be issued against you.

THIS ORDER shall serve as a protection order for the Complainant until the return date.  
 Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 202.

\_\_\_\_\_  
**Judge**

**FORM 6**

**GENERAL FORM OF PROTECTION ORDER**

In the \_\_\_\_\_ Court  
 In the \_\_\_\_\_ Division  
 Suit No \_\_\_\_\_ Between  
 A.B \_\_\_\_\_ Complainant  
 And  
 C.D \_\_\_\_\_ Respondent  
 And  
 EF \_\_\_\_\_ Guardian /Police Officer etc  
 To: CD \_\_\_\_\_ Respondent

**PROTECTION ORDER**

WHEREAS the Complainant /Guardian etc has applied that the Complainant be protected by this Honourable Court against you;

AND WHEREAS there is prima facie evidence that you have committed an act or acts of domestic violence against the Complainant, or that there is imminent likelihood of your committing such violence against the Complainant;

You are hereby prohibited from:

(Insert whichever is appreciated)

- (a) committing any act of domestic violence;
- (b) enlisting the help of another person to commit any such act;
- (c) entering a shared household: Provided that the court may impose this prohibition only if it appears to be in the best interests of the complainant;
- (d) entering a specified part of such a shared household;
- (e) entering the complainant’s residence;
- (f) entering the complainant’s place employment;
- (g) preventing the complainant from entering or remaining in the shared household or a specified part of shared household;
- (h) alienating or disposing the shared household or encumbering same;
- (i) renouncing his or her rights in the shared household except in favour of the complainant;
- (j) committing any other act as specified in the protection order; and/or
- (k) as the Court deems fit.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 202..

\_\_\_\_\_  
**Judge**

This printed impression has been carefully compared by me with the Bill which has been passed by Imo State House of Assembly and found by me to be a true and correct printed copy of the said Bill.

**BARR. CHINELO ADAORA EMEGHARA**  
Clerk of the House of Assembly  
Imo State of Nigeria

Assented to by me this 15<sup>th</sup> day of December, 2021



**SEN. HOPE UZODINMA**  
Governor  
Imo State of Nigeria

Assent withheld by me this .....day of ....., 2021

**SEN. HOPE UZODINMA**  
Governor  
Imo State of Nigeria

Passed again by the Imo House of Assembly by two-thirds majority this .....  
Day of ....., 2021.



**RT. HON. BARR. KENNEDY CHIDOZIE IBEH**  
Speaker  
Imo State House of Assembly

United Nations  Nations Unies

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**United Nations Office on Drugs and Crime  
United Nations Division for the Advancement of Women**

**Expert Group Meeting on good practices in legislation on violence against women**  
United Nations Office at Vienna, Austria  
26 to 28 May 2008

**Effectiveness of Legislation Enacted to Address Violence against  
Women in Nigeria**

**Expert Paper prepared by:**

**Oby Nwankwo\***  
Executive Director  
Civil Resource Development and Documentation Centre (CIRDDOC)  
Enugu State, Nigeria

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\* *The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.*

### **List of Acronyms**

CIRDDOC:	Civil Resource Development and Documentation Centre
CRC:	(United Nations) Convention on the Rights of the Child
DAW:	(United Nations) Division for the Advancement of Women
DV:	Domestic Violence
FGM:	Female Genital Mutilation
GBV:	Gender Based Violence
LACVAW:	Legislative Advocacy Committee on Violence against Women
NACVAW:	National Coalition on Violence against Women
NHRC:	National Human Rights Commission
VAW:	Violence against Women

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### **Introduction**

Violence against women is a profound social and health problem for women in Nigeria. It is a significant cause of female morbidity and mortality. It is a social problem in terms of the cultural prerogatives assigned to men by sexism. The culture in Nigeria is patriarchal and this culture fosters belief in men's entitlement to the service, obedience, loyalty and subservience of women and authorizes men's violence towards women in the service of those entitlements. In a patriarchy, the power assigned to men in intimate relationships and the violence permitted to sustain that power foster the social control of women by men in the culture. Violence should be seen as the final expression of patriarchal values of sexual domination in society. These values are accentuated by certain cultural myths which continue to victimize women and to a large extent shape their attitudes towards violence. These myths suggest for instance, that domestic violence is a private family affair, and that women who are raped or sexually harassed asked for it either because of their seductive postures or dressing. It is also this cultural

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mystification ascribing the ownership of women's sexuality to men that justifies genital mutilation and child marriage in order to preserve a woman's virginity for her husband.<sup>1</sup>

Growing evidence shows that a large proportion of women and girls in Nigeria are subjected to violence by family members, acquaintances, and strangers. Violence against women is often fueled by longstanding social and cultural norms that reinforce its acceptability in society – by both men and women. Women are beaten and inflicted with injuries by men who are supposed to be their husbands. Worse still some provisions of the laws such as section 55 of the Penal Code, Laws of Northern Nigeria<sup>2</sup> which allows a husband to beat his wife for the purpose of correcting her, tend to encourage violence against women in the family.

Under the Nigeria Criminal Code, a husband cannot be guilty of the offence of rape against his wife even when he has sex without the consent of the woman. Similarly, coercive environments such as trafficking of children and women and child prostitution have negative impacts on women such as exposing them to HIV infection. Trafficking of girls is also more likely to lead to situations of domestic work or work in streets and markets where sexual violence is a high risk.

Many Nigerian women are excluded from inheriting, evicted from their lands and homes by in-laws, stripped of their possessions, and forced to engage in risky sexual practices in order to keep their property. Although few clinical studies have been conducted, it is clear that at least some forms of FGM increase the HIV transmission risk faced by women and girls, both in that unsterile instruments may be used in the cutting and because some FGM is associated with chronic genital injury and tearing, ulceration, and delayed healing of injuries, all of which may increase HIV risk.<sup>3</sup> The presumption that

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<sup>1</sup> Okwori J; Ed. International Human Rights Law Group Advocacy Training Manual, 2004.

<sup>2</sup> Section 55 provides that nothing is an offence which does not amount to infliction of grievous hurt upon any person and which is done by a husband for the purpose of correcting his wife, such husband and wife being subject to native law and custom in which such correction is recognised as lawful.

<sup>3</sup> Margaret Brady, "Female genital mutilation: Complications and risk of HIV transmission," *AIDS Patient Care*

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marriage entails automatic consent to sexual relations of which the terms are dictated by the husband is shored up by divorce and property laws and customary practices that disadvantage women who try to escape abusive marriages.

### **Different Forms of Manifestation of Violence against Women in Nigeria**

In addition to pushing, kicking, hitting, punching, burning, stabbing, throwing of hot water or sulfuric acid and wounding, to killing in extreme cases, forms of physical violence include harmful traditional practices such as female genital mutilation, child marriage, oppressive widowhood practices, levirate marriages/wife inheritance, and denial of inheritance. Sexual offences which are also prevalent include rape<sup>4</sup>, marital rape<sup>5</sup>, incest, indecent assault<sup>6</sup>, sexual harassment in the work-place, forced pregnancy, trafficking in women, deliberately infecting women with HIV/AIDS, etc. Violence by state actors such as rape and indecent assault by police and security forces, torture of women in custody etc. are common in Nigeria.

A large percentage of women in Nigeria have not only been physically abused, they have been subjected to ongoing emotional or psychological abuse - a form of violence that many battered women consider worse than physical abuse. Psychological or emotional violence includes repeated verbal abuse, harassment, confinement and deprivation of financial and personal resources, repeated threats to send victim away from her matrimonial home, men going away from home and leaving the children and mother without any support, in-laws and relations of the husband tormenting the wife and the power they wield determine the fate of the wife in the family and control of contact with family members. Other forms of psychological abuse are sex selective abortion linked to

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*and STDs*, vol. 13. no. 12, pp. 709-716, December 1999.

<sup>4</sup> In rape cases the burden of proof required by the criminal code is so high that victims rarely succeed in securing a conviction of the accused persons in court. Religious laws are often manipulated and misinterpreted by institutions to suit them and to the detriment of women.

<sup>5</sup> The Nigerian Marriage Act specifically provides that Marital Rape is not a crime.

<sup>6</sup> A man who forcefully has sex with a woman/girl in any other way other than penetrating the vagina (e.g. oral sex) has also committed a crime known as **indecent assault**.



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male child preference ideology, daughters and women being thought of as “good for nothing” and not worth educating, desertion of wives because they are sick or because the man wants to live with a girlfriend, perpetual fear of being beaten, attacked or harassed, and husbands restricting their wives’ movements.

### **Existing Legal Framework on Violence against Women**

Before 2003<sup>7</sup>, there were no national laws expressly or specifically protecting the rights of women against violence. Where there is a semblance of protection, they are often inadequate, discriminatory or limited by virtue of the undue burden placed on the victim. Remedies under criminal law are confined to the prosecution and possible conviction of the offender. The most commonly used provision of criminal law in dealing with cases of violence against women is Section 383 of the Criminal Code of Nigeria. The provision prescribes a maximum punishment of three years imprisonment on conviction for assault occasioning harm.

The first limitation of this provision is that it does not protect women from violence in relationships e.g. marriage. It deals with assault generally. The second limitation inherent in criminal law is that it does not provide reliefs such as maintenance, shelter, custody etc. Thirdly, criminal law provisions, being State driven, have little space to consider the victim’s needs. Assault occasioning harm being a non-compoundable offence, that section does not allow a woman any scope for entering into settlements once the case reaches the court. Fourthly, there is a higher standard of proof required in criminal law, which is proof beyond reasonable doubt. In many cases this high burden is difficult to discharge as women find it difficult to recall incidents of violence. Finally, there are many instances where the police refuse to file complaints by victims under this provision and send them away to seek reconciliation instead. The general perception is that such cases are private and should never be put in the public realm. The Criminal Code and

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<sup>7</sup> In 2003, the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act was passed.

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Penal Code provide punishment for violent acts but the system refuses to deal with violence in the home as crime. It is put in the private realm.

The punishment for rape in the Criminal Code (CC) is life imprisonment with or without whipping<sup>8</sup>. However, under section 357 of the CC, the law requires corroboration<sup>9</sup>, which makes proof of the offence an arduous task. Furthermore, while indecent assault on a girl under 16 years is a misdemeanor (simple offence), the same offence on a male child is a felony and carries stiffer penalty under the CC<sup>10</sup>. Section 221 of the Criminal Code provides penalty of 2 years imprisonment for unlawful carnal knowledge of a girl being above 13 years and under 16 years of age and makes it a defense under the section that the accused *person* believed that the girl was above 16 years. It further provides that prosecution must have begun within 2 months after the offence was committed and there must be corroboration to secure a conviction. It will be extremely difficult to secure a conviction against an offender under this section. In the first place, if prosecution does not commence within two months after the offence was committed, it lapses. Secondly, it is usually difficult to have independent eyewitnesses in offences of this nature, so corroboration is almost impossible. The charge is always most likely to fail. Finally, it is always easy to prove that the victim looks older than her age. Even where there is a conviction and sentence under this section, it cannot serve as a deterrent, because the offender will readily pay a meagre fine in lieu of imprisonment.

Rape is criminalized in the *Sharia* Penal Laws which were introduced from 1999 and are in force in twelve Northern states of Nigeria. It however does not provide sufficient protection or redress for women and girls who have been raped and it discriminates against married women and girls.<sup>11</sup> The definition of rape falls short of the principles

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<sup>8</sup> Section 351 of the Criminal Code, Laws of Nigeria .

<sup>9</sup> This means the requirement of additional evidence to substantiate, support or validate the evidence of the victim.

<sup>10</sup> Section 360 of the Criminal Code, Laws of Nigeria .

<sup>11</sup> Under the Kano *Sharia* Penal Code rape carries different penalties according to the marital status of the perpetrator. It is punishable with death by stoning if the perpetrator is married, and caning and up to life

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underlying the Rome statute definition. As in the CC, sexual intercourse by a man with his wife without her consent is not rape.

The National Assembly passed the Anti-Trafficking Act (Trafficking in Persons (Prohibition) Law Enforcement and Administration Act) in 2003. The bill for the Act was initiated by the wife of the Vice President of Nigeria, Hajia Titi Atiku Abubakar through her pet project – the Women Trafficking and Child Labour Eradication Foundation (WOTCLEF), an NGO working towards combating trafficking in Nigeria. The government (i.e. the executive) followed suit and established an implementation agency - the National Agency for the Prohibition of Traffic in Persons (NAPTIP) with the responsibilities of enforcing all the provisions of the law, coordinating all other laws against trafficking in persons and adopting other measures to ensure the eradication of trafficking in persons. The Agency is headed by an Executive Secretary.

In 2005, the Act was amended by the legislature to increase penalties for traffickers. Examples of offences under the Anti-Trafficking Law include procurement of persons for illicit sexual intercourse with another (10 years imprisonment), procurement for prostitution (14 years).

Some provisions of Nigerian laws, instead of protecting women from violence, reduce their ability to escape violent relationships. For example, under the Matrimonial Causes Act, one of the grounds for the dissolution of marriage is irretrievable break down of the marriage. Section 15 lists a series of conduct, the result of which the petitioner cannot reasonably be expected to live with the respondent, one of which is cruelty. Others include physical assaults, humiliating treatment, etc.<sup>12</sup> To secure a divorce on ground of

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imprisonment if the perpetrator is unmarried. If a woman who alleges that she has been raped fails to produce 4 witnesses to prove the rape, she is liable to imprisonment for one year or up to 100 lashes.

<sup>12</sup> As a general rule, the courts do not consider a single act of cruelty sufficient to evoke the application of that section of the law. It has to be a behaviour pattern based on cruelty which leads the court to infer that cohabitation can no longer subsist between the parties. For example, it has been held that where on the same occasion, the respondent beat the petitioner, pushed her down and locked her up, the acts did not amount to that sustained behaviour envisaged by section 15 (2) (c).

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cruelty, the petitioner has to satisfy the court that “since the marriage, and within a period of one year immediately preceding the date of the petition, the respondent has been convicted of (i) having attempted to murder or unlawfully kill the petitioner; or (ii) having committed an offence involving the intentional infliction of grievous harm or grievous hurt on the petitioner or the intent to inflict grievous harm or grievous hurt on the petitioner.”<sup>13</sup> Until the petitioner is able to secure a conviction against the respondent for attempting to kill her or for inflicting grievous harm on her, she cannot get out of the relationship lawfully.

One of the significant omissions from our matrimonial laws is the fact that none of them, whether statutory, muslim, christian or customary, contain any declaration of a right to reside in the matrimonial home. The general belief is that the matrimonial home belongs to the husband. Without the recognition of a right to reside, civil laws on divorce provide little in terms of support to women in violent situations. This is the root cause of the vulnerability of a woman in her matrimonial home. It is also one of the major factors by which it is possible to drive out a woman to the street and then blackmail her into agreeing to an unfair settlement. The breakdown of marriage in our society with its attendant discrimination means virtual civil death for women. Hence, in many cases there are women who do not want a divorce but want to end the violence. The law on divorce has no answers for such women.

There was no national or state statute law against harmful traditional practices before 1999 except the constitution of the Federal Republic of Nigeria 1999 which protects the right to dignity of the human person under its fundamental human rights provisions. However, with the return of democracy in Nigeria in 1999, several states passed laws prohibiting Female Genital Mutilation (FGM), widowhood practices, early marriage etc. Examples are the Edo State Female Circumcision & Genital Mutilation (Prohibition) Law No. 4 of 1999, Cross Rivers State Girl-Child Marriages and Female Circumcision

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<sup>13</sup> Section 16 (e).

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(Prohibition) Law 2000, Rivers State Abolition of Female Circumcision Law No. 2, 2001, Ogun State Female Circumcision and Genital Mutilation (Prohibition) Law 2000, Ebonyi State Abolition of Harmful Traditional Practices Against Women and Children Law No. 10 of 2001 etc. These laws have criminalized FGM and prescribed penalties for offenders. It must also be pointed out that most of these laws are very scanty, having been pruned down by legislators before passage, and do not provide adequate protection for women.

On widowhood practices, the following laws which make it unlawful to infringe on the fundamental rights of widows and widowers were passed: the Enugu State Law on the Prohibition of Infringement of Widow's and Widower's Fundamental Rights Law No. 3 of 2001; the Oyo State Widows' Empowerment Law, 2002; the Anambra State Malpractices against Widows and Widowers (Prohibition) Law in 2004; Edo State Inhuman Treatment of Widows (Prohibition) Law 2004; and the Ekiti State Widowhood Law.

### **Administration of Justice Sector Reforms**

Following agitations from civil society organizations over the poor status of human rights protection in Nigeria, the government embarked on a series of sector reforms including the justice sector. A committee headed by a retired Supreme Court judge was set up to make recommendations for reform of the administration of justice sector. This committee worked with the Law Reform Commission to review the laws including Criminal law, Evidence law etc. Women's rights organizations submitted memoranda highlighting the provisions of Nigerian laws that were inimical to the welfare of women in Nigeria. Recommendations made included the introduction of victim and witness protection provisions in the laws, particularly in domestic violence cases, integration of equality clauses and affirmative action clauses in the constitution and the laws. The Attorney General also commissioned a team of experts to draft a bill on domestic violence, a move seen by the women's rights organisations as duplication of LACVAW's bill that was already pending in the National Assembly at the time. Both bills have since been

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harmonized on the initiative of the then Chair of the Senate Committee on Women's Affairs.

In August 2005, the Federal Government constituted the Committee on the Review of Discriminatory laws against Women, which operated under the auspices of the National Human Rights Commission (NHRC) with a mandate to review discriminatory legislation in Nigeria<sup>14</sup>. It submitted its final report to the Federal Ministry of Justice on 16 May 2006 along with a draft bill titled "Abolition of all Forms of Discrimination against Women in Nigeria and Other Related Matters Act 2006". The bill is also pending before the National Assembly.

In 2003, the National Assembly passed the Child's Rights Act, which is the first national law to put the age of marriage at 18 years, indirectly outlawing Early/child marriage. The Act incorporates the basic principles of the United Nations Convention on the Rights of the Child (CRC), to which Nigeria is a signatory and State Party. The Act, among other things, prohibits and criminalizes traditional and cultural practices that constitute violence and violate the rights of the girl child such as child marriage & child betrothal, tattoos & skin marks, Female Genital Mutilation, exploitative labour, buying, selling, hiring etc. for the purpose of hawking, begging for alms or prostitution, unlawful sexual intercourse with a child, other forms of sexual abuse & exploitation. The law provides for and establishes a child justice system different from the regular court procedure.

Nigeria has also incorporated the provisions of the African Charter on Human and Peoples Rights into the local laws thus making it a part of the domestic laws in the country. The Act provides that every individual shall have the right to the respect of the dignity inherent in a human being and prohibits all forms of exploitation and

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<sup>14</sup> The author of this paper served on that committee.

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degradation<sup>15</sup> particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment.

In summary, none of the existing laws provides protection for women against violence. The existing criminal law does not provide reliefs or any guarantee of a satisfactory outcome as it does not allow space for any negotiations. The idea of a separate law on violence against women was therefore conceived because it was extremely difficult for Nigerian women to access existing remedies satisfactorily. The obstacles as mentioned above are the patriarchal nature of the society and the attitude of the police that matrimonial misunderstandings should remain in the private realm.

### **Background of the VAW Bill**

It is in the light of the inadequacies of existing laws and their failure to protect women that a group of women's rights activists came together under an umbrella organization – the National Coalition on Violence against Women (NACVAW) – to join forces to move this socio-cultural phenomenon from a private space, in which it is always cloaked in shame, into the public sphere and commence serious work on combating the menace. It was the consensus very early in the life of the coalition that legislation must be put in place against VAW for the efforts to combat it to succeed. It is with that in mind that the Legislative Advocacy Coalition on Violence against Women (LACVAW) was formed<sup>16</sup>. A working group of members and consultants drafted a Violence against Women bill and after due consultations with stakeholders, presented it before the National Assembly in 2002. Legislative advocacy commenced in earnest but unfortunately the former National Assembly did not pass the bill before its life came to an end.

Long before then in 2001 the Civil Resource Development and Documentation Centre in collaboration with BAOBAB for Women's Human Rights, in a bid to break the silence

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<sup>15</sup> Section 5.

<sup>16</sup> Civil Resource Development and Documentation Centre (CIRDDOC) Nigeria is a founding member and member of the Coordinating Committee of NACVAW and LACVAW. The author of the paper is the Executive Director.

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around violence against women and girls organised a “mock tribunal” in which 33 women and girls told a panel of respected judges their stories of abuse including rape, incest, wife battery, murder, attempted murder, trafficking etc. The event was presided over by a Panel of Judges comprising a serving Supreme Court Judge, a Retired Supreme Court Judge, a member of the United Nations CEDAW Committee, the NDRC Rapporteur on VAW and a Senior Advocate of Nigeria. It was covered by the national media and hundreds of people came to witness the event. The testimony of the women brought many in the audience to tears, and when the judges came back from their deliberations, they had reached a powerful verdict including recommendations for changing Nigeria’s policy to better protect women from violence and human rights abuses. One of them was the need for legislation that would have sanctions as deterrence for those who abuse women.

Violence against women had long been trivialised in Nigeria. The extent of domestic violence and abuse was not publicly recognised, and there was no government effort to address it. The mock tribunal was timed to correspond with democratic elections in Nigeria so that newly elected representatives would gain greater perspective on the issue and be confronted with the need to include it in their schedule of legislation. It was also aimed at promoting greater public appreciation of the issue of domestic violence. The mock tribunal added faces, stories and experiences to the statistics of violence against women to give greater weight to the issue.

The tribunal which was attended by government and law enforcement agencies, ministries, local government officials, UN agencies, cultural and religious leaders, schools, donors, NGOs and individuals had a striking impact, and the women’s testimony moved witnesses to look at the issue of violence against women and demand action. Several of the legislators present pledged their support for a *Violence against Women Bill*. In the longer term, the tribunal raised awareness about violence against women, and actively engaged journalists who continued to highlight the issue more regularly in their reporting. The tribunal created a reference point for the discussion of women’s human



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rights and violence against women. National and state level legislation to protect women were developed as a result of the mock tribunal.<sup>17</sup>

Earlier on in 1999, a similar tribunal was held in Calabar, Cross River state by CIRDDOC. The Panel of Judges in that tribunal recommended the passage of a law to prohibit FGM which is prevalent in the state. Two years, later the Northern Cross River State Women Association, who participated in the tribunal successfully lobbied for a law against FGM.

### **Rationale and Key Features of the Nigerian Bill**

**Rationale:** The original title of the bill was “Violence against Women Bill”. It was later changed to “Violence Prohibition Bill” with a long title - “A Bill for an Act to prohibit all forms of Violence which includes Physical, Sexual, Psychological, Domestic Violence, Harmful Traditional Practices; Discrimination against Women; to provide adequate remedies for Victims; Punishment for offenders; Establish a Commission on Violence and a Trust Fund for victims of such Violence”.

The purpose of the bill is to prevent violence, punish offenders and restore a woman to a position of equality within the marriage so as to give her the time and the space to decide on what she wants to do with the rest of her life. The absolute precondition for that is to stop the violence promptly.

There were many discussions at the drafting stage on the title and contents of the law. It was agreed that the contents of any successful law on domestic violence would have to include some basic provisions including a clear declaration of the basic intent of the law, namely, the object of preventing domestic violence; a clear and unambiguous statement of the right to be free from domestic violence and the recognition of domestic violence as a violation of the human rights of women; the definition of domestic violence, which

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<sup>17</sup> For more information on the mock tribunal including testimonies of the victims, refer to Fijabi, M; “A Mock Tribunal to Advance Change, New Tactics in Human Rights” in [www.newtactics.org/en/tags/violence](http://www.newtactics.org/en/tags/violence).

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captures women's experience of abuse with some degree of precision; the definition of the 'shared household' so that rights can be protected within that household; the relief that can be given to protect women from violence; the infrastructure available to victims of violence that can make the remedy accessible e.g. clarity and simplicity of court procedures; monitoring the functioning of the law to see whether it was serving its intended purpose; providing a coordinated response to domestic violence by recognizing the role of other agencies such as NGOs, the medical profession, shelter homes and the police in assisting in the prevention of domestic violence.

At the initiation of the campaign for a VAW bill, the first policy decision that needed to be made was on the nature and contents of the law that would address the inadequacies in the existing legal regime. It was decided that the bill ought to recognize the right to equality and the right of women to live lives free from violence. The drafting of the bill also was an effort to codify common law, which states in no ambiguous terms that a woman has the right to reside in her matrimonial home.

Many proposals on the title were considered and the group's attention remained focused on the title that will be acceptable to both men and women. The bill was submitted as the Violence against Women Bill but the title was changed by the legislators to read the Violence (Prohibition) Bill, 2003. Their rationale for the change was that there are men who suffer violence in the hands of their wives and such men should be protected in the provisions too.

The initial advocacy efforts on the bill were targeted at the legislators who would sponsor the bill. Altogether, 25 legislators, out whom only 10 were female volunteered to sponsor the bill. The bill was produced massively and distributed widely amongst CSOs, legislators, government officials and women's groups across the country who would take the campaign forward in their states.

### **Key Features of the Bill**

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**It repeals inadequate laws:** The bill was used to indirectly repeal provisions of other laws which are inconsistent with the provisions of the bill or adjudged inadequate such as any definition of rape in any provision that was inconsistent with the definition of rape in the bill,<sup>18</sup> any provision that requires corroboration<sup>19</sup> or exempts marital rape from a list of crimes under the law.

**It incorporates Gang Rape:** The law incorporates gang rape and prescribes heavy penalties for offenders<sup>20</sup>.

**It establishes a Trust Fund for victims of Violence** for the purpose of providing assistance for the victim of violence through rehabilitation, reintegration into the society, provision of shelter, provision of legal aid, programmes on violence; provision of guidance and counseling; payment of medical expenses; and support of organisations which give direct assistance to victims of violence.

**It defines domestic violence** comprehensively, to include the offences created under sections 1 to 8 of the bill or any other act of violence when perpetrated on a victim in a domestic relationship including placing the victim in fear of physical injury, causing physical injury to the victim, coercion of victim to engage in conduct or act, sexual or otherwise, to the detriment of the victim's physical or psychological well-being, incest, confining or detaining the victim against his/her will, causing mischief, destruction or damage to property with intent to cause or knowing that it is likely to cause distress or annoyance to the victim, forced labour; economic denial, forced isolation from family

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<sup>18</sup> “A person commits the offence of rape if he intentionally penetrates the vagina, anus or mouth of a woman with his penis or with any other part of his body or anything else and the woman does not consent to the penetration; or the consent is obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false and fraudulent representation as to the nature of the act or in the case of a married woman by impersonating her husband”.

<sup>19</sup> Section 9.

<sup>20</sup> Section 1(4) Where the act ... is committed by a group of persons on the victim, the offence shall be known as gang rape and on conviction the persons shall be liable to a minimum of 20 years imprisonment without parole.

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and friends, verbal and emotional abuse, harmful widowhood practices, abandonment of wife and children without means of subsistence and harassment, intimidation or stalking.

**It defines domestic relationship** broadly to include a relationship between a person and his or her spouse, former spouse, a child resident in the household, any other member of the family; or resident in the household or a relationship between a victim and a respondent in marriage or relationship in the nature of marriage, although they are not married to each other, or are parents of a child or they are in an engagement, dating or customary relationship, or they share or recently shared the same residence.

**It defines violence** to include physical, sexual, psychological, emotional or economic violence occurring in the family, workplace and community; discrimination (that is applicable to women and girls only); any action which inflicts physical, sexual or psychological hurt or injury on a woman or girl; domestic violence; and acts constituting the offences created in sections 1 to 8 of the bill.

**It recognizes the right to freedom from violence:** It recognizes a woman's right to freedom from violence of any form and the right to live in a violence free home. A woman who has faced domestic violence from the respondent is entitled to reliefs under this law.

**It defines a child:** as a person under 18 years, indirectly prohibiting early marriage.

**It provides the following remedies:**

**a. Criminal sanctions:** The bill prescribes penalties for the offence of rape, indecent assault, coercion, willfully causing harm (including the pouring of acid), incest, violence against persons (FGM, isolation from friends, abandonment of wife and children, placing one in fear, subjecting one to a degrading and humiliating traditional practice); sexual harassment.

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**b. Compensation order**<sup>21</sup> in consonance with tort law principles of awarding damages for mental and physical suffering caused due to illegal conduct, the bill empowers a magistrate to order additional relief for mental torture and emotional distress in gang rape cases, indecent assault, and willfully causing harm.

**c. Emergency Monetary relief**<sup>22</sup> - orders for monetary relief can be passed to meet actual expenses incurred due to medical expenditure, loss of earnings, etc and includes compensation and maintenance.

**d. Protection Order/Interim Protection Order**<sup>23</sup>: The court may, by means of a protection order prohibit the respondent from committing any act of domestic violence; enlisting the help of another person to commit any such act; entering a shared household, entering the victim's residence or place of employment or preventing the victim from entering or remaining in the shared household; alienating, disposing or encumbering the shared household or committing any other act from which it is necessary to protect the victim, including an order directing the respondent to secure alternative accommodation for the victim. A breach of a protection order or any interim order constitutes an offence and carries a penalty of a fine of N50,000 or 5 years imprisonment or to both.

**d. Custody order**<sup>24</sup> - Orders for temporary custody may be passed in favor of the aggrieved person in pending applications for protection orders. The nature of custody provided is temporary and has no effect on personal/civil laws governing issues of permanent custody. The issue of custody is to be decided in keeping the interest and welfare of the children in mind.

**e. Interim orders**<sup>25</sup> – the magistrate is empowered to issue interim orders if a *prima facie* case is made out under the bill. This Section is important in providing immediate and emergency relief to women in situations of violence.

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<sup>21</sup> Section 1 (5). Section 32 provides for civil claim for compensation and damages. The law empowers magistrates to award the prescribed damages, compensation or fine even if the stipulated award is beyond the jurisdictional limitation on the power of the magistrate.

<sup>22</sup> Section 12, 16(4)

<sup>23</sup> Section 13, 14, & 15

<sup>24</sup> Section 16(6)

<sup>25</sup> Section 14

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**Infrastructure under the law**

*Creation of a special desk at all police stations:* The bill gives responsibilities to the Inspector General of Police to issue regulations for the creation of a special desk in each police station to handle reports from victims and special training for officers designated to handle sexual offences.

*The establishment of Rape Crisis Centres:* The bill mandates each state government to take steps to establish Rape Crisis Centres within its jurisdiction within one year of the coming into effect of the law.

*Establishment of Commission on Violence:* The bill proposed the establishment of a National Commission on VAW to be fully funded by government as the supervising body of the legislation. Other responsibilities proposed for the Commission in the legislation are administration of the operations of the Trust Fund, provision and management of rape crisis centres for victims, co-ordination of the activities of the police and the accredited service providers and the enforcement of any order that may have been made by the court under this Act.

For quality control, the Commission will ensure the registration of accredited service providers, draw up guidelines for their operations and supervise their activities to give full effect to the provisions of the Act. The law, when passed, will mandate the Commission to ensure that the victim has easy access to accredited service providers, transportation to an alternative residence or a safe shelter, transportation to the nearest hospital or medical facility for treatment, if the victim so requires.

The composition of the Commission includes the representative of the police, Government and NGOs.

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***Courts empowered to deal with applications:*** An aggrieved woman or any of the listed persons<sup>26</sup>, on her behalf may file an application for reliefs to a Magistrate. An application under the Act can also be filed in pending proceedings affecting the aggrieved woman. The law makes it mandatory for medical facilities and shelter homes to provide services to aggrieved women.

### **Analysis of commonalities and differences in legal approaches in Nigeria**

Apart from the initiative of NACVAW and LACVAW at the federal level, NGOs launched projects to secure laws at the state level to deal with the different aspects of violence against women. The Legal Defense and Assistance Project (LEDAP) implemented an advocacy project for a domestic violence bill at the state level. At least two states have passed the law. The legal process under the bill is quasi criminal and quasi civil in nature. It is only when a perpetrator or anyone else disobeys the court order or any prohibition in the law that arrest and punishment take place.

The rationale behind that position is that criminal proceedings require long procedures and usually depend on the commitment and efforts of the investigating and prosecuting police officer.<sup>27</sup> Women encounter a lot of obstacles in the course of the process. They are often faced with policemen who refuse to file their complaints on the ground that it is a family matter and it is difficult to obtain relevant technical documents needed by the complex criminal law such as medical report from a government hospital. Women are generally afraid to file criminal complaints because they fear that the incarceration of their husbands would result in a loss of face or social status for the family or their husbands would become more violent after incarceration or they would be left without a source of income if the husband is sent to jail. Finally, they do not wish to place their

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<sup>26</sup> Section 13(1) lists the following: The victim; the Commission; Police; a relation of the victim; a social or health worker; an accredited service provider or any person who witnesses the act of Violence. Failure by a police officer to comply with an obligation imposed in terms of the Act, without just cause, constitutes an offence punishable with a fine of N20,000.00 or a term of imprisonment of one year or to both.

<sup>27</sup> LEDAP; Domestic Violence Zero Tolerance, Report on Network of Nigerian Men against Domestic Violence; p. 254.

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children in a situation where they will have to see their father in jail. With all these at the back of their minds, they decided to make the DV bill a civil law.

The legal process under the bill does not involve arrest, trial or punishment of the perpetrator but only aims at protecting the survivor from violence within the home. They believe that the Protection order which the bill provides for will provide women with other means of ending the violence to which they are subjected. The court order under the civil justice process will involve less complicated and quicker legal proceedings resulting in the enforced discipline or separation of the perpetrator of the violence from the family home for a certain period of time as well as rehabilitation of the victim. The order also compels the spouse to continue to provide for his family during the time he is under legal sanction and counseling.

The state laws mentioned in this paper have adopted different approaches. Most of them are quasi-criminal in nature. Each state law dealt with an aspect of violence or two.

### **Effectiveness of Laws on VAW**

The effectiveness of the Violence Prohibition Bill would be known or measured after it has been passed and evaluated. I will therefore be focusing on other state and national laws in this section.

Although over 20 state laws have been passed on the different aspects of violence against women, in the most part, they have been accumulating dust on the shelves. Implementation has actually not taken off for lack of political will on the part of the government to put structures in place for that purpose. None of the States has bothered to reflect its commitment to the reduction of violence against women in the budgets and none whatsoever has done something positive to support the implementation of the existing laws.



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Combating trafficking has been the subject of numerous high-profile declarations by government, but states continue to allow anti-trafficking programs to be underfinanced and inadequately supported by effective implementation plans and law enforcement practices. The Federal government however, has, through its support for NAPTIP displayed political will to fight the war against trafficking in human persons. The agency has since commissioned its headquarters in the Federal capital Territory. The activities of NAPTIP have led to the bursting of syndicates who carry out this atrocity, reduction of their activities, repatriation and rehabilitation of victims of trafficking and bringing the culprits to book.

In 2006, the government reported 81 trafficking investigations, 23 prosecutions and 3 convictions. Sentences imposed on traffickers were however, inadequate. Two convicted traffickers received 2 years' imprisonment while the third was sentenced to only one year in prison. NAPTIP has established shelters in six cities and provide victims with short term care in those shelters. 352 victims were assisted in 2007. In 2006, the government developed a national action plan against trafficking.<sup>28</sup> By 2007, the country had moved from tier 2 watch list to tier 2, which, according to the Executive Secretary NAPTIP, is a great achievement for the country.

**Challenges:** Some of the challenges encountered in the course of advocacy for the passage of the bill and in the implementation of existing laws against violence in Nigeria include:

- Patriarchal mindset not only of the general public, but also of legislators, government structures and even civil society;

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<sup>28</sup> Nigeria (Tier 2) Extracted from US. State Dept. Trafficking in Persons Report, June 2007.

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- Issues related to political situation in the country took legislators' attention away from legislative duties. They were distracted by impeachment fever that gripped the Assemblies and the third term bid of the then president;<sup>29</sup>
- Lack of evidence based data on violence against women contributed in the non-passage of the law as some legislators challenged us to prove that the problem has reached such magnitude as to require a separate law.
- Lack of awareness of the existence of the laws, even among the women that the laws seek to protect is one of the reasons the law is not used.
- Lack of political will on the part of government to allocate adequate resources to support the implementation of the laws. Institutions and Homes necessary for the implementation of the laws e.g. the Child's Rights Act, Gender and Equal Opportunities Laws etc. have not been provided for in the budgets.
- Lack of resources on the part of victims to access the provisions of the laws for the enforcement of their rights to freedom from violence.

**Lessons learnt:** The lessons learnt in the process of advocating for the passage of a VAW law in Nigeria include:

- For legislative advocacy to be meaningful and successful, coalition building and capacity building for NGOs are necessary. There is strength in numbers and no one organization can go it alone.
- Failure to sensitise the community including the women themselves and the "gate keepers" to understand the benefits of the bill led to a backlash.
- Without proper dissemination of the contents of the law and its implementation, the fact that it exists will not make a difference.

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<sup>29</sup> In the last political dispensation (2003 – 2007), the Economic and Financial Crimes Commission (EFCC) waged a serious war against corrupt government officials and several governors were found wanting. This war divided the legislators in those states with some supporting the governors and other working with EFCC to impeach the governors to make way for their prosecution. In another development supporters of Mr. President were busy lobbying for an amendment of the constitution to elongate his tenure after he had served his full term of 4 years.

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- Having a law will give legitimacy to the campaign to end violence against women and provide incentive for the involvement of the government and local authorities. They will feel an obligation to initiate or support the efforts to combat violence.
- Activists working on legislation on violence against women must ensure that the problem of violence is widely recognized and understood at the local level, as this will make it easier to secure support for the proposed legislation.
- Political environment can have a strong influence on the way society perceives the project. One of the reasons the bill was not passed was that the legislators were distracted by other issues such as the Government's third term bid.
- Political will is needed for proper implementation of a law; therefore the executive has to be targeted in the advocacy plan.

**Good practices:**

- Building coalition and partnership among the stakeholders.
- Involving different institutions in the drafting of the bill brings in different perspectives to the bill.
- Management transparency coordination of the project by a Steering Committee of stakeholders in different fields ensured a level of trust to the project by different persons.
- Establishment of partnerships between CSOs and government, represented by the Ministry of Women Affairs, contributed to the little success achieved in the project
- Using media as an ally – partly because of the sensational nature of the topic, mass media campaign helped to raise awareness of the problem and sensitized the government and legislators.
- Enlisting support of high profile legislators and government officials was a good practice.
- Framing sensitive issues in a culturally appropriate context is important.
- Simplifying and translating existing laws into local languages as well as including a simple step by step procedure guide on how to use the laws

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(particularly at the state and local levels) will improve the level of implementation and effectiveness of the laws.

- Building and strengthening the capacity of the government Legal Aid Council to make the implementation of the laws on violence against women a core focus of their services and provide free legal services to victims.

**Conclusion:** The approaches discussed above have yielded credible results from which a number of lessons can be drawn. Although the Violence Prohibition bill was not passed into law before the end of the life of the former legislature, a lot of lessons were learnt and these would guide the next phase of advocacy on the bill when it resumes. It is also a fact that capacity building is needed for CSOs to ensure that they become an important social force capable of influencing the male dominated and patriarchal legislature to pass the bill into law.

**Annex 1: Violence Prohibition Bill**

*Extraordinary*

# Federal Republic of Nigeria Official Gazette

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**No. 26A**

**Lagos – 6th May, 2003**

**Vol. 90**

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Government Notice No. 53A

The following is published as Supplement to this Gazette:

<i>S. I. No.</i>	<i>Short Title</i>	<i>Page</i>
SB.307	A Bill for an Act to Prohibit all forms of Violence which includes Physical, Sexual, Psychological, Domestic Violence, Harmful Traditional Practices; Discrimination Against Women; to provide adequate remedies for Victims; Punishment for offenders; Establish a Commission on Violence and a Trust Fund for Victims of such Violence.	C185-C199

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**Printed and Published by The Federal Government Press, Lagos, Nigeria.  
FGP123/62003/600 (OL 39)**

Annual Subscription from 1<sup>st</sup> January, 2002 is Local: N5,200.00 Overseas: N8,200 [Surface Mail] N10,200.00 [Second Class Air Mail]. Present issue N150.00 per copy. Subscribers who wish to obtain Gazette after 1<sup>st</sup> January should apply to the Federal Government Printer, Lagos for amended Subscriptions.

**C 186 2003 No.** Violence (Prohibition) Bill, 2003

**ARRANGEMENT OF CLAUSES**

**CLAUSE:**

- 1 – Rape
- 2 – Indecent Assault
- 3 – Coercion
- 4 – Wilfully causing harm
- 5 – Incest
- 6 – Violence Against Persons
- 7 - Attempt
- 8 – Aiding and abetting
- 9 - Evidence and Defence
- 10 – Creation of Special Procedure
- 11 – Institution of Civil Proceedings
- 12 – Jurisdiction
- 13 – Application for Protection Order
- 14 – Consideration of Application and Issuing of Interim Protection Order
- 15 – Issuing of Protection Order
- 16 – Court’s Power in respect of Protection Order
- 17 – Warrant of Arrest upon Issuing of Protection Order
- 18 – Variation or setting aside of Protection Order
- 19 – Contravention of Protection Order
- 20 – Establishing of Commission on Violence
- 21 – Functions of the Commission
- 22 – Composition of the Commission
- 23 – Quorum
- 24 – Management of the Commission
- 25 – Establishment of Trust Fund

26 – Interpretation

27 – Citation

SCHEDULES

**C 187 2003 No.**

*Violence (Prohibition)*

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# **A BILL**

**FOR**

**AN ACT TO PROHIBIT ALL FORMS OF VIOLENCE, WHICH INCLUDES PHYSICAL, SEXUAL, PSYCHOLOGICAL, DOMESTIC VIOLENCE, HARMFUL TRADITIONAL PRACTICES; DISCRIMINATION AGAINST WOMEN; TO PROVIDE ADEQUATE REMEDIES FOR VICTIMS; PUNISHMENT FOR OFFENDERS; ESTABLISH A COMMISSION ON VIOLENCE AND A TRUST FUND FOR VICTIMS OF SUCH VIOLENCE**

Sponsors:

1. Hon. Farouk Lawan
2. Hon. Saudatu Sani
3. Hon. Aminu Bello Masari
4. Hon. Abdul Ningi
5. Sen. Daisy Danjuma
6. Hon. Akindahunsi Titilayo
7. Hon. Binta Garba
8. Hon. Iquo Inyang
9. Hon. Chidi Nwogu
10. Hon. Musa Mahmood
11. Hon. John Enoch
12. Hon. Jumoke Okoya-Thomas
13. Hon. Tayo Akande Sarumi
14. Hon. Pat Udogu

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15. Hon. Patricia Akwhashiki
16. Hon. Abdulazeez Idris – King
17. Hon. Patience U. Ogodo
18. Hon. Ogunbanjo Olusegun
19. Hon. Eta Enang
20. Hon. Abdul Oroh
21. Hon. Bala Ibn Na’Allah
22. Sen. Iyabo Anisulowo
23. Sen. Joy Emordi
24. Sen. Gbemisola Saraki
25. Hon. Biodun Olujimi

**C 188 2003 No.**

*Violence (Prohibition)*

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26. Hon. Azumi Bebeji
27. Hon. Patricia Ette
28. Hon. Jessie U. Balonwu
29. Hon. Temi Harriman
30. Hon. Jummai Ango
31. Hon. Mercy Almona Isei
32. Hon. Maimuna Adaji
33. Hon. Fatima S. Talba
34. Hon. Fanta Baba Shehu
35. Hon. Emiola Fakeye
36. Hon. Andona Dabo-Adzuana
37. Hon. Hamisu Shira
38. Hon. Faruk Mustapha
39. Hon. Seth Karfe



**C 189 2003 No.** *Violence (Prohibition)*

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[Commencement]

1 ENACTED by the National Assembly of the Federal Republic of Nigeria:  
2 **1-(1)** Subject to the provisions of this Act, any reference to rape in any law shall  
**Rape** 3 be construed as a reference to the offence of rape under this section and this  
4 section shall override any other law where there are inconsistencies.  
5 (2) A person commits the offence of rape if  
6 (a) (i) he intentionally penetrates the vagina, anus or mouth of a woman with his  
7 penis or  
8 (ii) he intentionally penetrates the vagina, anus or mouth of a woman with any  
9 other part of his body or anything else  
10 (b) the woman does not consent to the penetration; or  
11 (c) the consent is obtained by force or means of threat or intimidation of any kind  
12 or by fear of harm or by means of false and fraudulent representation as to the  
13 nature of the act or in the case of a married woman by impersonating her husband  
14 (3) A person guilty of an offence under this section shall, where the victim is

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15 under 14 years of age, be liable to a minimum of 20 years imprisonment and in  
16 all other cases to a minimum of 14 years imprisonment

17 (4) Where the act described under this section is committed by a group of persons  
18 on the victim, the offence shall be known as gang rape and on conviction the  
19 persons shall be liable to a minimum of 20 years imprisonment without parole.

20 (5) The court may also award appropriate compensation to the victim as it may  
21 deem fit in the circumstance.

22 (6) The foregoing subsection shall not prejudice any civil action that may arise  
23 from or that may be brought in respect of such act or the standard of proof  
24 required in such action.

**Indecent** 25 2- (1) A person commits the offence of indecent assault if:

**Assault** 26 (a) for whatever reason other than sexual, he intentionally penetrates the vagina,  
27 anus or mouth of a woman with any part of his body other than the penis or with  
28 anything else; and

29 (b) the victim does not consent to the penetration; or

30 (c) the consent is obtained by force or by means of threat or intimidation of any  
31 kind or by fear of harm or by means of false and/or fraudulent representation as  
32 to the nature of the act or by deception of any kind whatsoever.

33 (2) A person convicted of an offence under this section shall be liable to  
34 20 years imprisonment where the victim is under 14 years of age, and 14 years  
35 imprisonment in all other cases.

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1 (3) The court may also award appropriate compensation to the victim as it may  
2 deem fit in the circumstances.

3 (4) The foregoing subsection shall not prejudice any civil action that may arise  
4 from or that may be brought in respect of such act or the standard of proof  
5 required in such action.

**Coercion** 6 3 - Any person who coerces another person (by force or threat) to engage in any  
7 act not being an act already provided for in this Act, to the detriment of that other  
8 person's physical or psychological wellbeing, commits an offence and upon  
9 conviction is liable to 2 years imprisonment.

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**Wilfully** 10 4 (1) Any person who wilfully causes another person harm by pouring or using  
**Causing** 11 on that person any substance, chemical agent such as acid etc. or other thing  
**Harm** 12 capable of causing disfigurement or harm commits an offence and upon  
13 conviction is liable to 10 years imprisonment  
14 (2) The court may also award appropriate compensation to the victim as it may  
15 deem fit in the circumstance.  
16 (3) The foregoing subsection shall not prejudice any civil action that may arise  
17 from or that may be brought in respect of such act or the standard of proof required  
18 in such action.

**Incest** 19 5 - (1) A man commits an offence of incest if being over 18 years has sexual  
20 intercourse with a person he knows to be his grand daughter, daughter, sister, half  
21 sister, mother, niece or aunt.  
22 (2) A person convicted of an offence under this section shall be liable to 2 years  
23 imprisonment.

**Violence** 24 6 - (1) Any person who-  
**against** 25 (a) wilfully mutilates the genitals of a woman; or  
**persons** 26 (b) forces any woman to isolate herself from family or friends; or  
27 (c) abandons his wife or children without any means of subsistence or  
28 sustenance; or  
29 (d) in a domestic relationship wilfully or knowingly places another in fear of  
30 physical, sexual or psychological injury or causes such injury to another by such  
31 act which is known or ought to have been known to the perpetrator would result  
32 in physical, sexual or psychological injury;  
33 (e) subjects another person, without that person's consent to any custom  
34 or traditional practice which degrades or has the effect of dehumanising the  
35 victim; or

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1 (f) sexually harasses another, commits an offence and upon conviction is liable to  
2 imprisonment for 2 years or fine of N300,000 or both.  
**Attempt** 3 7. Any person who attempts to commit any of the offences under this Act is  
4 guilty of an offence and is liable on conviction to:

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- 5 (a) in the case of rape imprisonment for a minimum of half of the term prescribed  
6 for that offence
- 7 (b) in all other cases imprisonment for half of the term prescribed for that offence  
8 or fine of half of the term prescribed for that offence or both.
- Aiding** 9 8. Any person who incites, aids or abets or counsels another person to commit  
10 any of the offences under this Act is deemed to have taken part in committing the  
**and abetting** 11 offence and is liable on conviction to the same punishment as the principal  
12 offender.
- Evidence** 13 9. (1) Any rule of law or practice requiring the corroboration of evidence or  
**and** 14 requiring the judge in criminal proceedings to remind himself or herself that it is  
**Defence** 15 dangerous to convict a person on the uncorroborated evidence of a witness shall  
16 not apply to any of the offences created under this Act.
- 17 (2) Nothing in this section shall be construed as affecting the power of the judge  
18 in criminal proceedings involving the alleged commission of a sexual offence to  
19 make observations regarding the unreliability of any evidence.
- 20 (3) A marital or other relationship previous or existing shall not be a defence to  
21 any offence under this Act.
- Creation** 22 10. (1) The Inspector General of Police shall within 4 months of the coming into  
**of Special** 23 force of this law take steps to issue regulations on receipt of complaints from  
**Procedures** 24 victims of sexual offences and violence.  
25 Such steps shall include but not be limited to creation of a special desk in each  
26 26 police station to handle reports from victims.
- 27 (2) The Inspector General shall take steps to ensure that special training is  
28 provided for officers designated to handle sexual offences.
- 29 (3) Each state government shall within 1 year of the coming into effect of this  
30 law take steps to establish Rape Crisis Centres within its jurisdiction.
- Institution** 31 11.- A victim of any act of violence under this Act may institute civil  
**of civil** 32 proceedings in court against the respondent to seek appropriate redress  
**proceedings** 33 including compensation and damages.

- Jurisdiction** 1 12. (1) The jurisdiction to hear and determine issues/matters, including the award  
2 of emergency relief or the trial and punishment for offences under this Act, is  
3 vested in the magistrate courts.  
4 (2) Any court within the area in which:  
5 (a) the victim permanently or temporarily resides, carries on business or is  
6 employed.  
7 (b) the respondent resides, carries on business or is employed; or  
8 (c) the cause of action arose,  
9 has jurisdiction to grant a protection order as contemplated in this Act.  
10 (3) Notwithstanding any jurisdictional limitation on the power of the magistrate  
11 court in relation to the award of damages/compensation or the imposition of fines  
12 or terms of imprisonment contained in any law, a magistrate court before which  
13 issues/matters arising under this Act are being heard and determined or offences  
14 created in this Act are being tried shall have the full jurisdictional powers to  
15 award any emergency monetary relief it considers appropriate or impose up to  
16 the maximum penalties prescribed for the offences in this Act.  
17 (4) A protection order is enforceable throughout the Federal Republic of Nigeria.
- Application** 18 13.(1) An application supported by affidavit for a protection order may be made  
**for** 19 by any of the following before the Court following a complaint of domestic  
**Protection** 20 violence under this Act:  
**order** 21 (a) The victim;  
22 (b) the Commission;  
23 (c) Police;  
24 (d) a relation of the victim;  
25 (e) a social or health worker;  
26 (f) an accredited service provider or  
27 (g) any person who witnesses the act of Violence.

**C 193 2003 No.** Violence (Prohibition)

- 1 Provided that the application where brought by a person other than the victim  
2 must be brought with the written consent of the victim except in circumstances  
3 where the victim is:  
4 a) a minor  
5 b) mentally retarded  
6 c) illiterate  
7 d) unconscious; or  
8 e) a person who the court is satisfied is unable to provide the required consent.  
9 2) Notwithstanding the provisions of any other law, any minor, or any person on  
10 behalf of a minor, may apply to the court for a protection order without the  
11 assistance of a parent, guardian or any other person.  
12 3) Supporting affidavit referred to in subsection (1) of this section may be  
13 deposed to by any person who has knowledge of the matter concerned.  
14 4) If the victim is not represented by a legal practitioner, the police officer with  
15 whom the complaint is lodged or the registrar of the court shall inform the victim  
16 (a) of the relief available in terms of this Act; and  
17 (b) of the right to also lodge a criminal complaint against the respondent, if a  
18 criminal offence has been committed by the respondent.
- Consideration** 19 14 (1) The court must as soon as is reasonably possible consider an application  
**of application** 20 submitted to it in terms of section 13 and may, for that purpose, consider such  
**and Issuing** 21 additional evidence as it deems fit, including oral evidence or evidence by  
**of Interim** 22 affidavit, which shall form part of the record of the proceedings.  
**Protection** 23 (2) If the court is satisfied that there is prima facie evidence that the respondent is  
**order** 24 committing, has committed or that there is imminent likelihood that he/she may  
25 commit an act of domestic violence the court shall notwithstanding the fact that  
26 the respondent has not been given notice of the proceedings contemplated in

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27 subsection (1) of this section, issue an interim protection order against the  
28 respondent, in the prescribed manner.  
29 (3)(a) An interim protection order must be served on the respondent in the  
30 prescribed manner and must call upon the respondent to show cause on the return  
31 date, specified in the order why a protection order should not be issued.  
32 (b) copy of the application referred to in section 13 and the record of any  
33 evidence taken in terms of subsection (1) of this section shall be served on the  
34 respondent together with the interim protection order.

**C 194 2003 No.** Violence (Prohibition)

1 (4) If the court does not issue an interim protection order in terms of subsection  
2 (2) of this section, the court shall direct the registrar of the court to cause certified  
3 copies of the application concerned and any supporting affidavit to be served on  
4 the respondent in the prescribed manner, together with a prescribed notice calling  
5 on the respondent to show cause on the return date specified in the notice why a  
6 protection order should not be issued.

7 (5) The return dates referred to in subsections (3)(a) and (4) of this section may  
8 not be less than 5 days after service has been effected upon the respondent.

**Issuing of** 9 15 (1) If the respondent does not appear on a return date contemplated in  
**Protection** 10 section 14 (3) or (4) and if the court is satisfied that:  
**Order** 11 (a) proper service has been effected on the respondent; and  
12 (b) the application contains prima facie evidence that the respondent has  
13 committed, is committing or that there is an imminent likelihood that he/she may  
14 commit an act of domestic violence, the court shall issue a protection order in the  
15 prescribed form.  
16 (2) If the respondent appears on the return date in order to oppose the issuing of a  
17 protection order, the court shall proceed to hear the matter and:  
18 (a) consider any evidence previously received in terms of section 15 (1) and  
19 (b) consider such further affidavits or oral evidence as it may direct, which shall  
20 form part of the record of the proceedings.

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21 (3) The court may, on its own accord or on the request of the complainant, if it is  
22 of the opinion that it is just or desirable to do so, order that in the examination of  
23 witnesses, including the victim, a respondent who is not represented by a legal  
24 practitioner-

25 (a) is not entitled to cross – examine directly a person who is in a domestic  
26 relationship with the respondent; and

27 (b) shall put any question to such a witness by stating the question to the court,  
28 and the court is to repeat the question accurately to the witness.

29 (4) The court shall after a hearing as contemplated in subsection (2), issue a  
30 protection order in the prescribed form if it finds, on a balance of probabilities,  
31 that the respondent has committed, is committing or that there is an imminent  
32 likelihood that he/she may commit an act of domestic violence.

33 (5) Upon the issuing of a protection order the registrar of the court shall forthwith  
34 in the prescribed manner cause-

35 (a) the original of such order to be served on the respondent; and

36 (b) a certified copy of such order, and the original warrant of arrest contemplated

**C 195 2003 No.** Violence (Prohibition)

1 in section 17 (1) (a) be served on the victim.

2 (6) The registrar of the court shall forthwith in the prescribed manner forward  
3 certified copies of any protection order and of the warrant of arrest contemplated  
4 in section 17 (1) (a) to the police station of the victim's choice.

5 (7) Subject to the provisions of section 16 (7), a protection order issued in terms  
6 of this section remains in force until it is set aside, and the execution of such  
7 order shall not be automatically suspended upon the filing of an appeal.

**Court's power** 8 16 (1) The court may, by means of a protection order referred to in section 14 or  
**In respect of** 9 15, prohibit the respondent from-

**Protection** 10 (a) committing any act of domestic violence;

**Order** 11 (b) enlisting the help of another person to commit any such act;

12 (c) entering a shared household:

13 Provided that the court may impose this prohibition only if it appears to be in the  
14 best interests of the victim;

15 (d) entering a specified part of such a shared household;



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- 16 (e) entering the victim's residence;  
17 (f) entering the victim's place of employment;  
18 (g) preventing the victim from entering or remaining in the shared household or a  
19 specified part of the shared household;  
20 (h) alienating or disposing the shared household or encumbering same;  
21 (i) renouncing his rights in the shared household except in favour of the victim; or  
22 (j) committing any other act as specified in the protection order.  
23 (2) The court may impose any additional conditions, which it deems reasonably  
24 necessary to protect and provide for the safety, health or well being of the  
25 victim, including an order-  
26 (a) to seize any arm or dangerous weapon in the possession or under the control  
27 of the respondent;  
28 (b) that a police officer must accompany the victim to a specified place to assist  
29 with arrangements regarding the collection of personal property; or  
30 (c) directing the respondent to secure alternative accommodation for the victim.  
31 (3) In ordering a prohibition contemplated in subsection 1 (c) of this section, the  
32 court may impose on the respondent obligations as to the discharge of rent or  
33 mortgage payments having regard to the financial needs and resources of the  
34 victim and the respondent.

**C 196 2003 No.**

*Violence (Prohibition)*

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- 1 (4) The court may order the respondent to pay emergency monetary relief having  
2 regard to the financial needs and resources of the victim and the respondent, and  
3 such order has the effect of a civil judgment of a court.  
4 (5) (a) The physical address of the victim shall be omitted from the protection  
5 order, unless the nature of the terms of the order necessitates the inclusion of  
6 such address.  
7 (b) The court may issue any directions to ensure that the victim's physical  
8 address is not disclosed in any manner, which may endanger the safety, health or

9 well being of the victim.  
10 (6) If the court is satisfied that it is in the best interests of any child it may-  
11 (a) refuse the respondent contact with such child; or  
12 (b) order contact with such child on such conditions as it may consider  
13 appropriate.  
14 (7) (a) The court may not refuse  
15 (i) to issue a protection order; or  
16 (ii) to impose any condition or make any order which it is competent to impose  
17 or make under this section, merely on the grounds that other legal remedies are  
18 available to the victim.  
19 (b) If the court is of the opinion that any provision of a protection order deals  
20 with a matter that should, in the interests of justice, be dealt with further in terms  
21 of any other relevant law, including the Matrimonial Causes Act, 1970, Child's  
22 Rights Act, 2003, the court must order that such a provision shall be in force for  
23 such limited period as the court determines, in order to afford the party concerned  
24 the opportunity to seek appropriate relief in terms of such law.  
**Warrant** 25 17 (1) Whenever a court issues a protection order, the court shall make an order-  
**of arrest** 26 (a) authorising the issue of a warrant for the arrest of the respondent, in  
**upon** 27 the prescribed form; and  
**Issuing of** 28 (b) suspending the execution of such warrant subject to compliance with any  
**Protection** 29 prohibition, condition, obligation or order imposed in terms of section 16.  
**Order** 30 2) The warrant referred to in subsection (1) (a) remains in force unless the  
31 protection order is set aside, or it is cancelled after execution.

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1 (3) The registrar of the court shall issue the victim with a second or further  
2 warrant of arrest, if the victim files an affidavit in the prescribed form in which it  
3 is stated that such warrant is required for her or his protection and that the  
4 existing warrant of arrest has been-

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- 5 (a) executed and cancelled; or  
6 (b) lost or destroyed.
- 7 (4) (a) A victim may hand the warrant of arrest together with an affidavit in the  
8 prescribed form, wherein it is stated that the respondent has contravened any  
9 prohibition, condition, obligation or order contained in a protection order, to any  
10 police officer.
- 11 (b) If it appears to the police officer concerned that, subject to subsection (5),  
12 there are reasonable grounds to suspect that the victim may suffer imminent harm  
13 as a result of the alleged breach of the protection order by the respondent, the  
14 police officer shall forthwith arrest the respondent for allegedly committing the  
15 offence referred to in section 19(a)
- 16 (c) If the police officer concerned is of the opinion that there are insufficient  
17 grounds for arresting the respondent in terms of paragraph (b), he or she shall  
18 forthwith hand a written notice to the respondent which:
- 19 (i) specifies the name, the residential address and the occupation or status of the  
20 respondent;
- 21 (ii) calls upon the respondent to appear before a court, and on the date and at the  
22 time specified in the notice, on a charge of committing the offence referred to in  
23 section 19(a); and
- 24 (iii) contains a certificate signed by the police officer concerned to the effect that  
25 he or she handed the original notice to the respondent and that he or she  
26 explained the import thereof to the respondent.
- 27 (d) The police officer shall forthwith forward a duplicate original of a notice  
28 referred to in paragraph (c) to the registrar of the court concerned, and the mere  
29 production in the court of such a duplicate original shall be prima facie proof that  
30 the original thereof was handed to the respondent specified therein.
- 31 (5) In considering whether or not the victim may suffer imminent harm, as  
32 contemplated in subsection (4)(b), the police officer shall take into account-
- 33 (a) the risk to the safety, health or well being of the victim;

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- 1 (b) the seriousness of the conduct comprising an alleged breach of the  
2 protection order; and  
3 (c) the length of time since the alleged breach occurred.
- 4 (6) Whenever a warrant of arrest is handed to a police officer in terms of  
5 subsection (4) (a), the police officer shall inform the victim of his  
6 or her right to simultaneously lay a criminal charge against the  
7 respondent, if applicable, and explain to the victim how to lay such  
8 a charge.
- Variation or Setting** 9 18(1) A victim, the respondent or the commission may apply to the court  
**aside of Protection**  
**Order** 10 for the variation or setting aside of a protection order referred to in  
11 section 15 in the prescribed manner.  
12 (2) If the court is satisfied that good cause has been shown for the  
13 variation or setting aside of the protection order, it may issue an order to  
14 this effect:  
15 Provided that the court shall not grant such an application to the victim  
16 unless it is satisfied that the application is made freely and voluntarily.
- 17 (3) The registrar of the court shall forward a notice as prescribed to the  
18 victim and the respondent if the protection order is varied or set aside as  
19 contemplated in subsection (1).
- Contravention** 20 19 (1) A person who –  
**of protection** 21 (a) contravenes a protection or an interim protection order;  
**order.** 22 (b) while an interim protection order is in force, refuses to permit the  
23 victim to enter and remain in the place to which the order relates  
24 or does any act for the purpose of preventing the applicant or such  
25 dependent person from so entering or remaining;  
26 (c) publishes any information which might reveal the identity of any  
27 party to the proceedings in respect of protection order;  
28 (d) in an affidavit referred to in section 17 (4) (a), willfully makes a false  
29 statement in a material respect;  
30 commits an offence and is liable on conviction to a fine of N50,000 or a  
31 maximum of 5 years imprisonment or to both fine and imprisonment.

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32 (2) The provisions of subsection (I) shall be without prejudice to any  
33 Punishment or sanction as to contempt of court or any other liability,  
34 whether civil or criminal that may be incurred by the respondent.

**C 199 2003 No.** Violence (Prohibition)

1 (3) No prosecutor shall -  
2 (a) refuse to institute a prosecution; or  
3 (b) withdraw a charge,  
4 in respect of a contravention of section 18 (1), unless  
5 he or she has been authorised thereto, whether in general or in any  
6 specific case, by the Director of Public Prosecutions.  
7 (4) Failure by a police officer to comply with an obligation imposed in  
8 terms of this Act, without just cause, constitutes an offence punishable,  
9 on conviction, with a fine not exceeding N20,000.00 or a term of  
10 imprisonment not exceeding one year or to both such fine and  
11 imprisonment.  
12 (5) Prosecution for an offence under subsection (2) of this section shall  
13 only be initiated on the written authorisation of the Director of Public  
14 Prosecutions.  
15 (6) No suit, prosecution or other legal proceedings shall lie against any  
16 police officer, the commission, accredited service provider or any other  
17 person authorised to take any action under this Act for any thing which is  
18 in good faith done or purported to be done by or under this Act.

**Establishing  
of Commission  
on violence**

19 20(1) There is hereby established a body to be known as the  
20 Commission on Violence (herein referred to as “the  
21 Commission”).  
22 (2) The Commission shall be-  
23 (a) a body corporate with perpetual succession and a common seal;  
24 (b) capable of suing and being sued in its corporate name.  
25 (c) capable of acquiring, holding or disposing of any property, movable  
26 or immovable, for the purpose of carrying out its functions.

**Functions**

27 21(1) The Commission shall:

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- of the 28 (a) monitor and supervise the implementation of the provisions of this  
Commission 29 Act;  
30 (b) administer the operations of the Trust Fund;  
31 (c) recruit staff for the Commission;  
32 (d) provide and manage rape crisis centres for victims;  
33 (e) register accredited service providers, draw up guidelines for their  
34 operations and supervise their activities;  
35 (f) perform such other functions as may be specified by any law or  
36 enactment; and

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- 1 (g) undertake such other activities as are necessary or expedient for  
2 giving full effect to the provisions of this Act.  
3 (2) The commission shall also co-ordinate the activities of the police and  
4 the accredited service providers to ensure that the victim:  
5 (a) has easy access to accredited service providers;  
6 (b) has easy access to transportation to an alternative residence or a safe  
7 shelter, the nearest hospital or medical facility for treatment, if the victim  
8 so requires;  
9 (c) is able to collect his/her belongings or properties from a shared  
10 household or his/her residence, if the victim so requires;  
11 (d) is able to access the court for order under this Act; or  
12 (e) has access to every possible assistance in the service of interim  
13 protection order on the respondent, and the enforcement of any order that  
14 may have been made by the court under this Act.  
15 (3) The commission may, upon the failure of the respondent to make  
16 payment ordered by the court under this Act, direct an employer or a  
17 debtor of the respondent or any bank in which the respondent operates  
18 any account, to directly pay to the victim or deposit with court a portion  
19 of the wages or salaries or debt due to or accrued to the credit of  
20 respondent or monies in any bank account operated by the respondent,

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- 21 which amount may be adjusted towards the emergency monetary relief  
22 payable by the respondent.
- 23 (4) The commission to facilitate performance of its function may appoint  
24 such number of its officers in each Area Council as it may consider  
25 necessary, to assist the court in the discharge of its duties under this Act.
- Composition** 26 22(1) The Commission shall consist of the following members:  
**of the** 27 (a) a Chairperson who shall be appointed by the President and  
**Commission** 28 being a person who by reason of his or her ability, experience,  
29 specialised knowledge or professional attainment or outstanding  
30 contributions;  
31 (b) the representative of-  
32 (i) the Inspector-General of Police, not below the rank of an Assistant  
33 Commissioner of Police;

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- 1 (ii) the Ministry of Justice;  
2 (iii) the Ministry of Health; and  
3 (iv) the Nigeria Prisons Service;  
4 (c) two representatives of the Ministry of Women Affairs;  
5 (d) an Officer of the National Human Rights Commission;  
6 (e) an Officer of the Legal Aid Council;  
7 (f) 10 persons from the National Advocacy Coalition on Violence  
8 Against Women;  
9 (g) two representatives from religious organisations;  
10 (h) the Director-General, a woman, who shall be the administrative head  
11 of the Commission.
- 12 (2) The representatives of the ministries shall be public servants not  
13 below the cadres of Grade Level 14 officers;
- 14 (3) A person appointed as a member of the Commission shall hold office  
15 for a term of four years only and shall not be eligible for re-appointment.
- 16 (4) A member of the Commission shall cease to hold office if:

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- 17 (i) he or she becomes of unsound mind or is incapable of carrying out his  
18 or her duties;
- 19 (ii) he or she becomes bankrupt;
- 20 (iii) he or she is convicted of a felony or any offence involving  
21 dishonesty; or
- 22 (iv) he or she is guilty of serious misconduct relating to his or her duties.
- 23 (5) Members of the Commission appointed under this section shall be  
24 paid such remuneration and allowances as the President, on the  
25 recommendation of the Revenue Mobilization Allocation and Fiscal  
26 Commission may direct.
- 27 (6) Subject to Section 27 of the Interpretation Act, the Commission may  
28 make standing orders regulating its proceedings.
- Quorum** 29 23. The quorum of the Commission shall be one-third of the members;  
30 and the validity of its proceedings shall not be affected by any defect in  
31 the appointment of any member or by reason that a person not entitled to  
32 do so took part in the proceedings.

**C 202 2003 No.** Violence (Prohibition)

- Management** 1 24- The Commission shall be empowered to:-
- of the** 2 (a) disburse funds:
- Commission** 3 (b) appoint external auditors:
- 4 (c) oversee its own administration:
- 5 (d) engage in fund raising for the purpose of carrying out its functions.
- Establishment** 6 25- (1) There is hereby established for the Commission a Trust Fund for
- of Trust** 7 victim of violence.
- Fund** 8 (2) The Trust Fund shall be set up primarily for the purpose of providing
- 9 aid for the victim of Violence through:-
- 10 (a) rehabilitation of victim, individually or as a group



- 11 (b) reintegrating the victim into the society:  
12 (c) provision of shelter:  
13 (d) provision of legal aid:  
14 (e) programmes on violence;  
15 (f) provision of guidance and counselling;  
16 (g) payment of medical expenses for victim; and  
17 (h) support of organisations which give direct assistance to victims of  
12 violence.
- Interpretation** 19 26- In this Act-
- 20 “accredited service provider” means governmental, non-governmental,  
21 voluntary and charitable associations or institutions providing shelter,  
22 homes, counselling, financial, medical or other assistance to victims of  
23 domestic violence and are registered with the commission on violence  
24 ;
- 25 “civil proceedings” means
- 26 (a) proceeding for the making, variation or discharge of a protection  
27 order, safety order or interim protection order;
- 28 (b) proceedings by way of appeal or case stated which are related to  
29 proceedings to which paragraph (a) applies;
- 30 (c) proceedings under this Act for declaration, compensation or award;
- 31 “Child” includes any biological, adopted, step or foster child or any  
32 other minor, who is below the age of 18 years;
- 33 “Court” means the High Court and the Magistrate Court;

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*Violence (Prohibition)*

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- 1 “Commission” means the Commission on Violence  
2 established under this Act;
- 3 “Domestic relationship” includes a relationship between a person and –
- 4 (a) his or her spouse  
5 (b) his or her former spouse  
6 (c) a child resident in the household;  
7 (d) any other member of the family; and

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- 8 (e) any other resident in the household  
9 or a relationship between a victim and a respondent in any of the  
10 following ways-
- 11 (a) they are or were married to each other, including marriage according  
12 to any law, custom, religion or usage,  
13 (b) they live or lived together in a relationship in the nature of marriage,  
14 although they are not or were not, married to each other, or are not able  
15 to be married to each other,  
16 (c) they are parents of a child or are persons who have or had parental  
17 responsibility for that child (whether or not at the same time),  
18 (d) they are family members related by consanguinity, affinity or  
19 adoption,  
20 (e) they are or were in an engagement, dating or customary relationship,  
21 including an actual or perceived romantic, intimate or sexual relationship  
22 of any duration, or  
23 (f) they share or recently shared the same residence;
- 24 “Domestic violence” includes the offences created under sections 1 to 8  
25 of this Act when perpetrated on a victim in a domestic relationship or  
26 any other act of violence perpetrated on a victim in a domestic  
27 relationship including the following-
- 28 (a) wilfully or knowingly placing or attempting to place the victim in fear  
29 of physical injury,  
30 (b) causing physical injury to the victim by such act which is known or  
31 ought to have been known would result in physical injury,  
32 (c) coercion of victim to engage in conduct or act, sexual or otherwise, to  
33 the detriment of the victim’s physical or psychological well-being,  
34 (d) incest,  
22 (e) confining or detaining the victim against his/her will,

**C 204 2003 No.** Violence (Prohibition)

- 1 (f) causing mischief, destruction or damage to property with intent to  
2 cause or knowing that it is likely to cause distress or annoyance to the

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- 3 victim,  
4 (g) forced labour;  
5 (h) economic denial,  
6 (i) forced isolation from family and friends,  
7 (j) verbal and emotional abuse,  
8 (k) harmful widowhood practices  
9 (l) abandonment of wife and children without means of subsistence and  
10 (m) harassment, intimidation or stalking;  
11 “emergency monetary relief” means compensation for monetary  
12 losses suffered by a victim or any child at the time of the  
13 issue of a protection order as a result of the domestic violence  
14 including but not limited to:  
15 i) loss of earnings  
16 ii) medical and dental expenses  
17 iii) relocation and accommodation expenses,  
18 iv) loss caused due to the destruction, damage or removal of any  
19 property from the control of the victim,  
20 v) maintenance for the victim as well as his/her children, if  
21 any, or  
22 vi) compensation for the domestic violence inflicted upon the  
23 victim;  
24 “functions” means powers and duties;  
25 “harassment” means engaging in a pattern of conduct that induces the  
26 fear of harm to a victim, including -  
27 (i) repeatedly watching or loitering outside of or near the building or  
28 place where the victim resides, works, carries on business, studies  
29 or happens to be,  
30 (ii) repeatedly making telephone calls or inducing another person to  
31 make telephone calls to the victim, whether or not conversation  
32 ensues,  
33 (iii) repeatedly sending, delivering or causing the delivery of letters,

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34 telegrams, packages, facsimiles, text messages, electronic mails or other  
objects to the  
35 victim;  
36 “harmful traditional practices” means any custom or tradition

**C 205 2003 No.** Violence (Prohibition)

1 which degrades or has the effect of dehumanising the victim;  
2 “household” means a family living together with a domestic  
3 relationship;  
4 “Intimidation: means uttering or conveying a threat, or causing a  
5 victim to receive a threat, which induces fear;  
6 “respondent” means any person who has committed or allegedly  
7 committed an act of violence against the victim;  
8 “sexually harasses” shall include:  
9 (a) making unsolicited sexual remarks at a person and especially  
10 after that person disapproves of such remarks,  
11 (b) making physical contact of sexual coloration with any person  
12 without that person’s consent.  
13 (c) threatening to or actually exposing any person to any  
14 disadvantage in order to get that person to or for failure of that  
15 person to subject himself or herself to any form of sexual gratification  
16 or consideration.  
17 (d) offering or promising any person to offer any advantage or  
18 favour on the condition that that person subjects himself or  
19 herself to any form of sexual gratification or consideration  
20 “spouse” means person married under the Marriage Act or under  
native  
21 law and customs, Islamic law and persons who though not married are  
22 in cohabitation;  
23 “Stalking” means repeatedly following, pursuing, or accosting the  
24 victim;  
25 ‘survivor’ means the same as victim

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- 26 “Victim” means any person who suffers or is subjected to or  
27 allegedly subjected to any act of violence or to whom any act  
28 of violence is meted including any child in the care of such person.  
29 “Violence” includes:  
30 (a) physical or sexual or psychological or emotional or economic  
31 violence occurring in the family, workplace and community  
32 (b) discrimination (that is applicable to women and girls only)  
33 (c) any action which inflicts physical, sexual or psychological  
34 hurt or injury on a woman or girl  
35 (d) domestic violence as defined in this Act

**C 206 2003 No.**

*Violence Against Women (Prohibition)*

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- 1 (e) acts constituting the offences created in sections 1 to 8 of this  
2 Act;  
3 “welfare” means the physical and psychological welfare of the  
4 person in question;  
5 “women” includes girls.  
6 27 - This Bill may be cited as the Violence  
7 (Prohibition) Bill, 2003.

**Citation**

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**Allison A. Dunlop**

Senior Staff Attorney  
Family Law/Domestic Violence Unit



**Brooklyn Legal Services**

105 Court Street, 4th Floor | Brooklyn, NY 11201

Phone/Fax: 718-237-5534 | [adunlop@lsnyc.org](mailto:adunlop@lsnyc.org)

[www.legalservicesnyc.org](http://www.legalservicesnyc.org)





If you are a victim of domestic violence, you are not alone. Domestic violence affects people from all walks of life. Help is here.

## FAMILY LAW AND DOMESTIC VIOLENCE UNIT

**Brooklyn Legal Services' Family Law and Domestic Violence Unit provides holistic services to low-income survivors of domestic violence and sexual assault in family law matters, including obtaining orders for protection, safely securing custody and visitation of children, requesting and enforcing child support obligations, and actions for divorce. The unit also represents survivors in petitions for domestic-violence based immigration relief.** The program specializes in working with low income survivors who belong to vulnerable populations such as people of color, elderly, non-English speakers, and LGBTQ.

The unit partners with Brooklyn community resources, including the Brooklyn Family Justice Center, Wyckoff Heights Medical Center, Barrier Free Living, and the Kings County District Attorney's Office, and NYPD so that survivors may access legal and non-legal services, including case management, counseling, therapeutic services, medical care, safety planning, legal advice and representation. The unit also works to train service providers and law enforcement to combat prejudice, identify and prevent abuse, and improve survivors' access to services and regularly conducts education and legal outreach to raise awareness of abuse in vulnerable populations.

### PRIORITIZING CLIENT SAFETY

The Family Law and Domestic Violence Unit's holistic approach to counsel and representation provides our clients with an attorney who is an expert in the dangerous considerations a survivor faces in all stages of an abusive relationship. First and foremost, the unit works with the client to create a safety plan, including whether it is safe for the client to engage with the legal system. With the assistance of a domestic violence attorney, clients can begin to regain the independence, autonomy, and integrity that is lost in the cycles of intimate partner violence. As trauma informed advocates, the unit realizes the impact of trauma on clients, recognizes the signs and symptoms of trauma, and integrate that knowledge into our practice.

### COVID-19 SERVICES

- Provided **Individualized Safety Planning**
- Represented survivors **seeking protective orders**
- Assisted survivors to **obtain emergency access to shelter**
- Acquired **financial support** for survivors
- Litigated **divorce and custody actions**
- Secure **Writs of Habeas Corpus** for children not returned by abusers
- Furnished **access to shelter** for survivors facing homelessness
- Advised victims of abuse seeking to **temporarily or permanently move out of state** or out of NYC with their children
- Drafted **emergency applications** on behalf clients and children with vulnerable health
- Attained **stimulus payments** for survivors withheld by abuser.
- Received **emergency COVID-19 Relief funds** for survivors

## OUR PRIORITIES

- **Provide holistic services, including legal advice and representation** in family, matrimonial, immigration, and similar proceedings in coordination with medical intervention, social work services, case management, counseling and emergency relief.
- **Train service providers and law enforcement** to combat bias and prejudice, identify and prevent abuse, and improve survivors' access to services;
- **Conduct education and legal outreach** to raise awareness of abuse and remedies for vulnerable populations.

## COMMUNITY NEEDS

- **Brooklyn's population was estimated at over 2.6 million residents.** Of these residents, the US Census Bureau determined that 19% lived in poverty, over 500,000 people.
- **In 2021, there were over 89,000 complaints of domestic violence to the NYPD.** Domestic Violence is widely believed to be under-reported, meaning the number of incidents of violence could be far greater.
- **Survivors from all socio-economic backgrounds suffer from domestic violence, but poor survivors are more disparately impacted making them more vulnerable to abuse and less likely to have the means to leave.** Survivors who are more financially dependent on their partners tend to face more challenges when attempting to end the relationship. Abusers routinely sabotage their partners' economic mobility to keep them dependent. Solving the problem of domestic violence requires targeted, multi-disciplinary, efforts to make sure survivors are financially stable and connected to the necessary resources to safely leave their abusers.

## SUCCESS STORIES

Brooklyn Legal Services' experienced attorneys provided comprehensive representation to the following clients:

- **A man experiencing brutal violence at the hands of his boyfriend, who was threatened with drive-by shootings, disfiguring acid attacks, and spreading malicious and stigmatizing information to his family, began to have thoughts of suicide when he reached out to BLS. He felt as if no one would help him, not even police. We assisted him immediately with a safety plan, helped him obtain counseling services, and after filing a family offense petition, received an order of protection.**
- **An immigrant mother experienced abuse at the hands of her husband. She later discovered that the father of her child was also sexually abusing their daughter and threatened to harm her. The Family Law Unit filed successful U-Visa petitions on behalf of the mother and child. BLS assisted the mother by making special appearances in the ACS abuse/neglect case against the father. Additionally, BLS represented the mother in her contested divorce proceeding where the mother was granted a divorce, sole custody of the children, child support, and 100% of the marital assets. The client and her daughter are now on a path towards citizenship.**

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### About Brooklyn Legal Services

Brooklyn Legal Services, a program of Legal Services NYC, helps thousands of low-income Brooklynites get justice each year who otherwise could not afford legal services. Brooklyn Legal Services provides high-quality, free legal services that helps stop evictions, preserves affordable housing and homeownership, secures access to essential public benefits, identifies and addresses discrimination in housing and mortgage lending, empowers victims of domestic violence, supports Brooklyn residents who are LGBTQ or HIV+ in gaining access to the services they need, promotes the rights of immigrants, veterans and the disabled, protect borrowers from abusive and illegal collection tactics, and ensures proper care and housing for elderly Brooklynites.



## KNOW YOUR RIGHTS:

# Domestic Violence Resources

Survivors of Intimate Partner and Sexual Violence can access these resources to enable them to secure supportive services, counseling, safety planning, and more.

### RESOURCES:

- National Domestic Violence Hotline- 24/7 hotline that provides resources to survivors. 800-799-7233.
- New York State DV and Sexual Assault 24/7 Hotline- 1-800-942-6906.
- National Deaf Hotline- 1-800-787-3224.
- Safe Horizon- Provides support with crisis counseling, safety planning, assistance finding shelter, and 24/7 hotline. 1-800-621-HOPE (4673) and for help with rape and sexual assault 1-212-227-3000.
- NYC Family Justice Centers- Walk-in Centers offering domestic and gender-based violence victims with holistic safety planning, case management, legal services, housing, adult and childrens' therapeutic services, financial literacy and empowerment. 718-250-5113 (Brooklyn), 718-508-1220 (Bronx), 212-602-2800 (Manhattan), 718-575-4545 (Queens), and 718-697-4300 (Staten Island).
- Barrier Free Living- DV counseling and services for disabled survivors, including DV shelter. 212-400-6470 or [info@bflnyc.org](mailto:info@bflnyc.org)
- NYC Well to connect to mental health support. 888-NYC-Well. 888-692-9355. [www.nyc.gov/nychope](http://www.nyc.gov/nychope)
- Day One- Organization that advocates for youth in ending dating abuse and domestic violence through community education, supportive services, and legal advocacy. Hotline 800-214-4150. Text line-646-535-DAY1. [www.dayoneny.org](http://www.dayoneny.org)



917-661-4500

Culturally Sensitive Services for Latina/Spanish Speaking DV survivors

- VIP Mujeres- Provides social services to Latina/Spanish Speaking Victims of DV- [www.vipmujeres.org](http://www.vipmujeres.org). Bilingual Helpline 800-664-5880
- Dominican Women's Development Center's Nuevo Amanecer Program. <https://dwdc.org/nuevo-amanecer-new-dawn>. 212-994-6060
- Mixteca-Provides holistic social services to Mexican/Latin-American immigrants, including DV support programs. <https://mixteca.org> 718-965-4795
- New York Presbyterian Hospital Family Peace Trauma Treatment Center, the only Spanish-speaking services in Washington Heights, NY for very young children and their caregivers where there has been exposure to traumatic violence and abuse. 646-317-5525. Nyp.org

Cyber Sexual Abuse & Prevention Resources

- Cornell Tech (Clinic to End Tech Abuse), Centre to End Tech Abuse. <https://www.ceta.tech.cornell.edu/resources>
- National Network to End Domestic Violence. <https://www.techsafety.org>
- End Tech Abuse- [www.ENDTAB.org](http://www.ENDTAB.org)
- Access Now. 24/7 Digital Security Helpline. [help@accessnow.org](mailto:help@accessnow.org) or <https://www.accessnow.org/help>



917-661-4500

**Unofficial English Translation**

Distr. general  
28 February 2023

Original: Spanish

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**Human Rights Council**

**Fifty-second session**

27 February–31 March 2023

Agenda item 2

**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General**

**Situation of human rights in Honduras****Report of the United Nations High Commissioner for Human Rights\***

\*\*

*Summary*

In the present report, the United Nations High Commissioner for Human Rights describes the human rights situation and the activities of his office in Honduras from 1 January to 31 December 2022. The report highlights the main progress and challenges in the promotion and protection of human rights, and concludes with recommendations to the State. \* \*\*

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\* The summary of the report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission and in English only.  
\*\* The present report was submitted after the deadline in order to reflect latest developments.

## I. Introduction

1. This report is presented in accordance with Article V (4) of the agreement signed between the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Government of Honduras on 4 May 2015. The report and its analyses are based on information collected by OHCHR in the country, as well as information provided by state authorities, civil society and victims.
2. OHCHR continued to observe the human rights situation in Honduras and provide technical assistance towards the promotion and protection of human rights. The thematic priorities of the Office included strengthening the rule of law, particularly access to justice, promoting civic space and public participation, promoting economic, social, and cultural rights and measures to progressively achieve their full effectiveness, promoting equality and non-discrimination of persons in situation of vulnerability, as well as prevention and early warning of social conflicts and human rights violations.
3. OHCHR conducted 95 field missions to verify the human rights situation, including visits to detention centres. It implemented 80 technical assistance and institutional strengthening processes for state institutions, organized and supported 69 workshops and training sessions on human rights. Additionally, it monitored 47 judicial processes, including in emblematic human rights cases. OHCHR provided technical support to more than 400 civil society organizations and launched 13 communication campaigns to promote human rights.

## II. Context

4. The arrival of a new government on 2 January 2022, led by the country's first female president, with political will in the area of human rights and the fight against corruption, sets a new stage for human rights work in Honduras. The administration assumed its functions in a context of pre-existing structural challenges underlying human rights violations: poverty and inequality, land conflicts, violence, insecurity, impunity, institutional weakness and patriarchal culture, among others. Such challenges require short, medium and long-term measures to be resolved.
5. OHCHR recognizes progress made by the State in 2022, including in accordance with recommendations made by the Office. These include the adoption of a legal framework to strengthen the independence of the Judiciary, the beginning of the progressive demilitarization of the penitentiary administration, the repeal of the Law for the Classification of Public Documents Related to National Security and Defence ("Secrecy Law"), the repeal of all regulations related to the Employment and Economic Development Zones, and advances in environmental matters.
6. The enjoyment of economic and social rights remains impacted by pre-existing high levels of poverty and inequality. The prevalence of conflict related to land and natural resources had a significant negative impact on the effective guarantee of human rights, particularly for indigenous peoples, Afro-Hondurans, and peasants.
7. In the area of Bajo Aguán, the Government signed an agreement with the peasant movement aimed at finding durable solutions to the structural causes of the agrarian conflict in the zone.
8. The homicide rate was 35.83 per 100,000 inhabitants<sup>1</sup>, the lowest rate in the last 10 years. While this represents a decrease compared to 2021, violence and insecurity continued to affect the country, having an aggravated impact on women and lesbian, gay, bisexual, transgender and intersex persons.
9. OHCHR provided technical assistance for the drafting and implementation of the Special Law on the Organization and Functioning of the Nominating Board for the Proposal of Candidates to the Supreme Court of Justice (Decree 74-2022) adopted by the National Congress in July. This legal framework establishes objective selection criteria based on

<sup>1</sup> [www.sepol.hn/artisistem/images/sepol-images/files/PDF/INFOGRAFICO%20ANUAL\(2022\).pdf](http://www.sepol.hn/artisistem/images/sepol-images/files/PDF/INFOGRAFICO%20ANUAL(2022).pdf)

international standards on judicial independence, transparency, oversight, and public participation, as well as greater gender equity in the composition of this High Court.

10. On 24 November, President Castro declared a National Security Emergency to combat extortion by organized crime groups. On 6 December, a State of Emergency (Decree 29-2022) went into effect in the 162 neighbourhoods of Tegucigalpa and San Pedro Sula with the highest crime rates. The main measures adopted were the suspension of the rights of personal liberty, freedom of association, assembly and movement. This Decree also granted powers to the police to carry out arrests and searches without a warrant. OHCHR reiterates the need to adopt a comprehensive security policy, with emphasis on prevention and investigation, that addresses the root causes of violence<sup>2</sup>. The Office welcomes the establishment of a high-level inter-institutional roundtable to monitor the implementation of the State of Emergency.

### III. Development and Economic, Social, Cultural and Environmental rights

11. In April, the National Congress repealed Legislative Decree 263-2012 that provided for the creation and configuration of the ZEDES (Employment and Economic Development Zones), as well as all associated regulations<sup>3</sup>. The Government announced that all ZEDES remaining in operation must be registered in one of the existing special legal regimes. OHCHR welcomes this repeal, which reflects recommendations made by the Office and human rights mechanisms, and urges that the measures for its implementation be carried out with the effective participation of the communities in the impacted territories and for the guarantee of that the right to free, prior and informed consultation of indigenous and Afro-Honduran peoples.

#### A. Access to economic, social, cultural and environmental rights

12. The enjoyment of these rights remains impacted by the high levels of pre-existing poverty and inequality, and by the socioeconomic effects of the COVID-19 pandemic and climate change, such as the tropical storms that affected the country. According to information published in July 2022, 73.6% of the population lived in poverty and 53.7% in extreme poverty<sup>4</sup>. In February, the National Congress declared a state of fiscal and financial emergency in the public sector to address the public debt of more than 197 billion lempiras contracted by previous Governments<sup>5</sup>. The Government established the Secretariat of State in the Office of Social Development to promote development and social protection, and the Solidarity Action Program for persons in situation of vulnerability.

13. Affected by global trends, high year-to-year inflation also impacted the purchasing power and consumption of Honduran households. The Office welcomes the budget modification that increased budget allocations in the education and health sectors through Decree 30-2022. In June, the Government declared a state of health emergency to address the shortage of medicine in the health system.

14. The country's vulnerability to climate change impacted the guarantee, among others, of the right to food and increased humanitarian needs. The floods in September led the Government to declare a 90-day state of national emergency. Storm Julia in October impacted more than 144,000 persons and caused damages in 15 of the 18 departments<sup>6</sup>. These adverse weather events, in addition to a humanitarian response such as the state of food emergency proclaimed in April, also require medium and long-term measures to mitigate the effects of

<sup>2</sup> <https://oacnudh.hn/oacnudh-llama-a-adaptar-respuestas-integrales-de-combate-a-la-violencia-y-criminalidad-organizada-a-partir-de-un-enfoque-de-derechos-humanos/>

<sup>3</sup> Legislative Decrees 32-2022, 33-2022

<sup>4</sup> <https://www.ine.gob.hn/V3/imag-doc/2022/07/Boletin-Dia-de-la-poblacion-11-de-julio-1.pdf>

<sup>5</sup> Legislative Decree no. 8-2022

<sup>6</sup> <https://reliefweb.int/report/honduras/honduras-tormenta-tropical-julia-informe-de-situacion-no-01-12-de-octubre-de-2022>

climate change, facilitate the adaptation and promote the resilience of the most affected population.

15. Challenges persist in guaranteeing the right to food and health for the indigenous community of San Francisco de Locomapa, despite the fact that the Constitutional Chamber upheld in July the amparo ruling of the Administrative Court of San Pedro Sula, which established the obligation of the municipal corporation to install and equip health centres in the communities and implement a plan to ensure their right to food. The Office urges the Yoro Municipality to move forward as soon as possible with the effective implementation of the sentence.

16. The labour discrimination of domestic workers, in both law and in practice, is of concern due to the absence of an adequate legal framework for integral protection of their labour rights.

## **B. Access to Land and Natural Resources**

17. Social and environmental conflicts related to land and territory, alongside agrarian conflicts, have a strong negative impact on human rights and security, destabilize the country, and contribute directly to violence, displacement and migration. Inequitable access to land, territory and natural resources is one of the main causes of inequality and poverty. It is rooted in various factors, such as insecure land tenure and limited institutional capacity to resolve property rights and the overlap of private and ancestral land titles. This is further compounded by the existence of an economic development model based on extractive industries that has expanded over the last 12 years.

18. The Office documented that, over the last decade, this development model was enabled by expedited environmental licensing processes without the required consultation and free, prior and informed consent of indigenous and Afro-Honduran peoples, in some cases also without the effective evaluation and monitoring of its environmental impact. This has resulted in a high level of socio-environmental conflict with aggravated impact on indigenous and Afro-Honduran peoples.

19. OHCHR appreciates the prominence that environmental protection has had in Government policies, the commencement of a process of revision, suspension and cancellation of environmental licenses, permits and concessions, and the non-granting of permits in 2022 for extractive exploitation that threaten natural resources. The Office welcomes the openness of the Secretariat of Natural Resources and the Environment to review the regulatory and administrative framework for environmental licensing with technical assistance by OHCHR. Such efforts must be accompanied by policies to reduce the adverse impacts of development projects on the environment, communities and territories of indigenous and Afro-Honduran peoples.

20. In the Garifuna community of San Juan, Tela, the Office documented a dispute between community members asserting their ancestral territorial rights and third parties claiming property rights over the same territories, resulting from the failure of the State to recognize the integrity of said ancestral territory and the authorization by the Municipality for the sale of plots of land within this territory. The situation worsened in July when construction work began in the disputed territories, which also resulted in environmental damage to a lagoon within the protected area. The Office appreciates that the Government established a special commission to address the causes of this conflict and urges for the prompt implementation of the agreement signed between the authorities and community members represented by the Fraternal Black Organization of Honduras.

21. The Office documented evictions as one of the main violations suffered by peasant, indigenous and Afro-Honduran peoples. The implementation of Decree 93-2021, which allows for preventive and immediate evictions without judicial control, aggravated land and territory conflicts. The State Attorney's Directive issued in March that recognized the mandatory nature of judicial control and recommended avoiding preventive evictions

represents an important development. OHCHR reiterates its concerns regarding the Decree and urges its prompt repeal<sup>7</sup>.

22. The Office condemns the criminalization of six members of the Garífuna community of Punta Gorda that were charged with aggravated usurpation during a forced eviction in November, implemented in the context of the community demanding recognition of their ancestral rights. The Office welcomes the decision of the Roatán court to fully dismiss the case, recognizing the special relationship of the Garífuna people with their land and territory. OHCHR also followed up on the case of the Lenca community of Tierras del Padre, where a new eviction order was issued on 23 November, and later suspended. This order is in addition to the three eviction orders issued in previous years against this community.

23. The Office stresses the need for the State to adopt measures to implement the guarantees of non-repetition that the Inter-American Court of Human Rights established in its sentences regarding the Afro-Honduran communities of Triunfo de la Cruz and Punta Piedra, particularly the right to communal property and ownership rights of the communities, including through the delimitation, demarcation and titling of their lands in accordance with customary law and their values, uses and customs<sup>8</sup>. The adoption and implementation of these measures must be carried out with the effective participation of the affected communities and the organizations that represent them.

24. With regards to agrarian conflicts, OHCHR welcomes the signing of the agreements between the Government and peasant groups in Bajo Aguán on 22 February. These agreements represent an important first step towards addressing the historic conflict and they have already resulted in a decrease in forced evictions in the area. The implementation of the Tripartite Commission, key to ensuring a human rights approach in addressing the conflict, including for the investigation and prosecution of human rights violations and the adoption of reparation and non-repetition measures, remains pending.

25. OHCHR acknowledges the establishment, by the Secretariat for Human Rights with technical support by the Office, of the Inter-Institutional Round Table to address social conflicts, including conflicts related to land and territory, with a human rights-based approach. Such efforts should be complemented by policies to reduce the adverse impact of development projects on the environment, communities and the territories of indigenous and Afro-Honduran peoples.

26. Regarding the environmental and human rights impact of extractive projects, the Office followed up on the Guapinol, Azacualpa and Locomapa cases, among others, which highlight the importance of the obligation of private companies to respect human rights and to prevent their activities from causing or contributing to negative consequences on the communities where they operate.

27. The Office documented the environmental and social impacts of the mining project in the Carlos Escaleras National Park, authorized in 2014 following the reduction of the core zone of the park. The project has impacted the right to a healthy environment of surrounding communities, including their access to drinking water. Inspections conducted by the Secretariate of Natural Resources and the Environment concluded that the project does not comply with environmental control measures. In addition, in 2021 the Honduran Institute of Geology and Mines (INHGEOMIN) concluded that one of the mining operations was carried out outside of the authorized area and ordered a halt of said operations.

28. OHCHR documented the continued mining activities in the cemetery of the Azacualpa community in Copán, in contempt of court sentences that had ordered to stop the associated exhumation in the cemetery. There is an ongoing habeas corpus process against the mining company and the Secretariat of Health to disclose the location of the exhumed bodies. Since January, mining activities have expanded to new areas outside the cemetery. These activities are implemented under a license issued through an expedited process, without the required

<sup>7</sup> A/HRC/49/21, par. 8, 35, 40.

<sup>8</sup> *Cases Comunidad Garífuna Triunfo de la Cruz and Comunidad Garífuna de Punta Piedra*, Sentences of October 2015

inspections or assessments by INHGEOMIN. The process under which the licence was issued is currently under review by the new authorities.

29. The Office documented the absence of mining licenses for operations in the Locomapa community, resulting in ongoing operations without State authorization and supervision<sup>9</sup>. This situation has been aggravated by the lack of investigation of complaints of threats and intimidation against community members, as well as by the illegal exploitation of forest and mining resources enabled by acts that may constitute criminal association, money laundering and illegal possession of weapons.

30. OHCHR documented the dire consequences of the contamination of the Motagua River on the ecosystem and its negative impact on food security and water availability for the Barra del Río Motagua communities and the Masca Garffuna community. Resolving this contamination requires cooperation between Guatemala and Honduras, considering that a large part of the waste originates from at least 55 populated areas in Guatemala, flowing onwards into the Omoa Bay in Honduras.

31. The Office recognizes the efforts of the State of Honduras during the 27<sup>th</sup> United Nations Climate Change Conference towards the establishment of a global Loss and Damage Fund.

## IV. Rule of Law and Accountability

### A. Judicial Independence

32. In 2022, progress was made towards strengthening the rule of law and judicial independence through the implementation of the new legal framework for the election of Supreme Court justices. This framework was adopted by the National Congress in July, concluding a process driven by the Secretariat for Transparency and the Fight against Corruption. OHCHR provided technical support for the development and adoption of the law which introduces guarantees of transparency, publicity, gender parity, public oversight, and election based on objective criteria.

33. The Nominating Board, in charge of the process, was established in September, in a context of strong pressures and interests from various sectors. OHCHR provided technical assistance for the adoption of the operating procedures of the Board based on the principles of objectivity and transparency. The Board received 185 self-nominations (132 men, 53 women) and will present a list of at least 45 candidates to the National Congress in January 2023 for the election of 15 new justices.

34. The information received regarding attacks and retaliation against justice officials in relation to their work, particularly those linked to the anti-corruption circuit, is of concern. The lack of an effective institutional response to protect the personal integrity, judicial independence and autonomy of justice officials represents an obstacle to their work, exacerbates their vulnerability, and negatively impacts access to justice.

35. OHCHR received information regarding possible undue interference affecting the independence of justice officials at the departmental level in judicial proceedings against human rights defenders. On 9 February, the Trujillo Sentencing Court convicted<sup>10</sup> 6 of the 8 defenders of the Guapinol River<sup>11</sup>, in a judicial process that did not comply with international fair trial standards<sup>12</sup>. On 10 February, the Constitutional Chamber granted an amparo<sup>13</sup>, filed a year earlier, ordering the immediate release of the defenders as result of due process irregularities.

<sup>9</sup> Information provided by INHGEOMIN, letter dated 30 November 2022.

<sup>10</sup> Case file number TSTC-20-2021

<sup>11</sup> A/HRC/49/21, par. 19.

<sup>12</sup> A/HRC/WGAD/2020/85

<sup>13</sup> Amparo SCO-0919-2020



## B. Access to Justice and Effective Judicial Protection

36. The justice administration system remains characterized by high rates of impunity, structural barriers and systemic issues for accessing justice, mainly due to weak judicial independence, procedural delays and limited participation of victims of human rights violations in the criminal process.

37. The Office reiterates its concerns about the impunity for cases of serious human rights violations that occurred during the 1980s, the 2009 coup d'état, and the 2017 post-election crisis<sup>14</sup>. Most of these cases remain under investigation without any concrete progress, and the victims continue without access to truth, justice, and integral reparation.

38. Several specialized prosecutors' offices of the State Attorney's Office lack sufficient resources or permanently assigned investigators, which negatively impacts their effective investigation capacity and limits the implementation of an effective criminal prosecution strategy. Consequently, most investigations are carried out without an analysis of the context, without establishing the criminal offenses that correspond to the gravity of the violations, without characterization of the victims, or analysis of intellectual authorship and chain of command for cases involving the security forces and non-state actors.

39. The publicity of hearings and the participation of victims in judicial proceedings remains limited due to restrictions imposed in the context of the COVID-19 pandemic, limiting physical access to hearings. Courts, particularly those at the local level, did not adopt measures to mitigate the negative impact of such restrictions on the access to hearings and publicity of proceedings.

40. OHCHR documented harassment and reprisals against victims and witnesses who cooperate with investigations, as well as challenges for their effective protection, including lack of resources and risks due to the manner in which confidential information is handled.

41. OHCHR considers that the investigation in the case of the unnecessary and excessive use of force by the Joint Task Force of the Armed Forces in 2021 in the community of Ibans, Gracias a Dios, against the Miskito indigenous people, was carried out without due diligence. OHCHR also received allegations of lack of access to information and victim participation<sup>15</sup>.

42. Effective access to justice with a gender perspective remains a challenge. Several key amparo requests and unconstitutionality appeals regarding sexual and reproductive rights and equal marriage remain pending before the Constitutional Chamber. The judicial process in the case of Keyla Martínez<sup>16</sup> did not have a gender perspective, including due to the dismissal by the Constitutional Chamber of the amparo request filed by the State Attorney's Office against the change of classification of the crime from femicide to homicide.

43. In August, the Inter-American Court of Human Rights declared the international responsibility of Honduras for the extrajudicial execution of Herminio Deras in 1983<sup>17</sup> and ordered the adoption of a national policy of historical memory. The Government took steps towards the promotion of memory and recognition of the victims of the 1980s and the 2009 coup d'état.

## C. Security and Human Rights

44. In 2022, the rate of violent deaths between January and September decreased by 13.2% for men and 14.7% for women compared to the same period in 2021<sup>18</sup>. It is concerning that the use of firearms remains the main cause of violent deaths (77.8% for men, 69.3% for women), mainly due to the lack of effective gun control, and that young people are the most affected (40%).

<sup>14</sup> A/HRC/46/75, par. 10.; A/HRC/49/21, par. 20

<sup>15</sup> A/HRC/49/21, par. 27

<sup>16</sup> *Ibid.*, par. 26

<sup>17</sup> Case *Deras García*, Sentence of 25 August 2022, par. 142

<sup>18</sup> InfoSegura

45. The declared commitment of the Government to demilitarize citizen security is an important step forward; however, progress has been hindered by the continued presence of the Public Order Military Police in undertaking citizen security tasks.

46. In March, the National Congress repealed the "Secrecy Law", contributing to accountability and transparency in the public administration of security and defence.

47. The Office welcomes the closure of the National Inter-Institutional Security Force and the transfer of the National Anti-Mara and Gangs Force to the Secretariat of Security through the establishment of the Police Directorate against Maras, Gangs and Organized Crime. However, this transfer did not result in a decrease in the number of cases of unnecessary or disproportionate use of force.

48. Abuses by the National Anti-Mara and Gangs Force continued to be reported. On 25 February, the Office documented an irregular raid in Marcovia, Choluteca, when officers from this Force made unnecessary use of lethal weapons, firing against the population, killing one and wounding four other men. While the investigation continues, no charges have been made against the alleged perpetrators, thereby compromising the right to prompt and effective justice for the victims.

49. On 31 May, members of said Force fired shots during a foot chase of a 21-year-old man who was under investigation for allegedly assaulting a Police officer during a football match. The Office documented the excessive use of force during illegal and arbitrary searches of homes without warrants in the context of search operations for the man. After the State Attorney's Office filed an appeal based on the Minnesota protocol, on 23 October the Criminal Court of San Pedro Sula indicted four members of the Force for murder, torture, concealment and falsification of public documents<sup>19</sup>.

50. The Office registered the deaths of three men in connection with an incident that took place on 11 September during a training course for professionals aspiring to become Auxiliary Police Officers at the National Police Academy in La Paz. The deaths occurred after some 500 registered trainees were subjected to excessive and disproportionate training exercises. The health of at least 35 other people was seriously affected as well. It is concerning that the ongoing investigation remains under the auspices of the Police Investigations Directorate, which may lack independence as it is an integral part of the police service.

#### **D. Prison system and persons deprived of liberty**

51. The Government initiated the demilitarization of the prison system in March with the initial transfer of the administration of prisons from the Armed Forces to the National Police, making an important step towards strengthening the National Penitentiary Institute. In August, the Government declared a year-long state of emergency<sup>20</sup> in the national penitentiary to facilitate its demilitarization and the progressive reform of the system. As part of this process, the Police is expected to gradually transfer the administration of prisons to the National Penitentiary Institute.

52. As of December, the National Penitentiary System housed an average of 19,842 adult inmates in the country's 25 penitentiary centres, despite only having the capacity to house 14,780 persons, resulting in an overcrowding rate of 34.2%. At least 51.6% of the prison population does not have a final sentence. The absence of guidelines for the classification of persons deprived of liberty that would allow for adequate prison management in accordance with international human rights standards and reduce prison violence is concerning.

53. Although OHCHR documented only one prison riot compared to the six documented in 2021, the number of violent deaths in prisons remained high, with 17 deaths registered in 2022. According to monitoring by the Office, such deaths were the result of the existence of a system of self-governance by persons deprived of liberty, with the acquiescence of the

<sup>19</sup> <https://www.mp.hn/publicaciones/auto-de-formal-procesamiento-para-cuatro-policias-vinculados-a-muerte-de-aficionado-del-real-espana/>

<sup>20</sup> <https://www.tsc.gob.hn/web/leyes/PCM-03-2022.pdf>

authorities, resulting in the lack of effective control of prison centres, violation of the personal integrity and discrimination of detainees, including due to extortion within the centres.

54. The Office welcomes the appointment of the three national commissioners to the National Committee for the Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment. The Office remains concerned about the independence, administrative autonomy, and budgetary resources of the Committee.

## E. Corruption and Human Rights

55. On 14 February, the President requested the Secretary-General of the United Nations to establish an International Commission against Impunity and Corruption in Honduras. On 15 December, the United Nations Secretariat and the Government signed a preliminary memorandum of understanding towards the possible establishment of an international anti-corruption mechanism.

56. Honduras is among the 25 most corrupt countries in the world<sup>21</sup>. The anti-corruption circuit of the Judiciary registered 306 cases and appeals at its different levels between 2017 and 2022<sup>22</sup>, a sharp contrast to the 889 complaints for corruption offenses according to civil society sources<sup>23</sup>.

57. The criminal prosecution of corruption and the recognition of its victims depends to a large extent on the preservation of the structures established with the support of the Mission to Support the Fight against Corruption and Impunity in Honduras, particularly the State Attorney's Specialized Prosecutorial Unit against Corruption Networks (UFERCO) and the special criminal jurisdiction with national territorial competence in corruption matters. The National Congress approved Decree 67-2022 which, among granting other powers, temporarily authorized UFERCO to undertake criminal prosecution without prior approval by the Attorney General, ordered a budget increase, and strengthened the stability of its personnel - a reform questioned by the State Attorney's Office. In November, the discussion of the draft Law on Effective Collaboration started in the National Congress, the adoption of which would provide an important instrument for the prosecution of corruption.

58. The State Attorney's Office obtained convictions in high impact cases before the anti-corruption judicial circuit, including the "2020 Mobile Hospital Fraud", "Caja Chica de la Dama" and in one of the investigation lines of corruption against the Honduran Social Security Institute.

59. The Government established the Secretariat of State in the Offices of Transparency and Fight against Corruption to prevent and combat corruption in the exercise of public and private functions. One important advance was the repeal of decrees authorizing the creation of trusts.

60. It remains necessary to repeal the decrees known as the "Pact of Impunity" including Decree 116-2019 and Decrees 57-2020 and 93-2021 that interpret and reform articles of the Criminal Procedure Code and the Money Laundering Law<sup>24</sup>.

## V. Civic Space and Public Participation

61. The Office recognizes efforts made by the executive and legislative powers to advance towards the effective exercise of rights related to public participation. However, structural challenges and institutional practices persist, affecting the exercise of the defence of human rights and the rights to participate in the management of public affairs, peaceful assembly, freedom of expression, access to information and freedom of association, thus weakening the civic space.

<sup>21</sup> <https://www.transparency.org/en/cpi/2021>

<sup>22</sup> Judicial Branch Statistics Unit

<sup>23</sup> [https://estadodepais.asjhonduras.com/corrupcion\\_transparencia](https://estadodepais.asjhonduras.com/corrupcion_transparencia)

<sup>24</sup> A/HRC/49/21, par. 36

62. In September, the General Directorate of Information and Press of the Government of the Republic was established by way of Decree PCM-023-2022. The wording of the Decree is concerning as it does not provide clarity on the objective and functions of the Directorate. The Decree requires clarification to avoid generating an obstacle to the plurality and diversity of media, excessive State control, and in order not to hinder the full and safe exercise of freedom of expression.

63. The Office recorded at least 173 attacks against human rights defenders and journalists in 2022, resulting in a total of 242 victims, of which 191 were human rights defenders and 51 journalists. Of these victims, 147 (60.7%) were dedicated to defending land, territory, and the environment, 36 (14.9%) to journalism, and 19 (7.9%) to defending and promoting the rights of LGBTI persons. Of the total, 117 victims (48.3%) were cisgender men, 66 (27.3%) were cisgender women, 5 (2.1%) were transgender women, and 1 (0.4%) was a transgender man. In 53 cases (21.9%), the attacks were against organizations, media outlets, or other groups. Additionally, 68 (28.1%) were indigenous and 26 (10.7%) were Afro-Honduran.

64. It is noteworthy that 3 out of 4 attacks are against those who defend land, territory, and the environment, a number that showcases their extreme situation of risk. Of the defenders who were victims of attacks between 2021 and 2022, 24.8% were Afro-Honduran, which demonstrates the disproportionate impact on this community that represents 0.7% of the population<sup>25</sup>.

65. OHCHR documented 11 murders of human rights defenders and 3 journalists (12 cisgender men and 2 transgender women). Of these victims, 6 (42.9%) were dedicated to defending land, territory, and the environment, and 3 (21.4%) were defending the rights of the LGBTI community, including 2 transgender women. Although attacks against these groups have decreased compared to the previous year, it is concerning that murders have increased.

66. Other frequently recorded incidents against defenders and journalists, in addition to murders, were 41 acts of intimidation or harassment, 39 cases of threats, 11 acts of smear campaigns, 10 physical attacks and 10 attempted homicides. The departments with highest prevalence of incidents were Francisco Morazán (57 cases-32.94%), Colón (21 cases-12.13%), Atlántida (20 cases-11.56%), and La Paz (18 cases-10.40%). In addition to the Central District, the departments with the highest number of attacks were those with a high presence of indigenous, Afro-Honduran and peasant communities.

67. The effective investigation of crimes against human rights defenders remains a challenge. Of the 14 cases of killings documented by the Office in 2022, only two resulted in convictions. One of them is for the murder of Thalía Rodríguez, a trans woman defender of the rights of the LGBTI population, population with HIV-AIDS and trans women sex workers, murdered in January allegedly by three armed individuals. The oral and public trial ended with the conviction of one person for murder, while the other two are yet to be captured.

68. Of concern is the recurring practice of misuse of criminal law against defenders, particularly those dedicated to defending land, territory, and the environment, as well as those who publicly oppose large-scale business activities and/or development projects. The analysis of emblematic cases of the misuse of the criminal justice system by OHCHR indicates that: (a) the most frequently used criminal charges are those of "usurpation", "alteration of terms and boundaries" and "damage to private property"; (b) the accusations are mainly promoted by corporate and private actors; and (c) the accusations tend to be collective, based on a general accusation against a group of people without distinguishing or individualizing the conducts or their degree of participation. The misuse of criminal law not only hinders the work of defenders and the exercise of their freedom of expression, but also weakens the social fabric of affected communities.

69. One such example is the case of the 29 members of the Lenca Indigenous Council of Nueva Palestina who, in the context of their defence of their territory, were accused in May 2022 for the alleged crime of aggravated usurpation and alteration of terms or boundaries by

<sup>25</sup> Population and Housing Census 2013.

a private individual. In the same case, journalist Sonia Pérez, correspondent of *Radio Progreso*, who was covering the case at the time of the events, was charged with the same crimes. The case was permanently dismissed in July 2022.

70. Of concern are the severe delays in judicial proceedings against defenders, such as the case initiated in 2020 against the Lenca defenders Víctor Vásquez and José Santos Vigil Girón, from La Paz, for alleged forced displacement, and the proceedings against the Garífuna community of Cristales and Río Negro, Colón, in which 32 human rights defenders were charged usurpation.

71. The Office finalized its analysis of status of the National Protection System for Human Rights Defenders, Journalists, Social Communicators and Justice operators (the System), through a participatory consultation process. The analysis identifies opportunities and challenges for the System as of 31 December 2021 and concludes with findings that informed the development of the Institutional Strengthening Plan for the System, which was provided to authorities as part of OHCHR technical assistance.

72. The analysis highlights: (a) the lack of sufficient financial, human, and technical resources for the System to fulfil its functions and obligations; (b) the absence of shared responsibility among institutions in addressing cases and advancing towards a conducive environment for the target population; and (c) the lack of clarity, both among civil society actors and the State, regarding the purpose, scope, functions, and target population of the System.

73. Despite the increase of its budget in 2022, the System faced challenges in providing an effective and timely response to applicants, beneficiaries and their representatives. The National Protection Council did not meet regularly with the once-per-month frequency or with the configuration required by Law. As this body is responsible for the supervision, governance and decision making of the System, its inactivity translates in absence of strategic actions and timely measures to advance in providing a safer environment for the defence of human rights and freedom of expression.

74. The total number of cases under protection by the National Protection Mechanism at the end of the year stood at 181, of which 33 were referred by the Inter-American System for the Protection of Human Rights. The Office notes that, despite the fact that the number of cases increased by 41% compared to the previous year, the number of technical staff of the System remains the same.

75. The National Protection System faces technical, administrative and financial obstacles that prevent it from taking timely and appropriate measures.

## **VI. Equality and non-discrimination**

76. The direct and indirect discrimination in the public and private spheres, as well as intersectoral forms of discrimination against groups in situation of vulnerability, remain a challenge.

### **A. Women's rights**

77. Women continue to face barriers in the exercise of their rights in both the public and private domain. Violence against women, limited recognition of their human rights, including sexual and reproductive rights, and other factors of inequality evidence a pattern of discrimination that has been repeatedly highlighted by international human rights mechanisms.

78. The Office recognizes the efforts of the Executive Branch to move towards the accession to the Optional Protocol to the Convention on the Elimination of Discrimination against Women (CEDAW) and calls for its adoption by the National Congress. The adoption of the Comprehensive Law on Violence against Women, the Law on Shelters for Victims of Gender-Based Violence, and the Law on Domestic Work remain pending.

79. Violence against women remains extremely serious. The National Violence Observatory at the National Autonomous University of Honduras reported 252<sup>26</sup> violent deaths of women and femicides between January and October 2022, compared to 330 cases registered in all of 2021.

80. The State Attorney's Office, the Technical Agency for Criminal Investigation and the Police Investigative Directorate lack specialized protocols for the investigation of violence against women, including femicide and violent deaths, with a differentiated approach. This is compounded by the limited availability of trained personnel and required facilities, such as morgues, to allow for effective investigation of such cases.

81. As of 31 October, the State Attorney's Office registered 292 reports of domestic abuse, while the 911-System registered 50,351 reports of domestic abuse. It is concerning that the majority of registered cases do not reach the justice system, which demonstrates the high level of impunity and the need for greater inter-institutional coordination to provide timely response to victims.

82. The partial authorization for the exceptional use of emergency contraceptive pills in the Comprehensive Care Protocol for Victims and Survivors of Sexual Violence approved in December is a positive step. However, women's sexual and reproductive rights remain severely restricted, including by the criminalization of abortion. OHCHR echoes the recommendations of the CEDAW Committee<sup>27</sup> for the legalization of abortion in the three identified circumstances and the distribution and commercialization of emergency contraceptives.

## **B. Rights of Lesbian, Gay, Bisexual, Transgender, Transsexual and Intersex Persons**

83. Lesbian, gay, bisexual, transgender and intersex (LGBTI) persons remain victims of widespread stigmatization and discrimination that perpetuate violence against them due to their sexual orientation, gender identity or expression. The Observatory of the Catrachas Lesbian Network reported an increase in violence in 2022 against LGBTI persons resulting in 43 murders (26 gay, 11 lesbian and six trans persons) and two disappearances. Only eight of these cases are under criminal investigation.

84. Despite efforts by the State to implement the sentence of the Inter-American Court of Human Rights in the case of Vicky Hernandez v. Honduras, such as progress in the development of a protocol for the investigation and administration of justice in cases of violence against LGBTI persons, several other actions remain pending, including the development of a procedure for the recognition of gender identity.

85. The Organic Law on the National Registry of Persons<sup>28</sup> and its supplementary regulations do not allow for the legal recognition of gender identity of trans persons, including in the National Registry of Persons.

## **C. Rights of Persons with Disabilities**

86. The Secretariat for Social Development together with civil society developed a proposal for the comprehensive reform of the Law on Equity and Integral Development of Persons with Disabilities (Decree 160-2005), with technical support by OHCHR. The proposal, which aims to recognize and protect the rights of persons with disabilities in accordance with the International Convention on the Rights of Persons with Disabilities, is undergoing consultations before being submitted to the National Congress.

<sup>26</sup> <https://iudpas.unah.edu.hn/dmsdocument/14049-boletin-infografico-muerte-violenta-mujeres-enero-octubre-2022-preliminares-ed-12>

<sup>27</sup> CEDAW/C/HND/CO/9, par. 39n

<sup>28</sup> Decree 152-87, Art. 84

## D. Rights of indigenous and Afro-Honduran peoples

87. The historical structural barriers faced by indigenous and Afro-Honduran peoples persist, resulting in discrimination and serious violations of their rights and contributing to their exclusion, including in decisions with direct impact on them. There is no adequate legal framework that effectively recognizes and guarantees their right to consultation and free, prior and informed consent.

88. Indigenous and Afro-Honduran peoples face challenges to access justice and impunity for human rights violations committed against them. The majority of the complaints received by the Office of the Prosecutor for Ethnic Groups and Cultural Heritage were related to violations of the land and territories of indigenous and Garifuna peoples (35%), followed by violations of their life and physical integrity (25%)<sup>29</sup>. Adequate measures are also required for the protection of their rights in the administrative sphere.

89. Regarding the Miskito divers who engage in dive fishing in a context of labour exploitation by fishing companies, the State initiated the implementation of the sentence of the Inter-American Court of Human Rights in the case of *Lemoth Morris v. Honduras* (2021). It is necessary to advance with the implementation of other related structural measures, such as strengthening the health system in the Mosquitia.

## E. People on the move

90. Compared to previous years, OHCHR registered an increase in mixed migratory movements and an increased presence of families and women with children in migratory routes, taking alternate routes and moving in smaller groups.

91. According to the National Migration Institute, in 2022, 188,858 migrants entered the country irregularly<sup>30</sup>, mostly from Cuba, Venezuela, Ecuador and Haiti. According to the Honduran Consular and Migration Observatory, 88,855 Honduran migrants were returned to the country, the vast majority from Mexico (45,961) and the United States (42,090).

92. Of concern is the overcrowding of shelters due to the significant increase in transit migratory flows, which on occasion makes it impossible for migrants to find refuge. OHCHR recorded that unaccompanied minors, pregnant women and mothers with children, indigenous people and migrants from the LGBTI community are most often exposed to discrimination and violence.

93. The National Congress approved a 90-day amnesty in May for migrants who entered the country irregularly, exempting them from the payment of the administrative penalty foreseen in the Migration and Foreigners Law. The measure came into effect in August and has since been extended until June 2023, granting these persons the possibility of regularizing their temporary stay.

94. OHCHR welcomes the adoption in December of the Law for the Prevention, Attention and Protection of Internally Displaced Persons as a fundamental step towards their comprehensive protection, as well as calls on the Government to move forward with its regulation and implementation.

## VII. Recommendations

**95. OHCHR reiterates its commitment to continue supporting the efforts of Honduras to respect and guarantee human rights for all persons. The Office reiterates the recommendations contained in its previous reports and urges the authorities to implement them<sup>31</sup>. OHCHR further urges the authorities to:**

<sup>29</sup> State Attorney's Office, Letter DGF-2170-2022, 30 November 2022

<sup>30</sup> <http://inm.gob.hn/estadisticas.html>

<sup>31</sup> A/HRC/49/21, A/HRC/46/75, A/HRC/43/3/Add.2, A/HRC/40/3/Add.2, A/HRC/34/3/Add.2

- a) Adopt a comprehensive national human rights action plan that also includes the guarantee of economic, social, cultural and environmental rights, with a differentiated focus on populations in situations of vulnerability.
- b) Approve and implement a citizen security policy with a human rights approach that ensures gradual demilitarization, both at the operational level as well as at the institutional culture level, promoting civilian vision and leadership in the sector.
- c) Comprehensively address the challenge of insecurity and violence through a human rights approach, prioritizing the prevention, investigation and sanction. Declarations of State of Emergency and suspension of fundamental rights must only be adopted in strict compliance with international human rights law. All actions taken in the context of such measures must be proportional, temporary in nature and limited to those strictly required by the exigencies of the situation.
- d) Strengthen the independence of the justice sector by revising the constitutional and legal framework of the Judicial Branch through the adoption of its organic law and that of the Council of the Judiciary, as well as the framework for the State Attorney's Office, with particular attention to the election of the Attorney General.
- e) Adopt the necessary measures, including legislative measures, to guarantee truth, justice, memory and reparation for the victims of human rights violations, including those from the 1980s, the 2009 coup d'état, and the 2017 post-electoral crisis.
- f) Strengthen the National Protection System for Human Rights Defenders, Journalists, Social Communicators and Justice Operators, in line with the Institutional Strengthening Plan presented by OHCHR.
- g) Strengthen the human, financial and technical investigation capacities of the police and the State Attorney's Office, including the adoption of differentiated protocols for crimes against human rights defenders, women, LGBTI persons, among others, that guarantee due diligence and reduce impunity.
- h) Strengthen the Witness and Victim Protection Program run by the State Attorney's Office, as well as implement protection mechanisms for judicial operators and whistleblowers, guaranteeing their effectiveness.
- i) Establish a sustainable economic development model that guarantees equitable access to land, territory and natural resources based on policies that make effective the rights of indigenous and Afro-Honduran peoples, peasants and other historically excluded groups.
- j) Guarantee the right to a healthy environment, through a reform of the institutional and legal frameworks that regulate the granting of concessions for extractive projects, including the revision of environmental licensing processes.
- k) Sign and implement the Escazú Agreement.
- l) Adopt an adequate legal framework to guarantee the right to consultation and free, prior and informed consent of indigenous and Afro-Honduran peoples, in accordance with international standards.
- m) Implement mechanisms to address the structural causes of the conflict in Bajo Aguán that guarantee reparation and non-repetition, including the Tripartite Commission foreseen in the February 2022 Agreements.
- n) Revise the internal regulations of the National Defence and Security Council to clarify its mandate and adjust it to international human rights obligations, respecting the independence of the Judiciary and the State Attorney's Office.
- o) Advance in the establishment and implementation of the plan for the gradual transfer of the penitentiary administration from the National Police to the National Penitentiary Institute.



- p) Advance in the prevention and prosecution of corruption through the approval of the National Transparency and Anti-Corruption Strategy and the installation of an international mechanism against corruption and impunity.
- q) Adapt the regulatory framework and adopt institutional practices to strengthen, promote and protect civic space in accordance with the international obligations of the State.
- r) Prevent and avoid the misuse of criminal law against human rights defenders, journalists, justice operators and anyone exercising freedom of expression.
- s) Strengthen the capacity of relevant institutions and authorities to adequately assist migrants and forcibly displaced persons and guarantee the protection and exercise of their human rights.
- t) Adopt the policies and legal reforms necessary to guarantee the human rights of women, in particular to a life free of violence and to sexual and reproductive health.
- u) Adopt comprehensive anti-discrimination legislation against LGBTI people that covers all prohibited grounds of discrimination. Concurrently, review current regulations and repeal discriminatory provisions, including the Law of the National Registry of Persons and its bylaws.
- v) Adopt a Law on Domestic Worker and ratify ILO Convention 189, as well as establish a comprehensive care system as a pillar of welfare and social protection policy.
- w) Adopt the integral reform of Decree No. 160-2005 - Law on Equity and Integral Development for Persons with Disabilities and harmonize it with the Convention on the Rights of Persons with Disabilities.



**Comité de América Latina y el Caribe para la Defensa de los  
Derechos de las Mujeres - CLADEM**

Por estados que cumplan con los derechos humanos de las mujeres

Argentina - Bolivia - Brasil - Colombia - El Salvador - Guatemala - Honduras - México -  
Nicaragua - Panamá - Paraguay - Perú - Puerto Rico - República Dominicana - Uruguay

**ALTERNATE REPORT FROM CIVIL SOCIETY ORGANIZATIONS  
DOMINICAN REPUBLIC**

**On the occasion of the presentation of the 8th Report of the Dominican State to the  
Committee on the Elimination of All Forms of Discrimination against Women**

**-CEDAW-**



**June 2020  
Geneva, Switzerland**



## COORDINATION AND EDITING

- **LATIN AMERICAN AND CARIBBEAN COMMITTEE FOR THE DEFENSE OF WOMEN'S RIGHTS - DOMINICAN REPUBLIC (CLADEM-DR):** regional network that articulates women and organizations that, from a socio-legal feminist approach, seek social transformation and the construction of radical democracies, for the full exercise and enjoyment of human rights by all women.

## PARTNER ORGANISATIONS

- **CENTRO DE ESTUDIOS DE GÉNERO DE INTEC (CEG-INTEC):** organization dedicated to higher education, research and public policy advocacy from a gender perspective.
- **CENTRO DE INVESTIGACIÓN PARA LA ACCIÓN FEMENINA (CIPAF):** founded in 1980 to contribute to the integral development of **women by** promoting their participation in conditions of equality in all areas of the country's economic, social and political life.
- **FRIEDRICH-EBERT-STIFTUNG (FES):** working since 1979 in the Dominican Republic. It advocates for a more sustainable development model in terms of social inclusion, decent work and impact on the environment.
- **PLAN INTERNATIONAL REPÚBLICA DOMINICANA (PLANRD):** working in the country since 1987, it is one of the most recognized international organizations in the promotion of children's rights.
- **ASOCIACIÓN PRO BIENESTAR DE LA FAMILIA (PROFAMILIA):** a pioneering organization in sexual and reproductive health services, founded in 1966 to promote and educate about the importance of contraceptives.

## COUNTRY CONTEXT

The Dominican Republic is one of the countries in the Latin American and Caribbean region that has experienced the highest rates of economic growth in the last 8 years, registering an average increase of 5.6% in GDP<sup>1</sup>. However, this economic growth has not meant social inclusion for large population groups, but on the contrary has had a differentiated impact for reasons of age, sex, disability, race, ethnicity, origin, or socioeconomic status, resulting in unequal conditions and access to opportunities for access to productive resources, development of skills, expression of voice and respect for individual and collective economic, social and cultural rights.



Foto: Lorena Espinoza Peña

The population groups that have experienced decline in monetary poverty levels are women, young people, early childhood children, people with disabilities and migrants, and people living in rural areas, who do not have equal access to sufficient opportunities to achieve their well-being. By 2016, the percentage of poor people is higher in rural areas (37.9%) than in urban areas (26.6%), and in households headed by women (26.7%) than by men (20.9%). Similarly, there is a higher percentage of women (30.37%) in poverty than men (27.4%) at the national level, and within the group of women, those living in rural areas are the most affected by poverty (40.41%)<sup>1</sup>.

When human development is calculated considering gender differences, the value drops substantially by 47%, due to: lower participation of women in the labor market, deficient provision of goods and services in sexual and reproductive health, high rates of adolescent pregnancy (20.3%), high rates of maternal mortality (102 per 100 thousand live births) and low participation in political representation seats.

The circumstances surrounding the COVID-19 crisis in the Dominican context where women have the burden of unpaid work and care in the home, has increased violence in the home, as well as the increase in the price of the family basket has repercussions on the possibility of women and girls to obtain the necessary items for menstrual care. Similarly, the impact of the crisis on the economy will have repercussions mainly on the informal sector, which represents 49% of the country's economic activity and in which women represent 23%.

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<sup>1</sup> Ministry of Economy, Planning and Development. Sistema de Indicadores Sociales Dominicanos, published on the website [www.economia.gob.do](http://www.economia.gob.do)

## **ARTICLE 1. VIOLENCE AGAINST WOMEN**

The Dominican Republic is the fifth country in Latin America with the highest rate of femicide per 100,000 women, after El Salvador, Honduras, Bolivia and Guatemala<sup>2</sup>. According to the Attorney General's Office (PGR), 1,444 femicides were recorded between 2005 and 2019<sup>3</sup>. In 2019, there were 77,837 complaints of gender and domestic violence, 6,914 complaints of sexual offences, 77 femicides and 19,908 protection orders issued<sup>4</sup>. Most of the victims of femicide had not filed complaints.

It is estimated that less than 5 per cent of all complaints of gender violence, domestic violence and sexual offences are finally adjudicated. Despite this, neither the judiciary nor the Office of the Attorney-General of the Republic has conducted investigations in which they have made public the reasons for this very high rate of impunity. Civil society organizations, when trying to undertake investigations in this regard, have encountered obstacles from the highest levels when trying to access files, victims and personnel of the agencies that process the complaints.



Another element that contributes to impunity in cases of gender-based violence and, in many cases, even the death of the victim, is the persistence of conciliation, both in criminal law and in the practice of Public Ministry officials, who promote it, as well as promote and approve abbreviated criminal agreements that significantly reduce the penalties of the aggressors. These agreements, only in 2019, claimed the lives of Anibel González and Juana Domínguez, whose perpetrators were benefited by abbreviated criminal agreements despite the fact that the figure did not legally qualify for them and despite the risk this posed to the victims.<sup>5</sup>

Since 2012, the women's movement, feminists and civil society organizations have proposed the approval of the bill that creates the Integral System of Prevention, Attention and Sanction

of Violence against Women. Despite the fact that this project has been enriched, welcomed by the

<sup>2</sup> ECLAC. Gender Equality Observatory for Latin America and the Caribbean. Femicide. <https://oig.cepal.org/es/indicadores/femicidio>

<sup>3</sup> PGR. Homicides of women and femicides in the Dominican Republic, by type. Period January - December 2019. <https://transparencia.pgr.gob.do/Inicio/VisualizarDocumento?DocumentoId=27561>

<sup>4</sup> PGR. Homicides of women and femicides in the Dominican Republic, by type. Period January - December 2019. <https://transparencia.pgr.gob.do/Inicio/VisualizarDocumento?DocumentoId=27561>; Gender violence, domestic violence and sexual crimes. January - December 2019. <https://transparencia.pgr.gob.do/Inicio/VisualizarDocumento?DocumentoId=27879>

<sup>5</sup> The Day. "Anibel Gonzalez's family asks to submit to the head prosecutor of San Pedro de Macoris" <https://eldia.com.do/familia-de-anibel-gonzalez-pide-someter-a-fiscal-titular-de-san-pedro-de-macoris/>; Diario Libre. "Another woman killed by agreements of the Prosecutor's Office and inobservance of judges in San Pedro de Macoris" <https://www.diariolibre.com/actualidad/justicia/otra-mujer-muerta-por-acuerdos-de-la-fiscalia-e-inobservancia-de-jueces-de-san-pedro-de-macoris-1B15146196>

Gender Equality Commission of the Chamber of Deputies, presented and discussed on several occasions before the National Congress, no consensus has been reached for its approval.

Discrimination and violence against women is even greater if they belong to one of the vulnerable populations such as migrants, LGBTI+ community, de-nationalized people, older women, women with disabilities and afro-descendants. In particular, the lack of protection of lesbian and trans women in situations of violence, where State agencies designed to do so deny them protection and assistance, as is the case with the Ministry of Women's Affairs itself, which has indicated that it only provides legal services to women victims of gender violence or domestic violence where an aggressor man is involved, if the aggression comes from a partner of the same sex, assistance is not provided. The same is true of the Public Prosecutor's Office, where domestic violence between lesbian couples is registered as a quarrel, despite the fact that Act No. 24-97 on domestic violence guarantees protection without discrimination for all persons in a family.

The Ministry of Women reports that during the state of emergency declared by the Covid-19 pandemic, between March 17 and June 28, 2020, it provided 2,322 services through its hotline and in coordination with the National System of Emergency Care, 911. Of these, 1,262 referred to physical, psychological, verbal and property violence. They also provided protection from extreme violence to 1,241 women and their children under 13. Half of this figure, 662, was received in June alone, when confinement and curfews were relaxed<sup>612</sup>. The services of the Línea Mujer \*212 and Las Casas de Acogida, declared as essential services during the pandemic.

## RECOMMENDATIONS

1. Approval of the draft law creating the Comprehensive System for the Prevention, Treatment and Punishment of Violence against Women, assigning its governing body to the Ministry of Women's Affairs and providing it with sufficient resources for its implementation
2. Strengthen the internal policies of the Office of the Attorney General of the Republic and the Public Prosecutor's Office for the efficient and timely investigation, processing and prosecution of crimes of violence against women and domestic violence, ensuring that impunity, re-victimization and discrimination are avoided
3. To strengthen the internal policies of the judiciary for the comprehensive care of victims of violence against women and domestic violence without discrimination in the process of access to justice.
4. To strengthen the policies of the Ministry of Women's Affairs, as well as its technical and operational resources for the prevention and care of victims of violence against women and domestic violence without discrimination.
5. Promote transparency in the handling of cases of violence against women and domestic violence in all State institutions, with a clear regime of consequences.
6. To make the detection, prevention and comprehensive care of violence against women and domestic violence in the health and education systems an institutional priority.
7. Strengthen and expand services available to respond to violence against women and domestic violence in emergency settings, particularly during the Covid-19 pandemic, in which many

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<sup>6</sup> Ministry of Women of the Dominican Republic. Summary of statistical data in quarantine period. Línea Mujer and Casa de Acogida. 17 March to 21 June 2020; Bulletin MMujer News, 5 June 2020.

<https://mujer.gob.do/transparencia/fhccadownload/Publicaciones/Boletines/2020/BOLETIN%20JUNIO%202020.pdf>

- women are confined with their abusers.
8. Strengthen the supervision, monitoring and guarantee of application of health protocols on violence against women and domestic violence by the Ministry of Public Health.
  9. To effectively implement the detection, prevention and assistance to victims of violence against women and domestic violence from all levels of care of the National Health Service, efficiently applying the corresponding protocols
  10. Allocate sufficient public resources to expand the capacity and territorial coverage of the shelters, which are the responsibility of the Ministry of Women's Affairs.

#### **ARTICLE 4 - DISCRIMINATION**

Structural and racial discrimination against migrants of Haitian citizenship and their descendants born in the Dominican Republic is historical, manifesting itself in systematic patterns of economic, social and cultural marginalization. In the case of women and girls of Haitian origin (and generations) who live in extreme poverty in isolated communities called "*bateyes*", the non-recognition of the right to Dominican nationality and under-registration is disproportionate, seriously impacting their rights. A UNFPA study in 2018 showed the difference and reduced access to rights and services by the Haitian-born population in the country compared to another national origin<sup>7</sup>.

Constitutional Court Ruling No. 168 of September 23, 2013 is still in force, massively and retroactively denationalizing Dominicans of Haitian origin born in the country, whether or not they are registered in the Dominican civil registry, based on the irregular migratory origin of their parents.

Six years after Law 169-14 it has been a total failure. Based on data received by the Inter-American Commission on Human Rights (IACHR) from the State between 2016-2019, approximately 49% of the 61,000 registered in the civil registry (Group A of the Law) would be available to return their documents and 51% are not ready for delivery. The 8,750 who applied for naturalization today do not have Dominican nationality, and the process encountered obstacles: the mother's document was required for registration and the Law does not establish this, difficulties in identifying the mother and obtaining the document from the hospital of birth. The Law has no solution for the registration of descendants or minors of Group A or those who applied for special naturalization. Approximately 75,000 of the people who have applied are under 15 years of age registered in a Book of Foreigners that does not indicate nationality. In addition, there is a number of people of Haitian descent, a number that is still unclear, who were born in the country, did not apply to the Law, therefore they have no legal solution, remaining stateless.

The State has not relaxed the requirement for a foreign mother's passport when the father is Dominican in order to register the minor as Dominican. The civil law presumes the child born to the mother and the father can only recognize him if it is his will; without the mother's passport the child cannot be registered as Dominican by blood, nor the subsequent generations, increasing the risk of statelessness. Gender discrimination is clear, as it does not happen when the mother is Dominican. Furthermore, as a result of his context, the statistical health records of the Haitian migrant population and the population of Haitian origin are racially discriminatory, if a mother does not have documents in the hospital she is registered

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<sup>7</sup> <sup>13</sup> UNFPA 2018. Descendants of migrants in the Dominican Republic.  
<https://dominicanrepublic.unfpa.org/es/publications/descendientes-de-inmigrantes-en-la-rep%C3%BAblica-dominicana>

as "Haitian", which is reflected in the statistics.

During Covid19 the civil registry offices have been closed, without information on extensions of time for timely registration, considering costs and distances and home births. The government's measures did not consider women domestic workers, nor those of Haitian descent or migrants, since the food program required them to have a Dominican identity document.

Also, during the quarantine, Ana Maria Belique, leader of the Recognized Stateless People's Movement, was illegally detained by the national police for protesting against racial discrimination and in solidarity with the African-American people over the death of George Floyd; while because of this initiative, ultra-nationalist groups have intensified threats, hate speech and xenophobia against her, as well as against Haitian migrants and their descendants, and the government has not taken action.

## **RECOMMENDATIONS**

1. Automatic restitution of Dominican nationality to all those denationalised by Judgement No. 168-13 still in force, born in the Dominican Republic before 26 January 2010, without procedures or administrative formalities, as ordered by the IACHR and the Inter-American Court of Human Rights. Through another Ruling of the Constitutional Court, Ruling No. 168-13 is revoked. To this end, mobile units for civil registration and delivery of identity documents should be made operational throughout the country.
  2. In the statistics of births, disaggregate the data on mothers and their children born in the Dominican Republic in health centers and children's homes, eliminating "phenotypical-racial" criteria in the statistics in which they indicate "Haitian" nationality, and indicate that their nationality is "Dominican" or "born in the Dominican Republic."
  3. The State should criminally punish ultra-nationalist groups for hate speech and incitement to public violence, not tolerating these behaviors through public pronouncements and official school education programs on interculturality.
  4. Adopt a procedure in conjunction with the migration authorities and the corresponding training to avoid deportations of women and minors born in the Dominican Republic without documents.
  5. The JCE should adopt a resolution for the timely registration of babies born during the State of Emergency due to Covid19, in view of the total closure of its offices, and thus avoid the risk of statelessness.
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## ARTICLE 7. RIGHT TO POLITICAL PARTICIPATION



In past years 2018 and 2019, the National Congress approved important reforms to the Dominican electoral legislative framework: Law 33-18 on Political Parties, Groups and Movements and Law 15-19 on the Electoral Regime. These legislative pieces brought with them an increase in the percentage allocated to the electoral gender quota for certain popularly elected positions at the municipal and congressional level, whose proportion rose from 33% to a minimum of 40%<sup>8</sup>.

The effective implementation of the gender quota has been hindered by political parties that are reluctant to comply and by administrative and jurisdictional bodies that apply and interpret the law without a gender perspective. In this regard, the Central Electoral Board (JCE) issued Resolution 28-2019, by which it distributed the seats in the municipal and congressional electoral districts in accordance with the gender quota. In calculating how many male and female candidates would fill the quota according to the total number of seats in each district, the JCE made incorrect calculations (equivalent to percentages below 40 per cent) for several districts at the governorship and provincial levels.

Given that these calculations would result in the exclusion of candidates from the electoral ballots, the High Administrative Court, after being empowered to file an action of protection, ordered through sentence No. 0030-04-2019-SS-EN-00506 the immediate modification and adaptation of Resolution 28-2019<sup>9</sup>, establishing that<sup>10</sup>: "*As the shareholders argue, since there are 6 and 13 candidates (provincial and municipal governments), the figures of 2 and 5 spaces, respectively, intended to cover the corresponding percentage, do not cover the minimum 40%, since the interpretation made by the respondent - the Central Electoral Board - deviated from the pro homine principle that should prevail in the interpretation of rules, especially when the law establishes a minimum for women (...)*".

<sup>8</sup> Law No. 33-18, on Political Parties, Groups and Movements, G.O. 10917, of 15 August 2018, art. 33; Law No. 15-19, Organic Law on the Electoral System, G.O. 10933, of 20 February 2019, art. 136.

<sup>9</sup> Acento. "TSA Orders Board to Amend Resolution Establishing Gender Quota Distribution." Online: <https://acento.com.do/politica/tsa-ordena-a-la-junta-modificar-resolucion-establece-distribucion-de-la-cuota-de-genero-8764842.html>

<sup>10</sup> Third Chamber of the High Administrative Court. *Judgement 0030-04-2019-SS-EN-00506*, dated 26 December 2019, para. 11

Although this was a favorable interpretation of women's political rights, the sentence was never complied with by the JCE, so Resolution 28-2019 was not modified and the ballots for both the already completed municipal and congressional contests and the next congressional event were cast by a smaller number of women than the legal percentage. In fact, as a result a total of 69 women candidates for deputy were excluded from their parties' ballots<sup>11</sup>. This could also explain the decrease of two percentage points in terms of women's representation in the councils (32.30% of women councilors elected in 2016<sup>12</sup>; 30.25% of women councilors elected in 2020<sup>13</sup>).

In addition to the role that the JCE has played to the detriment of women's political participation, at the jurisdictional level, the Superior Electoral Court (TSE) has also performed poorly in safeguarding the effectiveness of the gender quota. Ruling TSE-091-2019 shows a misguided and ignorant interpretation of political party gender dynamics, by providing that the gender quota must be covered by making use of the seats that parties have reserved for themselves. In short, this implies that women who competed in elections within their parties could be displaced by the women who the leadership of their parties decides will fill the seats. This interpretation opens the door for parties to place women with little chance of winning their candidacies or, failing that, women as wives and daughters of political leaders -as<sup>14</sup> has in fact happened at the level of deputies- who could then be coerced into resigning their positions.

The representation in the Senate 2016-2020 had only 3 women in 32 positions. In the Chamber of Deputies for the same period, women held only 28.1% of the seats. The Senate 2020-2024 will have 4 women. At the Central Bank, which is the body where the main economic decisions are taken, none of the 10 members of its Monetary Board is a woman. In the municipal elections held in March 2020, it was only possible to reach the quota at the municipal council level (30.25 per cent), and in the mayoral offices women barely reached 12.03 per cent<sup>15</sup>.

Women's participation in decision-making bodies has historically remained very low, despite the regulations in place to reverse this situation. In the government administration that only ends in August 2020, out of 22 ministries in the Executive Branch, only 3 are occupied by women, in roles that are otherwise traditional, the Ministry of Women, the Ministry of Youth and the Ministry of Higher Education, Science and Technology.

## RECOMMENDATIONS

1. Adopt effective mechanisms to monitor and control compliance with the electoral gender quota, including sanctions for political parties and electoral bodies that fail to comply with it.
2. Train political parties, members of the Central Electoral Board and judges of the Superior Electoral Tribunal in the gender perspective, so that their administrative and/or jurisdictional actions and decisions do not ignore or obscure the partisan political dynamics that disproportionately affect women
3. Promote the necessary legislative reforms to Law 33-18 on Political Parties, Groupings and Movements and Law 15-19 on the Electoral System to extend the mandatory application of the

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<sup>11</sup> See publication El Mitin. Online: <https://www.instagram.com/p/CAQ4yNKDL9/>

<sup>12</sup> Espinal, R et al. *More women, more democracy: challenges for gender equality in politics*. UNDP: Santo Domingo, 2018, p. 77.

<sup>13</sup> Meet Your Candidate. *Computer graphics: results of the 2020 municipal elections*. Conocetucandidata.com] UNDP, 2020. Online: <https://conocetucandidata.com/infografia-resultados-elecciones-municipales-2020/>

<sup>14</sup> See: Diario Libre. "Parties place wives of deputies for quotas." Online: <https://www.diariolibre.com/actualidad/politica/partidos-colocan-esposas-de-diputados-para-cuotas-CC15574767>

<sup>15</sup> Meet Your Candidate. *Computer graphics: results of the 2020 municipal elections*. Conocetucandidata.com] UNDP, 2020. Available at: <https://conocetucandidata.com/infografia-resultados-elecciones-municipales-2020/>

- gender quota to elected positions in the Senate and the Mayor's Office;
4. Promote the necessary legislative reforms to Law 33-18 on Political Parties, Groups and Movements and Law 15-19 on the Electoral Regime to guarantee the allocation of specific budgets to political parties that allow for the training and investment of campaign funds for their female candidates;
  5. To design policies that pursue parity in freely appointed public positions, including positions in the public administration and in the formation of high courts, such as the Supreme Court of Justice and the Constitutional Tribunal.

### **ARTICLE 10. RIGHT TO EDUCATION**

The information available shows a favorable panorama for women in terms of insertion into the formal education system, showing that women have higher educational levels than men in terms of: average years of study (8.9 years for men and 9.5 years for women); levels close to parity in early education (0.94) and primary education (0.97); and greater presence in secondary and university education, presenting a gender parity index of 1.07 and 1.73, respectively.

There are deficits in the levels of coverage of educational services at all levels, especially in initial education (net enrolment rate of 34.9% for boys and 32.9% for girls) and secondary education (57.6% and 67.2% for men and women), as well as in university education (21.6% for men and 34.4% for women); and in primary education the enrolment rate is 94.7% for boys and 94.9% for girls<sup>16</sup>. These data in education are explained despite the extensive program of building new schools and rehabilitating classrooms, the implementation of the extended school day and the Comprehensive Early Childhood Care Program -focused on the most impoverished sectors, and still with limited coverage, and the programs of school feeding, adult literacy, and the conversion of school centers into vocational technical training programs, among other advances.

For the LGBT population, school environments are both explicitly and implicitly hostile, as they feel subject to discrimination and homophobic and transphobic bullying, compounded by a lack of teacher training on diversity issues.

#### **Information and Communication Technologies (ICT)**

Women in the Dominican Republic have overcome the so-called first gap, or access gap. Dominican women represent a little more than 50% of those connected; however, this change in the access gap has not meant changes in the gaps in skills and transformational uses associated with the study of careers linked to science, technology and mathematics, and therefore they maintain a low level of labor insertion in the technological field.

The above is verified from secondary education in the selection of young women in the courses of the technical-professional modality, women are 50.2% of the students, but they are concentrated mainly in technical training lines that reinforce the trades traditionally assigned to women, such as hotel management (cooking, bakery and pastry, room service, hotel reception), commerce (secretarial, accounting and human resources), and services (beauty and hairdressing, police, domestic service,

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<sup>16</sup> Centro de Estudios de Género de INTEC- Las deudas sociales del país con las mujeres- enero 2019, p.25 See [https://www.intec.edu.do/downloads/documents/CEG/Las\\_deudas\\_sociales\\_del\\_pais\\_con\\_las\\_mujeres.pdf](https://www.intec.edu.do/downloads/documents/CEG/Las_deudas_sociales_del_pais_con_las_mujeres.pdf)

nursing), among others <sup>17</sup>



In careers related to ICTs and engineering, women are still underrepresented, for example in civil engineering (index of femininity 0.43), Computing (0.69); and Industrial (0.61), which are generally better valued and better paid in the market, and in<sup>28</sup> technological areas (cutting edge), such as electronic engineering, computer science degree, computer technician and communication technologies (networks and connectivity) are still very masculine, with women representing less than 43%<sup>18</sup>.

The most worrying thing is that the trend in ICT careers for women in recent years shows a decrease of almost 50%. Likewise, this absence of women in the training of technological and STEM-related careers is reflected in a significant gender gap in the country's scientific work<sup>19</sup>. Of the 268 researchers selected for the 2019 call, only 36% are women researchers.

## RECOMMENDATIONS:

1. Transparent use and management of 4% of GDP for education.
2. Removing from the public school curriculum content and teaching practices linked to diverse religious beliefs, which do not meet the commitment to non-denominational education
3. Improve school curricula, including sexual and reproductive education and education for peace and gender equality.
1. Create comprehensive policies in the national education sector to prevent and combat violence based on sexual orientation, gender identity and sexual characteristics to ensure inclusive curricula and teaching materials.
2. Promote programs and initiatives for continuous learning and gender-sensitive training for women and girls in specialized areas of digital skills from primary and secondary school.
3. Ensure technology affirmative action for elementary and high school girls to inspire careers in Science, Technology, Engineering and Arts and Design and Math (STEAM) studies.
4. Include in the National Strategy for the Information Society or the National Digital Development Plan and the National Science and Technology Plan a cross-cutting gender approach, including a chapter on closing the gender digital gap in education, skills development and technological leadership.

<sup>17</sup> Ministry of Women's Affairs - National Gender Equality and Equity Plan Topic Education page 186 See <https://cne.one.gob.do/sei/pdf/PLANEG%20III.pdf>

<sup>18</sup> UNDP-DR, Human Development Report 2015

[http://www.do.undp.org/content/dominican\\_republic/es/home/library/human\\_development/informe-sobre-desarrollo-humano-2015.html](http://www.do.undp.org/content/dominican_republic/es/home/library/human_development/informe-sobre-desarrollo-humano-2015.html)

<sup>19</sup> With information from the Report of the results of the Call 2019 of the National Fund for Innovation and Scientific and Technological Development (FONDOCYT)

## **ARTICLE 11. RIGHT TO EMPLOYMENT**

In the Dominican Republic, it is estimated that the average hourly wage for men is RD\$108.00 while for women it is RD\$99.00, equivalent to 91.7% of that received by men. Such differences are also seen in the average monthly income, where women's wages represent 83.4% of those received by men in general, 89.1% in the formal sector and 64.2% in the informal sector. Gaps in monthly labor income are present in all sectors and branches of activity and occupational groups and categories, except in the construction sector (194.5% is the ratio of women's wages to men's)<sup>20</sup>

Women spend an average of 31.2 hours per week in unpaid work, while men work only 9.6 hours in unpaid work. The difference of 21.6 hours shows the great inequalities in the distribution of unpaid work on the basis of gender in the performance of tasks that are carried out without pay and without social recognition to the disadvantage of women, and limiting their economic independence. In contrast, men devote an average of 37.1 hours per week to paid work, and women devote 19.5 hours<sup>21</sup>.

### **Domestic work**

The feminization of migration, the absence of a national care policy, the growing participation of women in the workforce and the ageing of society are some of the reasons for the increased demand for domestic services both at home and abroad. In the Dominican Republic, there are approximately 266,000 domestic workers, 96% of whom are women and more than half of whom are heads of household or single mothers, the vast majority of whom live in conditions of poverty and extreme poverty.

Although the constitution establishes that domestic work is an economic activity that creates added value, produces wealth and social well-being (Art. 55, section 11), in practice, it has little social value and the women who perform it are invisible. The income of domestic workers is equal to or less than 50% of the average employed person, according to data disseminated by the International Labor Organization (ILO).

Low wages in the sector force domestic workers to take on more than one job in order to meet the family's most pressing needs, and they also face the formidable challenge of having to combine paid work, which is often vital to the family's livelihood, with their maternal role and the need to devote many hours to unpaid care work.

Given that there is no correlation of force in favor of amending the Labor Code and that there is no political will within the Ministry of Labor to make administrative progress in guaranteeing the rights of domestic workers, the trade unions of domestic workers, with the support and accompaniment of civil society organizations and trade union centers, have drawn up a proposed law to regulate domestic work in order to implement the provisions of Convention No. 189 and make progress in effectively guaranteeing rights.

<sup>20</sup> SISDOM 2016 See <http://economia.gob.do/wp-content/uploads/drive/UAAES/SISDOM/2016/Datos%20estadisticos/SISDOM%202016.%20Volumen%2011%20Serie%20 de%20Datos.pdf>

<sup>21</sup> National Statistics Office and Ministry of Women 2018. Unpaid work in the Dominican Republic: analysis based on the time use module of ENHOGAR 2016 <https://oie.cepal.org/es/documentos/trabajo-no-remunerado-republica-dominicana-un-analisis-partir-modulo-uso-tiempo-la>

## RECOMMENDATIONS

1. Adoption of policies that secure elimination of the gender pay gap.
2. Adoption of a legal framework regulating paid domestic work
3. Amendment of the provisions of articles 258 to 265 of the Labor Code, in order to ensure that those engaged in paid domestic work enjoy the same labor rights as other workers.
4. Regulate the operation of private employment agencies, in order to protect workers against abusive and/or fraudulent practices.
5. Inclusion of domestic workers in social security, while ensuring access to health, pension and occupational risks.

### **ARTICLE 12: RIGHT TO HEALTH**

#### **Teenage pregnancy and forced infant pregnancy**

Teenage pregnancy in the Dominican Republic is a complex issue of high concern on the national agenda. Available official data indicate that 22% of women between the ages of 12-19 have been pregnant. This rate is 34% higher than the average for Latin American and Caribbean countries.<sup>22</sup>

The evidence shows that the most vulnerable adolescent population is that of the lowest socioeconomic strata, the least educated, those living in territories and areas of greater vulnerability and belonging to the most excluded groups (disabled adolescents, migrants, those with HIV, orphans, among others).<sup>23</sup> As in our country it is prohibited to interrupt the pregnancy in all cases, it is correct to say that all child pregnancies presented correspond to forced child pregnancies. The statistics of the Ministry of Public Health show a trend of increase in forced child pregnancies in the country where 1,615 girls under 15 years gave birth in 2016

With broad participation from different government institutions and civil society, the country adopted a National Plan for the Reduction of Adolescent Pregnancies in 2019, which has defined objectives and strategies to address this scourge in a comprehensive manner throughout the country. Progress has been made in structuring and monitoring the Plan, and full implementation by the new government is awaited.

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<sup>22</sup> UNDP- 2017 "Adolescent Pregnancy: a multidimensional challenge to generate opportunities in the life cycle" see [https://www.undp.org/content/dam/dominican\\_republic/docs/odh/publicaciones/pnud\\_do\\_INDI/2017.pdf](https://www.undp.org/content/dam/dominican_republic/docs/odh/publicaciones/pnud_do_INDI/2017.pdf)

<sup>23</sup> Social Policy Coordination Cabinet - National Plan for Adolescent Pregnancy Reduction 2019-2023 - <https://repositorio.msp.gob.do/handle/123456789/1218>

## Right to abortion



The Dominican Republic is one of only six countries in the Central American and Caribbean region that still maintains an absolute penalization of abortion, with a Criminal Code that dates from 1884. Feminist and women's organizations have promoted an arduous struggle for the decriminalization of abortion in three specific cases, when the woman's life is in danger, when it is a question of sexual violation or when there are fatal malformations for the survival of the fetus, applying criminal sanctions both to health personnel who intervene and to women who voluntarily seek or attempt an abortion. This forces

those women who want to save their lives to perform abortions in unhealthy, unsafe and clandestine conditions.

The only official data on the number of abortions performed in the country is provided by the Directorate of Epidemiology of the Ministry of Public Health, which reports a total of 15,472 abortions among obstetric procedures performed in public sector facilities during 2019<sup>24</sup>, but does not provide data that relates this figure to maternal mortality.

For its part, the Attorney General's Office (PGR)<sup>25</sup> reports cases prosecuted for the crime of abortion established in the current Penal Code:

- 2016: 1 case;
- 2017: 3 cases;
- 2018: 27 cases;
- 2019: 5 cases;

The increase in cases between 2017 and 2018, represents a 900% increase that calls powerfully for attention. As of 2019, the General Directorate of Prisons, an agency of the PGR, reports three persons deprived of their liberty for this crime, two men and one woman<sup>26</sup>.

For more than 20 years, there have been attempts to reform the Penal Code and to include the decriminalization of abortion in three grounds, at the time of this report, Congress has not yet been able to pass these provisions.

<sup>24</sup> Ministry of Public Health. Dominican Republic. Hospital Services Production Statistics. January - December 2019. <https://www.msp.gov.do/web/Transparencia/estadisticas-institucionales/#EIPSSS>

<sup>25</sup> Attorney General's Office. Directorate of Statistics and Analysis. Preliminary report on the number of cases registered in the various prosecutor's offices. Year 2019, and information obtained by request via access to public information.

<sup>26</sup> General Directorate of Prisons. General statistics on the typology of crimes. 2018

## Maternal Mortality

Government efforts to reduce the incidence of maternal death have resulted in the establishment of public policies, budgets, plans and programs, which recognize that the main challenge in this area is to achieve the highest standards of quality of care. This work has begun to bear fruit in terms of reducing both the ratio of maternal deaths and the absolute number of deaths. By comparison, 54 maternal deaths were recorded in June 2018, while for the same period in 2019, the data show 46 deaths.

In May 2019, through Ministerial Resolution 00004, the Ministry of Public Health put into effect the Framework Document: National Alliance to Accelerate the Reduction of Maternal and Child Mortality, which is a proposal aimed at strengthening actions to reduce maternal mortality by 70 per 100,000 live births.

## RECOMMENDATIONS:

1. Budget and implement the National Plan for the Reduction of Adolescent Pregnancies 2019-2023
2. Adopt comprehensive public policies to fully guarantee the sexual and reproductive rights of the population, with a gender-differentiated approach and targeting young people and vulnerable populations, in order to expand access to sexual and reproductive health services nationwide.
3. Promote sexual and reproductive health services with warmth and quality, without discrimination to the entire population, from the first level centers of the national health system, which are located in urban and rural communities.
4. Continue to expand the supply and availability of contraceptive methods to the population
5. Decriminalize abortion in at least three cases: when the woman's life is in danger, when it is a question of rape or when there are fatal malformations for the survival of the fetus;
6. To continue the adoption and implementation of strategies to reduce maternal mortality, from an approach to improving the quality of medical care received by women and including strategies to reduce unsafe abortions.

## **ARTICLE 16 - DISCRIMINATION WITH RESPECT TO MARRIAGE**

The vast majority of child marriages that occur in the Dominican Republic affect girls and adolescents and according to ENHOGAR-MICS 2014 23.4% of adolescents between 15 and 19 years of age in child marriages or unions had a male spouse at least 10 years older than them. De facto marital<sup>27</sup> unions have the same legal and social consequences as civil marriage, but do not have the same legal protection.

In the Dominican Republic, marriage is a civil contract, so it is regulated by the Dominican Civil Code, which dates from 1884. The requirements for contracting marriage are:

*For the man to be 18 years old and for the woman to be 15 years old.*

*Minors under 18 years of age may marry with parental consent, but a man before his 16th birthday and a woman before her 15th birthday may marry if they apply to the competent judge for a dispensation from the age requirement.*

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<sup>27</sup> National Statistics Office. National Multipurpose Household Survey 2014. Main results. 2015, p. 24





Law 136-03, which establishes the Code for the System for the Protection of the Fundamental Rights of Children and Adolescents, restricts the request for dispensation from the age of marriage to adolescents. Therefore, from the age of 13, adolescents may marry if they have the authorization of the courts for children and adolescents.

These requirements establish a discriminatory age difference against women that is based on gender stereotypes about the position of women in marriage as dependents of their husbands, and thus violates the principle of equality in marriage and family relations, protected by the Dominican Constitution and the Convention on the Elimination of All Forms of Discrimination against Women.

Law 136-03 criminalizes sexual practices with a child or adolescent by an adult, or a person five (5) years older, for their own sexual gratification, without consideration of the child's or adolescents psychosexual development, even when no physical contact occurs. However, the Dominican Criminal Code establishes that when the abuser, also called the seducer, marries the aggrieved child, that is, raped, he

can only be prosecuted if the persons or guardians in charge of the child demand the annulment of the marriage, and he can only be convicted after this annulment has been pronounced.

This legal framework legitimizes transactional practices where the family does not criminally prosecute the adult male who joins the child. Research in the country shows how it is common, for example, to agree to pay pensions to family members, financial compensation, purchase of goods or land, move or rent a house/room and pay for services, in exchange for avoiding a complaint with the Prosecutor's Office <sup>28</sup> This type of "transaction" is classified under our legislation as Sexual and Commercial Exploitation of Children and Adolescents, punishable by 3 to 10 years' imprisonment under Law 136-03.

## RECOMMENDATIONS

1. Modify the Dominican Civil Code so that the minimum age for marriage is 18 years of age, without establishing exceptions, not even through a court order.
2. Regulate de facto marital unions by setting the minimum age of consent to the union at 18 years of age without establishing exceptions.
3. Establish the obligation to register de facto marital unions in a public registry as a measure to regulate the system of paternal filiation within this type of union,
4. Eliminate the discriminatory difference that places children born in a marital union at a disadvantage compared to children born in marriage.

<sup>28</sup> TINEO, J. D. Handcuffed girls: Characterization of forced child marriage in the provinces of Azua, Barahona, Pedernales, Elías Piña and San Juan [online]. Approaches. Dominican Republic: Plan International, March 2017, No. 2. ISBN 2518- 895X. Available at: [https://plan-international.org/sites/files/plan/field/field\\_document/planteamientos\\_2\\_arte\\_final\\_print.pdf](https://plan-international.org/sites/files/plan/field/field_document/planteamientos_2_arte_final_print.pdf)

## STATUTES AND LAWS THAT PROTECT SURVIVORS OF DOMESTIC VIOLENCE

### NEW YORK FAMILY LAW STATUTES-

#### FAMILY COURT ACT-

ARTICLE 4. SUPPORT PROCEEDINGS; ARTICLE 5. PATERNITY PROCEEDINGS; ARTICLE 5A. UNIFORM INTERSTATE FAMILY SUPPORT ACT; ARTICLE 6. PART 3. CUSTODY AND VISITATION, PART 4. GUARDIANSHIP, ARTICLE 8. FAMILY OFFENSES PROCEEDINGS

#### DOMESTIC RELATIONS LAW-

ARTICLE 2. MARRIAGES; ARTICLE 5-A. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT; ARTICLE 6. GUARDIANS; ARTICLE 10. DIVORCE; ARTICLE 13. PROVISIONS APPLICABLE TO MORE THAN ONE TYPE OF MATRIMONIAL ACTION

SOCIAL SERVICES LAW- Provides for shelter, housing, public benefits like Snap (food stamps), support collection unit and enforcement of support obligations, etc.,

TITLE 8 UNITED STATES CODE IMMIGRATION AND NATIONALITY ACT SECTION 1101 AND TITLE 8 OF THE CODE OF FEDERAL REGULATIONS- ALIEN AND NATIONALITY ACT.

See <https://www.uscis.gov/humanitarian>. Federal immigration humanitarian relief that assists victims of domestic and sexual violence and trafficking obtain lawful immigration status for themselves and often their derivatives, including children. The humanitarian applications allow victims to apply for work authorization. Some of the humanitarian relief include:

VAWA SELF-PETITION. Form I-360 PETITION FOR AMERASIAN, WIDOWER OR SPECIAL IMMIGRANT

PETITION FOR U NON-IMMIGRANT VISA- FORM I-918, I-918A AND FORM I-929

BATTERED SPOUSE WAIVER-I-751, PETITION TO REMOVE CONDITIONS ON RESIDENCE

SPECIAL IMMIGRANT JUVENILE STATUS-FORM I-360

APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS. FORM I-485.

ASYLUM PETITION- FORM I-589. APPLICATION FOR ASYLUM AND FOR WITHOLDING OF REMOVAL

APPLICATION FOR EMPLOYMENT AUTHORIZATION. FORM I-765. EMPLOYMENT AUTHORIZATION DOCUMENT (EAD)



**Convention on the Elimination  
of All Forms of Discrimination  
against Women**

Distr.: General  
28 February 2022

Original: English

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**Committee on the Elimination of Discrimination  
against Women**

**Eighty-first session**

**Summary record of the 1869th meeting**

Held at the Palais des Nations, Geneva, on Friday, 18 February 2022, at 3 p.m.

*Chair:* Ms. Acosta Vargas

**Contents**

Consideration of reports submitted by States parties under article 18 of the Convention  
(*continued*)

*Eighth periodic report of the Dominican Republic (continued)*

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*The meeting was called to order at 3 p.m.*

**Consideration of reports submitted by States parties under article 18 of the Convention** *(continued)*

*Eighth periodic report of the Dominican Republic (continued)* (CEDAW/C/DOM/8 and CEDAW/C/DOM/QPR/8)

1. *At the invitation of the Chair, the delegation of the Dominican Republic joined the meeting.*

*Articles 1–6 (continued)*

2. **Ms. Gallardo** (Dominican Republic), speaking via video link, said that the Government had conducted four research studies in an unprecedented attempt to strengthen its response to trafficking through practical action. The studies looked at the trafficking of foreign women, adolescents and children inside the country and of Dominican women abroad. One study had produced conceptual and methodological recommendations that would help inform public policy on prevention, victim protection and prosecution of traffickers. The research had yielded a robust, three-dimensional view of the problem that would help the Government coordinate action on migration, gender and development and inform its next plan to combat trafficking and the amendment of Act No. 137-03, on the crimes of migrant smuggling and trafficking in persons.

3. In another pioneering initiative, the National Migration Institute had, in the previous four years, trained more than 1,400 government officials who had previously not received training, including migration and security officials working at the borders who were responsible for detecting trafficking. More recently, training had been provided to lawyers and psychologists from the Ministry of Women to enable them to provide services to trafficking victims.

4. **Ms. Sáenz** (Dominican Republic), speaking via video link, said that her Government recognized the current limitations of Act No. 137-03 and was cooperating with all relevant competent bodies in the legislative reform process, particularly given the importance of the Act to the Strategic Plan for a Life Free from Violence for Women. Key points of the bill included a more detailed definition of the offence of migrant smuggling and harsher penalties for offenders. It also included stronger protection for victims, taking into account their age and whether they belonged to a particularly vulnerable group, and, for the first time, made provision for comprehensive reparations. The bill was currently at the technical review stage before being submitted to Congress. Both the bill on migrant smuggling and trafficking in persons and the bill on a comprehensive response to violence against women recognized new forms of sexual exploitation involving the use of technology. In connection with the latter, the Special Prosecutor for High-Technology Crime had been working with other agencies on proposals for preventing cyberviolence and online gender violence.

5. **Mr. Marmolejos** (Dominican Republic), speaking via video link, said that the Dominican Republic divided violent deaths among women into two categories, namely femicide and homicide of a woman. Femicide was as yet not officially defined as a criminal offence in law but was taken to mean the death of a woman by sexist violence at the hands of her partner or ex-partner. Homicide of a woman meant the murder of a woman under other circumstances. In 2020 there had been 70 femicides and 134 homicides of women and in 2021, 87 femicides and 152 homicides of women. In population terms, the rates in 2020 had been 2.56 per 100,000 women for homicides and 1.34 per 100,000 for femicides and in 2021, 2.88 per 100,000 for homicides and 1.65 per 100,000 for femicides. Those were official figures from the Public Prosecution Service as cross-checked with other relevant agencies and prosecutors' offices.

6. **Ms. Jiménez** (Dominican Republic), speaking via video link, said that the State had opened 12 new shelters for women in 2021, thereby nearly tripling its capacity to support the victims of gender and intrafamily violence and women at risk of femicide. The shelters also accepted the women's children if they were aged under 14. Also in 2021, the Ministry of Women had opened a special national centre for women at risk, with space for more than 100

women and their children, and a shelter specially for girls in situations of violence, which was run in coordination with the National Council for Children and Adolescents.

7. **Ms. Núñez** (Dominican Republic), speaking via video link, said that the Ministry of Women and its partner agencies had set up a critical pathway in order to provide psychological and legal support to women in situations of violence. Support had been provided via the emergency hotline to 8,071 women at risk, legal support to 68,126 women and psychological support to 28,747 women. The National Police had also set up a special victim support corps, which had opened 14 regional offices that provided protection to victims. The Public Prosecution Service also had a gender violence and sex crimes unit and there were gender units in several ordinary prosecutors' offices.

8. **Ms. Pérez Acosta** (Dominican Republic), speaking via video link, said that, as part of efforts to eradicate early marriage and adolescent pregnancy, the Office for Children and Adolescents had coordinated the formulation of the National Policy to Prevent and Address Early Marriage and Adolescent Pregnancy. In 2022 the Government would allocate 173.5 million pesos of new funding to support coordinated action under the policy.

9. Girls' clubs ran courses for girls and adolescents in human rights, gender, and sexual and reproductive health. Local authorities and families were involved and support was provided by civil society organizations and international cooperation agencies. In addition, since 2015, the Ministry of Women, through its courses on sexual and reproductive health and prevention of pregnancy, run by the Centre for the Promotion of Comprehensive Health Care for Adolescents, had reached 44,200 girls aged between 10 and 19. In 2021, around 60 per cent of those attending courses had been girls and around 40 per cent boys. Courses were also run for adults.

10. **Ms. Dettmeijer-Vermeulen** said that she would appreciate clarification as to whether the planned amendments to Act No. 137-03 would permit prosecution of the offence of trafficking in children even where there was no evidence of fraud or coercion.

11. **Ms. Tisheva**, noting that sexual intercourse with an underage girl would amount to statutory rape, said that she would like to know how many prosecutions and convictions of that crime there had been during 2020 and 2021, and how the State party intended to guarantee prosecution of crimes under the recently adopted Act No. 1-21, which prohibited child marriage. In addition, she wondered whether the State party systematically worked with relevant non-governmental organizations (NGOs) to gather data on femicide and its root causes and contributing factors. Were such data published?

12. **Ms. Sáenz** (Dominican Republic) said that the bill to amend Act No.137-03 would expand the definition of the crime and would penalize offences involving violence or fraud. It would also increase the protection provided to victims who were girls or adolescents.

13. **Ms. Villa Camacho** (Dominican Republic), speaking via video link, said that, as the prosecuting authority, the Office of the Attorney General carried out analyses of the incidence of femicides in collaboration with NGOs and other State bodies with a view to reinforcing its ability to prosecute that offence.

#### *Articles 7-9*

14. **Ms. Toe Bouda**, noting that the State party was still working on amendments to introduce gender parity in electoral law, said that she would be interested to know whether, in the meantime, the State party had taken any action to address the decline in women's political participation since 2020 and to change behaviours in respect of their participation in public life. She would also like to know whether any women candidates had been nominated, in particular any Dominican women of Haitian origin. She would welcome statistics on women's appointment to diplomatic posts and posts in international organizations.

15. **Ms. Narain** asked what the State party was doing to change the special registration procedure under Act No. 285-04, the General Immigration Act, which discriminated against foreign mothers and their children, and to ensure that children born to foreign women and Dominican fathers were not considered foreigners and issued a different birth certificate. She would also like to hear what action was being taken to ensure that undocumented women recognized as refugees under the mandate of the Office of the United Nations High

Commissioner for Refugees could obtain legal residence permits that would give them access to rights and services without discrimination.

16. She would welcome reassurance that the State party would ensure that the implementation of the 2010 Constitution, and Constitutional Court ruling No. 168-13, which had arbitrarily deprived thousands of individuals of their nationality, did not result in women and girls being made stateless. Would the State party provide for automatic restitution of Dominican nationality to those arbitrarily deprived of their nationality by Constitutional Court ruling No. 168-13, as ordered by the Inter-American Court of Human Rights, and would it consider acceding to and implementing the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness?

17. She would appreciate information on steps taken to determine the number of women of Haitian origin and their children who had been left out of the naturalization process and to facilitate their naturalization. It would also be useful to know whether there were still legal restrictions to obtaining citizenship for children born in the State party to foreign mothers, in particular Haitian mothers, and what the State party was doing to ensure that all children born on its territory were registered and issued with an official birth certificate.

18. **Ms. Alina Paulino** (Dominican Republic), speaking via video link, said that a child of a foreign mother and a Dominican father was registered in the usual way, without discrimination, provided the father acknowledged paternity. The children of foreign mothers who were illegally resident, on the other hand, were registered as children of foreign mothers not resident in the Dominican Republic, in accordance with article 18 of the Constitution and article 28 of Act No. 285-04.

19. **Ms. Alvarado Bolaños** (Dominican Republic), speaking via video link, said that the Ministry of Women had put in place mechanisms for coordination with women in all political parties and movements at the national and the local levels, which it had used to conduct a series of consultations and training workshops on topics such as women's leadership and empowerment in political parties and the issue of political violence. It was also consulting with women in the political parties on the amendments to the electoral law and the legislation on political parties.

20. **Ms. Hernández** (Dominican Republic), speaking via video link, said that the Central Electoral Board, through the women's political round table, was actively involved in promoting women's participation in politics. The bills to amend Organic Act No. 15-19, on the electoral system, and Act No. 33-18, on political parties, groups and movements, were aimed at ensuring women's enjoyment of their political rights by prohibiting any form of discrimination or conduct that might limit their exercise and, in the case of the former, by prescribing a penalty of 3 to 10 years' imprisonment for persons who committed acts of political violence. A project to strengthen women's leadership skills and to promote their participation in local politics and electoral processes was being carried out with the support of the Spanish Agency for International Development Cooperation.

21. **Ms. Neyra Paulino** (Dominican Republic), speaking via video link, said that the Government was in the process of reviewing its position on the ratification of various international human rights conventions. The Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness were being studied by the Office of the Legal Counsel of the Ministry of Foreign Affairs; once the necessary consultations had taken place, the matter could be referred to the competent authorities for further action.

22. **Ms. Arbaje** (Dominican Republic), speaking via video link, said that, between September 2015 and September 2021, the National Judicial College had provided training to some 4,200 persons on issues such as child abuse, access to justice, fundamental rights, gender issues, refugees, human trafficking and family and gender-based violence. The recipients of the training had included some 1,400 judicial officials, 520 public defenders, 850 judges and 1,110 members of the national legal community. Lawyers and psychologists had also benefited from training during the pandemic. The College's masters' programme included a module on gender, which referred to the Convention and other relevant international instruments.

23. **Ms. Núñez** (Dominican Republic) said that all victims of recent acid attacks had secured access to justice and that, in some cases, convictions had already been obtained against their attackers. They had also received comprehensive health and psychological care from the State. The bill on violence against women would class such attacks as a criminal offence; the Criminal Code would be amended accordingly.

*Articles 10–14*

24. **The Chair** said that the delegation was requested to provide written replies to the questions posed under articles 10, 11 and 12 within 24 hours following the conclusion of the interactive dialogue.

25. **Ms. Bonifaz Alfonzo** said that data collected by the United Nations Educational, Scientific and Cultural Organization showed that the increasing school enrolment rate of younger girls in the State party was offset by the high dropout rate among girls between 15 and 18 years of age, which she understood might be attributable to the impact of teenage pregnancy. It would be helpful to know what steps the State party was taking to provide age-appropriate sex education for children and adolescents. She wondered whether the mathematics, science and technology clubs for girls, which she understood were proving very effective in breaking down gender stereotypes, were set to continue. She would also welcome data demonstrating the benefits for girls of the extended school day that had been implemented in the State party's schools. Lastly, she would like to hear about any efforts to reduce the digital divide in education between urban and rural areas specifically targeting girls.

26. **Ms. Dettmeijer-Vermeulen** said that, according to a 2016 study, women in the Dominican Republic spent considerably more time on unpaid work and less time on paid work than men. It would be useful to know what measures the State party was taking to remedy that inequality and to address its impact on women's economic independence. She understood that many female domestic workers living in the Dominican Republic were heads of household or single mothers who, for the most part, lived in poverty or extreme poverty. She wondered what the State party was doing to overcome the difficulties encountered in implementing the International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189) and in setting a minimum wage for domestic workers.

27. She would like to know whether the gender quotas for persons with disabilities in the public and private sectors established in Act No. 5-13 and its implementing regulations had been fully implemented and whether compliance with those quotas was monitored. She would also appreciate information on the content and status of implementation of the amendments to the Labour Code and Social Security Act following the entry into force for the State party of the ILO Maternity Protection Convention, 2000 (No. 183).

28. Lastly, she would be grateful if the delegation would describe the measures taken by the State party to provide victims of sexual harassment in the workplace with effective remedies; prohibit and prosecute compulsory pregnancy testing and HIV/AIDS testing as a condition of employment; establish a mechanism for complaints and redress for pregnant women who were victims of discrimination in the workplace; and expand and allocate adequate resources to childcare facilities throughout the State party and introduce flexible working hours for women and men in both the public and private sectors.

29. **The Chair** said that she wished to know what measures the State party was taking to address the high maternal mortality rate in the country, whether the causes of individual maternal deaths were identified and recorded and what the top three causes were. She would likewise like to receive further information on the measures being introduced in the public and private health-care systems to reduce the high teenage pregnancy rate. She wondered whether the State party intended to lift the blanket ban on abortion to allow terminations in cases of rape, threat to the life or health of the mother, or severe fetal abnormalities. Information on the status and content of the bill to decriminalize abortion would also be appreciated, as would information on the number of women who had been deprived of their liberty for having attempted to terminate a pregnancy.

30. The Committee would also welcome information on what was being done to guarantee women and adolescents of childbearing age access to modern contraceptives, what

steps were being taken to combat the negative stereotyping of persons of diverse sexual orientations, whether special care was provided to prostitutes who contracted HIV/AIDS and whether there were specific measures in place to help reduce the incidence of HIV/AIDS among women in general and pregnant women in particular.

31. **Ms. Nadaraia** said that, although fewer Dominicans were now living in poverty, the State party's social spending remained low in comparison with the social spending levels of other countries in the region. It would be helpful to know, on average, how much of the country's gross domestic product was spent on family benefits and what measures were in place to ensure that women had equal access to those benefits. She wondered whether the State party had undertaken a gender analysis of the tax system to determine the impact of current taxation policies and public spending on women. She would also like to know what measures the State party was taking to ensure that women had equal access to bank loans, mortgages and other forms of financial credit. In addition, she would be interested to learn what percentage of women were involved in recreational activities, such as sport, and all aspects of cultural life.

32. **Ms. Peláez Narváez** said that she wished to know whether rural women and women from disadvantaged groups had been consulted in connection with the post-pandemic recovery needs assessment recently conducted by the State party. If so, how had the needs of those women been reflected in the associated post-pandemic recovery strategy and when would the strategy be implemented?

33. She would appreciate information on the measures taken by the State party to reduce the poverty experienced by women living in rural areas; improve rural and disadvantaged women's access to health care, including sexual and reproductive health services; expand services for victims of gender-based violence in rural areas and improve their access to justice; provide digital literacy training to disadvantaged women; and ensure the participation of rural and disadvantaged women in designing, implementing and evaluating policies that concerned them directly.

34. The Committee was concerned by reports that, in recent months, women of Haitian descent, including pregnant women, had been detained and subjected to mass deportation, contrary to international human rights standards. She wondered what steps the State party was taking to align its migration, refugee and asylum policies with international standards and how it planned to combat the severe discrimination suffered by women of Haitian descent and to ensure that they had access to essential services.

35. She would like to know how many women with disabilities lacked legal capacity in the Dominican Republic, how access to justice for those women was ensured and whether free and informed consent was required before women with disabilities underwent any medical or other intervention. Did the State party plan to put an end to forced sterilization?

36. She would be interested to hear what the State party was doing to combat hate speech against lesbian, bisexual and transgender women and intersex persons and the discrimination they suffered at the hands of the police, judicial officials and health workers. She would also like to know how the State party went about protecting women living with HIV/AIDS, including those in an irregular migration situation, from discrimination and ensuring they had access to essential services. The Committee was concerned by the reported use of force by police officers against pro-abortion activists and the alleged arbitrary detention of several women who had attempted to obtain access to sexual and reproductive health services. If those reports were accurate, what was the State party doing to remedy those violations?

37. **Ms. Méndez** (Dominican Republic), speaking via video link, said that women who led micro-, small and medium-sized enterprises, including disadvantaged women living in border areas, could obtain a special certification from the Ministry of Industry, Trade, and Micro-, Small and Medium-Sized Enterprises to enjoy access to business opportunities, skills development training and credit from public and private banks. A project to build the leadership capacity of female entrepreneurs living in border areas had recently been launched. Participants had received training and seed capital to start a business.

38. **Mr. Lizardo** (Dominican Republic), speaking via video link, said that, as part of the "Supérate" (Get Ahead) poverty reduction programme, an entrepreneurship scheme had been



launched with the specific aim of promoting the economic and financial inclusion of women. The Single Beneficiary System was playing an active role in identifying women who currently had no access to banking services and, together with partners in the banking sector, providing them with innovative banking solutions so that they could participate in the entrepreneurship scheme.

39. **Ms. Jiménez** (Dominican Republic) said that the Women's Sectoral Office for Agriculture was responsible for ensuring the inclusion and participation of rural women in all agricultural and livestock production activities, including through the provision of technical and financial assistance.

40. **Mr. Suero** (Dominican Republic), speaking via video link, said that, in 2016, the Council of the Judiciary had agreed to implement an equality policy for persons with disabilities in the judiciary with a view to ensuring greater autonomy and improved access to justice for such persons. Disability training was provided by the National Judicial College and an agreement on the employment of persons with disabilities had been concluded. The 2020–2024 Institutional Strategic Plan set out guidelines for removing barriers to achieve a more inclusive justice system.

41. **Ms. Hernández** (Dominican Republic) said that the recently adopted inclusion policy of the Central Electoral Board aimed to remove all barriers to access to political participation for persons with disabilities and was implemented by a round table that counted civil society representatives among its members. The Central Electoral Board's work to eliminate such barriers included improvements to its website to render it more accessible, the recruitment of a sign language interpreter and the provision of training for more than 400 persons on interaction and dignified treatment of persons with disabilities. Those unable to travel to the Board's offices benefited from a mobile identity and electoral documentation service.

42. **Ms. Rivas** (Dominican Republic), speaking via video link, said that since 2019 the National Statistical Office had gathered information on persons with disabilities in accordance with the guidelines of the Washington Group on Disability Statistics. It maintained a database of the results of multiple indicator cluster surveys, which in 2021 had included questions for all household members on physical disability and related matters, such as accessibility. The 2022 Population and Housing Census would include a section on disability aimed at collecting information that would enable the State to improve policies benefiting persons with disabilities.

43. **Ms. Jiménez** (Dominican Republic) said that the National Judicial College ran a training programme on disability and on the Brasilia Regulations Regarding Access to Justice for Vulnerable People that provided instruction in sign language to judges and public defenders. To date, 41 sign language interpreters had received certification. The Ministry of Women had provided sign language training to its legal and psychological support teams.

44. **Mr. Camacho** (Dominican Republic), speaking via video link, said that in June 2020 the female poverty rate had been 27.9 per cent, as compared with the male rate of 24 per cent. Women were less active in the labour market, mainly because 40 per cent of them were engaged in unpaid domestic work. That was an impediment not only to their own personal development but also to the country's development. As part of the drive to reduce poverty, particularly rural poverty, the Government was piloting the "Care Communities" project in three regions. The project was intended to provide targeted support to women and empower them to enter the labour market and improve their quality of life. The Government was also supporting local authorities in drawing up development plans. A fund had been created that would reduce poverty and inequality at the local level by providing resources and public investment. In addition, a project was under development that would support vulnerable households and those living in extreme poverty in rural areas, a large proportion of which were women-led. As part of the "Supérate" programme, technical assistance and support was provided for family farms, including support for marketing their products, thereby increasing the incomes of vulnerable households and those living in poverty.

45. **Mr. Lizardo** said that the coverage of the Family Health Insurance scheme had been made universal in response to the COVID-19 pandemic, and a further 2 million persons had been enrolled, most of them women. Improvements to the coverage of the country's social security system were under discussion.

46. **Ms. Pujol** (Dominican Republic), speaking via video link, said that vulnerable families received housing support through a range of programmes, including a national plan to provide adequate housing that had so far received around 164,000 applications, of which more than 60 per cent had been submitted by women and one fifth by single mothers. The Executive Unit for the Renovation of Neighbourhoods and Surrounding Areas was working to modernize housing in several districts and had provided apartments and other support to women heads of household. Another unit had been created to address the lack of land titles in the country; one of its central functions was to grant titles to vulnerable groups, thereby enabling them to access credit. More than 28,000 land titles had been issued to women between 2020 and February 2022.

47. **Ms. Jiménez** (Dominican Republic) said that the State fully respected the constitutional right to protest. The aggression suffered by the women who had attended a demonstration on abortion legislation had been an isolated incident that did not have the support of the State; indeed, for 63 days members of women's organizations had set up camp near the offices of the executive branch to protest the same cause and had faced no aggression. While the matter of the rights of lesbian, bisexual and transgender women and intersex persons posed challenges, the State upheld the rights of all members of the population and had conducted awareness-raising and capacity-building activities with a view to ensuring that public officials respected those rights.

*Articles 15 and 16*

48. **Ms. Reddock** said that, despite the abrogation of legal provisions that had allowed for child marriage, it remained a problem in the State party. She would like to know how the authorities planned to address the underlying and intersecting social, ethnic, gender and economic causes of the phenomenon and whether the State party would consider regulating de facto unions by setting the minimum age for entering into such unions at 18, without exception, and establishing a system to register them. She understood that the Criminal Code voided the crime of sexual exploitation of young girls by adult men or persons more than five years older than the victim if the abuser married the girl. Was that the case?

49. The Committee was gravely concerned by the 2014 law which had stripped thousands of Haitians and Dominicans of Haitian descent of their Dominican nationality. The focus on pregnant women as a category in migration control was also cause for concern. She wished to know the status of the Protocol of Understanding on Repatriation Mechanisms between the State party and the Republic of Haiti and the implementing regulations for the General Immigration Act. The Committee had received reports of summary deportations that rendered women unable to make arrangements for their children, who might be left to live with persons who kept them as unpaid household servants. She would like to hear how the State party would ensure that all deportations were undertaken according to the legally established procedures, whether women could challenge deportation orders and whether they could access the Public Defence Fund. Lastly, she understood that unaccompanied minors were sometimes reportedly deported by the State party, and she wished to know the State party's position on such deportations.

50. It was not clear whether the children of Dominican fathers whose mothers lacked identity documents could access education, health and other services. She wondered what mechanisms and incentives existed to encourage Dominican fathers to acknowledge their children and how such acknowledgement was recorded. Statistics on the number of fathers who had acknowledged their Haitian-Dominican children, and on those who refused to do so, would be appreciated, as would information on the technological methods used to establish paternity, such as DNA testing.

51. **Ms. Santana** (Dominican Republic), speaking via video link, said that discrimination did not form part of the Government's migration policy, as established in the General Immigration Act and the Constitution. The legal provisions under which undocumented migrants were deemed to be residing in the country illegally were non-discriminatory and based on international law. Migration control operations ensured that the rights of children and pregnant women were respected. The Directorate General of Migration was drawing up a protocol for such operations that would guarantee due process and ensure that the needs of particular groups, including pregnant women, were met. Migration officers received training

on human rights, and the Directorate endeavoured to ensure that families were not separated. If unaccompanied minors of Haitian nationality were detained during a migration control operation, they were referred to the National Council on Childhood and Adolescence, which, in coordination with the Haitian authorities, took all possible measures to reunite them with their families and ensure that their best interests were protected. The Government did not deport unaccompanied minors.

52. **Ms. Núñez** (Dominican Republic) said that, under Dominican law, adults who engaged in sexual relations with a minor could be prosecuted, and minors did not have the capacity to consent to such relations. Additional information would be provided in writing.

53. **Ms. Jiménez** (Dominican Republic) said that her Government stood ready to accept any recommendations made by the Committee that would contribute to its progress in the area of women's equality and human rights. It remained committed to resolving the challenges that the country faced in advancing the rights of women and girls in the Dominican Republic.

54. **The Chair** said that the constructive dialogue had afforded the Committee a deeper understanding of the situation of women and girls in the Dominican Republic. The State party had made commendable progress, and she encouraged it to adopt all necessary measures to give effect to the Committee's recommendations in order to achieve broader implementation of the Convention. She invited the State party to accept, as soon as possible, the amendment to article 20 (1) of the Convention concerning the Committee's meeting time.

*The meeting rose at 5.05 p.m.*

## Section 19. Office to end domestic and gender-based violence.

a. The city of New York recognizes that domestic violence is a public health issue that threatens hundreds of thousands of households each year and that respects no boundaries of race, ethnicity, age, gender, sexual orientation or economic status. The city of New York further recognizes that the problems posed by domestic violence fall within the jurisdiction and programs of various City agencies and that the development of an integrated approach to the problem of domestic violence, which coordinates existing services and systems, is critical to the success of the city of New York's efforts in this area.

b. There shall be, in the executive office of the mayor, an office to end domestic and gender-based violence. The office shall be headed by a director, who shall be appointed by the mayor.

c. The director of the office to end domestic and gender-based violence shall have the power and duty to:

1. coordinate domestic violence services;
2. formulate policies and programs relating to all aspects of services and protocols for victims of domestic violence;
3. develop methods to improve the coordination of systems and services for domestic violence;
4. develop and maintain mechanisms to improve the response of city agencies to domestic violence situations and improve coordination among such agencies; and
5. implement public education campaigns to heighten awareness of domestic violence and its effects on society and perform such other functions as may be appropriate regarding the problems posed by domestic violence.

d. 1. For purposes of this subdivision, the following terms shall have the following meanings:

(i) "Agency" shall mean a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(ii) "Domestic violence fatality" shall mean a death of a family or household member, resulting from an act or acts of violence committed by another family or household member, not including acts of self-defense.

(iii) "Family or household member" shall mean the following individuals:

- (a) persons related by consanguinity or affinity;
- (b) persons legally married to one another;
- (c) persons formerly married to one another regardless of whether they still reside in the same household;
- (d) persons who have a child in common regardless of whether such persons have been married or have lived together at any time;
- (e) persons not legally married, but currently living together in a family-type relationship; and
- (f) persons not legally married, but who have formerly lived together in a family-type relationship.

Such term, as described in (e) and (f) of this subparagraph, therefore includes "common law" marriages, same sex couples, registered domestic partners, different generations of the same family, siblings and in-laws.

(iv) "Perpetrator" shall mean a family or household member who committed an act or acts of violence resulting in a domestic violence fatality.

(v) "Victim" shall mean a family or household member whose death constitutes a domestic violence fatality.

2. There shall be a domestic violence fatality review committee to examine aggregate information relating to domestic violence fatalities in the city of New York. Such committee shall develop recommendations for the consideration of the director of the office to end domestic and gender-based violence regarding the coordination and improvement of services for victims of domestic violence provided by agencies and private, including non-profit, organizations that provide such services pursuant to a contract with an agency. The committee shall consist of the director of the office to end domestic and gender-based violence, or their designee, the commissioner of the police department, or their designee, the commissioner of the department of health and mental hygiene, or their designee, the commissioner of the department of social services/human resources administration, or their designee, the commissioner of the department of homeless services, or their designee and the commissioner of the administration for children's services, or their designee. The committee shall also consist of two representatives of programs that provide social or legal services to victims of domestic violence, including at least one program that serves immigrant victims; two representatives of sexual assault service

providers; two representatives of human trafficking service providers; and two survivors of domestic violence. The director of the office to end domestic and gender-based violence, or their designee, shall serve as chairperson of the committee. At the discretion of the director of the office to end domestic and gender-based violence, the committee may also include representatives of any of the offices of the district attorney of any of the five boroughs and/or a representative of the New York city housing authority. Each member of the committee other than any member serving in an ex officio capacity shall be appointed by the mayor. The director of the office to end domestic and gender-based violence may also invite representatives from other relevant agencies to participate in the committee's work, if the director determines they are necessary to accomplish the goals of the committee.

(i) The service of each member other than a member serving in an ex officio capacity shall be for a term of two years to commence ninety days after the effective date of the local law that added this subdivision. Any vacancy occurring other than by expiration of term shall be filled by the mayor in the same manner as the original position was filled. A person filling such a vacancy shall serve for a term of two years. New terms shall begin on the next day after the expiration date of the preceding term.

(ii) Members of the committee shall serve without compensation.

(iii) No person shall be ineligible for membership on the committee because such person holds any other public office, employment or trust, nor shall any person be made ineligible to or forfeit such person's right to any public office, employment or trust by reason of such appointment.

(iv) The committee shall meet at least four times a year.

3. The committee's work shall include, but not be limited to, reviewing statistical data relating to domestic violence fatalities; analyzing aggregate information relating to domestic violence fatalities, including, non-identifying data with respect to victims and perpetrators involved in domestic violence fatalities, such as gender, age, race and familial or other relationship involved, and, if available, religion, ethnicity and employment status; examining any factors indicating a high-risk of involvement in domestic violence fatalities; and developing recommendations for the director of the mayor's office to end domestic and gender-based violence regarding the coordination and improvement of services for victims of domestic violence provided by agencies and private, including non-profit, organizations that provide such services pursuant to a contract with an agency.

4. The committee may request and receive information from any agency as may be necessary to carry out the provisions of this subdivision, in accordance with applicable laws, rules and regulations, including, but not limited to, the exceptions to disclosure of agency records contained in the public officers law. Nothing in this subdivision shall be construed as limiting any right or obligation of agencies pursuant to the public officers law, including the exceptions to disclosure of agency records contained in such law, with respect to access to or disclosure of records or portions thereof. The committee may also request from any private organization providing services to domestic violence victims pursuant to a contract with an agency information necessary to carry out the provisions of this subdivision. To the extent provided by law, the committee shall protect the privacy of all individuals involved in any domestic violence fatality that the committee may receive information on in carrying out the provisions of this subdivision.

5. The committee shall submit to the mayor and to the speaker of the city council, on an annual basis, a report including, but not limited to, the number of domestic violence fatality cases which occurred in the city of New York during the previous year; the number of domestic violence fatality cases reviewed by the committee during the previous year, if any; any non-identifying data with respect to victims and perpetrators involved in domestic violence fatalities, such as gender, age, race and familial or other relationship involved, and, if available, religion, ethnicity and employment status; any factors indicating a high risk of involvement in domestic violence fatalities; and recommendations regarding the coordination and improvement of services for victims of domestic violence provided by agencies and private, including non-profit, organizations that provide such services pursuant to a contract with an agency.

6. The director of the office to end domestic and gender-based violence, or the director's designee, shall establish a mechanism to review certain individual case-level data on gender-based and domestic violence fatalities, identified after due consideration of the goals of the fatality review committee and to the extent such data is available. The director shall establish and chair a fatality advisory committee to conduct or assist in such review, and may further prescribe, through interagency agreements or otherwise, appropriate confidentiality and privacy protocols, consistent with applicable law, to be followed in conducting such review. The director of the office to end domestic and gender-based violence may invite representatives from relevant agencies to participate in the committee's work, if the director determines they are necessary to accomplish the goals of the committee.

(Am. L.L. 2019/038, 2/24/2019, eff. 2/24/2019; Am. L.L. 2022/049, 1/15/2022, eff. 4/15/2022)

**Editor's note:** For related unconsolidated provisions, see Administrative Code Appendix A at L.L. 2005/061.

**LOCAL LAWS  
OF  
THE CITY OF NEW YORK  
FOR THE YEAR 2022**

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**No. 46**

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Introduced by Council Member Rosenthal, the Public Advocate (Mr. Williams) and Council Members Van Bramer, Louis, Kallos, Brooks-Powers and Rose.

**A LOCAL LAW**

**To amend the administrative code of the city of New York, in relation to establishing a street harassment prevention advisory board**

*Be it enacted by the Council as follows:*

Section 1. Chapter 1 of title 10 of the administrative code of the city of New York is amended by adding a new section 10-183 to read as follows:

*§ 10-183 Street harassment prevention advisory board. a. Definitions. For purposes of this section, the following terms have the following meanings:*

*Advisory board. The term “advisory board” means the street harassment prevention advisory board established pursuant to this section.*

*Street harassment. The term “street harassment” means unwanted or unwelcome disrespectful, offensive or threatening statements, gestures or other conduct directed at a natural person in public based on the person’s actual or perceived age, race, creed, color, national origin, gender, disability, sexual orientation or any other trait, status or condition.*

*b. Advisory board established. There shall be an advisory board to advise the mayor and the council on the issue of street harassment and its prevention.*

*c. Duties. The advisory board shall have the following duties:*

- 1. To study the occurrence of street harassment;*
- 2. To identify persons and communities most at risk of street harassment, and most impacted by its occurrence;*
- 3. To develop and recommend programming and training materials for appropriate agencies to prevent and respond to street harassment, including recommendations for communication and outreach;*
- 4. To develop and recommend programming, training and educational materials to promote public awareness and prevention of street harassment, including recommendations for communication and outreach;*
- 5. To develop and recommend forms of support and resources for victims of street harassment, which may include identifying existing avenues for individuals to file complaints regarding discrimination or harassment;*
- 6. To develop and recommend programming regarding non-criminalization responses to street harassment;*
- 7. No later than December 31, 2022, to identify, recommend and make available to city agencies, for publicizing on their websites and through other methods, relevant information and resources addressing the prevention of street harassment, including, but not limited to a resource guide for victims of street harassment;*
- 8. No later than 18 months after the effective date of the local law that added this section, and as frequently thereafter as the advisory board determines is necessary to fulfill the duties set forth in subdivision c of this section, to develop a survey for members of the public regarding the occurrence of street harassment. The advisory board shall determine the specific data elements to*

*be collected in such survey, including but not limited to questions aimed at identifying high-risk locations, and shall collaborate with the members of the participating city offices and agencies to recommend which such city offices and agencies should conduct such survey;*

*9. Beginning on December 31, 2022, and no later than December 31 annually thereafter, to submit a report to the mayor and the speaker of the council that contains a summary of the advisory board's activities for the relevant reporting period, including but not limited to public outreach conducted by the participating city offices and agencies; the advisory board's recommendations for legislation and programming; and a list of materials the advisory board considered in making its recommendations;*

*10. Beginning with the report due December 31, 2023, and annually thereafter, the report due pursuant to paragraph 9 of this subdivision shall include a summary of findings of any survey conducted in the prior year pursuant to paragraph 8 of this subdivision; and*

*11. The report due pursuant to paragraph 9 of this subdivision shall be posted on the websites of the commission on gender equity and the office to end domestic and gender-based violence no later than 10 days after its submission to the mayor and the speaker of the council.*

*d. Members. The advisory board shall be composed of the following members:*

*1. The director of the commission on gender equity or their designee and the director of the office to end domestic and gender-based violence or their designee, who shall serve as co-chairs of the advisory board;*

*2. The chair of the city commission on human rights or their designee;*

*3. The executive director of the office of nightlife or their designee;*

*4. A representative from the department of transportation;*



5. *A representative from the metropolitan transit authority shall be invited to participate as a member;*

6. *Four members appointed by the mayor;*

7. *Two members appointed by the speaker of the council; and*

8. *Two members appointed by the public advocate.*

*Members appointed by the mayor, speaker of the council and the public advocate pursuant to paragraphs 6 through 8 of this subdivision shall: (i) be representative of all five boroughs; and (ii) have demonstrated expertise on the topic of street harassment prevention, including expertise as it relates to gender-based violence prevention, gender equity, LGBTQ rights, racial equity, religious tolerance, poverty and homelessness prevention, and immigrants' rights.*

*e. Other participants. The co-chairs may invite officers and representatives of relevant federal, state and local agencies and authorities to participate in the work of the advisory board.*

*f. Appointments. All appointments required by this section shall be made no later than May 1, 2022. Each member of the advisory board shall serve for a term of two years at the pleasure of the officer who appointed the member. In the event of a vacancy on the advisory board, a successor shall be appointed in the same manner as the original appointment for the remainder of the unexpired term. All members of the advisory board shall serve without compensation.*

*g. Meetings. 1. The co-chairs shall convene the first meeting of the advisory board no later than June 1, 2022, except that where not all members of the advisory board have been appointed within the time specified in subdivision f, the co-chairs shall convene the first meeting of the advisory board within 10 days of the appointment of a quorum.*

*2. The advisory board shall meet no less frequently than once each quarter to carry out the duties set forth in subdivision c of this section.*

*3. The advisory board may invite, or accept requests from, experts and stakeholders to attend its meetings and to provide testimony and information relevant to its duties.*

*4. The advisory board shall, during each calendar year, make at least one of its meetings open to members of the public to solicit their input. The advisory board shall seek assistance from agencies and organizations associated with members of the advisory board to publicize such public meetings to as broad a scope of the public as possible.*

§ 2. This local law takes effect immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on December 15, 2021 and returned unsigned by the Mayor on January 14, 2022.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 46 of 2022, Council Int. No. 2424-B of 2021) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, presented to the Mayor and neither approved nor disapproved within thirty days thereafter.

STEPHEN LOUIS, Acting Corporation Counsel.



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N.Y. 10007

EXECUTIVE ORDER 85

October 27, 2021

**ESTABLISHING A NYC DOMESTIC AND GENDER-BASED VIOLENCE  
WORKPLACE POLICY**

WHEREAS, the Mayor's Office to End Domestic and Gender-Based Violence ("ENDGBV") was established in 2018, by Executive Order No. 36, to coordinate the response to domestic and gender-based violence in New York City; and

WHEREAS, the duties of ENDGBV include developing policies and providing guidance to City agencies relating to gender-based and domestic violence; and

WHEREAS, New York City, as an employer, has an interest in adopting a standardized domestic and gender-based violence workplace policy for its agencies to provide trauma-informed responses to City workers experiencing domestic or gender-based violence;

NOW, THEREFORE, by the power vested in me as Mayor of the City of New York, it is hereby ordered:

Section 1. By December 31, 2021, ENDGBV shall create a written NYC Domestic and Gender-Based Violence Workplace Policy (Policy) establishing a standardized, trauma-informed response to survivors of domestic and gender-based violence, that shall be incorporated into City agencies' existing Workplace Violence Prevention Programs.

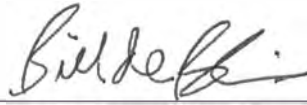
§ 2. ENDGBV shall distribute the Policy and implementation procedures to all City agencies.

§ 3. By December 31, 2021, each City agency shall appoint a Domestic and Gender-Based Violence Liaison who will be responsible for overseeing the implementation of the Policy for such agency.

§ 4. ENDGBV shall provide consultation and assistance to each City agency in the agency's implementation of the Policy and support of City employees who are experiencing domestic and gender-based violence.

§ 5. Every City agency shall cooperate with ENDGBV as needed to carry out its responsibilities under this Order.

§ 6. This Order shall take effect immediately.

A handwritten signature in black ink, appearing to read "Bill de Blasio", written over a horizontal line.

Bill de Blasio,  
MAYOR

# Mental Health Implications of Intimate Partner Violence



**33%**

of women and 25% of men have experienced physical violence by an intimate partner



**50%**

of female IPV victims diagnosed with depression



**61%**

of female IPV victims reported PTSD symptoms

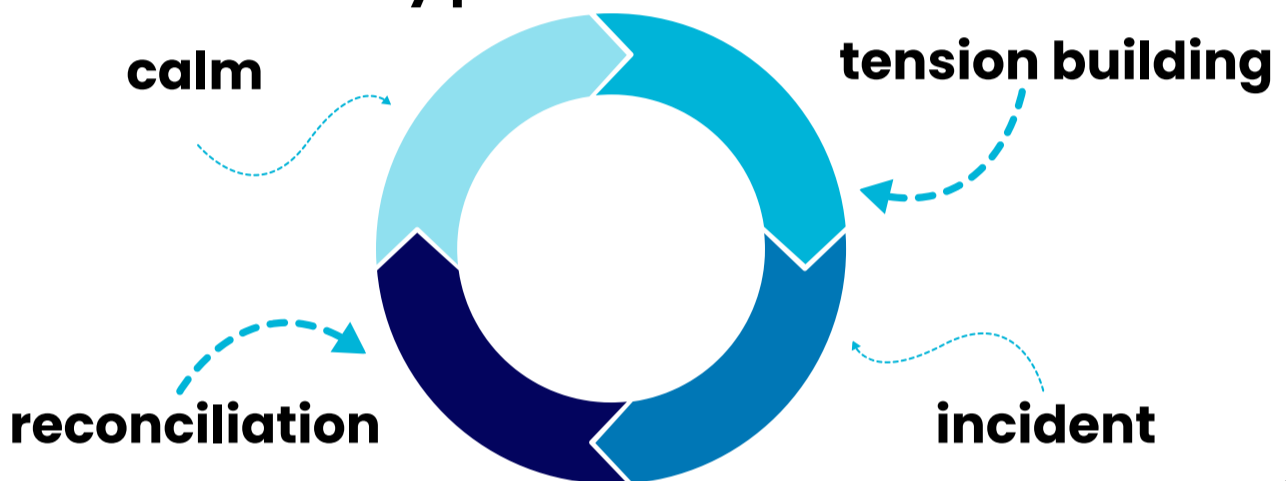


**20%**

of female IPV victims attempted suicide

## **Trauma Bonding & Cycle of Abuse**

**trauma bonding is a deep attachment from a cycle of physical and/or emotional abuse or trauma followed by positive reinforcement.**



## **Effects of Witnessing IPV on Children**

**Attributed to higher risk for health problems as adults, including anxiety, PTSD, depression, and suicidal ideation.**

- **lack of sense of security and trust**
- **difficulty seeking help from adults**
- **feelings of guilt and blame**
- **behavioral issues**

## **Effects of Trauma on the Brain**

- **changes in brain structure and function**
- **alteration in memory**
- **hypervigilance -- constant fight or flight**
- **physical manifestations**

NCADV

Hijazi, R. (2017). The effect of domestic abuse on children. World Bank Group.

Hathaway, B. (2017). New PTSD study identifies potential path to treatment, Yale News.

Bremner, J. D. (2006). Traumatic stress: Effects on the brain. Dialogues of Clinical Neuroscience.

# Mental Health Implications of Intimate Partner Violence

## Study of Cyber Abuse Victims



**28%**

of participants were victimized by a former partner or "date/hookup"



**69%**

of participants reported not disclosing due to feelings of shame, retraumatization, revictimization



**63%**

of participants reported mental health concerns including depression, PTSD, suicidal ideation



**40%**

of participants wished they had better social support or access to therapy

## **Types of Cyber Abuse**

### **cyberstalking**

**ex-boyfriend cyberstalked victim after breakup**

### **sextortion/sexploitation**

**victim was coerced into sexual relationship and forced to send explicit photos**

### **intimate image abuse**

**explicit photos/video shared with others without consent**

## **Effects of Cyber Abuse**

- **social isolation**
- **depression**
- **suicidal ideation/attempts**
- **anxiety**
- **alcohol/drug use**
- **sexual promiscuity**
- **fear**
- **shame/guilt**
- **distrust**

## **Needs of Victims**

- **social support**
- **support from law enforcement**
- **therapy/victim advocacy**
- **better understanding of the law/remedies**

Bahrenburg, S. (2024). Cyber Sexual Abuse Victimization: A Mixed Methods Approach Through Existential Phenomenology.

**CYBER SEXUAL ABUSE VICTIMIZATION: A MIXED METHODS APPROACH  
THROUGH EXISTENTIAL PHENOMENOLOGY**

Dissertation presented to the Faculty of the

California School of Forensic Studies

Alliant International University

In partial fulfillment of the requirements for the degree of

Doctor of Philosophy

by


Sarah E. Bahrenburg, MSc, MBA

2024

Approved by:

Dr. Michael McHenry, Ph.D. Chairperson

Scott Masten, Ph.D.



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## **Abstract**

Technology has grown exponentially over the past decade, mainly due to smartphone and computer access by much of the population. People can connect with anyone and everyone at the push of a button or the click of a mouse. With the ease of connectivity also comes the ease of unlawful and devious use of that connection. Cyber Sexual Abuse (CSA), although novel, has become a growing problem among Internet users. The Internet is riddled with sexual harassment, cyberstalking, sexexploitation, intimate image abuse, nonconsensual solicitation, deepfakes, and cyberflashing. The purpose of this study is to uncover the meaning and essence of the experiences of CSA victim-survivors from all walks of life. This study also examines the relationship between victim-survivors of CSA and victim-survivors of in-person sexual abuse/harassment. Through the lens of existential phenomenology and theories of gender, generations, and social dominance, this study explored the victim-offender relationship, disclosure motives, and power dynamics. The majority of participants identified as young females and identified their offenders as older male strangers. This impacted participants' lack of disclosure. Recommendations for creating safety for victim-survivors are also explored.

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## CHAPTER III

### Results

#### Demographic Characteristics

Survey responses were obtained from 126 respondents who experienced at least one cyber sexual abuse incident. Respondents were typically 18 to 26 years old (82.5%) and identified as female (57.9%), White (60.7%), and 'single, never married' (85.7%). In addition, 38.1% identified as bisexual, 42.9% reported an education level of 'some college, no degree,' and 38.1% were students. Demographics are presented in Table 1.

#### Cyber Sexual Abuse Victimization

##### *Age at First CSA Incident*

Most respondents reported being younger than 18 years old at the time of their first cyber sexual abuse incident ( $n = 105$ , 83.3%). The remainder reported being ages 18 to 24 years old ( $n = 16$ , 12.7%), 25 to 34 years old ( $n = 4$ , 3.2%), or 35 to 44 years old ( $n = 1$ , 0.8%) when their first cyber sexual abuse incident occurred.

##### *Number and Types of CSA*

Overall, 80.2% ( $n = 101$ ) of respondents reported being a victim-survivor of two or more types of CSA, with a modal response of three types of CSA ( $n = 34$ , 27.0%). The most common types of CSA reported by respondents were 'victim-survivor of cyber sexual harassment' ( $n = 99$ , 78.6%) and cyberflashing ( $n = 91$ , 72.2%). Sextortion ( $n = 47$ , 37.3%) and cyberstalking ( $n = 54$ , 42.9%) were the next most common, followed by sexexploitation ( $n = 42$ , 33.3%) and 'revenge porn' or 'nonconsensual dissemination of intimate images' ( $n = 21$ , 16.7%). The least common types of CSA reported by respondents were 'deepfake pornography' ( $n = 3$ , 2.4%) and 'upskirting/downblousing' ( $n = 3$ , 2.4%). Respondents most reported their cyber sexual abuse

and harassment victimization occurred 10 or more times ( $n = 49, 38.9\%$ ). The least common frequency of both cyber sexual abuse and cyber sexual harassment was 7 to 9 times ( $n = 8, 6.4\%$  and  $n = 10, 7.9\%$ , respectively).

### ***Victim-Offender Relationship***

Of the 126 respondents who participated in the demographic questionnaire, 71 answered the following questions. Most respondents identified their offenders as a “stranger” ( $n = 43, 61\%$ ). Others identified their offenders as “friend” ( $n = 17, 24\%$ ), “ex-boyfriend/girlfriend” or “former partner” ( $n = 14, 20\%$ ), “acquaintance” ( $n = 10, 14\%$ ), “date” or “hookup” ( $n = 6, 8\%$ ), “former classmate” ( $n = 5, 7\%$ ), “coworker/manager” ( $n = 1, 1\%$ ), and “parent of someone I did sports with” ( $n = 1, 1\%$ ). Multiple respondents identified their offender as having different relationship statuses ( $n = 5, 7\%$ ), and some respondents identified having multiple offenders ( $n = 20, 28\%$ ).

### ***Site of Victimization***

Most respondents stated they were victimized on social media platforms ( $n = 40, 56\%$ , including Facebook, Instagram, MySpace, Snapchat, TikTok, and Twitter). Messaging apps, chat websites, and forums such as Omegle, Kik, Reddit, and Discord were the next most prevalent sites of victimization ( $n = 34, 48\%$ ). Some respondents stated their victimization was through text or email ( $n = 16, 23\%$ ), dating apps/websites ( $n = 5, 7\%$ ), or video games ( $n = 4, 6\%$ ).

### ***Repercussions***

Most respondents said their victimization caused mental health concerns ( $n = 45, 63\%$ , including “PTSD,” “suicidal,” and “suicidal ideation,” “self-harm,” “anxiety,” “paranoid,” and “depression”). Some also stated it caused “fear” and led to feeling “unsafe” ( $n = 8, 11\%$ ). Respondents also expressed their victimization had an impact on “online trust” and trust in

relationships ( $n = 10, 14\%$ ), they “avoided going” to or “dropped out of” school or had poor grades ( $n = 9, 13\%$ ), and were socially “isolated” or “alienated” ( $n = 9, 13\%$ ). Other respondents reported negative self-worth or self-esteem and negative body image ( $n = 7, 10\%$ ), overprotection of their body ( $n = 2, 3\%$ ), and eating disorders ( $n = 1, 1\%$ ). Some respondents stated they were “desensitized” ( $n = 2, 3\%$ ), and other respondents felt “guilty” for their victimization ( $n = 2, 3\%$ ). One respondent reported a “positive” repercussion (1%).

### ***Report of Incident(s)***

The minority of respondents did report their victimization to someone ( $n = 22, 31\%$ ). Of the 22 respondents who did report, 36% reported to law enforcement ( $n = 8$ ), 36% reported to the website/app, 18% reported to a friend ( $n = 4$ ), 14% reported to a parent ( $n = 3$ ), 14% reported to a mental health professional or advocate ( $n = 3$ ), 9% reported to a school official ( $n = 2$ ), and 5% reported to a sibling ( $n = 1$ ). Most respondents did not report their victimization to someone ( $n = 49, 69\%$ , citing the uncertainty of “legal recourse” or “what to do,” “retraumatization,” “no one would believe me,” “nothing would be done,” “shame,” “thought I would get in trouble,” and “didn’t want to get [him] in trouble”).

### ***Support Mechanisms Victim-Survivors Wish They Had in Place***

Many respondents stated they wished they had more social support from family/friends ( $n = 20, 28\%$ ), mental health or therapy access (13%,  $n = 9$ ), support from law enforcement ( $n = 8, 11\%$ , including “anonymous reporting,” “more action,” “more consequences,” and “for cyber sex crimes to be taken seriously”), and access to support groups or advocates ( $n = 3, 4\%$ ). Some respondents expressed they wished they had more “knowledge” about what was occurring ( $n = 15, 21\%$ , including “it was not my fault,” “it was wrong,” “clearer laws,” “more education,” and “more awareness”).

**Table 1***Demographics of 126 Respondents*

Variable		Frequency	Percent
Age	18 - 26	104	82.5
	27 - 42	20	15.9
	43 - 58	2	1.6
Sexual Orientation	Heterosexual	22	17.5
	Homosexual - gay	3	2.4
	Homosexual - lesbian	10	7.9
	Bisexual	48	38.1
	Pansexual	7	5.6
	Asexual	8	6.3
	Queer	25	19.8
	Other	3	2.4
Gender Identity	Male	5	4
	Female	73	57.9
	Non-binary	17	13.5
	Genderfluid	5	4
	Trans MTF	2	1.6
	Trans FTM	21	16.7
	Other	3	2.4
Ethnicity	White	94	74.6
	Hispanic/Latinx	18	14.3
	Black/African American	15	11.9
	American Indian/Alaska Native	4	3.2
	Asian	19	15.1
	Native Hawaiian/Pacific Islander	1	0.8
	Other	4	3.2
Completed Education Level	Less than a high school diploma	7	5.6
	High school degree or equivalent (e.g. GED)	18	14.3
	Some college, no degree	54	42.9
	Associate degree (e.g. AA, AS)	8	6.3
	Bachelor's degree (e.g. BA, BS)	32	25.4
	Master's degree (e.g. MA, MS, MEd)	6	4.8
	Doctorate or professional degree (e.g. MD, DDS, PhD)	1	0.8
Marital Status	Single (never married)	108	85.7

Variable		Frequency	Percent
	Married or in a domestic partnership	16	12.7
	Divorced	2	1.6
Employment Status	Employed full-time (40 or more hours per week)	30	23.8
	Employed part-time (up to 39 hours per week)	24	19
	Unemployed and currently looking for work	12	9.5
	Unemployed, not currently looking for work	2	1.6
	Student	48	38.1
	Homemaker	1	0.8
	Self-employed	5	4
	Unable to work	4	3.2

Of the 126 total respondents (all of whom experienced at least one cyber sexual abuse incident), most also reported experiencing *in-person* sexual abuse or harassment. Specifically, only 15.1% ( $n = 19$ ) reported not experiencing in-person sexual abuse, and 17.5% ( $n = 22$ ) reported not experiencing in-person sexual harassment. The most common frequency of in-person incidence among the respondents was 1 to 3 times for both sexual abuse ( $n = 59$ , 46.8%) and sexual harassment ( $n = 50$ , 39.7%). The least common frequency of both in-person sexual abuse and sexual harassment was 7 to 9 times ( $n = 12$ , 9.5% and  $n = 9$ , 7.1%, respectively).

### Test of Quantitative Hypothesis

It was hypothesized that victim-survivors of cyber sexual harassment/abuse (CSA/CSH) would have a high probability of being victim-survivors of in-person sexual harassment and abuse (SH/SA). This hypothesis would be supported if positive correlations were found between CSA/CSH and in-person SA/SH. Figure 1 presents a scatterplot of CSA and SA incidents, Figure 2 presents a scatterplot of CSH and SH incidents, Figure 3 presents a scatterplot of CSA and SH incidents, Figure 4 presents a scatterplot of CSH and SA incidents, Figure 5 presents a scatterplot of CSA and CSH incidents, and Figure 6 presents a scatterplot of SA and SH incidents, including lines of best fit to aid in interpretation.

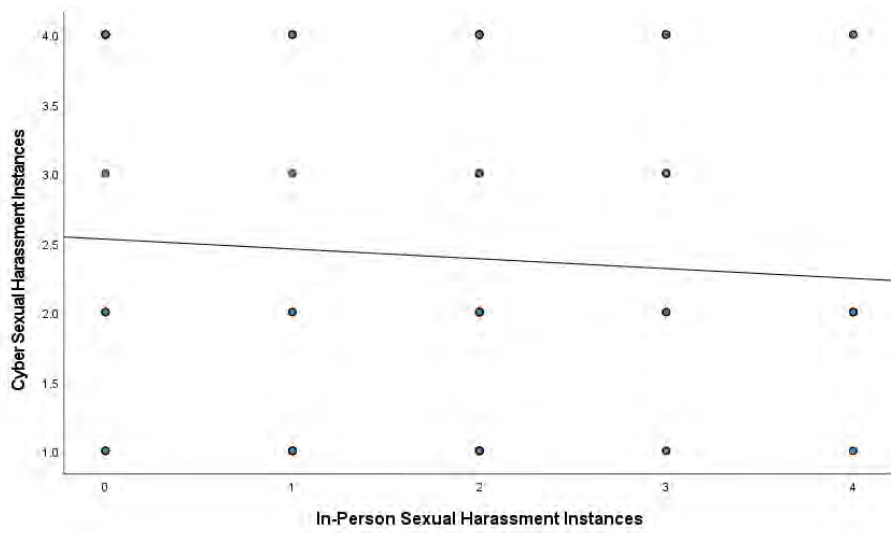
**Figure 1**

*Scatterplot between Cyber Sexual Abuse and In-Person Sexual Abuse Instances*



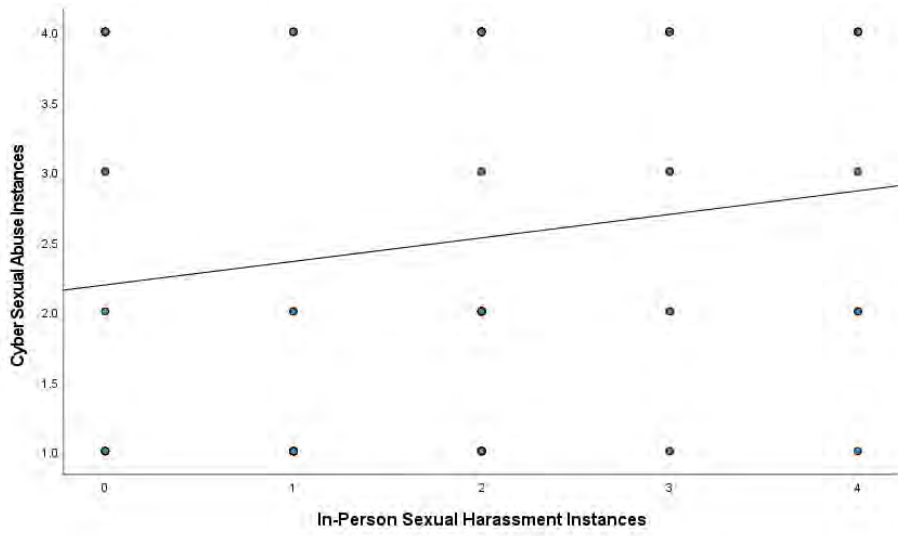
**Figure 2**

*Scatterplot between Cyber Sexual Harassment and In-Person Sexual Harassment Instances*



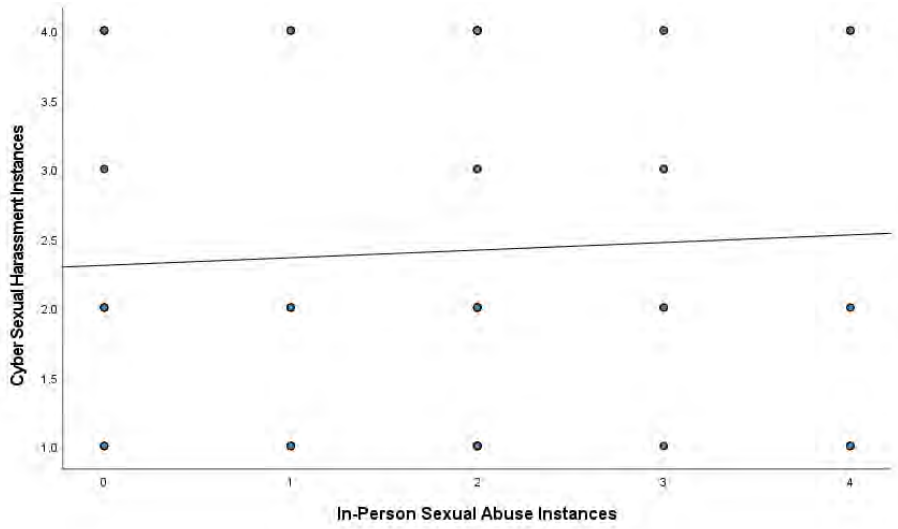
**Figure 3**

*Scatterplot between Cyber Sexual Abuse and In-Person Sexual Harassment Instances*



**Figure 4**

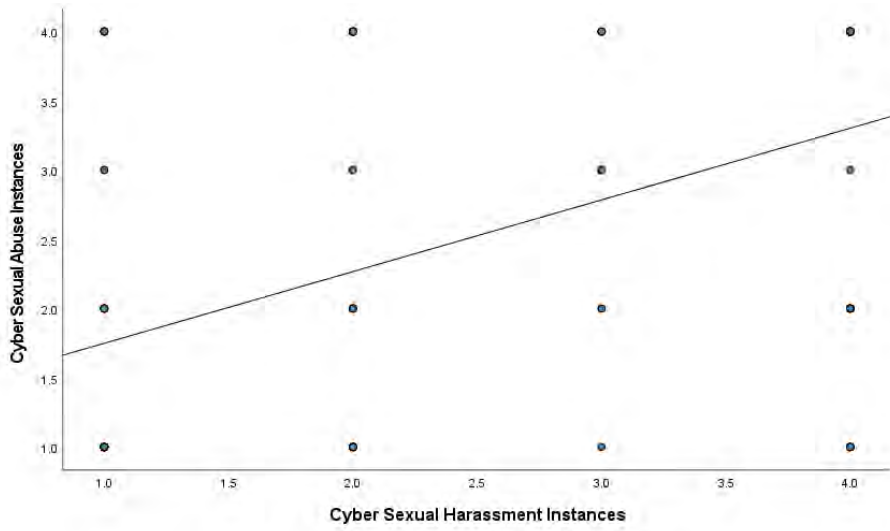
*Scatterplot between Cyber Sexual Harassment and In-Person Sexual Abuse Instances*





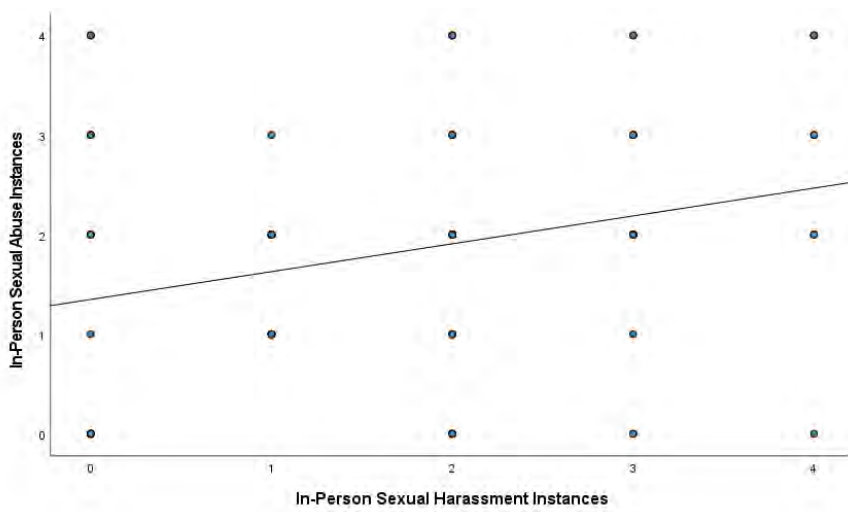
**Figure 5**

*Scatterplot between Cyber Sexual Abuse and Cyber Sexual Harassment Instances*



**Figure 6**

*Scatterplot between In-Person Sexual Abuse and In-Person Sexual Harassment Instances*



Visual analysis of Figures 1-4 does not appear to provide much support for the hypothesis that victim-survivors of cyber sexual harassment/abuse (CSA/CSH) have a high probability of being victim-survivors of in-person sexual harassment and abuse (SH/SA), as the lines of best fit do not appear to sharply slope upward from left to right in the figures, as expected in the case of strong positive correlations.

Although the scatterplots did not appear to support the idea that the variables were positively related, the hypothesis that CSA/CSH and SA/SH were positively related was formally tested using a series of Pearson product-moment correlations. The variables used in the correlation analyses were the respondents' instances of Cyber Sexual Abuse (CSA), Cyber Sexual Harassment (CSH), In-Person Sexual Abuse (SA), and In-Person Sexual Harassment (SH). A one-tailed alpha level of .05 was used to determine the statistical significance of the correlations presented in Table 2.

**Table 2**

*Correlation Matrix of Respondent Cyber Sexual Abuse (CSA), Cyber Sexual Harassment (CSH), In-Person Sexual Abuse (SA), and In-Person Sexual Harassment (SH) Instances*

Variable	1	2	3	4
1. CSA Instances	—	.49*	-.01	.15
2. CSH Instances		—	.05	-.07
3. SA Instances			—	.29*
4. SH Instances				—

\* $p < .05$ , one-tailed.

The results of the correlation analyses did not indicate any statistically significant positive correlations between the respondents' instances of CSA/CSH and their instances of SA/SH ( $p > .05$ ). Hence, their CSA/CSH instances were not found to be significantly associated with in-person SA/SH instances, which did not support the hypothesis.

Although not related to the hypothesis, it is worth noting that the results indicated that respondents who experienced more CSA instances were significantly more likely to experience more CSH instances,  $r(124) = .49, p < .05, r^2 = .24$ . In addition, those who experienced more in-person SA instances were significantly more likely to experience more in-person SH instances,  $r(124) = .29, p < .05, r^2 = .08$ . These results suggest that respondents' experiences of sexual abuse and harassment are positively correlated within the modalities of occurrence (within cyber or in-person modality), but not necessarily between these modalities as was hypothesized.

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## **CHAPTER IV**

### **Discussion**

#### **Summary of the Results**

This study was designed to learn about the experiences of cyber sexual abuse (CSA) victim-survivors and how closely related CSA and in-person sexual abuse/harassment are. Few prior studies regarding CSA explored the experiences of individuals who identify as minorities, whether it be ethnically, by sexual orientation, or gender identity. Continued research was needed to analyze the experiences of those not already examined. The experiences of all victim-survivors affected by CSA were assessed to inform policy and education for support, legal remedy, and mental health implications. Prior research found that most victim-survivors of CSA are young heterosexual females. Furthermore, research has also found that many victim-survivors are reluctant to report sexual abuse to their social support systems as well as law enforcement due to fear of judgment, not being believed, and victim-blaming. Prior research also found that sexual abuse had negative effects on victim-survivors' mental health, social situations, employment, and education. Further, participants in past studies felt revictimized and retraumatized when disclosing their victimization to law enforcement. Additionally, research found a correlation between online and offline sexual abuse/harassment in instances where the victim-survivor knew their offender.

Through a 6-question interview of semi-open-ended items, participants were asked a series of questions related to their experiences of CSA, including where they were victimized, their relationship to the offender, whether they reported and to whom, and the overall repercussions of their experiences. Through quantitative data analysis, the study also explored the correlation between online and offline sexual abuse/harassment. Most of the findings in this

study supported prior findings. Many victim-survivors were reluctant to disclose their CSA victimization to family, friends, and law enforcement because of feelings of shame and guilt, fear of being blamed, or because of feelings that nothing would be done. Participants also had severe mental health concerns, including anxiety and depression, social isolation and alienation, and educational breakdowns. However, no correlation was established between online and offline sexual abuse/harassment, which is inconsistent with past studies.

### **Discussion**

This study hypothesized that victim-survivors of online sexual abuse and harassment are more likely to be victim-survivors of offline sexual abuse and harassment. The research found no positive correlation between the two. This is inconsistent with past research related to the relationship between cyber sexual abuse/harassment and in-person sexual abuse/harassment. According to this study, the responsibility for the results likely lies with the offenders, not the victim-survivors. Most participants stated that their offender was a “stranger.” Participant 19 acknowledged their offender was a “stranger who I thought was my friend.” Participant 22 also stated that their offender was “in reality, a stranger on the Internet [whom] I quickly became attached to and considered a friend.” Past studies have analyzed the correlation between victim-survivors and offenders who were known to them. Barter et al. studied this correlation within intimate partner relationships, finding a significant relationship between online and offline emotional and physical harassment and abuse (Barter et al., 2017). Barter et al.’s study did not examine the correlation between online and offline sexual abuse/harassment regarding victim-survivors whom strangers victimize in cyberspace. Most participants in the current study did not know their offenders, and therefore, this could explain why there was no statistically significant relationship between online and offline abuse and harassment. Reyns and Fisher (2018) found a

similar phenomenon, though it did not account for only intimate partner status. Victim-survivors of offline stalking were found to be more than three times more likely to become targets of cyberstalking; however, victim-survivors of cyberstalking are no more likely to become victims of subsequent in-person stalking (Reyns & Fisher, 2018). Some participants in the current study expressed victimization like those in Reyns and Fisher's study – their offenders were known to them before the cyberstalking victimization. Participant 1 explained they had been “cyberstalk[ed] through [social media by a] middle school classmate.” Participant 2 also stated that their ex-boyfriend cyberstalked them after their breakup. Participants 36, 43, and 71 said their exes also cyberstalked them. Participants 36 and 71 explained they were nervous about being out in public for fear their offenders would be stalking them in person as well.

DeKeseredy et al. (2019) examined the correlation between cyberstalking and in-person sexual assault, as well as cyber sexual harassment and in-person sexual assault. They found that those who were cyberstalked and cyber-sexually harassed were more likely to report being sexually assaulted in person (DeKeseredy et al., 2019). However, like in Reyns and Fisher's study, cyber sexual harassment and stalking could have occurred after the in-person sexual assault. Participant 25 was “forced/coerced into taking a romantic relationship to a sexual level. I was coerced into sending nudes or explicit paragraphs almost every day.” Participant 46 was “raped at a party [which was] watched and filmed by others. The videos were spread throughout high school to paying customers [and were] also used to extort more sexual encounters.] Participant 51 was also “raped and expose[d] on [social media], then later stalked for 6-8 months on [social media].” The current study outlines the disparities in correlational findings because strangers can access anyone anytime via the Internet. It is always much more difficult for a

stranger to access victims in person. Due to this easy access, offenders can victimize individuals in cyberspace when they do not even know them.

### ***Comparison of Findings with Theoretical Framework and Previous Literature***

**Gender Theory.** Most participants in this study identified as female, which is consistent with prior research. Societal views of women consist of feelings of weakness, vulnerability, property, and lesser importance (Kempton, 2020; Klysing et al., 2021; Mascia-Lees & Black, 2017). Cyber sexual abuse victimization of females is unremarkable, as females are also the gender most often sexually abused and harassed in person. As prior research found, individuals who adhere to more traditional gender-based double standards are more likely to blame female victims for their victimization (Mckinlay & Lavis, 2020). Additionally, cultural and societal influences on intimate image abuse assign negative values to the sexual autonomy of women (Kempton, 2020). This also establishes that society views women's bodies and thus makes them view their bodies as shameful (Kempton, 2020). Negative attitudes about women's consent can be attributed to intimate image abuse removing the agency surrounding sex and sexuality from women (in the CSA realm). These views normalize abusing women (Kempton, 2020). Not only has prior research found that women are more likely than men to be sexually abused in-person and online, but research has also found that most women have been victimized by cyber sexual harassment (Reed et al., 2019). More than half of the adolescents and young adult females reported being victimized by at least one form, including receiving unwanted sexual messages or photos and receiving unwanted messages soliciting sexual acts (Reed et al., 2019). Women and those who appear as female-presenting are viewed by society as subservient.

Individuals who identified as trans female-to-male participated in this study at a higher rate than expected. However, this could be attributed to victimization before transitioning, when

identifying as female, or while female-presenting. Trans male-to-female participants partook in this study at a much lower rate than those identifying as female-to-male. Again, this could be understood to be because they were male-presenting and were not seen as “easy targets.” Additionally, few participants identified as male. Males are viewed in many cultures, including those in the United States, as dominant and superior to women. Men are expected to be aggressors, not submissives. Unsurprisingly, so few males participated in this study. This could be understood twofold: they are not victimized as often as women, or they do not feel comfortable reporting because they cannot be viewed as vulnerable.

Furthermore, participants identifying as bisexual participated in this study at a much higher rate than all other sexual orientations. Queer participants and heterosexual participants were the next largest populations within the study. This is consistent with prior research, as Patchin and Hinduja (2020) found that non-heterosexual individuals are more likely to be cybersexually abused depending on the type of CSA – through sextortion. Participant 15 noted the fear of “being outed” by the offender. They stated, “It put me at risk with my family of being outed as queer and being heavily shamed or punished for expressing any kind of sexuality within a conservative Christian household.” Many individuals of non-heterosexual orientations are often extorted into providing sexually explicit material by threats of “outing” them to those who do not know they are not heterosexual (Eaton et al., 2022).

**Social Dominance Theory.** Social Dominance Theory brings together the theories of both Gender and Generation. Age, status, and gender play key roles in this social paradigm. Cisgender white males have been the socially dominant group in the United States since the creation of this country, which is no different now, as women are continuing to fight for equal rights. The 2023 U.S. census found that 75.5% of the country comprises people who identify as



White only (“QuickFacts United States,” 2023). Additionally, males comprise approximately half of the U.S. population (49.6%) (“QuickFacts United States,” 2023). As most participants identified as female, some identified their offenders as male. Participant 3 was victimized by “my first boyfriend [..., a] man who didn’t delete my nudes [..., and a] guy on Snapchat.” Participant 35 noted they received “messages from men such as unwanted photographs or comments.” Many participants expressed that their first CSA victimization incident was when they were under the age of 18. They also noted that their offenders were older. Participant 40 expressed, “[I was] 12; they were grown men.” Participant 70 shared, “he was the parent of someone I played sports with.” Participant 7 stated their offender was “in his 30s” and “I was 17.”

While age played a prominent role in victimization, it also played a significant role in why victim-survivors did not disclose their victimization. Participants mentioned they did not report the incidents for multiple reasons, but one of the most common themes among their reasons was the fear of getting in trouble, primarily due to their age. Participant 7 continued, “I believed I would get in trouble.” Participant 10 expressed, “I was a scared teenager and didn’t know what to do so I said nothing to anybody,” Participant 13 stated, “[I] didn’t want to be embarrassed or in trouble...,” and Participant 20 noted, “I was young...and ashamed...and scared.” Some participants expressed that they did not want to report to social support systems, such as family, also for fear of getting in trouble. Participant 11 stated, “I was hiding the fact that I had social media from my parents so I could not tell them.” Participant 16 also stated, “I was a kid and wasn’t allowed to be using chat rooms online so I didn’t feel comfortable letting anyone know because I would have gotten in trouble.” This is consistent with prior research, as other studies have found that many victim-survivors do not disclose to social support systems such as

family, friends, and school officials because of feelings of shame or blame (Spencer et al., 2017; Winters et al., 2020).

Additionally, conservative religious views also hinder victim-survivors from disclosing to social support systems. This is unsurprising as most U.S. society identifies as part of the Christian religion. In 2016, 48.9% of the U.S. identified as Protestant/other Christian, and 23% as Catholic (Newport, 2016). Participant 17 felt their parents would not appropriately support them due to their Christian views and felt they were proven right when their parents found out by looking through their phones. They stated, “I was sent to a Christian counselor who didn’t practice as a licensed [therapist], but the focus was convincing me I was not queer rather than feeling supported[.] I felt punished for what happened.”

Another common theme was participants not reporting to law enforcement due to the belief that they would not be believed or that nothing would be done about their report. With dominance often comes abuse of authority and power. Participant 21 stated, “The police often do not help in these... All the information I had been given about sharing explicit content with others was highly inappropriate and involved lots of victim blaming.” Participant 25 expressed, “I haven’t seriously reported it due to fear of not being taken seriously and that we were both underage at the time.” Participant 37 also expressed, “I never officially reported anything that happened ... [siblings] wanted to report him to the cops, but I wouldn’t do that ... because I knew it wouldn’t go anywhere. I knew almost no personal information of his, I only had one blank account, and I knew I would just be shamed for letting this happen to me.” Participant 66 ultimately did report to law enforcement, though, “they said they can’t do anything unless he physically shows up to act out on his threats.” Participant 31 also reported to local law enforcement as well as the FBI “but they were of no assistance.” Law enforcement is supposed

to protect society, but these participants felt they would not be protected. Participant 6 felt their offender's behaviors continued despite reporting to law enforcement, stating, "[I] reported to the police initially, but they didn't do anything about [it] after the report, so it kept happening and I didn't report it." This is also consistent with prior research. Murphy-Oikonen et al. (2022) observed that many victim-survivors chose not to report to police because they felt they would not be believed. Additionally, victim-survivors felt their reports were made in vain (McQueen et al., 2021). Like Participant 6's sentiment, prior studies found that victim-survivors decided not to report subsequent crimes to law enforcement due to distrust (McQueen et al., 2021).

With most of the participants in this study identifying as female, it is not unexpected that they would not feel comfortable reporting to law enforcement. In 2021, of the 824,824 police officers in the United States, 533,623 were white males ("Police Officers," n.d.), which accounted for 65% of the police force throughout the entire country. An astounding 85.8% of the police force were men of any ethnicity ("Police Officers," n.d.). This perpetuates the idea that law enforcement is a "boys' club," and that rape culture is maintained in that profession. Police culture tends to be hypermasculine (Purvis & Blanco, 2020). The police partake in the aggression of hypermasculinity in a socially acceptable way (Purvis & Blanco, 2020). Participants were young and felt vulnerable; they did not want to report their incidents to older, authoritative men because they believed they would be brushed off and the CSA offenses would continue regardless of the reports. Rape myths and stereotypes are still rampant throughout law enforcement agencies, with prejudicial and false beliefs about what a victim or offender should look and act like (Davies et al., 2022). Further, evidentiary value and physical injury play a role in law enforcement's interpretation of what makes a perfect victim (Davies et al., 2022). Being that online sexual abuse does not cause any physical injury by the offender, it makes it more

difficult for law enforcement to understand the true nature of victim injury. Participant 8 expressed, “I never reported to the police. I worried they wouldn’t believe me, and that because it happened over Snapchat there would be no evidence to collect.” Participant 35 also stated that the evidence “was never substantial.” Participant 43 explained, “I did not report the incidents [of] my partner stalking me online because I had no proof it was actually them.” Participant 45 also explained, “When I did find out it was wrong it was too late to collect evidence.” Participant 61 expressed concern about it being an invisible harm, stating, “At the time I didn’t believe anyone would take it seriously because it was occurring online and not in real life.” Participant 67 stated, “I have no proof and no idea who did it.” Participant 26 also felt they would be deemed complicit and possibly charged, stating, “I did not because I had broken the law by creating and disseminating the photo.” These feelings are consistent with previous findings of police causing victim-survivors to question their credibility due to their behaviors (Murphy-Oikonen et al., 2022).

This is also true of laws and legislature in the United States. Participants felt they did not know they had legal recourse or that what was occurring was illegal or wrong. Participant 5 did not report because “the individual live[d] overseas and I wasn’t sure what legal recourse I would have in the U.S.” Participant 24 stated that they “never [reported because they] didn’t realize the severity.” Participant 30 stated, “I didn’t recognize it was wrong.” Participant 44 also “didn’t know they were wrong.” Participant 18 also shared, “I wish that laws were clearer on sexual abuse on the Internet. With people living in different states, it is hard to know what is a crime.”

Even in progressive states like California and New York, legislatures are made up primarily of older white males. In 2015, California’s state legislature comprised 74% males, 62% white individuals, and 47% Baby Boomers (born 1946-1964) (“State Legislator Demographics,”

2020). Similarly, New York's state legislature comprised 75% males, 73% white individuals, and 52% Baby Boomers ("State Legislator Demographics," 2020). The same can be said for the federal legislature. In 2023, Non-Hispanic White Americans accounted for 75% of voting members (Schaeffer, 2023). About 72% of the United States Congress is male, and half of the House and 74% of the Senate are of the Boomer and Silent generations (Schaeffer, 2023). Again, just as with law enforcement, having many older, white males in most of the positions of power does not allow for social change and debunking of rape myths and stereotypes. Thus, victim-survivors feel reporting would be futile. Participants 53 and 39 noted the essence of not reporting as attributed to social dominance theory: "It happens to a lot of girls so it's not worth it when nothing changes" and "It is too scary. Men are protected," respectively.

### **Practical and Theoretical Implications**

There must be an enhanced effort to decrease the amount of CSA, educate the public on Internet safety and healthy relationships, and create comprehensive laws prohibiting and punishing CSA. Few participants felt supported by anyone, whether family, friends, school officials, or law enforcement.

Educational systems, primarily those in middle and high school, should incorporate teaching cyber and Internet safety beyond surface-level information. Participant 15 wished, "I had the tools and resources that would've helped me to recognize and identify what was happening in the first place." Schools should allow safe spaces for students to discuss their experiences and feelings, to educate and help one another understand that they may not be alone. Participant 8 noted that a teacher shared her experiences "and made herself available for us to talk to." Participant 12 also felt "stories of others in similar situations would have helped." These teachings should also include what a healthy relationship looks like and what to look for in

unhealthy relationships. Schools should also have discussions about rape culture and what that means in the context of CSA. More students need to feel comfortable coming forward for support and help and be provided the tools and knowledge to understand that what is occurring is not normal and is dangerous and reportable behavior. Further, Title IX offices must be more prominent, especially within the K-12 system. Title IX offices are where these complaints would be disclosed if the abuse is between individuals within the same school system. As some participants mentioned their offenders were schoolmates, it would have been essential to know they would have appropriate support in their Title IX office.

Family, friends, and even school support systems should also be educated on rape culture and rape myths. This would allow for better understanding and support for victim-survivors and allow for placing less blame on the individual. The media could establish better ways of reporting sexual crimes to remove the stigma from victims. This may help remove confirmation bias in victim-blaming. If the public is made more aware of how pervasive these crimes are throughout different backgrounds and communities – regardless of ethnicity, sexual orientation, or socioeconomic status – they may be more inclined to realize anyone is susceptible to victimization, especially on the Internet.

More training for law enforcement on the implications of CSA on the mental health of victim-survivors and society needs to be considered. Victim-survivors feel their mental health deteriorated due to their victimization, and they had no support to assist in healing that trauma. Because law enforcement did not take reports seriously and could not investigate without additional information, few victim-survivors felt comfortable coming forward to report, even with substantial evidence.

Lastly, legislatures should pursue a concerted effort to create comprehensive federal laws prohibiting CSA. When laws are in the books, it is easier to inform people that these behaviors are crimes. Some participants did not know if what was occurring was indeed criminal, and some participants were victimized by people outside of their state and even the country. Federal laws would support victims, punish offenders, and inform society that these behaviors are unacceptable.

Additionally, while law enforcement and legislatures are progressively improving the racial and gender disparities, more action needs to be taken to increase the number of women and minorities within these professions. Decreasing the socially dominant population within these groups will dismantle the patriarchal design. More women and minorities in power will help to expand views on their autonomy, equality, and equity. Support for CSA victim-survivors should be a priority. Still, support cannot be provided without knowledge, awareness, education, and a system that is there to put an end to victimization.

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**Commented [MM4]:** Continue to review this list to catch mistakes, such as: different color fonts, proper DOI placement, capitalization, ensuring the majority is scholarly material within 5-7 years, long links are not included (use permalink or the home page of journals if you don't have a DOI), etc.



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# **Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women**

## **"CONVENTION OF BELEM DO PARA"**

### **PREAMBLE**

THE STATES PARTIES TO THIS CONVENTION,

**RECOGNIZING** that full respect for human rights has been enshrined in the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights, and reaffirmed in other international and regional instruments;

**AFFIRMING** that violence against women constitutes a violation of their human rights and fundamental freedoms, and impairs or nullifies the observance, enjoyment and exercise of such rights and freedoms;

**CONCERNED** that violence against women is an offense against human dignity and a manifestation of the historically unequal power relations between women and men;

**RECALLING** the Declaration on the Elimination of Violence against Women, adopted by the Twenty-fifth Assembly of Delegates of the Inter-American Commission of Women, and affirming that violence against women pervades every sector of society regardless of class, race or ethnic group, income, culture, level of education, age or religion and strikes at its very foundations;

**CONVINCED** that the elimination of violence against women is essential for their individual and social development and their full and equal participation in all walks of life; and

**CONVINCED** that the adoption of a convention on the prevention, punishment and eradication of all forms of violence against women within the framework of the Organization of American States is a positive contribution to protecting the rights of women and eliminating violence against them,

**HAVE AGREED** to the following:

### **CHAPTER I**

#### **DEFINITION AND SCOPE OF APPLICATION**

##### Article 1

For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.

##### Article 2

Violence against women shall be understood to include physical, sexual and psychological violence:

- a. that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;

- b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and
- c. that is perpetrated or condoned by the state or its agents regardless of where it occurs.

## **CHAPTER II** **RIGHTS PROTECTED**

### Article 3

Every woman has the right to be free from violence in both the public and private spheres.

### Article 4

Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others:

- a. The right to have her life respected;
- b. The right to have her physical, mental and moral integrity respected;
- c. The right to personal liberty and security;
- d. The right not to be subjected to torture;
- e. The right to have the inherent dignity of her person respected and her family protected;
- f. The right to equal protection before the law and of the law;
- g. The right to simple and prompt recourse to a competent court for protection against acts that violate her rights;
- h. The right to associate freely;
- i. The right of freedom to profess her religion and beliefs within the law; and
- j. The right to have equal access to the public service of her country and to take part in the conduct of public affairs, including decision-making.

### Article 5

Every woman is entitled to the free and full exercise of her civil, political, economic, social and cultural rights, and may rely on the full protection of those rights as embodied in regional and international instruments on human rights. The States Parties recognize that violence against women prevents and nullifies the exercise of these rights.

### Article 6

The right of every woman to be free from violence includes, among others:

- a. The right of women to be free from all forms of discrimination; and
- b. The right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.

## **CHAPTER III**

### **DUTIES OF THE STATES**

#### Article 7

The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

- a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;
- b. apply due diligence to prevent, investigate and impose penalties for violence against women;
- c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;
- d. adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;
- e. take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;
- f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;
- g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and
- h. adopt such legislative or other measures as may be necessary to give effect to this Convention.

#### Article 8

The States Parties agree to undertake progressively specific measures, including programs:

- a. to promote awareness and observance of the right of women to be free from violence, and the right of women to have their human rights respected and protected;
- b. to modify social and cultural patterns of conduct of men and women, including the development of formal and informal educational programs appropriate to every level of the educational process, to counteract prejudices, customs and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on the stereotyped roles for men and women which legitimize or exacerbate violence against women;
- c. to promote the education and training of all those involved in the administration of justice, police and other law enforcement officers as well as other personnel responsible for implementing policies for the prevention, punishment and eradication of violence against women;
- d. to provide appropriate specialized services for women who have been subjected to violence, through public and private sector agencies, including shelters, counseling services for all family members where appropriate, and care and custody of the affected children;
- e. to promote and support governmental and private sector education designed to raise the awareness of the public with respect to the problems of and remedies for violence against women;

- f. to provide women who are subjected to violence access to effective readjustment and training programs to enable them to fully participate in public, private and social life;
- g. to encourage the communications media to develop appropriate media guidelines in order to contribute to the eradication of violence against women in all its forms, and to enhance respect for the dignity of women;
- h. to ensure research and the gathering of statistics and other relevant information relating to the causes, consequences and frequency of violence against women, in order to assess the effectiveness of measures to prevent, punish and eradicate violence against women and to formulate and implement the necessary changes; and
- i. to foster international cooperation for the exchange of ideas and experiences and the execution of programs aimed at protecting women who are subjected to violence.

#### Article 9

With respect to the adoption of the measures in this Chapter, the States Parties shall take special account of the vulnerability of women to violence by reason of among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom.

### **CHAPTER IV** **INTER-AMERICAN MECHANISMS OF PROTECTION**

#### Article 10

In order to protect the right of every woman to be free from violence, the States Parties shall include in their national reports to the Inter-American Commission of Women information on measures adopted to prevent and prohibit violence against women, and to assist women affected by violence, as well as on any difficulties they observe in applying those measures, and the factors that contribute to violence against women.

#### Article 11

The States Parties to this Convention and the Inter-American Commission of Women may request of the Inter-American Court of Human Rights advisory opinions on the interpretation of this Convention

#### Article 12

Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Inter-American Commission on Human Rights containing denunciations or complaints of violations of Article 7 of this Convention by a State Party, and the Commission shall consider such claims in accordance with the norms and procedures established by the American Convention on Human Rights and the Statutes and Regulations of the Inter-American Commission on Human Rights for lodging and considering petitions.

## **CHAPTER V** **GENERAL PROVISIONS**

### Article 13

No part of this Convention shall be understood to restrict or limit the domestic law of any State Party that affords equal or greater protection and guarantees of the rights of women and appropriate safeguards to prevent and eradicate violence against women.

### Article 14

No part of this Convention shall be understood to restrict or limit the American Convention on Human Rights or any other international convention on the subject that provides for equal or greater protection in this area.

### Article 15

This Convention is open to signature by all the member States of the Organization of American States.

### Article 16

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

### Article 17

This Convention is open to accession by any other state. Instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

### Article 18

Any State may, at the time of approval, signature, ratification, or accession, make reservations to this Convention provided that such reservations are:

- a. not incompatible with the object and purpose of the Convention, and
- b. not of a general nature and relate to one or more specific provisions.

### Article 19

Any State Party may submit to the General Assembly, through the Inter-American Commission of Women, proposals for the amendment of this Convention. Amendments shall enter into force for the states ratifying them on the date when two-thirds of the States Parties to this Convention have deposited their respective instruments of ratification. With respect to the other States Parties, the amendments shall enter into force on the dates on which they deposit their respective instruments of ratification.

### Article 20

If a State Party has two or more territorial units in which the matters dealt with in this Convention are governed by different systems of law, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its territorial units or to only one or more of them. Such a declaration may be amended at any time by subsequent declarations, which shall expressly specify the territorial unit or units to which this Convention applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall enter into force thirty days after the date of their receipt.

### Article 21

This Convention shall enter into force on the thirtieth day after the date of deposit of the second instrument of ratification. For each State that ratifies or accedes to the Convention

after the second instrument of ratification is deposited, it shall enter into force thirty days after the date on which that State deposited its instrument of ratification or accession.

Article 22

The Secretary General shall inform all member states of the Organization of American States of the entry into force of this Convention.

Article 23

The Secretary General of the Organization of American States shall present an annual report to the member states of the Organization on the status of this Convention, including the signatures, deposits of instruments of ratification and accession, and declarations, and any reservations that may have been presented by the States Parties, accompanied by a report thereon if needed.

Article 24

This Convention shall remain in force indefinitely, but any of the States Parties may denounce it by depositing an instrument to that effect with the General Secretariat of the Organization of American States. One year after the date of deposit of the instrument of denunciation, this Convention shall cease to be in effect for the denouncing State but shall remain in force for the remaining States Parties.

Article 25

The original instrument of this Convention, the English, French, Portuguese and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall send a certified copy to the Secretariat of the United Nations for registration and publication in accordance with the provisions of Article 102 of the United Nations Charter.

**IN WITNESS WHEREOF** the undersigned Plenipotentiaries, being duly authorized thereto by their respective governments, have signed this Convention, which shall be called the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women - Convention of Belém do Pará..

DONE IN THE CITY OF BELEN DO PARA, BRAZIL, the ninth of June in the year one thousand nine hundred ninety-four.





# Organization of American States

Department of International Law  
Secretariat for Legal Affairs

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## MULTILATERAL TREATIES

### » AMERICAN CONVENTION ON HUMAN RIGHTS "PACT OF SAN JOSE, COSTA RICA" (B-32)

#### **Preamble**

The American states signatory to the present Convention,

Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man;

Recognizing that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states;

Considering that these principles have been set forth in the Charter of the Organization of American States, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights, and that they have been reaffirmed and refined in other international instruments, worldwide as well as regional in scope;

Reiterating that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights; and

Considering that the Third Special Inter-American Conference (Buenos Aires, 1967) approved the incorporation into the Charter of the Organization itself of broader standards with respect to economic, social, and educational rights and resolved that an inter-American convention on human rights should determine the

structure, competence, and procedure of the organs responsible for these matters,

Have agreed upon the following:

## **PART I - STATE OBLIGATIONS AND RIGHTS PROTECTED**

### **CHAPTER I - GENERAL OBLIGATIONS**

#### **Article 1. Obligation to Respect Rights**

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

2. For the purposes of this Convention, "person" means every human being.

#### **Article 2. Domestic Legal Effects**

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

### **CHAPTER II - CIVIL AND POLITICAL RIGHTS**

#### **Article 3. Right to Juridical Personality**

Every person has the right to recognition as a person before the law.

#### **Article 4. Right to Life**

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.

3. The death penalty shall not be reestablished in states that have abolished it.

4. In no case shall capital punishment be inflicted for political offenses or related common crimes.

5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.

6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of

sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

#### **Article 5. Right to Humane Treatment**

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
3. Punishment shall not be extended to any person other than the criminal.
4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.
5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.
6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

#### **Article 6. Freedom from Slavery**

1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.
2. No one shall be required to perform forced or compulsory labor. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes is deprivation of liberty at forced labor, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labor shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner.
3. For the purposes of this article, the following do not constitute forced or compulsory labor:
  - a. work or service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority. Such work or service shall be carried out under the supervision and control of public authorities, and any persons performing such work or service shall not be placed at the disposal of any private party, company, or juridical person;
  - b. military service and, in countries in which conscientious objectors are recognized, national service that the law may provide for in lieu of military service;
  - c. service exacted in time of danger or calamity that threatens the existence or the well-being of the community; or
  - d. work or service that forms part of normal civic obligations.

#### **Article 7. Right to Personal Liberty**

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.
7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for nonfulfillment of duties of support.

### **Article 8. Right to a Fair Trial**

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.
2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
  - a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
  - b. prior notification in detail to the accused of the charges against him;
  - c. adequate time and means for the preparation of his defense;
  - d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

- e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
  - f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
  - g. the right not to be compelled to be a witness against himself or to plead guilty; and
  - h. the right to appeal the judgment to a higher court.
3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.
  4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.
  5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

#### **Article 9. Freedom from Ex Post Facto Laws**

No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

#### **Article 10. Right to Compensation**

Every person has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice.

#### **Article 11. Right to Privacy**

1. Everyone has the right to have his honor respected and his dignity recognized.
2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.
3. Everyone has the right to the protection of the law against such interference or attacks.

#### **Article 12. Freedom of Conscience and Religion**

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.
2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.

3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.

4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

### **Article 13. Freedom of Thought and Expression**

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

a. respect for the rights or reputations of others; or

b. the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

### **Article 14. Right of Reply**

1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.

2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.

3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special

privileges.

### **Article 15. Right of Assembly**

The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.

### **Article 16. Freedom of Association**

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.
2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.
3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

### **Article 17. Rights of the Family**

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.
2. The right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of nondiscrimination established in this Convention.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. The States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.
5. The law shall recognize equal rights for children born out of wedlock and those born in wedlock.

### **Article 18. Right to a Name**

Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary.

### **Article 19. Rights of the Child**

Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

#### **Article 20. Right to Nationality**

1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

#### **Article 21. Right to Property**

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.
3. Usury and any other form of exploitation of man by man shall be prohibited by law.

#### **Article 22. Freedom of Movement and Residence**

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.
2. Every person has the right to leave any country freely, including his own.
3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.
4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest.
5. No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it.
6. An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law.
7. Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes.
8. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of



origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.

9. The collective expulsion of aliens is prohibited.

### **Article 23. Right to Participate in Government**

1. Every citizen shall enjoy the following rights and opportunities:

- a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
- b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
- c. to have access, under general conditions of equality, to the public service of his country.

2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

### **Article 24. Right to Equal Protection**

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

### **Article 25. Right to Judicial Protection**

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

- a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
- b. to develop the possibilities of judicial remedy; and
- c. to ensure that the competent authorities shall enforce such remedies when granted.

## **CHAPTER III - ECONOMIC, SOCIAL, AND CULTURAL RIGHTS**

### **Article 26. Progressive Development**

The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational,

scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

## **CHAPTER IV - SUSPENSION OF GUARANTEES, INTERPRETATION, AND APPLICATION**

### **Article 27. Suspension of Guarantees**

1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.

2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.

3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.

### **Article 28. Federal Clause**

1. Where a State Party is constituted as a federal state, the national government of such State Party shall implement all the provisions of the Convention over whose subject matter it exercises legislative and judicial jurisdiction.

2. With respect to the provisions over whose subject matter the constituent units of the federal state have jurisdiction, the national government shall immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfillment of this Convention.

3. Whenever two or more States Parties agree to form a federation or other type of association, they shall take care that the resulting federal or other compact contains the provisions necessary for continuing and rendering effective the standards of this Convention in the new state that is organized.

### **Article 29. Restrictions Regarding Interpretation**

No provision of this Convention shall be interpreted as:

- a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;
- b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;
- c. precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or
- d. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

### **Article 30. Scope of Restrictions**

The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.

### **Article 31. Recognition of Other Rights**

Other rights and freedoms recognized in accordance with the procedures established in Articles 76 and 77 may be included in the system of protection of this Convention.

## **CHAPTER V - PERSONAL RESPONSIBILITIES**

### **Article 32. Relationship between Duties and Rights**

1. Every person has responsibilities to his family, his community, and mankind.
2. The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.

## **PART II - MEANS OF PROTECTION**

### **CHAPTER VI - COMPETENT ORGANS**

#### **Article 33**

The following organs shall have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to this Convention:

- a. the Inter-American Commission on Human Rights, referred to as "The Commission;" and
- b. the Inter-American Court of Human Rights, referred to as "The Court."

## **CHAPTER VII - INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

### **Section 1. Organization**

### **Article 34**

The Inter-American Commission on Human Rights shall be composed of seven members, who shall be persons of high moral character and recognized competence in the field of human rights.

### **Article 35**

The Commission shall represent all the member countries of the Organization of American States.

### **Article 36**

1. The members of the Commission shall be elected in a personal capacity by the General Assembly of the Organization from a list of candidates proposed by the governments of the member states.
2. Each of those governments may propose up to three candidates, who may be nationals of the states proposing them or of any other member state of the Organization of American States. When a slate of three is proposed, at least one of the candidates shall be a national of a state other than the one proposing the slate.

### **Article 37**

1. The members of the Commission shall be elected for a term of four years and may be reelected only once, but the terms of three of the members chosen in the first election shall expire at the end of two years. Immediately following that election the General Assembly shall determine the names of those three members by lot.
2. No two nationals of the same state may be members of the Commission.

### **Article 38**

Vacancies that may occur on the Commission for reasons other than the normal expiration of a term shall be filled by the Permanent Council of the Organization in accordance with the provisions of the Statute of the Commission.

### **Article 39**

The Commission shall prepare its Statute, which it shall submit to the General Assembly for approval. It shall establish its own Regulations.

### **Article 40**

Secretariat services for the Commission shall be furnished by the appropriate specialized unit of the General Secretariat of the Organization. This unit shall be provided with the resources required to accomplish the tasks assigned to it by the Commission.

## **Section 2. Functions**

### **Article 41**

The main function of the Commission shall be to promote respect for and defense of human rights. In the exercise of its mandate, it shall have the following functions and powers:

- a. to develop an awareness of human rights among the peoples of America;
- b. to make recommendations to the governments of the member states, when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights;
- c. to prepare such studies or reports as it considers advisable in the performance of its duties;
- d. to request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights;
- e. to respond, through the General Secretariat of the Organization of American States, to inquiries made by the member states on matters related to human rights and, within the limits of its possibilities, to provide those states with the advisory services they request;
- f. to take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention; and
- g. to submit an annual report to the General Assembly of the Organization of American States.

#### **Article 42**

The States Parties shall transmit to the Commission a copy of each of the reports and studies that they submit annually to the Executive Committees of the Inter-American Economic and Social Council and the Inter-American Council for Education, Science, and Culture, in their respective fields, so that the Commission may watch over the promotion of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

#### **Article 43**

The States Parties undertake to provide the Commission with such information as it may request of them as to the manner in which their domestic law ensures the effective application of any provisions of this Convention.

### **Section 3. Competence**

#### **Article 44**

Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.

## **Article 45**

1. Any State Party may, when it deposits its instrument of ratification of or adherence to this Convention, or at any later time, declare that it recognizes the competence of the Commission to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention.
2. Communications presented by virtue of this article may be admitted and examined only if they are presented by a State Party that has made a declaration recognizing the aforementioned competence of the Commission. The Commission shall not admit any communication against a State Party that has not made such a declaration.
3. A declaration concerning recognition of competence may be made to be valid for an indefinite time, for a specified period, or for a specific case.
4. Declarations shall be deposited with the General Secretariat of the Organization of American States, which shall transmit copies thereof to the member states of that Organization.

## **Article 46**

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:
  - a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;
  - b. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment;
  - c. that the subject of the petition or communication is not pending in another international proceeding for settlement; and
  - d. that, in the case of Article 44, the petition contains the name, nationality, profession, domicile, and signature of the person or persons or of the legal representative of the entity lodging the petition.
2. The provisions of paragraphs 1.a and 1.b of this article shall not be applicable when:
  - a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
  - b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
  - c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

## **Article 47**

The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if:

- a. any of the requirements indicated in Article 46 has not been met;
- b. the petition or communication does not state facts that tend to establish a violation of the rights guaranteed by this Convention;
- c. the statements of the petitioner or of the state indicate that the petition or communication is manifestly groundless or obviously out of order; or
- d. the petition or communication is substantially the same as one previously studied by the Commission or by another international organization.

#### **Section 4. Procedure**

##### **Article 48**

1. When the Commission receives a petition or communication alleging violation of any of the rights protected by this Convention, it shall proceed as follows:

- a. If it considers the petition or communication admissible, it shall request information from the government of the state indicated as being responsible for the alleged violations and shall furnish that government a transcript of the pertinent portions of the petition or communication. This information shall be submitted within a reasonable period to be determined by the Commission in accordance with the circumstances of each case.
- b. After the information has been received, or after the period established has elapsed and the information has not been received, the Commission shall ascertain whether the grounds for the petition or communication still exist. If they do not, the Commission shall order the record to be closed.
- c. The Commission may also declare the petition or communication inadmissible or out of order on the basis of information or evidence subsequently received.
- d. If the record has not been closed, the Commission shall, with the knowledge of the parties, examine the matter set forth in the petition or communication in order to verify the facts. If necessary and advisable, the Commission shall carry out an investigation, for the effective conduct of which it shall request, and the states concerned shall furnish to it, all necessary facilities.
- e. The Commission may request the states concerned to furnish any pertinent information and, if so requested, shall hear oral statements or receive written statements from the parties concerned.
- f. The Commission shall place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.

2. However, in serious and urgent cases, only the presentation of a petition or communication that fulfills all the formal requirements of admissibility shall be necessary in order for the Commission to conduct an investigation with the prior consent of the state in whose territory a violation has allegedly been committed.

#### **Article 49**

If a friendly settlement has been reached in accordance with paragraph 1.f of Article 48, the Commission shall draw up a report, which shall be transmitted to the petitioner and to the States Parties to this Convention, and shall then be communicated to the Secretary General of the Organization of American States for publication. This report shall contain a brief statement of the facts and of the solution reached. If any party in the case so requests, the fullest possible information shall be provided to it.

#### **Article 50**

1. If a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions. If the report, in whole or in part, does not represent the unanimous agreement of the members of the Commission, any member may attach to it a separate opinion. The written and oral statements made by the parties in accordance with paragraph 1.e of Article 48 shall also be attached to the report.

2. The report shall be transmitted to the states concerned, which shall not be at liberty to publish it.

3. In transmitting the report, the Commission may make such proposals and recommendations as it sees fit.

#### **Article 51**

1. If, within a period of three months from the date of the transmittal of the report of the Commission to the states concerned, the matter has not either been settled or submitted by the Commission or by the state concerned to the Court and its jurisdiction accepted, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration.

2. Where appropriate, the Commission shall make pertinent recommendations and shall prescribe a period within which the state is to take the measures that are incumbent upon it to remedy the situation examined.

3. When the prescribed period has expired, the Commission shall decide by the vote of an absolute majority of its members whether the state has taken adequate measures and whether to publish its report.

### **CHAPTER VIII - INTER-AMERICAN COURT OF HUMAN RIGHTS**

#### **Section 1. Organization**

#### **Article 52**

1. The Court shall consist of seven judges, nationals of the member states of the Organization, elected in an individual capacity from among jurists of the highest moral authority and of recognized competence in the



field of human rights, who possess the qualifications required for the exercise of the highest judicial functions in conformity with the law of the state of which they are nationals or of the state that proposes them as candidates.

2. No two judges may be nationals of the same state.

### **Article 53**

1. The judges of the Court shall be elected by secret ballot by an absolute majority vote of the States Parties to the Convention, in the General Assembly of the Organization, from a panel of candidates proposed by those states.

2. Each of the States Parties may propose up to three candidates, nationals of the state that proposes them or of any other member state of the Organization of American States. When a slate of three is proposed, at least one of the candidates shall be a national of a state other than the one proposing the slate.

### **Article 54**

1. The judges of the Court shall be elected for a term of six years and may be reelected only once. The term of three of the judges chosen in the first election shall expire at the end of three years. Immediately after the election, the names of the three judges shall be determined by lot in the General Assembly.

2. A judge elected to replace a judge whose term has not expired shall complete the term of the latter.

3. The judges shall continue in office until the expiration of their term. However, they shall continue to serve with regard to cases that they have begun to hear and that are still pending, for which purposes they shall not be replaced by the newly elected judges.

### **Article 55**

1. If a judge is a national of any of the States Parties to a case submitted to the Court, he shall retain his right to hear that case.

2. If one of the judges called upon to hear a case should be a national of one of the States Parties to the case, any other State Party in the case may appoint a person of its choice to serve on the Court as an ad hoc judge.

3. If among the judges called upon to hear a case none is a national of any of the States Parties to the case, each of the latter may appoint an ad hoc judge.

4. An ad hoc judge shall possess the qualifications indicated in Article 52.

5. If several States Parties to the Convention should have the same interest in a case, they shall be considered as a single party for purposes of the above provisions. In case of doubt, the Court shall decide.

### **Article 56**

Five judges shall constitute a quorum for the transaction of business by the Court.

## **Article 57**

The Commission shall appear in all cases before the Court.

## **Article 58**

1. The Court shall have its seat at the place determined by the States Parties to the Convention in the General Assembly of the Organization; however, it may convene in the territory of any member state of the Organization of American States when a majority of the Court considers it desirable, and with the prior consent of the state concerned. The seat of the Court may be changed by the States Parties to the Convention in the General Assembly by a two-thirds vote.

2. The Court shall appoint its own Secretary.

3. The Secretary shall have his office at the place where the Court has its seat and shall attend the meetings that the Court may hold away from its seat.

## **Article 59**

The Court shall establish its Secretariat, which shall function under the direction of the Secretary of the Court, in accordance with the administrative standards of the General Secretariat of the Organization in all respects not incompatible with the independence of the Court. The staff of the Court's Secretariat shall be appointed by the Secretary General of the Organization, in consultation with the Secretary of the Court.

## **Article 60**

The Court shall draw up its Statute which it shall submit to the General Assembly for approval. It shall adopt its own Rules of Procedure.

## **Section 2. Jurisdiction and Functions**

### **Article 61**

1. Only the States Parties and the Commission shall have the right to submit a case to the Court.

2. In order for the Court to hear a case, it is necessary that the procedures set forth in Articles 48 and 50 shall have been completed.

### **Article 62**

1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.

2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court.

3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.

### **Article 63**

1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

2. In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

### **Article 64**

1. The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court.

2. The Court, at the request of a member state of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.

### **Article 65**

To each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.

## **Section 3. Procedure**

### **Article 66**

1. Reasons shall be given for the judgment of the Court.

2. If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to have his dissenting or separate opinion attached to the judgment.

### **Article 67**

The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning

or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

#### **Article 68**

1. The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.
2. That part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state.

#### **Article 69**

The parties to the case shall be notified of the judgment of the Court and it shall be transmitted to the States Parties to the Convention.

### **CHAPTER IX - COMMON PROVISIONS**

#### **Article 70**

1. The judges of the Court and the members of the Commission shall enjoy, from the moment of their election and throughout their term of office, the immunities extended to diplomatic agents in accordance with international law. During the exercise of their official function they shall, in addition, enjoy the diplomatic privileges necessary for the performance of their duties.
2. At no time shall the judges of the Court or the members of the Commission be held liable for any decisions or opinions issued in the exercise of their functions.

#### **Article 71**

The position of judge of the Court or member of the Commission is incompatible with any other activity that might affect the independence or impartiality of such judge or member, as determined in the respective statutes.

#### **Article 72**

The judges of the Court and the members of the Commission shall receive emoluments and travel allowances in the form and under the conditions set forth in their statutes, with due regard for the importance and independence of their office. Such emoluments and travel allowances shall be determined in the budget of the Organization of American States, which shall also include the expenses of the Court and its Secretariat. To this end, the Court shall draw up its own budget and submit it for approval to the General Assembly through the General Secretariat. The latter may not introduce any changes in it.

#### **Article 73**

The General Assembly may, only at the request of the Commission or the Court, as the case may be,

determine sanctions to be applied against members of the Commission or judges of the Court when there are justifiable grounds for such action as set forth in the respective statutes. A vote of a two-thirds majority of the member states of the Organization shall be required for a decision in the case of members of the Commission and, in the case of judges of the Court, a two-thirds majority vote of the States Parties to the Convention shall also be required.

### **PART III - GENERAL AND TRANSITORY PROVISIONS**

#### **CHAPTER X - SIGNATURE, RATIFICATION, RESERVATIONS, AMENDMENTS, PROTOCOLS, AND DENUNCIATION**

##### **Article 74**

1. This Convention shall be open for signature and ratification by or adherence of any member state of the Organization of American States.
2. Ratification of or adherence to this Convention shall be made by the deposit of an instrument of ratification or adherence with the General Secretariat of the Organization of American States. As soon as eleven states have deposited their instruments of ratification or adherence, the Convention shall enter into force. With respect to any state that ratifies or adheres thereafter, the Convention shall enter into force on the date of the deposit of its instrument of ratification or adherence.
3. The Secretary General shall inform all member states of the Organization of the entry into force of the Convention.

##### **Article 75**

This Convention shall be subject to reservations only in conformity with the provisions of the Vienna Convention on the Law of Treaties signed on May 23, 1969.

##### **Article 76**

1. Proposals to amend this Convention may be submitted to the General Assembly for the action it deems appropriate by any State Party directly, and by the Commission or the Court through the Secretary General.
2. Amendments shall enter into force for the States ratifying them on the date when two-thirds of the States Parties to this Convention have deposited their respective instruments of ratification. With respect to the other States Parties, the amendments shall enter into force on the dates on which they deposit their respective instruments of ratification.

##### **Article 77**

1. In accordance with Article 31, any State Party and the Commission may submit proposed protocols to this Convention for consideration by the States Parties at the General Assembly with a view to gradually including

other rights and freedoms within its system of protection.

2. Each protocol shall determine the manner of its entry into force and shall be applied only among the States Parties to it.

### **Article 78**

1. The States Parties may denounce this Convention at the expiration of a five-year period from the date of its entry into force and by means of notice given one year in advance. Notice of the denunciation shall be addressed to the Secretary General of the Organization, who shall inform the other States Parties.

2. Such a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of denunciation.

## **CHAPTER XI - TRANSITORY PROVISIONS**

### **Section 1. Inter-American Commission on Human Rights**

#### **Article 79**

Upon the entry into force of this Convention, the Secretary General shall, in writing, request each member state of the Organization to present, within ninety days, its candidates for membership on the Inter-American Commission on Human Rights. The Secretary General shall prepare a list in alphabetical order of the candidates presented, and transmit it to the member states of the Organization at least thirty days prior to the next session of the General Assembly.

#### **Article 80**

The members of the Commission shall be elected by secret ballot of the General Assembly from the list of candidates referred to in Article 79. The candidates who obtain the largest number of votes and an absolute majority of the votes of the representatives of the member states shall be declared elected. Should it become necessary to have several ballots in order to elect all the members of the Commission, the candidates who receive the smallest number of votes shall be eliminated successively, in the manner determined by the General Assembly.

### **Section 2. Inter-American Court of Human Rights**

#### **Article 81**

Upon the entry into force of this Convention, the Secretary General shall, in writing, request each State Party to present, within ninety days, its candidates for membership on the Inter-American Court of Human Rights. The Secretary General shall prepare a list in alphabetical order of the candidates presented and transmit it to the States Parties at least thirty days prior to the next session of the General Assembly.

## **Article 82**

The judges of the Court shall be elected from the list of candidates referred to in Article 81, by secret ballot of the States Parties to the Convention in the General Assembly. The candidates who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties shall be declared elected. Should it become necessary to have several ballots in order to elect all the judges of the Court, the candidates who receive the smallest number of votes shall be eliminated successively, in the manner determined by the States Parties.

**AMERICAN DECLARATION OF THE RIGHTS  
AND DUTIES OF MAN**

(Adopted by the Ninth International Conference of American States,  
Bogotá, Colombia, 1948)

WHEREAS:

The American peoples have acknowledged the dignity of the individual, and their national constitutions recognize that juridical and political institutions, which regulate life in human society, have as their principal aim the protection of the essential rights of man and the creation of circumstances that will permit him to achieve spiritual and material progress and attain happiness;

The American States have on repeated occasions recognized that the essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality;

The international protection of the rights of man should be the principal guide of an evolving American law;

The affirmation of essential human rights by the American States together with the guarantees given by the internal regimes of the states establish the initial system of protection considered by the American States as being suited to the present social and juridical conditions, not without a recognition on their part that they should increasingly strengthen that system in the international field as conditions become more favorable,

The Ninth International Conference of American States

AGREES:

To adopt the following

**AMERICAN DECLARATION OF THE RIGHTS  
AND DUTIES OF MAN**

**Preamble**

All men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another.

The fulfillment of duty by each individual is a prerequisite to the rights of all. Rights and duties are interrelated in every social and political activity of man. While rights exalt individual liberty, duties express the dignity of that liberty.

Duties of a juridical nature presuppose others of a moral nature which support them in principle and constitute their basis.

Inasmuch as spiritual development is the supreme end of human existence and the highest expression thereof, it is the duty of man to serve that end with all his strength and resources.



Since culture is the highest social and historical expression of that spiritual development, it is the duty of man to preserve, practice and foster culture by every means within his power.

And, since moral conduct constitutes the noblest flowering of culture, it is the duty of every man always to hold it in high respect.

## **CHAPTER ONE**

### **Rights**

- |  |   |
|--|---|
| Article I. Every human being has the right to life, liberty and the security of his person.  | Right to life, liberty and personal security.                                   |
| Article II. All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.                         | Right to equality before law.   |
| Article III. Every person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private.  | Right to religious freedom and worship.   |
| Article IV. Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.  | Right to freedom of investigation, opinion, expression and dissemination.       |
| Article V. Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life.  | Right to protection of honor, personal reputation, and private and family life. |
| Article VI. Every person has the right to establish a family, the basic element of society, and to receive protection therefore.   | Right to a family and to protection thereof.                                    |
| Article VII. All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.  | Right to protection for mothers and children.                                   |
| Article VIII. Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will. | Right to residence and movement.  |
| Article IX. Every person has the right to the inviolability of his home.   | Right to inviolability of the home.   |
| Article X. Every person has the right to the inviolability and transmission of his correspondence.   | Right to the inviolability and transmission of correspondence.                  |

Article XI. Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.

Right to the preservation of health and to well-being.

Article XII. Every person has the right to an education, which should be based on the principles of liberty, morality and human solidarity.

Right to education.

Likewise every person has the right to an education that will prepare him to attain a decent life, to raise his standard of living, and to be a useful member of society.

The right to an education includes the right to equality of opportunity in every case, in accordance with natural talents, merit and the desire to utilize the resources that the state or the community is in a position to provide.

Every person has the right to receive, free, at least a primary education.

Article XIII. Every person has the right to take part in the cultural life of the community, to enjoy the arts, and to participate in the benefits that result from intellectual progress, especially scientific discoveries.

Right to the benefits of culture.

He likewise has the right to the protection of his moral and material interests as regards his inventions or any literary, scientific or artistic works of which he is the author.

Article XIV. Every person has the right to work, under proper conditions, and to follow his vocation freely, insofar as existing conditions of employment permit.

Right to work and to fair remuneration.

Every person who works has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family.

Article XV. Every person has the right to leisure time, to wholesome recreation, and to the opportunity for advantageous use of his free time to his spiritual, cultural and physical benefit.

Right to leisure time and to the use thereof.

Article XVI. Every person has the right to social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living.	Right to social security.
Article XVII. Every person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights.	Right to recognition of juridical personality and civil rights.
Article XVIII. Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.	Right to a fair trial.
Article XIX. Every person has the right to the nationality to which he is entitled by law and to change it, if he so wishes, for the nationality of any other country that is willing to grant it to him.	Right to nationality.
Article XX. Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.	Right to vote and to participate in government.
Article XXI. Every person has the right to assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature.	Right of assembly.
Article XXII. Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.	Right of association.
Article XXIII. Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.	Right to property.
Article XXIV. Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon.	Right of petition.

Article XXV. No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law.

Right of protection from arbitrary arrest.

No person may be deprived of liberty for nonfulfillment of obligations of a purely civil character.

Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released. He also has the right to humane treatment during the time he is in custody.

Article XXVI. Every accused person is presumed to be innocent until proved guilty.

Right to due process of law.

Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.

Article XXVII. Every person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements.

Right of asylum.

Article XXVIII. The rights of man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy.

Scope of the rights of man.

## **CHAPTER TWO**

### **Duties**

Article XXIX. It is the duty of the individual so to conduct himself in relation to others that each and every one may fully form and develop his personality.

Duties to society.

Article XXX. It is the duty of every person to aid, support, educate and protect his minor children, and it is the duty of children to honor their parents always and to aid, support and protect them when they need it.

Duties toward children and parents.

Article XXXI. It is the duty of every person to acquire at least an elementary education.

Duty to receive instruction.

Article XXXII. It is the duty of every person to vote in the popular elections of the country of which he is a national, when he is legally capable of doing so.

Duty to vote.

Article XXXIII. It is the duty of every person to obey the law and other legitimate commands of the authorities of his country and those of the country in which he may be.

Duty to obey the law.

Article XXXIV. It is the duty of every able-bodied person to render whatever civil and military service his country may require for its defense and preservation, and, in case of public disaster, to render such services as may be in his power.

Duty to serve the community and the nation.

It is likewise his duty to hold any public office to which he may be elected by popular vote in the state of which he is a national.

Article XXXV. It is the duty of every person to cooperate with the state and the community with respect to social security and welfare, in accordance with his ability and with existing circumstances.

Duties with respect to social security and welfare.

Article XXXVI. It is the duty of every person to pay the taxes established by law for the support of public services.

Duty to pay taxes.

Article XXXVII. It is the duty of every person to work, as far as his capacity and possibilities permit, in order to obtain the means of livelihood or to benefit his community.

Duty to work.

**REPORT No. 80/11**  
CASE 12.626  
MERITS  
JESSICA LENAHAN (GONZALES) ET AL.  
UNITED STATES (\*)  
July 21, 2011

**I. SUMMARY**

1. This report concerns a petition presented to the Inter-American Commission on Human Rights (hereinafter the "Commission" or "IACHR") against the Government of the United States (hereinafter the "State" or the "United States") on December 27, 2005, by Caroline Bettinger-Lopez, Emily J. Martin, Lenora Lapidus, Stephen Mcpherson Watt, and Ann Beeson, attorneys-at-law with the American Civil Liberties Union.<sup>1</sup> The petition was presented on behalf of Ms. Jessica Lenahan, formerly Jessica Gonzales,<sup>2</sup> and her deceased daughters Leslie (7), Katheryn (8) and Rebecca (10) Gonzales.

2. The claimants assert in their petition that the United States violated Articles I, II, V, VI, VII, IX, XVIII and XXIV of the American Declaration by failing to exercise due diligence to protect Jessica Lenahan and her daughters from acts of domestic violence perpetrated by the ex-husband of the former and the father of the latter, even though Ms. Lenahan held a restraining order against him. They specifically allege that the police failed to adequately respond to Jessica Lenahan's repeated and urgent calls over several hours reporting that her estranged husband had taken their three minor daughters (ages 7, 8 and 10) in violation of the restraining order, and asking for help. The three girls were found shot to death in the back of their father's truck after the exchange of gunfire that resulted in the death of their father. The petitioners further contend that the State never duly investigated and clarified the circumstances of the death of Jessica Lenahan's daughters, and never provided her with an adequate remedy for the failures of the police. According to the petition, eleven years have passed and Jessica Lenahan still does not know the cause, time and place of her daughters' death.

3. The United States recognizes that the murders of Jessica Lenahan's daughters are "unmistakable tragedies."<sup>3</sup> The State, however, asserts that any petition must be assessed on its merits, based on the evidentiary record and a cognizable basis in the American Declaration. The State claims that its authorities responded as required by law, and that the facts alleged by the petitioners are not supported by the evidentiary record and the information available to the Castle

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\*Commission Member Dinah L. Shelton did not take part in the discussion and voting on this case, pursuant to Article 17(2) of the Commission's Rules of Procedure.

<sup>1</sup> By note dated October 26, 2006, the Human Rights Clinic of Columbia University Law School was accredited as a co-petitioner, and on July 6, 2011 Peter Rosenblum was accredited as co-counsel and Director of said Clinic. By note dated October 15, 2007, Ms. Araceli Martínez-Olguín, from the Women's Rights Project of the American Civil Liberties Union, was also accredited as a representative. The University of Miami School of Law Human Rights Clinic was later added as co-petitioner, with Caroline Bettinger-Lopez as a representative of the Human Rights Clinic and lead counsel in the case. Sandra Park from the Women's Rights Project of the American Civil Liberties Union was also accredited later as co-counsel in the case.

<sup>2</sup> The Commission will refer throughout the report to the presumed victim as Jessica Lenahan, which she has indicated is the name she currently uses. See, December 11, 2006 Observations from Petitioners, Ex. E: Declaration of Jessica Ruth Lenahan (Gonzales).

<sup>3</sup> Reply by the Government of the United States of America to the Final Observations Regarding the Merits of the Case by the Petitioners, October 17, 2008, p. 1.

Rock Police Department at the time the events occurred. The State moreover claims that the petitioners cite no provision of the American Declaration that imposes on the United States an affirmative duty, such as the exercise of due diligence, to prevent the commission of individual crimes by private actors, such as the tragic and criminal murders of Jessica Lenahan's daughters.

4. In Report N° 52/07, adopted on July 24, 2007 during its 128th regular period of sessions, the Commission decided to admit the claims advanced by the petitioners under Articles I, II, V, VI, VII, XVIII and XXIV of the American Declaration, and to proceed with consideration of the merits of the petition. At the merits stage, the petitioners added to their allegations that the failures of the United States to conduct a thorough investigation into the circumstances surrounding Leslie, Katheryn and Rebecca's deaths also breached Jessica Lenahan's and her family's right to truth in violation of Article IV of the American Declaration.

5. In the present report, having examined the evidence and arguments presented by the parties during the proceedings, the Commission concludes that the State failed to act with due diligence to protect Jessica Lenahan and Leslie, Katheryn and Rebecca Gonzales from domestic violence, which violated the State's obligation not to discriminate and to provide for equal protection before the law under Article II of the American Declaration. The State also failed to undertake reasonable measures to protect the life of Leslie, Katheryn and Rebecca Gonzales in violation of their right to life under Article I of the American Declaration, in conjunction with their right to special protection as girl-children under Article VII of the American Declaration. Finally, the Commission finds that the State violated the right to judicial protection of Jessica Lenahan and her next-of kin, under Article XVIII of the American Declaration. The Commission does not consider that it has sufficient information to find violations of articles V and VI of the American Declaration. As to Articles XXIV and IV of the American Declaration, it considers the claims related to these articles to have been addressed under Article XVIII of the American Declaration.

## **II. PROCEEDINGS SUBSEQUENT TO ADMISSIBILITY REPORT N° 52/07**

6. In Report No. 52/07, adopted on July 24, 2007, the Commission declared Ms. Lenahan's petition admissible in respect to Articles I, II, V, VI, VII, XVIII and XXIV of the American Declaration and decided to proceed with the analysis of the merits of the case.

7. Report N° 52/07 was forwarded to the State and to the Petitioners by notes dated October 4, 2007. In the note to the petitioners, the Commission requested that they provide any additional observations they had within a period of two months, in accordance with Article 38(1) of the Commission's Rules of Procedure. In both notes, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter in accordance with Article 38(4) of its Rules, and requested that the parties inform the Commission as soon as possible whether they were interested in this offer. In a communication dated October 12, 2007, the petitioners informed the Commission that they were amenable to engaging in friendly settlement discussions with the United States, which the Commission forwarded to the State on January 30, 2008. By letter dated October 15, 2007, Ms. Araceli Martínez-Olguin from the American Civil Liberties Union requested that all communications from the Commission pertaining to this matter be sent to her as well as to Mr. Watt and Ms. Bettinger-Lopez at their respective addresses.

8. In a communication dated March 24, 2008, the petitioners submitted to the Commission their final observations on the merits of the matter. The Commission forwarded to the State these observations by letter dated March 26, 2008, with a request pursuant to Article 38 (1) of its Rules to present any additional observations regarding the merits within two months. In a communication dated March 24, 2008, the petitioners also requested a merits hearing before the Commission during its 132<sup>o</sup> period of sessions. By letter dated August 4, 2008, the petitioners

reiterated their request for a merits hearing during the 133<sup>o</sup> period of sessions, which was granted by the Commission on September 22, 2008. In a communication dated October 16, 2008, the State forwarded to the Commission its merits observations on this matter, which were transmitted to the petitioners on October 21, 2008.

9. The petitioners submitted additional observations and documentation to the Commission on October 21 and 22, 2008; March 12 and July 16, 2009; and January 11, February 20, and June 5, 2010; communications which were all duly forwarded to the State.

10. On August 3, 2009, the Commission requested the State to submit the complete investigation files and all related documentation in reference to the death of Simon Gonzales and of Leslie, Katheryn and Rebecca Gonzales, within a period of one month.

11. The State submitted additional observations to the Commission on April 9, 2010, which were duly forwarded to the petitioners.

12. The Commission convened a merits hearing pertaining to this case during its 133<sup>o</sup> ordinary period of sessions on October 22, 2008 with the presence of both parties.

13. During the processing of this case, the IACHR has received several *amicus curiae* briefs, which were all duly forwarded to the parties. In a communication dated July 6, 2007, Katherine Caldwell and Andrew Rhys Davies, attorneys for the firm Allen & Overy LLP, submitted an *amici curiae* brief, on behalf of several organizations, entities and international and national networks dedicated to the protection of the rights of women and children.<sup>4</sup> In a communication dated January 4, 2008, Jennifer Brown and Maya Raghu from Legal Momentum; David S. Ettinger and Mary-Christine Sungalia from Horvitz & Levy LLP; and various local, national and international women's rights and human rights organizations,<sup>5</sup> presented an *amicus curiae* brief. On October 15, 2008, the Commission received a supplemental *amicus curiae* brief by Maya Raghu from Legal

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<sup>4</sup> The *amicus curiae* brief was also presented by the Center for Justice and International Law (CEJIL); The Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM); *Asociación Civil por la Igualdad y la Justicia* (ACIJ), Argentina; *Asociación por los Derechos Civiles* (ADC), Argentina; *Centro de Estudios Legales y Sociales* (CELS), Argentina; *Fundación Mujeres en Igualdad*, Argentina; *Fundación para Estudio e Investigación de la Mujer*, Argentina; *Instituto de Derechos Humanos, Facultad de Ciencias Jurídicas y Sociales, Universidad Nacional de La Plata*, Argentina; Tracy Robinson, Faculty of Law, University of the West Indies, Barbados; *La Oficina Jurídica Para la Mujer*, Cochabamba, Bolivia; Constance Backhouse, Professor of Law and University Research Chair, University of Ottawa, Canada; Canadian Association of Sexual Assault Centres, British Columbia, Canada; Harmony House, Ottawa, Ontario, Canada; Professor Elizabeth Sheehy, University of Ottawa Faculty of Law, Canada; *Centro de Derechos Humanos y Litigio Internacional* (CEDHUL), Colombia; *Corporación Sisma - Mujer*, Colombia; *Liga de Mujeres Desplazadas*, Colombia; *Fundación Paniamor*, Costa Rica; *La Fundación PROCAL (Promoción, Capacitación y Acción Alternativa)*, Costa Rica; *Centro de Apoyo Aquelarre* (CEAPA), Dominican Republic; *Movimiento de Mujeres Dominico - Haitiana* (MUDHA), Dominican Republic; *Núcleo de Apoyo a la Mujer* (NAM), Dominican Republic; Jacqueline Sealy-Burke, Director, Legal Aid and Counseling Clinic (LACC), Grenada; *Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, A.C.* (CMDPDH), México; *Organización Popular Independiente, A.C.*, Ciudad Juárez, México; *Organización Red de Mujeres Contra la Violencia*, Nicaragua; *Centro de la Mujer Panameña* (CEMP), Panamá; *Asociación Pro Derechos Humanos* (APRODEH), Lima, Perú; *Red Nacional de Casas de Refugio para Mujeres y Niñas Víctimas de Violencia Familiar y Sexual*, Perú.

<sup>5</sup> The *amicus curiae* brief was also presented by Legal Momentum; World Organization for Human Rights USA; Break the Cycle; Harriet Buhai Center for Family Law; California Women's Law Center; The Feminist Majority Foundation; the Allard K. Lowenstein International Human Rights Clinic; National Center for Women & Policing; The National Congress of Black Women, Inc.; National Organization for Women Foundation, Inc.; National Women's Law Center; and Women Lawyers Association of Los Angeles.



Momentum; David S. Ettinger and Mary-Christine Sungalia from Horvitz & Levy LLP; and various local, national and international women's rights and human rights organizations.<sup>6</sup>

14. By letter dated October 20, 2008, Professor Rhonda Copelon presented an *amicus curiae* brief on behalf of the International Women's Human Rights Law Clinic of the City University of New York School of Law, the Center for Constitutional Rights and Ms. Ayumi Kusafaka, Prof. Vahida Nainar, Andrew Fields and Jennifer Green. By letter dated October 17, 2008, William W. Oxley, Christopher Chaudoir, Phylipp Smaylovsky, Melanie D. Phillips, and Jonathan Roheim from Orrick, Herrington & Sutcliffe, LLP presented an *amicus curiae* brief with various local, national and international women's rights and human rights organizations as signatories.<sup>7</sup>

15. By communication dated October 17, 2008, Amy Myers, Elizabeth Keyes, and Morgan Lynn from Women Empowered against Violence (WEAVE) presented an *amicus curiae* brief. By communication dated October 17, 2008, Cristina Brandt-Young, Amanda Beltz, and Yisroel Schulman from the Domestic Violence Clinical Center of the New York Legal Assistance Group and Sarah M. Buel, Clinical Professor of Law of the University of Texas School of Law presented an *amicus curiae* brief with various various local, national and international women's rights and human rights organizations.<sup>8</sup>

16. By communication dated October 10, 2008, the National Centre for Domestic Violence, Baker & McKenzie (Sydney), Freehills Foundation (Australia) and the Equal Justice Project (Auckland), represented by Lovells LLP, presented an *amicus curiae* brief in support of the petitioner's arguments. By communication dated November 13, 2008, Lucy Simpson and Kirsten Matoy Carlson from the Indian Law Resource Center and Jacqueline Agtuca and Terri Henry from the Sacred Circle National Resource Center to End Violence Against Native Women<sup>9</sup> presented an *amicus curiae* brief.

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<sup>6</sup> The *amicus curiae* brief was also presented by the *Asociación para el Desarrollo Integral de Personas Violadas*, (ADIVAC); Break the Cycle; Harriett Buhai Center for Family Law; California Women's Law Center; Center for Gender & Refugee Studies; Central American Resource Center; Professor John Cerone; Monica Ghosh Driggers, Esq., Honorable Marjory D. Fields; The Feminist Majority Foundation; Harvard Law School Gender Violence Clinic; Professor Dina Francesca Haynes; Human Rights Watch; The Immigration Law Clinic at the University of Detroit Mercy; The International Women's Human Rights Clinic; The International Committee of the National Lawyers Guild; The Leitner Center for International Law and Justice at Fordham Law School; The Walter Leitner International Human Rights Clinic; Los Angeles Chapter of the National Lawyers Guild; The Allard K. Lowenstein International Human Rights Clinic; National Center for Women & Policing; The National Congress of Black Women, Inc.; National Organization for Women Foundation, Inc.; National Women's Law Center; Professor Sarah Paoletti; Professor Susan Deller Ross; Seton Hall University School of Law Center for Social Justice; Professor Deborah M. Weissman; Women Lawyers Association of Los Angeles; and World Organization for Human Rights USA.

<sup>7</sup> The *amicus curiae* brief was also presented by Break the Cycle; The Children's Rights Project of Public Counsel Law Center; Coalition Against Child Abuse and Neglect (CCAN); Domestic Violence Legal Empowerment Appeals Project (DV LEAP); Family Violence Prevention Fund; Human Rights Watch; Illinois Clemency Project for Battered Women; In Motion; Justice for Children; Men Stopping Violence; The Nassau County Coaliton Against Domestic Violence; Pace Women's Justice Center; Rockland Family Shelter; Safe House Center; South Carolina Coalition Against Domestic Violence and Sexual Abuse (SCCADV ASA); Willamette University College of Law, Child and Family Advocacy Clinic.

<sup>8</sup> The *amicus curiae* brief was also presented by The New York Legal Assistance Group; the University of Texas School of Law Domestic Violence Clinic; the California Partnership to End Domestic Violence; the Domestic Violence Report; the National Association of Women Lawyers; the Sanctuary for Families; Professor Elizabeth Schneider; University of Baltimore Family Law Clinic; University of California at Berkley Law School (Boalt Hall) Domestic Violence Practicum; University of Cincinnati College of Law Domestic Violence and Civil Protection Order Clinic; University of Toledo College of Law Domestic Violence Clinic; and the Victims Rights Law Center.

<sup>9</sup> The *amicus curiae* brief was also presented on behalf of the Alaska Native Women's Coalition (ANWC); Battered Women's Justice Project (BWJP); Cangleska, Inc., Clan Star, Inc.; La Jolla Indian Tribe (the "Tribe"); Legal Momentum; Mending the Sacred Hoop, Inc. (MSH); National Center on Domestic and Sexual Violence; National Congress of American Indians (NCAI); National Organization of Sisters of Color Ending Sexual Assault (SCESA); Ohitika Najin Win Oti; Our Sister's Keeper Coalition (OSKC); Pauma Band of Mission Indians (the "Tribe"); Qualla Women's Justice Alliance; Shelter of Safety

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17. On April 11, 2011, the Commission also received a communication accrediting the University of Miami School of Law Human Rights Clinic as a co-petitioner, and Caroline Bettinger-Lopez as a representative of the Human Rights Clinic and lead counsel in the case. By communication dated April 18, 2011, Sandra Park from the Women's Rights Project of the American Civil Liberties Union was also accredited as co-counsel in the case. On July 6, 2011, the Commission received an additional communication accrediting Peter Rosenblum as co-counsel in the case and as Director of the Human Rights Clinic of Columbia Law School.

### III. POSITIONS OF THE PARTIES

#### A. Position of the Petitioners

18. The petitioners allege that Jessica Lenahan, of Native-American and Latin-American descent, lived in Castle Rock, Colorado and married Simon Gonzales in 1990.<sup>10</sup> In 1996, Simon Gonzales allegedly began adopting abusive behavior towards Jessica Lenahan and their three daughters Leslie, Katheryn and Rebecca (ages 7, 8 and 10). In 1999, after he attempted to commit suicide, Jessica Lenahan filed for divorce and started living separately from him.

19. They allege that after Jessica Lenahan separated from Simon Gonzales, he continued displaying erratic and unpredictable behavior that harmed her and their daughters. Between January and May, 1999, Simon Gonzales had several run-ins with the Castle Rock Police Department (hereinafter "CRPD"), among these, for road rage while driving with his daughters, for two break-ins to Jessica Lenahan's house, and for trespassing on private property and obstructing public officials at the CRPD station. The petitioners allege that by June 22, 1999, Simon Gonzales was a name that "the CRPD – a small police department in a small town – knew or should have known to be associated with domestic violence and erratic and reckless behavior."<sup>11</sup>

20. Jessica Lenahan requested and obtained a restraining order from the Colorado Courts on May 21, 1999.<sup>12</sup> The petitioners indicate that the temporary restraining order directed Simon Gonzales not to "molest or disturb the peace" of Jessica Lenahan or their children; excluded Simon Gonzales from the family home; and ordered him to "remain at least 100 yards away from this location at all times."<sup>13</sup> The petitioners affirm that the front page of the temporary restraining order noted in capital letters that the reserve side contained "important notices for restrained parties and law enforcement officials."<sup>14</sup> The reverse side of the temporary restraining order allegedly directed law enforcement officials as follows: "You shall use every reasonable means to enforce this restraining order....," according to the requirements of Colorado's mandatory arrest law.<sup>15</sup> When the order was issued, the petitioners report that it was entered into

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(SOS); Tribal Law and Policy Institute (TLPI); White Buffalo Calf Woman Society, Inc. (WBCWS); Women Spirit Coalition (WSC); and YMCA Clark County.

<sup>10</sup> Hearing on the matter of *Jessica Gonzales v. United States* at the 127<sup>th</sup> Ordinary Period of Sessions of the Inter-American Commission on Human Rights, March 2, 2007.

<sup>11</sup> Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, p. 9.

<sup>12</sup> See Petitioners' petition dated December 27, 2005, Exhibit A: Temporary Restraining Order dated May 21, 1999 and Petitioners' petition dated December 27, 2005, Exhibit B: Decision of District Court, County of Douglas, State of Colorado making temporary restraining order permanent.

<sup>13</sup> See Petitioners' petition dated December 27, 2005, Exhibit A: Temporary Restraining Order dated May 21, 1999.

<sup>14</sup> See Petitioners' petition dated December 27, 2005, Exhibit A: Temporary Restraining Order dated May 21, 1999.

<sup>15</sup> See Petitioners' petition dated December 27, 2005, Exhibit A: Temporary Restraining Order dated May 21, 1999.

the Colorado Bureau of Investigation's central registry of restraining orders, which is a computerized central database registry that is accessible to any state or local enforcement agency connected to the Bureau, including the Castle Rock Police Department.<sup>16</sup>

21. Jessica Lenahan alleges that, despite the issuance of the temporary order, her former husband continued to terrorize her and the children. She called the CRPD to report this and other violations of the restraining order, but the police ignored most of her calls and in her words: "they would be dismissive of me, and they scolded me for calling them and asking for help."<sup>17</sup>

22. On June 4, 1999, the state court made permanent the temporary restraining order, including slight changes such as granting Jessica Lenahan sole physical custody of the three girls and allowing Simon Gonzales occasional visitation or "parenting time."<sup>18</sup> The petitioners claim that, upon Jessica Lenahan's request, the judge restricted Simon Gonzales' weekly contact with the girls to one "mid-week dinner visit," that Simon and Jessica Lenahan would previously arrange.<sup>19</sup>

23. The petitioners allege that, in Colorado, as in other states, a restraining order represents a judicial determination that any violation of its terms threatens the safety of the domestic violence victim. As with Colorado's mandatory arrest law mentioned previously, restraining orders "are specifically meant to cabin police discretion in determining whether a threat exists in the face of evidence of such a violation."<sup>20</sup>

24. Despite the existence of the restraining order, the petitioners claim that on Tuesday, June 22, 1999, Simon Gonzales abducted his three daughters and their friend from the street in front of Jessica Lenahan's home. Simon Gonzales allegedly abducted his daughters in violation of the restraining order, since time for visitation had not been previously arranged with Jessica Lenahan. In response, over the next ten hours, Jessica Lenahan repeatedly contacted the CRPD to report the children missing, and to request the enforcement of her restraining order. According to the petition, the police continuously ignored her cries for help. During her conversations with various police officers from the CRPD, Jessica Lenahan clearly communicated that Simon Gonzales had abducted the children, in violation of a valid restraining order, that there was no pre-arranged dinner visit, and that she was concerned for the safety of her missing children.

25. The petition relates that Jessica Lenahan first called the police department on June 22<sup>nd</sup>, 1999, approximately at 5:50 p.m. seeking advice. During this conversation she communicated to the dispatcher that she did not know where her children were, that she thought perhaps her daughters had been taken by her ex-husband, and that this visit had not been pre-arranged as required by the restraining order. She also informed them that their friend Rebecca Robinson had also been taken. Around 7:40 p.m., Jessica Lenahan called the police department a second time

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<sup>16</sup> See C.R.S. § 18-6-803.7 (Colorado's Central Registry Statute), Petitioners' petition dated December 27, 2005.

<sup>17</sup> Hearing on the matter of *Jessica Gonzales v. United States* at the 127<sup>th</sup> Ordinary Period of Sessions of the Inter-American Commission on Human Rights, March 2, 2007.

<sup>18</sup> See Petitioners' petition dated December 27, 2005, Exhibit: B, Decision of District Court, County of Douglas, State of Colorado making temporary restraining order permanent.

<sup>19</sup> The exact language of the order was "Respondent, upon reasonable notice, shall be entitled to a mid-week dinner visit with the minor children. Said visit shall be arranged by the parties." See Exhibit B, Petitioners' petition dated December 27, 2005, Decision of District Court, County of Douglas, State of Colorado making temporary restraining order permanent.

<sup>20</sup> Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, p. 8.

noting that she held a restraining order against Simon Gonzales and that she was concerned over her children's safety.

26. The petitioners claim that at approximately 7:50 p.m., two hours after Jessica Lenahan first called the Castle Rock Police Department, Officer Brink and Sergeant Ruisi arrived at her house. Jessica Lenahan allegedly showed both officers a copy of the restraining order, which expressly directed them to arrest Simon Gonzales upon violation of the order. Jessica Lenahan explained to the officers that the judge had specifically noted in the order that the dinner visit was to be "pre-arranged" by the parties, that Simon Gonzales's normal visitation night was on Wednesday evenings, and that she had communicated to her former husband that he could not switch nights that week, since the girls had plans for their friend to sleep over.<sup>21</sup> Officer Brink allegedly held the restraining order in his hands and glanced at it briefly, and then communicated to Jessica Lenahan that there was nothing he could do because the children were with their father. The Officers promised Jessica Lenahan that they would drive by Simon Gonzales' apartment to see if he and the girls were there.

27. The petitioners claim that shortly after 8:30 p.m., Jessica Lenahan was able to reach Simon Gonzales by phone and learned that he was with the girls at an amusement park in Denver, approximately 40 minutes from Castle Rock. She also received an alarming call from Simon Gonzales' girlfriend, Rosemary Young, asking questions about his mental health history, his capacity for harming himself or the children, and his access to firearms. Ms. Young also communicated that Simon Gonzales had threatened to drive off a cliff earlier that day.

28. After these calls, Jessica Lenahan became more alarmed and called the CRPD for a third time to communicate her concerns. The dispatcher allegedly communicated to Jessica Lenahan that an officer would be sent to her house, but the officer never arrived. Officer Brink did telephone Jessica Lenahan shortly thereafter, and she explained to him again that she had a restraining order, that it was "highly unusual," "really weird," and "wrong" for Simon Gonzales to have taken the girls to Denver on a weeknight, and that she was "so worried," particularly because it was almost bedtime and the girls were still not home.

29. Jessica Lenahan allegedly called the CRPD a fourth and a fifth time before 10:00 p.m., and requested several actions from Officer Brink including a) that an officer be dispatched to locate Simon Gonzales and the children in Denver, and to call the Denver police; b) to put on a statewide All Points Bulletin<sup>22</sup> for Simon Gonzales and the missing children; and c) to contact Rosemary Young. Officer Brink allegedly refused to perform any of these three actions and asked Jessica Lenahan to wait until 10:00 p.m. to see whether Simon Gonzales returned with the children. In light of police inaction in the face of her concerns, Jessica Lenahan alleges that:

I was shocked when they responded that there was nothing they could do because Denver was outside of their jurisdiction. I called back and begged them to put out a missing children alert or contact the Denver police, but they refused. The officer told me I needed to take this matter to divorce court and told me to call back if the children were not back home in a few hours. The officer said to me: "at least you know where the children are, they are with their father." I felt totally confused and humiliated. I called the police again and again that night.<sup>23</sup>

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<sup>21</sup> December 11, 2006 Observations from Petitioners, Ex. F: Progress Report CR #99-26856, p. 3 (containing statement from Jessica Lenahan's best friend, who was with her when the girls disappeared and who remained with her throughout the course of the evening, stating that "Simon normally has the children on Wednesday nights").

<sup>22</sup> An All Points Bulletin is an electronic dissemination of wanted-person information, known as "APB."

<sup>23</sup> Hearing on the matter of *Jessica Gonzales v. United States* at the 127<sup>th</sup> Ordinary Period of Sessions of the Inter-American Commission on Human Rights, March 2, 2007.

30. Jessica Lenahan allegedly called the police department a sixth time around 10:00 p.m. to report that her children were still not home and again informed them about the restraining order. During the call, the dispatcher asked Jessica Lenahan to call back on a non-emergency line and scolded her stating that it was "a little ridiculous making us freak out and thinking the kids are gone."<sup>24</sup> Jessica Lenahan called again a seventh time at midnight to inform the CRPD that she was at her husband's apartment, that no one was home and she feared that her husband had "run off with my girls."<sup>25</sup> The dispatcher told her that she would send an officer, but the officer never arrived.

31. Shortly thereafter, Jessica Lenahan drove to the CRPD where she met with Detective Ahlfinger, to whom she communicated again that she had a restraining order against Simon Gonzales, that she was afraid he had "lost it," and that he might be suicidal. According to the petitioners, inaction and indifference persisted in the response of the police even after Jessica Lenahan went to the Castle Rock Police Department and filed an incident report. The police simply replied that the father of the children had the right to spend time with them, even though she repeatedly mentioned the restraining order against him and that no visitation time had been agreed upon. She was only advised to wait until 10:00 p.m., and when she called at that time, her pleas were dismissed, and she was again told to wait, until 12:00 a.m.

32. The petitioners allege that approximately ten hours after Jessica Lenahan's first call to the police, Simon Gonzales drove up to and parked outside the police station at 3:15 a.m. on June 23, 1999, waited approximately 10-15 minutes, and then began shooting at the station. The police returned fire and shot and killed Simon Gonzales, and then discovered the bodies of Leslie, Katheryn and Rebecca in the back of Simon Gonzales' truck, apparently having been shot to death. The petitioners indicate that Jessica Lenahan trusted that the police would take action, and had she known the police would not do anything to locate her daughters, she would have undertaken steps to find them herself and avoid the tragedy.

33. After hearing about the shooting from Rosemary Young, Jessica Lenahan drove to the police station.<sup>26</sup> The petitioners allege that the officers refused to offer Jessica Lenahan any information on whether the girls were alive or not, and ignored her pleas to see the girls and identify them for about twelve hours. According to the petition, despite repeated pleas from the family, the deaths of Leslie, Katheryn and Rebecca Gonzales were never duly investigated by the State. Jessica Lenahan allegedly never learned any details of how, when and where her daughters died, their death certificates do not state this information, and therefore, she is still unable to include this information on their grave stones.<sup>27</sup>

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<sup>24</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab D: Investigator's Progress Report, CRPD, Castle Rock, Colorado, Third Call at 12:57 hrs., CR #99-3226.

<sup>25</sup> December 11, 2006 Observations from the petitioners, citing U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab E: Office of the District Attorney, Eighteenth Judicial District. Report Date: 7/1/99, Report by Karen Meskis, Date of offense: 6/23/99 (statement from Dispatcher Lisk noting that "on June 23, 1999 at 0034 hours.....Jessica Gonzales called dispatch and stated that she was at her husband's residence in her maroon Explorer and her ex-husband picked up their three kids and had not returned them. She was told to wait for an officer at his location").

<sup>26</sup> Hearing on the matter of *Jessica Gonzales v. United States* at the 127<sup>th</sup> Ordinary Period of Sessions of the Inter-American Commission on Human Rights, March 2, 2007.

<sup>27</sup> Hearing on the matter of *Jessica Gonzales v. United States* at the 127<sup>th</sup> Ordinary Period of Sessions of the Inter-American Commission on Human Rights, March 2, 2007.

34. The petitioners claim that, to this day, Jessica Lenahan does not know whether the numerous bullets found inside of their bodies came from Simon Gonzales' gun or the guns of the police officers who fired upon the truck. She also alleges that she has never received any information as to why Simon Gonzales was approved to purchase a gun that night by the Federal Bureau of Investigations, since gun dealers cannot sell guns to individuals who are subject to a restraining order in the United States.

35. The petitioners claim that the investigations conducted by the authorities solely related to the shooting death of Simon Gonzales. According to them, these investigations summarily conclude that Simon Gonzales had murdered his children before the shootout at the CRPD station, yet provide little evidence to substantiate this conclusion. They claim that the evidence in these documents is insufficient to determine which bullets killed the Jessica Lenahan's daughters; those of the CRPD, or those of Simon Gonzales.

36. The petitioners allege that Jessica Lenahan and her family remain deeply traumatized by the deaths of Leslie, Katheryn and Rebecca Gonzales. The petitioners indicate that their sense of loss has been aggravated by the failure of Colorado and federal authorities to adequately investigate these deaths and respond with the information the family seeks. As set forth in the declaration of Jessica Gonzales' mother, Tina Rivera, the entire family has experienced great trauma and feels that closure to their tragedy will only come once questions surrounding the girls' deaths are answered.<sup>28</sup>

37. The petitioners indicate that Jessica Lenahan filed suit in the United States District Court for the District of Colorado, a court of federal jurisdiction, alleging that the City of Castle Rock and several police officers had violated her rights under the Due Process Clause of the Fourteenth Amendment, claiming both substantive and procedural due process challenges. Firstly, in the realm of substantive due process, Jessica Lenahan argued that she and her daughters had a right to police protection against harm from her husband. In the realm of procedural due process, she argued that she possessed a protected property interest in the enforcement of the terms of her restraining order and that the Castle Rock police officers' arbitrary denial of that entitlement without due process violated her rights. Jessica Lenahan also claimed that the City had failed to properly train its police officers in relation to the enforcement of restraining orders, and had a policy of "recklessly" disregarding the right to police protection created by such orders.

38. The District Court dismissed Jessica Lenahan's case, and on appeal a panel of judges of the Third Circuit Court of Appeals affirmed in part and reserved in part. This finding was then affirmed in a rehearing before all of the judges of the appellate court ("*en banc*" review).

39. Jessica Lenahan's case reached the Supreme Court, the highest court in the United States. On June 27, 2005, the Supreme Court rejected all of the claims presented by Jessica Lenahan, holding that her due process rights had not been violated. The Supreme Court held that despite Colorado's mandatory arrest law and the express and mandatory terms of her restraining order, Jessica Lenahan had no personal entitlement to police enforcement of the order under the due process clause.

40. The petitioners claim that, under the American Declaration, the judiciary had the obligation to provide a remedy for the police officers' failure to enforce the restraining order

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<sup>28</sup> Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, Exhibit A: Declaration of Tina Rivera, March 17, 2008.

issued in favor of Jessica Lenahan in violation of state law and principles of international human rights law, which it failed to do. Moreover, the petitioners claim that the United States Supreme Court's decision in *Town of Castle Rock v. Gonzales* leaves Jessica Lenahan and countless other domestic violence victims in the United States without a judicial remedy by which to hold the police accountable for their failures to protect domestic violence victims and their children.

41. Regarding federal avenues, the petitioners mention two previous decisions from the United States Supreme Court, which read together with *Town of Castle Rock v. Gonzales*, allegedly severely limit access to such avenues for victims of domestic violence perpetrated by private actors.<sup>29</sup> In regards to potential state remedies and due process for domestic violence victims, the petitioners argue that a civil tort suit under Colorado law against either the Town of Castle Rock or the individual officers involved, although technically available to Jessica Lehanan, would have had no possibility of success due to the doctrine of sovereign immunity. In regards to administrative channels, the petitioners claim that they have thoroughly reviewed a variety of Castle Rock sources, but have not located any information pointing to mechanisms available to file administrative complaints against the CRPD or the Town of Castle Rock.

42. The petitioners finally highlight that domestic violence is a widespread and tolerated phenomenon in the United States that has a disproportionate impact on women and negative repercussions on their children. They maintain that the failings of the Castle Rock Police Department in this case are representative of a larger failure by the United States to exercise due diligence in response to the country's domestic violence epidemic.<sup>30</sup> The petitioners contend that Jessica Lenahan's claims are paradigmatic of those of numerous domestic violence victims in the United States, the majority of which are women and children, who pertain disproportionately to racial and ethnic minorities and to low-income groups. Even though the prevalence, persistence and gravity of the issue are recognized at the state and federal levels, and certain legislative measures have been adopted to confront the problem, the historical response of police officers has been to treat it as a family and private matter of low priority, as compared to other crimes. According to the petitioners, the present case demonstrates that police departments and governments still regularly breach their duties to protect domestic violence victims by failing to enforce restraining orders.

43. The petitioners also recently presented information to the Commission pertaining to two legal developments that they consider pertinent to the Commission's decision in this case. They highlight the 2009 sentence of the Inter-American Court of Human Rights in the case of *Claudia Ivette Gonzales and Others v. Mexico*,<sup>31</sup> as a source of key principles of state responsibility in the context of violence against women.<sup>32</sup> They particularly underscore the emphasis of this judgment on the obligation of States to act with due diligence towards acts of violence against women perpetrated by private actors. They also highlight that in April of 2009, the United States Department of Homeland Security articulated a new position recognizing the eligibility of foreign

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<sup>29</sup> The petition refers to the case of *United States v. Morrison*, 529 U.S. 598 (2000), according to which the United States Supreme Court struck down a federal law which created a cause of action to sue perpetrators for domestic violence by holding that Congress did not have the constitutional authority to adopt such law. The petition also refers to the case of *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989) where the Supreme Court allegedly held that the government is under no substantive obligation to protect an individual from violence committed by a non-State actor.

<sup>30</sup> Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, page 2.

<sup>31</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205.

<sup>32</sup> Petitioners' observations presented on February 19, 2010 and June 5, 2010.

domestic violence victims for asylum in certain circumstances, thereby recognizing state responsibility to protect those victims.

44. The petitioners have presented their legal allegations under Articles I, II, IV, V, VI, VII, XVIII and XXIV of the American Declaration focusing on three main issues.<sup>33</sup> First, they claim this case is about the United States' affirmative obligations under the American Declaration to exercise due diligence to protect domestic violence victims who are beneficiaries of court issued restraining orders when the government has knowledge that those victims, and their children, are in danger. Second, they affirm that this case is about the government's obligation to provide a remedy when it does not comply with its duty to protect. Third, they argue that this case is about a mother's right to truth, information and answers from the State as to when, where and how her daughters died after they were abducted in violation of a domestic violence restraining order, and the police ignored her calls for help.

## **B. Position of the State**

45. The United States recognizes that the murders of Leslie, Katheryn and Rebecca Gonzales are "unmistakable tragedies."<sup>34</sup> The State, however, underscores that any petition must be assessed on its merits, based on the evidentiary record and a cognizable basis in the American Declaration. The State claims that the facts alleged by the petitioners are not supported by the evidentiary record and that the petition has not demonstrated a breach of duty by the United States under the American Declaration. The State claims that the evidentiary record demonstrates that throughout the evening of June 22, 1999 and the early hours of June 23, 1999, the Castle Rock Police Department responded professionally and reasonably to the information Jessica Lenahan provided and that the information available at the time revealed no indication that Simon Gonzales was likely to commit a crime against his own children.

46. In response to the petitioners' overall description of the facts, the State argues that the petitioners' filings in this case present a "misleading, and in some instances, manifestly inaccurate portrayal of the facts."<sup>35</sup> The State identifies three fundamental differences between the petitioners' claims and the actual record in this case.

47. The State first alleges that, contrary to the petitioners' allegations, the record does not support the proposition that the restraining order was actually violated on the evening of June 22, 1999 and that Jessica Lenahan ever conveyed to the CRPD that it had been violated. During Jessica Lenahan's first call to the CRPD, she communicated that she had granted Simon Gonzales permission to see the children that evening for a mid-week dinner visit and that she had discussed with him the logistics for picking up the girls. Furthermore, the State claims that the restraining order granted Simon Gonzales "parenting time with the minor children on alternating weekends commencing after work on Friday evening and continuing through 7:00 p.m. Sunday evening," a "mid-week dinner visit" to be "arranged by the parties," and two weeks of "extended parenting time during the summer."<sup>36</sup> The State recognizes that the evidentiary record shows that Jessica

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<sup>33</sup> Hearing on the matter of *Jessica Gonzales v. United States* at the 133th Ordinary Period of Sessions of the Inter-American Commission on Human Rights, October 22, 2008.

<sup>34</sup> Reply by the Government of the United States of America to the Final Observations Regarding the Merits of the Case by the Petitioners, October 17, 2008, p. 1.

<sup>35</sup> Reply by the Government of the United States of America to the Final Observations Regarding the Merits of the Case by the Petitioners, October 17, 2008, p. 14.

<sup>36</sup> Reply by the Government of the United States of America to the Final Observations Regarding the Merits of the Case by the Petitioners, October 17, 2008, pp. 14-15, citing Petitioners' petition dated December 27, 2005, Exhibit B:



Lenahan informed the police of the existence of the restraining order during her calls, but maintains that she never conveyed to the police that the restraining order had been violated. Therefore, the State claims that there was no probable cause for the CRPD to believe that the restraining order had been violated and the circumstances did not trigger Colorado's mandatory arrest statute, as petitioners claim.

48. The second difference is that the State denies that Leslie, Katheryn and Rebecca Gonzales were ever abducted by their father. The transcripts of Jessica Lenahan's calls to the CRPD do not reveal any indication that she believed, or that she conveyed to the police, that her daughters had been abducted. She initially sought assistance and advice to determine whether her daughters were with Simon Gonzales or not. The record shows that Jessica Lenahan did not characterize the situation as an "abduction" to the police until after midnight. It was at this point that the CRPD took steps to enter an Attempt to Locate BOLO<sup>37</sup> into the system.

49. The third difference that the State highlights is that it rejects the notion advanced by the petitioners that the police "should have known" that Jessica Lenahan and her daughters faced a "real and immediate risk." According to the State, Jessica Lenahan never conveyed such a concern to the police during the evening of June 22 of 1999, and Simon Gonzales was not known by the CRPD to be a dangerous individual capable of committing violent crimes. The State recognizes that available information does suggest that Simon Gonzales was emotionally unstable and had been displaying erratic behavior before the murder of the girls, but there is very little in the evidentiary record to suggest that Simon Gonzales was prone to physical violence. The fact that the restraining order granted regular and substantial parenting time to Simon Gonzales outside of the family home would lead a reasonable person to conclude that neither Jessica Lenahan nor the Court considered Simon Gonzales to pose a physical threat to his children.

50. The United States also notes the following about the Commission and its fact-finding capacity:

.....with due respect to the Commission, it is not a formal judicial body that is fully equipped with a strong set of fact-finding authorities and tools. The Commission's petition and hearing process does not involve a discovery procedure, nor does it have formal rules of evidence or provisions for witness examination and cross-examination. In this context, we urge the Commission to exercise prudence and caution with respect to its examination of the facts, and consider that the Petitioners bear the burden of establishing facts that constitute a breach of the Declaration.<sup>38</sup>

51. The State claims that, in the wake of the tragedy, two investigations were undertaken by the Colorado Bureau of Investigations and by the Critical Incident Team (hereinafter "CIT") of the 18<sup>th</sup> Judicial District which were prompt, extensive and thorough. Moreover, a supplemental report was prepared by one of the investigators called to the scene. The State expresses surprise that the petitioners now argue that, because there was no adequate

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...continuation

Decision of District Court, County of Douglas, State of Colorado making temporary restraining order permanent on June 4, 1999.

<sup>37</sup> BOLO is an acronym for "Be On The Look Out." An Attempt to Locate BOLO is directed to other jurisdictions so that they may notify the requesting police department if they locate the individual in question. Reply by the Government of the United States of America to the Final Observations Regarding the Merits of the Case by the Petitioners, October 17, 2008, p. 9.

<sup>38</sup> Reply by the Government of the United States of America to the Final Observations Regarding the Merits of the Case by the Petitioners, October 17, 2008, p. 60.

investigation, the actual cause of the death of the children is unknown. The State considers that the petitioners' suggestion that the gunfire originating from the CRPD officers may have killed the children is contradictory to their original petition and to the evidence amassed in the investigative reports mentioned by the State, which indicate that Simon Gonzales murdered the children.

52. The State moreover sustains that the United States' judicial system, at both the state and federal level, was available to Jessica Lenahan. With respect to the sole legal action initiated by Jessica Lenahan, the judicial process was efficient and fairly considered her claims at every stage of the litigation and the case rose to the United States Supreme Court. That Jessica Lenahan did not ultimately prevail in the particular suit she filed in federal court does not mean that she was denied access to the right to a fair trial or due process under Articles XVIII and XXIV of the American Declaration. The State also affirms that domestic violence victims do have recourses available to them at the state and local level, and that protection orders can effectively safeguard their beneficiaries.

53. The State contends that Ms. Lenahan had access to remedies and that the case she filed was decided on the merits. Other valid legal claims, at the state and administrative level, may have been available to Jessica Lenahan, but she chose not to pursue them, and therefore, there is no way of knowing whether other legal theories she could have asserted would have resulted in an eventual adjudication of the facts.<sup>39</sup> In response to the petitioners' argument that the failure to adequately enforce a restraining order must give rise to a cause of action, the State finds this argument unsustainable from a factual and legal perspective.

54. The State also describes a series of additional remedies and protections for victims of domestic violence at the national and state levels, entailing billions of dollars devoted to implementing programs related to domestic violence, as well as diverse laws that have been designed to improve the investigation of domestic violence cases. The State alleges that, at the national level, Congress has adopted three major pieces of legislation that recognize the seriousness of domestic violence and the importance of a nationwide response: the Violence against Women Act of 1994 (hereinafter "VAWA 1994"), the Violence against Women Act of 2000 (hereinafter "VAWA 2000"), and the Violence against Women and Department of Justice Reauthorization Act of 2005 (hereinafter "VAWA 2005").

55. The State alleges that the petitioners cite no provision of the American Declaration that imposes on the United States an affirmative duty, such as the exercise of due diligence, to prevent the commission of individual crimes by private parties. The petitioners cite case law of the Inter-American Court of Human Rights and of the Inter-American Commission on Human Rights, but these precedents cannot be interpreted to impose such a broad affirmative obligation upon the United States to prevent private crimes, such as the tragic and criminal murders of Leslie, Katheryn and Rebecca Gonzalez. The State moreover claims that the petitioners attempt unsuccessfully to argue that the entire corpus of international human right law and non-binding views of international bodies are embodied in obligations contained in the American Declaration, which in turn, are binding upon the United States. As a legal matter, the United States maintains

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<sup>39</sup> For example, the State alleges that Jessica Lenahan never filed a complaint with the Castle Rock Police Department or with the Town of Castle Rock which would have prompted an investigation of her complaint by either entity. In addition, although Jessica Lenahan chose not to pursue a claim under Colorado law, such as a civil suit in State court against the police officers under State tort law, the State alleges that "had she been able to establish that the Castle Rock police officers acted 'willfully and wantonly' outside the scope of their employment, she should have filed a civil suit against them in state court." Furthermore, the State argues that the Colorado Governmental Immunity Statute would have permitted such a suit had she been able to meet this standard. The State also alleges that, had Simon Gonzales survived, an additional range of remedies such as criminal prosecution and criminal or civil contempt proceedings would have been available to Jessica Gonzales.

that it is not bound by obligations contained in human rights treaties it has not joined and the substantive obligations enshrined in these instruments cannot be imported into the American Declaration.

56. In this regard, the State considers that the sentence of the Inter-American Court of Human Rights in the case of *Campo Algodonero* is based in very different legal and factual circumstances from those present in the case of Jessica Lenahan and her daughters.<sup>40</sup> The State alleges that the facts driving this Court sentence centered on the systematic and consistent failure of the Mexican authorities to address the murders and disappearances of hundreds of women in Ciudad Juarez due to an official culture of discrimination and stereotyping; claims that are different from what has been presented in this case. Unlike the police in the case of *Campo Algodonero*, the CRPD officers had no reason to believe that any prevention measures were necessary in this case since Jessica Lenahan did not demonstrate concern for the physical safety of her children throughout her calls. The State also clarifies that the U.S. Department of Homeland Security's position is that under some circumstances, victims of domestic violence may satisfy all of the generally applicable requirements of asylum law; a position which does not translate into a general State recognition of responsibility related to human rights obligations pertaining to this issue.

57. The State emphasizes that "all States owe a moral and political responsibility to their populations to prevent and protect them from acts of abuse by private individuals."<sup>41</sup> States around the world routinely prohibit and sanction such acts under their criminal laws, and the United States' commitment to preventing domestic violence and protecting victims is shown by the steps taken at the state and federal level to respond to domestic violence. For purposes of interpreting the United States' legal obligations, however, the State notes that "it is essential to bear in mind that the judging of governmental action such as in this case has been and will remain a matter of domestic law in the fulfillment of a state's general responsibilities incident to ordered government, rather than a matter of international human rights law to be second-guessed by international bodies."<sup>42</sup>

58. The State moreover alleges that the content of the due diligence standard that the petitioners would like the Commission to apply is substantively unclear. The content of the due diligence standard does not provide guidance to the State with respect to its "putative" duties to prevent private violence other than the need to be "effective," which is the objective of all crime prevention measures. In the same vein, the State claims that even if the Commission applies the "due diligence" or a similar duty, the United States has met this standard.

#### **IV. ANALYSIS**

59. In this section, the Commission sets forth its findings of fact and law pertaining to the allegations advanced by the petitioners and the State. In its analysis and in accordance with article 43(1) of its Rules of Procedure, the Commission bases its findings on the arguments and

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<sup>40</sup> State Observations presented on April 2, 2010.

<sup>41</sup> Reply by the Government of the United States of America to the Final Observations Regarding the Merits of the Case by the Petitioners, October 17, 2008, p. 41.

<sup>42</sup> Reply by the Government of the United States of America to the Final Observations Regarding the Merits of the Case by the Petitioners, October 17, 2008, p. 41.

evidence submitted by the parties, the information obtained during the two hearings before the IACHR related to this case,<sup>43</sup> and information that is a matter of public knowledge.<sup>44</sup>

60. First, the Commission proceeds to set forth the facts that it considers proven. Second, the Commission moves on to analyze whether the United States incurred international responsibility under Articles I, II, IV, V, VI, VII, XVIII and XXIV of the American Declaration, based on these facts.

### **A. Findings of Fact**

61. After a comprehensive review of the arguments and evidence presented by the parties, the Commission concludes that the following facts have been proven:

#### **1. The Existence of a Restraining Order against Simon Gonzales**

62. The evidence presented to the Commission shows that at the time of the events subject to this petition, Jessica Lenahan possessed a valid restraining order against Simon Gonzales, initially granted on a temporary basis on May 21, 1999<sup>45</sup> and then rendered permanent on June 4, 1999.<sup>46</sup> The initial order directed Simon Gonzales “not to molest or disturb the peace of the other party or any child;” excluded him from the family home; and ordered Simon Gonzales to remain at least 100 yards away from this location at all times.<sup>47</sup> The Court further found that “physical or emotional harm” would result if Simon Gonzales were not excluded from the “home of the other party.”<sup>48</sup> The reserve side of the temporary restraining order reiterated the requirements of Colorado’s mandatory arrest law,<sup>49</sup> and contained important instructions for the restrained party and law enforcement officials which are discussed in detail *infra* in paras. 139-140.

63. When rendered permanent on June 4, 1999, the order granted Jessica Lenahan temporary sole physical custody of her three daughters.<sup>50</sup> The order restricted Simon Gonzales’ time with his daughters during the week to a “mid-week dinner visit” that Simon Gonzales and Jessica Lenahan had to previously arrange “upon reasonable notice.”<sup>51</sup> Simon Gonzales was also

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<sup>43</sup> Hearing on the matter of *Jessica Gonzales v. United States* at the 133th Ordinary Period of Sessions of the Inter-American Commission on Human Rights, October 22, 2008; Hearing on the matter of *Jessica Gonzales v. United States* at the 127th Ordinary Period of Sessions of the Inter-American Commission on Human Rights, March 2, 2007.

<sup>44</sup> Article 43(1) of the Rules of Procedure of the Inter-American Commission on Human Rights provides that: “The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge.”

<sup>45</sup> See Petitioners’ petition dated December 27, 2005, Exhibit A: Temporary Restraining Order dated May 21, 1999.

<sup>46</sup> See Petitioners’ petition dated December 27, 2005, Exhibit B: Decision of District Court, County of Douglas, State of Colorado making temporary restraining order permanent on June 4, 1999.

<sup>47</sup> See Petitioners’ petition dated December 27, 2005, Exhibit A: Temporary Restraining Order dated May 21, 1999.

<sup>48</sup> See Petitioners’ petition dated December 27, 2005, Exhibit A: Temporary Restraining Order dated May 21, 1999.

<sup>49</sup> See C.R.S. § 18-6-803.5 (3), Colorado’s Mandatory Arrest Statute, Petitioners’ petition dated December 27, 2005.

<sup>50</sup> See Petitioners’ petition dated December 27, 2005, Exhibit B: Decision of District Court, County of Douglas, State of Colorado making temporary restraining order permanent.

<sup>51</sup> See Petitioners’ petition dated December 27, 2005, Exhibit B: Decision of District Court, County of Douglas, State of Colorado making temporary restraining order permanent.

authorized parenting time with his daughters on alternating weekends starting after work on Friday evening and continuing through 7:00 p.m. on Sunday evening, and was entitled to two weeks of extended parenting time during the summer.<sup>52</sup> After the order was rendered permanent, Jessica Lenahan and Simon Gonzales would normally arrange for him to have the children on Wednesday nights.<sup>53</sup>

64. When the order was issued, it was entered into the Colorado Bureau of Investigation's central registry of restraining orders, which is a computerized central database registry that is accessible to any state or local enforcement agency connected to the Bureau, including the Castle Rock Police Department.<sup>54</sup> In Colorado, like in other states, a restraining order represents a judicial determination that any violation of its terms threatens the safety of the domestic violence victim. When the Colorado General Assembly passed mandatory arrest legislation in 1994, it held that "the issuance and enforcement of protection orders are of paramount importance in the state of Colorado because protection orders promote safety, reduce violence, and prevent serious harm and death."<sup>55</sup>

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<sup>52</sup> See Petitioners' petition dated December 27, 2005, Exhibit B: Decision of District Court, County of Douglas, State of Colorado making temporary restraining order permanent.

<sup>53</sup> December 11, 2006 Observations from Petitioners, Tab F: Progress Report, CR #99-26856, Report by Investigator Rick Fahlstedt, Dated July 1, 1999 (Interview with Heather Edmison, Jessica Gonzales' best friend).

<sup>54</sup> See C.R.S. § 18-6-803.7 (Colorado's Central Registry Statute), Petitioners' petition dated December 27, 2005.

<sup>55</sup> See C.R.S. § 13-14-102 (1)(a) *Civil Protection Orders – Legislative Declaration*.

## 2. Simon Gonzales' Family and Criminal History prior to June 22, 1999

65. Throughout Jessica Lenahan's relationship with Simon Gonzales he demonstrated "erratic and emotionally" abusive behavior towards her and her daughters.<sup>56</sup> Jessica Lenahan has described how "he would break our children's toys and other belongings, impose harsh discipline on the children and threaten to kidnap them, drive recklessly, exhibit suicidal behavior, and act verbally, physically, and sexually abusive to me."<sup>57</sup> Simon Gonzales' frightening and destructive behavior continued despite Jessica Lenahan's efforts to separate from him, including forcing Jessica Lenahan to perform sexual favors for clothing and other necessities.<sup>58</sup> He would also stalk her outside of her house, her job and on the phone "at all hours of the day and night," often while high on drugs, and break into her house.<sup>59</sup>

66. Jessica Lenahan initially requested a restraining order from the District Court of Douglas County in Colorado, on May 21, 1999, due to Simon Gonzales' increasingly erratic and unpredictable behavior over the years.<sup>60</sup> As justification, she indicated that Simon Gonzales had committed several incidents of violence against herself and her daughters, including trying to hang himself in the garage in the presence of his daughters and purposely breaking the children's belongings.<sup>61</sup> She expressly indicated that she and her daughters were in imminent danger of "harm to my/our emotional health or welfare if the defendant is not excluded from the family home or the home of another."<sup>62</sup> She requested to the Court that Simon Gonzales be allowed only limited contact with her to discuss "alteration of visits or matters concerning the children."<sup>63</sup>

67. Simon Gonzales' criminal history shows that he had several run-ins with the police in the three months preceding June 22, 1999.<sup>64</sup> Jessica Lenahan called the Castle Rock Police Department on at least four occasions during those months to report domestic violence incidents. She reported that Simon Gonzales was stalking her,<sup>65</sup> that he had broken into her house and stolen her wedding rings,<sup>66</sup> that he had entered into her house unlawfully to change the locks on the

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<sup>56</sup> December 11, 2006 Observations from Petitioners, Ex E: Declaration of Jessica Ruth Lehahan (Gonzales), Dated December 6, 2006, para. 5.

<sup>57</sup> December 11, 2006 Observations from Petitioners, Ex E: Declaration of Jessica Ruth Lehahan (Gonzales), Dated December 6, 2006, para. 5.

<sup>58</sup> December 11, 2006 Observations from Petitioners, Ex E: Declaration of Jessica Ruth Lehahan (Gonzales), Dated December 6, 2006, para. 9.

<sup>59</sup> Hearing on the matter of *Jessica Gonzales v. United States* at the 127<sup>th</sup> Ordinary Period of Sessions of the Inter-American Commission on Human Rights, March 2, 2007.

<sup>60</sup> December 11, 2006 Observations from Petitioners, Ex. A: Jessica Gonzales, Verified Complaint for Restraining Order, May 21, 1999; Ex. E: Declaration of Jessica Ruth Lenahan (Gonzales), Dated December 6, 2006.

<sup>61</sup> December 11, 2006 Observations from Petitioners, Ex. A: Jessica Gonzales, Verified Complaint for Restraining Order, May 21, 1999.

<sup>62</sup> December 11, 2006 Observations from Petitioners, Ex. A: Jessica Gonzales, Verified Complaint for Restraining Order, May 21, 1999.

<sup>63</sup> December 11, 2006 Observations from Petitioners, Ex. A: Jessica Gonzales, Verified Complaint for Restraining Order, May 21, 1999.

<sup>64</sup> December 11, 2006 Observations from Petitioners, Ex. H: Castle Rock Police Department Individual Inquiry on Simon Gonzales, Dated June 23, 1999.

<sup>65</sup> December 11, 2006 Observations from Petitioners, Ex. E: Declaration of Jessica Ruth Lenahan (Gonzales), Dated December 6, 2006, para. 13.

<sup>66</sup> December 11, 2006 Observations from Petitioners, Ex. E: Declaration of Jessica Ruth Lenahan (Gonzales), Dated December 6, 2006.

doors,<sup>67</sup> and that he had loosened the water valves on the sprinklers outside her house so that water flooded her yard and the surrounding neighborhood.<sup>68</sup> Simon Gonzales also received a citation for road rage on April 18, 1999, while his daughters were in his car without seatbelts,<sup>69</sup> and his drivers' license had been suspended by June 23, 1999.<sup>70</sup>

68. When Jessica Lenahan called the CRPD police on May 30, 1999 to report a break-in of her house perpetrated by Simon Gonzales, a CRPD officer was dispatched to her house.<sup>71</sup> At this time, she showed the officer the restraining order and the CRPD later requested that Simon Gonzales come to the police station to discuss the violation of the restraining order.<sup>72</sup> During the CRPD contact with Simon Gonzales, they described him in a police report as "uncooperative" and "initially refused to respond to the Police Department for questioning."<sup>73</sup> When Simon Gonzales did go to the CRPD that day, he entered a restricted area, and was charged with trespass and with the obstruction of public officials.<sup>74</sup> When he was asked by the officer to sign the summons, he "refused", and began to walk out of the lobby in an attempt to keep the officer from serving him the summons.<sup>75</sup>

69. Prior to 1999, the Denver Police had taken Simon Gonzales to a hospital psychiatric facility in 1996 after he attempted suicide in front of Jessica Gonzales and their daughters.<sup>76</sup> A non-

<sup>67</sup> December 11, 2006 Observations from Petitioners, Ex. Q: Castle Rock Police Department Offense Report (Violation of a Restraining Order, Domestic Violence), Dated May 30, 1999.

<sup>68</sup> December 11, 2006 Observations from Petitioners; Ex. I: Critical Incident Team Report, Dated June 23, 1999, R. E. Garrett, Detective, Declaration of Josey Ranson, baby-sitter for the girls and family friend (indicating that "Jessica Ruth made previous police reports noting: Simon deliberately broke the sprinklers while Jessica and the girls were at church. Simon changed the locks on the house after he had moved out, causing Jessica and the girls to be locked out for several hours. The police found Simon in the bedroom after a restraining order had been issued ordering Simon to stay away from the home....Simon had 'lost' control"); Ex. F: Progress Report, CR #99-26856, Report by Investigator Rick Fahlstedt, Dated July 1, 1999, Interview with Ernestine Rivera, Jessica Gonzales' mother (indicating that "Simon had been driving around the house, stalking her [Jessica Gonzales]. That Simon had moved out of the house, but still snuck into the house and hid so he could jump out and scare Jessica or the kids....That Jessica had the locks changed on her house as soon as Simon moved out. That Jessica believes that Simon stole a key from one of the kids. That several weeks ago, Jessica found Simon in her room smoking cigarettes and drinking beer. That Simon was very compulsive and possessive").

<sup>69</sup> December 11, 2006 Observations from Petitioners, Exhibit S: Castle Rock Police Department Municipal Summons, Dated April 18, 1999.

<sup>70</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab G: Statement Signed by Cpl. Patricia A. Lisk.

<sup>71</sup> December 11, 2006 Observations from Petitioners, Ex. Q: Castle Rock Police Department Offense Report (Violation of a Restraining Order, Domestic Violence), Dated May 30, 1999.

<sup>72</sup> December 11, 2006 Observations from Petitioners, Exhibit R: Castle Rock Police Department Offense Report (Trespass on Private Property; Obstruction of Duties of Public Official), Dated May 30, 1999.

<sup>73</sup> December 11, 2006 Observations from Petitioners, Exhibit R: Castle Rock Police Department Offense Report (Trespass on Private Property; Obstruction of Duties of Public Official), Dated May 30, 1999.

<sup>74</sup> December 11, 2006 Observations from Petitioners, Exhibit R: Castle Rock Police Department Offense Report (Trespass on Private Property; Obstruction of Duties of Public Official), Dated May 30, 1999.

<sup>75</sup> Since Simon Gonzales did not listen to the officer, the officer describes how "I placed my right hand on the rear of his neck and my left hand on his left elbow. I turned him around and escorted him to a chair where he was told to sit" and two other officers responded to the lobby to assist with the situation. December 11, 2006 Observations from Petitioners, Exhibit R: Castle Rock Police Department Offense Report (Trespass on Private Property; Obstruction of Duties of Public Official), Dated May 30, 1999.

<sup>76</sup> December 11, 2006 Observations from Petitioners, Ex. E: Declaration of Jessica Ruth Lenahan (Gonzales), Dated December 6, 2006; Ex. F: Progress report, CR #99-26856, Report by Investigator Rick Fahlstedt, Dated July 1, 1999 (including statement from Jessica Gonzales' mother, Ernestine Rivera, "That around January 1997, Simon Gonzales attempted to hang himself in the garage. That Denver police department should have a report on this incident"); Ex. J: Police Emergency Mental Illness Report, June 16, 1996.

extraditable warrant for Mr. Gonzales' arrest had also been issued in Larimer County by June 23, 1999.<sup>77</sup>

70. On Tuesday June 22, 1999 in the evening, Simon Gonzales purchased a Taurus 9mm handgun with 9 mm ammunition, from William George Palsulich, who held a Federal Firearms License since 1992.<sup>78</sup> Simon Gonzales went to Palsulich's house at 7:10 p.m on June 22, 1999 with Leslie, Katheryn and Rebecca Gonzales.<sup>79</sup> Simon Gonzales successfully passed a background check processed through the Federal Bureau of Investigations the evening of June 22<sup>nd</sup>, 1999, which was required to purchase the gun.<sup>80</sup>

### **3. Jessica Lenahan's Contacts with the Castle Rock Police Department during the Evening of June 22, 1999 and the Morning of June 23, 1999**

71. At the time of the events, Jessica Lenahan worked as a janitor at a private cleaning business that serviced the CRPD and knew most of the officers, dispatchers and employees there.<sup>81</sup> Not knowing the whereabouts of her daughters, the record before the Commission shows that Jessica Lenahan had eight contacts with the CRPD during the evening of June 22, 1999 and the morning of June 23, 1999.<sup>82</sup> The eight contacts included four telephone calls she placed to the CRPD emergency line; one telephone call she placed to the CRPD non-emergency line at the request of a dispatcher; one phone call from a CRPD officer; a visit by two CRPD officers to her

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<sup>77</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab G: Statement signed by Cpl. Patricia A. Lisk, p. 7.

The report including the investigation by the 18th Judicial Critical Incident Team of the shooting death of Simon Gonzales found that records indicated that Simon Gonzales had been contacted by the police prior to June 22, 1999 for the following incidents, among others: on November 7, 1986, Simon Gonzales was arrested for driving under the influence in Pueblo, Colorado; on September 23, 1989, he was arrested for driving under the influence in Denver, Colorado; on April 18, 1999, he was contacted by the CRPD for a traffic altercation; on May 30, 1999, he was contacted by the CRPD for allegedly violating a restraining order issued by Jessica Lenahan; and on May 30, 1999, he was arrested for trespassing in a restricted area of the police building without permission. See, Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, Ex. C, 18<sup>th</sup> Judicial Critical Incident Team Shooting of Simon Gonzalez Castle Rock PD Case #99-3226.

<sup>78</sup> December 11, 2006 Observations from Petitioners, Tab N: Interview with William George Palsulich by the 18<sup>th</sup> Judicial District Critical Incident Team Detectives Bobbie Garret and Christian Contos, June 23, 1999, 7:04 p.m.; Investigation by the Critical Incident Team (CIT) of 18<sup>th</sup> Judicial District. See, Exhibit C of the Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, p. 32.

<sup>79</sup> December 11, 2006 Observations from Petitioners, Tab N: Interview with William George Palsulich by the 18<sup>th</sup> Judicial District Critical Incident Team Detectives Bobbie Garret and Christian Contos, June 23, 1999, 7:04 p.m.; Investigation by the Critical Incident Team (CIT) of 18<sup>th</sup> Judicial District. See, Exhibit C of the Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, p. 32.

<sup>80</sup> December 11, 2006 Observations from Petitioners, Tab N: Interview with William George Palsulich by the 18<sup>th</sup> Judicial District Critical Incident Team Detectives Bobbie Garret and Chirstian Contos, June 23, 1999, 7:04 p.m.

<sup>81</sup> December 11, 2006 Observations from Petitioners, Ex E: Declaration of Jessica Ruth Lenahan (Gonzales), Dated December 6, 2006.

<sup>82</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab A: Jessica Gonzales/Dispatch, Tape Transcription; Tab B: CRPD Incident Report 06/22/99, 19:42 hrs; Tab E: Office of the District Attorney, Eighteenth Judicial District, Report Date: 07/01/99. Report by Karen Meskis, Date of Offense 06/23/99, p. 7 (Statement from Dispatcher Lisk that: At 20:43 Jessica Lenahan called back on a 911 line and stated her children were at Elitches Park with their father); Tab C: Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, CR# 99-3226, Call from Officer Brink to Jessica Gonzales; Tab D: Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, Third Call at 21:57 hrs., CR# 99-3226; and Tab F: Castle Rock Police Department Incident Report 90623004, 06/23/99, 00:06 hrs. See also, December 11, 2006 Observations from Petitioners, Ex. B: Jessica Gonzales/Dispatch, Tape Transcription, CR# 99-3223.



house after the first call; and a visit by her to the CRPD station.<sup>83</sup> During each of these contacts, she reported to the police dispatchers that she held a restraining order against Simon Gonzales, that she did not know where her daughters were, that they were children, and that perhaps they could be with their father.<sup>84</sup>

72. Jessica Lenahan first called the Castle Rock Police Station at 7:42 p.m.<sup>85</sup> on the evening of June 22, 1999, to seek advice.<sup>86</sup> During this call, Jessica Lenahan reported to the dispatcher the following:

I filed a Restraining Order against my husband and we had agreed that whatever night was best, I would let him have the dinner hour.....and I don't know whether he picked them up today or not.... We're leaving but tonight there was no sign of him around or anything and the girls are gone and I don't know if I should go search through town for them.<sup>87</sup>

73. During this call, Jessica Lenahan also communicated to the dispatcher that "the scary part"<sup>88</sup> is that she did not know where her children were, that she was very upset<sup>89</sup> and "I just don't know what to do."<sup>90</sup> She indicated that she had last seen them at 5:30 p.m. and that the girls had a friend with them. As a response to this phone call, two officers were dispatched to Jessica Lenahan and Simon Gonzales' houses and drove around Castle Rock looking for his pick-up truck.<sup>91</sup> During the visit of the officers, Jessica Lenahan explained that Simon Gonzales usually

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<sup>83</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab A: Jessica Gonzales/Dispatch, Tape Transcription; Tab B: CRPD Incident Report 06/22/99, 19:42 hrs; Tab E: Office of the District Attorney, Eighteenth Judicial District, Report Date: 07/01/99. Report by Karen Meskis, Date of Offense 06/23/99, p. 7 (Statement from Dispatcher Lisk that: At 20:43 Jessica Lenahan called back on a 911 line and stated her children were at Elitches Park with their father); Tab C: Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, CR# 99-3226, Call from Officer Brink to Jessica Gonzales; Tab D: Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, Third Call at 21:57 hrs., CR# 99-3226; and Tab F: Castle Rock Police Department Incident Report 90623004, 06/23/99, 00:06 hrs. See also, December 11, 2006 Observations from Petitioners, Ex. B: Jessica Gonzales/Dispatch, Tape Transcription, CR# 99-3223.

<sup>84</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab B: CRPD Incident Report 06/22/99, 19:42 hrs.

<sup>85</sup> Petitioner's Observations concerning the September 22, 2006 Response of the United States Government, December 11, 2006, Exhibit G, Castle Rock Police Department Dispatch Log June 22 and June 23, 1999; U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab A: Jessica Gonzales/Dispatch, Tape Transcription.

<sup>86</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab A: Jessica Gonzales/Dispatch, Tape Transcription.

<sup>87</sup> Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, p. 10, citing U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab A: Jessica Gonzales/Dispatch, Tape Transcription.

<sup>88</sup> Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, p. 10, citing U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab A: Jessica Gonzales/Dispatch, Tape Transcription, at 1.

<sup>89</sup> Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008.

<sup>90</sup> Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, p. 10, citing U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab A: Jessica Gonzales/Dispatch, Tape Transcription.

<sup>91</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab B: CRPD Incident Report 06/22/99, 19:42 hrs; Tab E: Office of the District Attorney, Eighteenth Judicial District. Report Date: 7/01/99, Report by Karen Meskis, Date of offense: 6/23/99, p. 10.

communicated with her when he picked up their daughters, but that he had not contacted her that night.<sup>92</sup>

74. When Jessica Lenahan called the police station for a second time at 8:43 p.m., she informed them that she had learned that her husband had taken their daughters to Denver, outside of the Castle Rock police department jurisdiction, without her knowledge.<sup>93</sup> CRPD Officer Brink returned Jessica Lenahan's telephone call,<sup>94</sup> where she communicated that the girls were at Elitches Park in Denver with their father, that she did not consider this "cool" because two of the girls had school the next day, and that she considered this "highly unusual," "wrong," and "weird."<sup>95</sup> Officer Brink in response advised her to inform the Court that her husband had violated their divorce decree, because based on the information she was offering he did not consider the restraining order violated. He closed the conversation by communicating to her that "at least you know where the kids are right now."<sup>96</sup> At 8:49 p.m. an entry was made in the CRPD dispatch log of telephone calls reflecting Jessica Lenahan's children had been found as reported by her.<sup>97</sup>

75. Jessica Lenahan called the CRPD a third time at 9:57 p.m. that evening.<sup>98</sup> During this call, she informed the dispatcher that her kids were still not home, that she was upset, and that she "did not know what to do."<sup>99</sup> She related to the dispatcher a conversation she had with Simon Gonzales that evening:

I, I just told him [Simon Gonzales], I said, you know I would really like to call the cops cause they're looking for you cause we didn't know.....And he said, we're at Elitches, we're fine.

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<sup>92</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab B: CRPD Incident Report 06/22/99, 19:42 hrs; December 11, 2006 Observations from Petitioners, Tab E: Declaration of Jessica Ruth Lenahan (Gonzalez), dated December 6, 2006.

<sup>93</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab E: Office of the District Attorney, Eighteenth Judicial District. Report Date: 7/01/99, Report by Karen Meskis, Date of offense: 6/23/99.

<sup>94</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab C: Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, Cr #99-3226, Call from Officer Brink to Jessica Gonzales.

<sup>95</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab D: Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, Cr #99-3226, Third Call at 21:57 hours.

<sup>96</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab C: Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, Cr #99-3226, Call from Officer Brink to Jessica Gonzales.

<sup>97</sup> Petitioner's Observations concerning the September 22, 2006 Response of the United States Government, December 11, 2006, Exhibit G, Castle Rock Police Department Dispatch Log June 22 and June 23, 1999; Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, p. 10, citing U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab E: Office of the District Attorney, Eighteenth Judicial District. Report Date: 7/01/99, Report by Karen Meskis, Date of Offense: 6/23/99, p. 7.

<sup>98</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab D: Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, Cr #99-3226, Third Call at 21:57 hours.

<sup>99</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab D: Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, Cr #99-3226, Third Call at 21:57 hours.

And I'm like, well why didn't you tell me. And he said, well cause I thought I had 'em over night and I said, no, you know you didn't.<sup>100</sup>

76. During the call, the dispatcher asked Jessica Lenahan to call her back on a "non-emergency line."<sup>101</sup> In response to Jessica Lenahan's concerns, the dispatcher communicated to her the following:

I don't know what else to say, I mean.....I wish you guys uh, I wish you would have asked or had made some sort of arrangements. I mean that's a little ridiculous making us freak out and thinking the kids are gone...<sup>102</sup>

77. To these comments from the dispatcher, Jessica Lenahan answered "well, I mean, I really thought the kids were gone too," that she was a "mess" and that she was "freaking out."<sup>103</sup> The Dispatcher on duty encouraged Jessica Lenahan to try to call the suspect and then also to return a call to the police department.<sup>104</sup> The same Dispatcher later reported that she "could tell [Jessica] Gonzales was nervous."<sup>105</sup> The Dispatcher reported to investigators subsequently her belief that Simon Gonzales had a wish for a vengeance against the police department because of the contact he had with them recently, where he was charged with trespassing.<sup>106</sup>

78. Another dispatcher reported to the state investigators after the shooting death of Simon Gonzales, that Jessica Lenahan also called around midnight to report that her daughters, ages 7, 8, and 10 were still not home.<sup>107</sup> Dispatcher O'Neill indicates in the report that she detected from her conversations with Jessica Lenahan that "she was very worried about her children" and

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<sup>100</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab D: Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, Cr #99-3226, Third Call at 21:57 hours.

<sup>101</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab D: Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, Cr #99-3226, Third Call at 21:57 hours.

<sup>102</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab D: Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, Cr #99-3226, Third Call at 21:57 hours.

<sup>103</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab D: Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, Cr #99-3226, Third Call at 21:57 hours.

<sup>104</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab D: Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, Cr #99-3226, Third Call at 21:57 hours.

<sup>105</sup> Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, p. 10 citing U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab E: Office of the District Attorney, Eighteenth Judicial District. Report Date: 7/01/99, Report by Karen Meskis, Date of offense: 6/23/99, p. 10.

<sup>106</sup> Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, p. 10 citing U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab E: Office of the District Attorney, Eighteenth Judicial District. Report Date: 7/01/99, Report by Karen Meskis, Date of offense: 6/23/99, p. 10.

<sup>107</sup> December 11, 2006 Observations from Petitioners, Ex. B: Jessica Gonzales/Dispatch, Tape Transcription, CR# 99-3223; U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab E: Office of the District Attorney, Eighteenth Judicial District. Report Date: 7/01/99, Report by Karen Meskis, Date of offense: 6/23/99, p. 2.

that “she wanted an officer to meet her” at her husband’s apartment.<sup>108</sup> Jessica Lenahan informed the dispatcher that Simon Gonzales had run off with the girls.<sup>109</sup> Dispatcher O’Neill advised Jessica Lenahan that an officer would be dispatched and the officer was dispatched by Cpl. Patricia Lisk, but three other calls were pending and the officer was unable to respond.

79. Jessica Lenahan arrived at the police department at about 12:30 a.m, with her 13-year old son and “was crying.”<sup>110</sup> Jessica Lenahan spoke to the dispatchers telling them that “she didn’t know what to do” about her children and that she was “scared for them.”<sup>111</sup> In response, Officer Aaron Ahlfinger was dispatched to the CRPD to speak to Jessica Lenahan and filed a missing person’s report on the children and the truck.<sup>112</sup> She reported to the Officer again that she had a restraining order against Simon Gonzales, that he had picked up their three daughters from her residence around 5:30 p.m that day, that she was afraid he had “lost it,” and that he might be suicidal. She was worried that Simon Gonzales had abducted the children, but said “no” when the Officer asked her whether she believed Simon Gonzales would harm them.<sup>113</sup> She informed the Officer that he might have taken the children to the Pueblo Area and that she had tried to reach him via his home and cell phone since 8:00 p.m., but that he was not answering, and that she was getting a message that the lines were disconnected.<sup>114</sup> After Officer Ahlfinger left the station, he drove through Simon Gonzales’ neighborhood, but did not see his vehicle in front of the residence and also called him on his home and cell phone.<sup>115</sup>

80. An hour after Jessica Lenahan visited the CRPD station, at 1:40 a.m, Officer Ahlfinger requested that Dispatcher Lisk send an “Attempt to Locate BOLO” for Mr. Gonzales and his vehicle.<sup>116</sup> After Officer Ahlfinger left, Dispatcher Lisk began investigating how to send the bulletin on the “attempt to locate” based on the information she had, but was unable to do so by

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<sup>108</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab E: Office of the District Attorney, Eighteenth Judicial District. Report Date: 7/01/99, Report by Karen Meskis, Date of offense: 6/23/99, p. 2.

<sup>109</sup> December 11, 2006 Observations from Petitioners, Ex. B: Jessica Gonzales/Dispatch, Tape Transcription, CR# 99-3223.

<sup>110</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab E: Office of the District Attorney, Eighteenth Judicial District. Report Date: 07/01/99. Report by Karen Meskis, Date of Offense: 06/23/99, p. 3; See also, Tab F, Castle Rock Police Department Incident Report 90623004, 06/23/99, 00:06 hrs.

<sup>111</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab E: Office of the District Attorney, Eighteenth Judicial District. Report Date: 07/01/99. Report by Karen Meskis, Date of Offense: 06/23/99, p. 3; See also, Tab F: Castle Rock Police Department Incident Report 90623004, 06/23/99, 00:06 hrs.

<sup>112</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab F, Castle Rock Police Department Incident Report 90623004, 06/23/99, 00:06 hrs.

<sup>113</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab F, Castle Rock Police Department Incident Report 90623004, 06/23/99, 00:06 hrs.

<sup>114</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab F, Castle Rock Police Department Incident Report 90623004, 06/23/99, 00:06 hrs.

<sup>115</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab F, Castle Rock Police Department Incident Report 90623004, 06/23/99, 00:06 hrs.

<sup>116</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab G: Statement signed by Cpl. Patricia A. Lisk.

the time Simon Gonzales arrived at the CRPD approximately at 3:25 a.m.<sup>117</sup> In a declaration after the shooting death of Simon Gonzales, she stated that between 2:15 – 2:45 a.m. she attempted to find the guidelines in the three books pertaining to Attempt to Locates.<sup>118</sup> She also tried to locate information on Simon Gonzales' driver's license and a valid license plate number for the truck he was driving through the Colorado Department of Motor Vehicles.<sup>119</sup> Cpl. Lisk reported to one of the investigators after Simon Gonzales' shooting death that "she had other problems entering information into the screens for the attempt to locate, i.e., no physical descriptions on the children. Dispatcher Lisk reports that she spent a considerable time looking at CBI manuals and trying to determine how to enter the information while dispatching and answering other calls."<sup>120</sup>

81. At approximately 3:25 a.m. Simon Gonzales drove his pick-up truck to the CRPD and fired shots through the window.<sup>121</sup> There was an exchange of gunfire with officers from the station. In the course of this shooting, he was fatally wounded and killed, and when the officers approached the truck they discovered the bodies of three young girls subsequently identified as Leslie, Katheryn, and Rebecca Gonzales.<sup>122</sup>

#### **4. The Investigation of Leslie, Katheryn and Rebecca Gonzales' Deaths by the Authorities**

82. The Colorado Bureau of Investigations (hereinafter "CBI") undertook a detailed investigation of the crime scene.<sup>123</sup> The investigation report contains: 1) descriptions of the crime scene and how the integrity of the scene was protected by personnel on site, 2) the evidence collected at the crime scene, including evidence relating to the weapons used, and 3) descriptions of the bodies and physical locations of the victims inside the truck. The investigation was undertaken with the involvement of eight CBI crime scene agents, and other personnel on the scene within hours of the shooting.<sup>124</sup> The report of this investigation does not contain any

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<sup>117</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab E: Office of the District Attorney, Eighteenth Judicial District. Report Date: 07/01/99. Report by Karen Meskis, Date of Offense: 06/23/99, p. 6.

<sup>118</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab G: Statement signed by Cpl. Patricia A. Lisk.

<sup>119</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab E: Office of the District Attorney, Eighteenth Judicial District. Report Date: 07/01/99. Report by Karen Meskis, Date of Offense: 06/23/99, p. 6.

<sup>120</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab E: Office of the District Attorney, Eighteenth Judicial District. Report Date: 07/01/99. Report by Karen Meskis, Date of Offense: 06/23/99, p. 6.

<sup>121</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab E: Office of the District Attorney, Eighteenth Judicial District. Report Date: 07/01/99. Report by Karen Meskis, Date of Offense: 06/23/99.

<sup>122</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab E: Office of the District Attorney, Eighteenth Judicial District. Report Date: 07/01/99. Report by Karen Meskis, Date of Offense: 06/23/99, pp. 6-7.

<sup>123</sup> Reply by the Government of the United States of America to the Final Observations Regarding the Merits of the Case by the Petitioners, October 17, 2008, p. 11, mentioning detailed investigation undertaken by the Colorado Bureau of Investigation (CBI), dated July 19, 1999, which can be found at Exhibit B of Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008.

<sup>124</sup> Reply by the Government of the United States of America to the Final Observations Regarding the Merits of the Case by the Petitioners, October 17, 2008, p. 11, mentioning detailed investigation undertaken by the Colorado Bureau of Investigation (CBI), dated July 19, 1999, which can be found at Exhibit B of Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008.

conclusions as to which bullets struck Leslie, Katheryn and Rebecca Gonzales or the time and place of their deaths.

83. A second investigation was undertaken at about 4:30 a.m. on June 23<sup>rd</sup> by the Critical Incident Team (hereinafter "CIT") of the 18<sup>th</sup> Judicial District, involving 18 members of the CIT, as well as a number of additional investigators.<sup>125</sup> This report includes descriptions of the interviews with the five officers involved in the shooting death of Simon Gonzales; interviews of 12 witnesses; an interview with Jessica Lenahan; an interview with Simon Gonzales' ex-girlfriend, Rosemary Young; and interviews with other relatives and acquaintances of Simon and Jessica Lenahan.<sup>126</sup> The final report also includes a statement of Simon Gonzales' history; information regarding the autopsies of Simon Gonzales and his daughters; information regarding additional evidence secured from the homes of Simon Gonzales, Jessica Lenahan and Rosemary Young; a description of the physical evidence recovered from the crime scene; and a discussion of Simon Gonzales' possible motives for the shooting at the CRPD.<sup>127</sup>

84. In its "summary of investigation" section, the CIT report states that as a result of the exchange of gunfire between the police officers and Simon Gonzales, "the 18th Judicial District Critical Incident Team was called out to investigate the circumstances surrounding the shooting."<sup>128</sup> Regarding the death of Leslie, Katheryn and Rebecca Gonzales, the CIT report solely concludes that the "autopsies revealed that the three girls were shot at extremely close range and were not struck by any rounds fired by the officers. The exact location of the homicides of the children has not been determined. There were no injuries to any police officers, bystanders or witnesses. There is no information to indicate that there were any other suspects involved besides Simon James Gonzales."<sup>129</sup>

85. The autopsy reports of Leslie, Katheryn and Rebecca before the Commission only confirm about Rebecca Gonzales that her cause of death was determined to be "brain injuries due to a through and through large caliber gunshot to the right side of the head;"<sup>130</sup> and for both Katheryn and Leslie "brain injuries due to a through and through large caliber gunshot to the left

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<sup>125</sup> Reply by the Government of the United States of America to the Final Observations Regarding the Merits of the Case by the Petitioners, October 17, 2008, p. 11, mentioning detailed investigation undertaken by the Critical Incident Team (CIT) of the 18<sup>th</sup> Judicial District, which can be found at Exhibit C of Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008.

<sup>126</sup> Reply by the Government of the United States of America to the Final Observations Regarding the Merits of the Case by the Petitioners, October 17, 2008, p. 11, mentioning detailed investigation undertaken by the Critical Incident Team (CIT) of the 18<sup>th</sup> Judicial District, which can be found at Exhibit C of Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008.

<sup>127</sup> Reply by the Government of the United States of America to the Final Observations Regarding the Merits of the Case by the Petitioners, October 17, 2008, p. 11, mentioning detailed investigation undertaken by the Critical Incident Team (CIT) of the 18<sup>th</sup> Judicial District, which can be found at Exhibit C of Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008.

<sup>128</sup> Reply by the Government of the United States of America to the Final Observations Regarding the Merits of the Case by the Petitioners, October 17, 2008, p. 11, mentioning detailed investigation undertaken by the Critical Incident Team (CIT) of the 18<sup>th</sup> Judicial District, which can be found at Exhibit C of Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008.

<sup>129</sup> Report of investigation undertaken by the Critical Incident Team (CIT) of the 18<sup>th</sup> Judicial District, which can be found at Exhibit C of Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008.

<sup>130</sup> Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008; Exhibit E: Douglas County Coroner's Report for Rebecca Gonzales.

side of the head.”<sup>131</sup> The autopsy reports do not identify which bullets, those of the CRPD or Simon Gonzales, struck Leslie, Katheryn and Rebecca Gonzales.<sup>132</sup>

## 5. Legal Process for Jessica Lenahan’s Claims in the United States

86. Jessica Lenahan filed suit on January 23, 2001, in the United States District Court for the District of Colorado, a court of federal jurisdiction, alleging that the City of Castle Rock and several police officers had violated her rights under the Due Process Clause of the Fourteenth Amendment, presenting both substantive and procedural challenges as described *supra* para. 37.

87. Accepting her allegations as true, the District Court dismissed her case regarding both claims. The Court held that “[w]hile the State may have been aware of the dangers that [the children] faced in the free world, it played no part in their creation, nor did it do anything to render [them] any more vulnerable to them,” since Jessica Lenahan’s daughters were not in the State’s custody, but their father’s.<sup>133</sup> Therefore, the Court found that the plaintiffs had failed to state a claim since solely proving “inaction” from the police officers does not rise to the level of “conscience-shocking affirmative conduct or indifference,” which is needed to support a violation of substantive due process.<sup>134</sup> In the realm of procedural due process, the District Court held that the regulatory language of the mandatory arrest statute was not truly “mandatory,” since it offered police officers discretion to determine whether probable cause exists, therefore, it considered that Jessica Lenahan did not have a protectable property interest in the enforcement of the order.

88. Thereafter, a panel of judges of the Tenth Circuit Court of Appeals affirmed in part and reversed in part the District Court decision.<sup>135</sup> In regards to Jessica Lenahan’s substantive due process challenge, the Court considered that Jessica Lenahan had failed to show that any affirmative actions by the defendants created or increased the danger to the victims; a requirement that the Court considered necessary to succeed on a substantive due process claim.<sup>136</sup> The Tenth Circuit Court however reached a different conclusion in regards to Jessica Lenahan’s procedural process claim, interpreting the Colorado Mandatory Arrest Statute as containing a mandatory duty to arrest, based on the use of the word “shall”, when an officer has information amounting to probable cause that the order has been violated. The Court considered that the complaint in this case, viewed most favorably to Jessica Lenahan, indicated that defendant police officers used no reasonable means to enforce the restraining order, even though she communicated to the authorities that she held one, and that Simon Gonzales had taken his daughters in violation of this order. Therefore, under these circumstances, the Court concluded that Jessica Lenahan had

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<sup>131</sup> Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008; Exhibit F: Douglas County Coroner’s Report: Katheryn Gonzales, and Exhibit G: Douglas County Coroner’s Report: Leslie Gonzales.

<sup>132</sup> Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008; Exhibits E, F, and G: Douglas County Coroner’s Reports for Rebecca, Katheryn and Leslie Gonzales.

<sup>133</sup> See Petitioners’ petition dated December 27, 2005, Exhibit C: District Court Order, *Gonzales v. City of Castle Rock et Al.*, January 23, 2001, citing *DeShaney v. Winnebago*, 489 U.S. 189, 201 (1989).

<sup>134</sup> See Petitioners’ petition dated December 27, 2005, Exhibit C: District Court Order, *Gonzales v. City of Castle Rock et Al.*, January 23, 2001, p. 69.

<sup>135</sup> See Petitioners’ petition dated December 27, 2005, Exhibit D: 10<sup>th</sup> Circuit Panel Decision, *Gonzales v. City of Castle Rock, et. Al.*, October 15, 2002.

<sup>136</sup> The Tenth Circuit held that a substantive due process argument fails when the plaintiffs are unable to “point to any affirmative actions by the defendants that created or increased the danger to the victims”. See Petitioners’ petition dated December 27, 2005, Exhibit D: 10<sup>th</sup> Circuit Panel Decision, *Gonzales v. City of Castle Rock, et. Al.*, October 15, 2002, p. 6.

effectively alleged a procedural due process claim with respect “to her entitlement to enforcement of the restraining order by every reasonable means.”<sup>137</sup>

89. This finding was then affirmed in a rehearing before all the judges of the court (“*en banc*” review).<sup>138</sup> The Court underscored that Jessica Lenahan’s entitlement to police enforcement of the restraining order arose when the order was issued by the state court, since it was granted based on the court’s finding that “irreparable injury would result to the moving party if no order was issued.”<sup>139</sup> The Court considered that not only the order itself mandated that it be enforced, but the Colorado legislature had also passed a series of statutes to ensure its enforcement. It found that there was no question in this case that the restraining order mandated the arrest of Simon Gonzales under specified circumstances, or at a minimum required the use of reasonable means to enforce the order, which limited the police officers’ discretion in its implementation. Among other findings, the Court ruled that “the statute promised a process by which [Jessica Lenahan’s] restraining order would be given vitality through careful and prompt consideration of an enforcement request, and the constitution requires no less. Denial of that process drained all of the value from her property interest in the restraining order.”<sup>140</sup>

90. Jessica Lenahan’s claims at the national level reached the United States Supreme Court, the highest judicial and appellate court in the United States. On June 27, 2005,<sup>141</sup> the Supreme Court rejected all of Jessica Lenahan’s claims by holding that under the Due Process Clause of the 14<sup>th</sup> Amendment of the U.S. Constitution, Colorado’s law on the police enforcement of restraining orders did not give Jessica Lenahan a property interest in the enforcement of the restraining order against her former husband. In its analysis, the Supreme Court considered the Colorado Statute in question and the pre-printed notice to law enforcement officers on the restraining order, holding that a “well-established tradition of police discretion has long coexisted with apparently mandatory arrest statutes,”<sup>142</sup> and that the “deep-rooted nature of law-enforcement discretion, even in the presence of seemingly mandatory legislative commands,”<sup>143</sup> had been previously recognized by the United States Supreme Court.

91. The Supreme Court specifically noted that:

It is hard to imagine that a Colorado police officer would not have some discretion to determine that – despite probable cause to believe a restraining order has been violated – the circumstances of the violation or the competing duties of that officer or his agency counsel decisively against enforcement in a particular instance. The practical necessity for

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<sup>137</sup> See Petitioners’ petition dated December 27, 2005, Exhibit D: 10<sup>th</sup> Circuit Panel Decision, *Gonzales v. City of Castle Rock, et. Al.*, October 15, 2002, p. 6.

<sup>138</sup> See Petitioners’ petition dated December 27, 2005, Exhibit E: 10<sup>th</sup> Circuit Court En Banc Decision, *Gonzales v. City of Castle Rock, et. Al.*, April 29, 2004.

<sup>139</sup> See Petitioners’ petition dated December 27, 2005, Exhibit E: 10<sup>th</sup> Circuit Court En Banc Decision, *Gonzales v. City of Castle Rock, et. Al.*, April 29, 2004.

<sup>140</sup> See Petitioners’ petition dated December 27, 2005, Exhibit E: 10<sup>th</sup> Circuit Court En Banc Decision, *Gonzales v. City of Castle Rock, et. Al.*, April 29, 2004.

<sup>141</sup> See Petitioners’ petition dated December 27, 2005, Exhibit F: U.S. Supreme Court Decision, *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005), 125 S. Ct. 2796.

<sup>142</sup> See Petitioners’ petition dated December 27, 2005, Exhibit F: U.S. Supreme Court Decision, *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005), 125 S. Ct. 2796, 2805-2806.

<sup>143</sup> See Petitioners’ petition dated December 27, 2005, Exhibit F: U.S. Supreme Court Decision, *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005), 125 S. Ct. 2796, 2806.



discretion is particularly apparent in a case such as this one, where the suspected violator is not actually present and his whereabouts are unknown.<sup>144</sup>

## 6. Problem of Domestic Violence in the United States and Colorado

92. Throughout the processing of this case before the Commission, both parties have presented information related to the situation of domestic violence in the United States and the quality of the state response, as context to their claims.

93. Both parties recognize the gravity and prevalence of the problem of domestic violence in the United States, at the time of the events and the present. The petitioners highlight that in the United States between one and five million women suffer non-fatal violence at the hands of an intimate partner each year.<sup>145</sup> The United States Government characterizes the problem as “acute” and “significant,” and acknowledges that there were at least 3.5 million incidents of domestic violence in a four-year period, contemporary with the facts pertaining to this case.<sup>146</sup> Available estimates only display part of the reality, since reports indicate that only about half of the domestic violence that occurs in the United States is actually reported to the police.<sup>147</sup>

94. Studies and investigations presented by the parties reveal that women constitute the majority of domestic violence victims in the United States.<sup>148</sup> Some sectors of the United States

<sup>144</sup> See Petitioners’ petition dated December 27, 2005, Exhibit F: U.S. Supreme Court Decision, *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005), 125 S. Ct. 2796, 2806.

<sup>145</sup> Petitioners’ petition dated December 27, 2005 and Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, citing statistics from Center for Disease Control and Prevention, *Costs of Intimate Partner Violence against Women in the United States* 18 (2003) (estimating 5.3 million intimate partner assaults against women in the United States each year); Patricia Tjaden and Nancy Thoennes, U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *Extent, Nature and Consequences of Intimate Partner Violence*, July 2000.

<sup>146</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, p. 12.

<sup>147</sup> Feminist Majority Foundation, Domestic Violence Information Center, Domestic Violence Facts, <http://www.feminist.org/other/dv/dvfact.html> cited in Amicus Curiae Presented in Favor of Petitioner by William W. Oxley and others, October 17, 2008, p. 4; Callie Marie Rennison, U.S. Department of Justice, Bureau of Justice Statistics, NCJ 197838, *Intimate Partner Violence, 1993-2001*, 1 [Feb. 2003]. See also, U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, p. 12 citing U.S. Department of Justice, Bureau of Justice Statistics, *Family Violence Statistics*, Mathew Durose and Others (June 2005); Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, citing Lawrence A. Greenfield et al., U.S. Department of Justice, *Violence by Intimates* 38 (1998).

<sup>148</sup> A United States Department of Justice report on family violence statistics discussed by both parties in their pleadings, found that family violence accounted for 11% of all reported and unreported violence between 1998 and 2002, and that the majority of the victims – 73% - were female. In regards to fatal family violence, the same report indicates that about 22% of the murders in 2002 were family murders and 58% of those victims were female. See, U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, p. 12, citing U.S. Department of Justice, Bureau of Justice Statistics, *Family Violence Statistics*, Mathew Durose and Others (June 2005).

The United States Department of Justice has also previously indicated that women are five to eight times more likely to be victims of domestic violence than men. See, Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, citing Lawrence A. Greenfield et al., U.S. Department of Justice, *Violence by Intimates* 38 (1998).

Other studies have found that domestic abuse is the leading cause of injury to American women; that at least one in three American women experience physical abuse by a partner; and that approximately one-third of the women murdered in the United States each year are killed by an intimate partner. See, C.J. Newton, Domestic Violence: An Overview, FINDCOUNSELING.COM Mental Health Journal, February 2001, <http://www.findcounseling.com/journal/domestic-violence/>; Montana State University-Northern, *Statistics*, <http://www.msun.edu/stuaffairs/response/stats/stats/html>, cited in Amicus Curiae Brief presented in favor of petitioners by Women Empowered against Violence (WEAVE) before the IACHR, October 17, 2008.

female population are at a particular risk to domestic violence acts, such as Native American women and those pertaining to low-income groups.<sup>149</sup> Children are also frequently exposed to domestic violence in the United States, although definitive numbers are scarce.<sup>150</sup>

95. Empirical research presented to the Commission also confirms that in order to regain control over departing spouses and children, batterers will escalate violence after the battered spouse attempts to separate from her abuser.<sup>151</sup> In many cases and as part of the escalation of violence, the abduction of the children is a means to coerce the resumption of the marital relationship and/or reestablish the batterer's control.<sup>152</sup> Therefore, when a battered parent seeks to leave an abusive relationship, this is the time where the children are more at risk and more in need of legal protections and interventions from law enforcement agencies.<sup>153</sup>

96. The Commission has also received information in the context of this case indicating that the problem of domestic violence in the United States was considered a "private matter," and therefore, undeserving of protection measures by law enforcement agencies and the justice system.<sup>154</sup> Once domestic violence was finally recognized as a crime, women were still very

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<sup>149</sup> A 2000 national domestic violence survey identified several groups of women that are at a particular risk of domestic violence acts, including women pertaining to lower-income groups and women pertaining to minority groups. See, Patricia Tjaden and Nancy Thoennes, U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *Extent, Nature and Consequences of Intimate Partner Violence*, July 2000, p. 33 (The survey consists of telephone interviews with a nationally representative sample of 8,000 U.S. women and 8,000 U.S. men about their experiences with intimate partner violence. The survey compares victimization rates among women and men, specific racial groups, Hispanics and non-Hispanics, and same-sex and opposite-sex cohabitants. It also examines risk factors associated with intimate partner violence, the rate of injury among rape and physical assault victims, injured victims' use of medical services, and victims' involvement with the justice system).

The United States Congress identified Native American women as a group at particular risk of domestic violence by including a specific title within the VAWA 2005 geared towards the "Safety of Indian Women." VAWA 2005 indicates that Indian women experience the violent crime of battering at a rate of 23.2 per 1,000, compared with 8 per 1,000 among Caucasian women. See, Violence against Women and Department of Justice Reauthorization Act of 2005, P.L. No. 109 – 162 § 901 (2) (2006), Title XI – Safety for Indian Women; Amicus Curiae Brief of November 13, 2008, submitted by Lucy Simpson and Kirsten Matoy Carlson from the Indian Law Resource Center and Jacqueline Agtuca and Terri Henry from the Sacred Circle National Resource Center to End Violence Against Native Women.

Native American women are also the most likely to report experiencing domestic violence, followed by African American women, Caucasian women, and Latina women. See, Matthew R. Durose et al., U.S. Department of Justice, Bureau of Justice Statistics, *Family violence Statistics: Including Statistics on Strangers and Acquaintances*, 10 NCJ 207846 (June 2005), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/fvs.pdf>, cited in Amicus Curiae Brief presented in favor of petitioners by Women Empowered Against Violence (WEAVE) before the IACHR, October 17, 2008, p. 9.

<sup>150</sup> National Center for Children Exposed to Violence, *Domestic Violence* (2007); Bonnie E. Carlson, *Children Exposed to Intimate Partner Violence: Research Findings and Implications for Intervention* 1 Trauma, Violence & Abuse 321, 323 (2000), cited in Amicus Curiae Brief presented in favor of petitioners by William W. Oxley, and others before IACHR, on October 17, 2008, p. 5.

<sup>151</sup> Barbara J. Hart, Minnesota Center against Violence & Abuse, *Parental Abduction and Domestic Violence* (1992), <http://www.mincava.umn.edu/documents/hart/hart.html>, cited in, Amicus Curiae Brief presented in favor of petitioners by William W. Oxley and others before IACHR on October 17, 2008, p. 4, note 10.

<sup>152</sup> Barbara J. Hart, Minnesota Center Against Violence & Abuse, *Parental Abduction and Domestic Violence* (1992), <http://www.mincava.umn.edu/documents/hart/hart.html> cited in Amicus Curiae Brief presented in favor of petitioners by William W. Oxley, and others before IACHR, October 17, 2008, para. 32, p. 8.

<sup>153</sup> Barbara J. Hart, Minnesota Center Against Violence & Abuse, *Parental Abduction and Domestic Violence* (1992), <http://www.mincava.umn.edu/documents/hart/hart.html> cited in Amicus Curiae Brief Presented in Favor of Petitioner by William W. Oxley, and others before IACHR, October 17, 2008, para. 32, p. 8.

<sup>154</sup> For example, the United States Attorney General documented in 1984 that the law enforcement's perception of the problem as a "private matter" translated into inaction from the police and law enforcement agencies in general to domestic violence reports. See, U.S. Department of Justice, *Final Report: Attorney General's Task Force on Family Violence* 3 (1984).

unlikely to gain protection in the United States because of law enforcement's widespread under-enforcement of domestic violence laws.<sup>155</sup> Very often, the police responded to domestic violence calls either by not taking any action, by purposefully delaying their response in the hope of avoiding confrontation, or, by merely attempting to mediate the situation and separate the parties so they could "cool off".<sup>156</sup>

97. Therefore, the creation of the restraining order<sup>157</sup> is widely considered an achievement in the field of domestic violence in the United States, since it was an attempt at the state level to ensure domestic violence would be treated seriously.<sup>158</sup> A 2002 national survey found that female victims of intimate partner violence are significantly more likely than their male counterparts to obtain a protective or restraining order against their assailants.<sup>159</sup> However, one of the most serious historical limitations of civil restraining orders has been their widespread lack of enforcement by the police.<sup>160</sup> Police officers still tend to support "traditional patriarchal gender roles, making it difficult for them to identify with and help female victims."<sup>161</sup>

98. To effectively address the problem of domestic violence, at the federal level, Congress has adopted three major pieces of legislation that recognize the seriousness of domestic violence and the importance of a nationwide response: the Violence against Women Act of 1994 (hereinafter "VAWA 1994"), the Violence against Women Act of 2000 (hereinafter "VAWA 2000") and the Violence against Women and Department of Justice Reauthorization Act of 2005 (hereinafter "VAWA 2005"). VAWA is a comprehensive legislative package including the requirement for states and territories to enforce protection orders issued by other states, tribes and territories. However, most laws that protect persons in the United States from domestic violence and provide civil remedies against perpetrators and other responsible parties are state

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<sup>155</sup> See, e.g., *Thurman v. City of Torrington*, 595 F. Supp. 1521 (D. Conn. 1984) (Case where police refused to respond to woman's repeated requests for protection. Police watched as estranged husband stabbed and kicked victim in her neck, throat, and chest, paralyzing her from the neck down and causing permanent disfigurement.), cited in, Supplemental Amicus Curiae Brief submitted by Maya Raghu from Legal Momentum and others on behalf of petitioners on October 15, 2008, p. 40, note 22.

<sup>156</sup> Michaela M. Hoxter, Comment, *Domestic Violence as a Crime Against the State: The Need for Mandatory Arrest in California*, 85 Ca. L. Rev. 643, 649 (1997); Daniel D. Polsby, *Suppressing Domestic Violence with Law Reforms*, 83 J. Crim. L. & Criminology 250, 250-251 (1992); Dennis P. Saccuzzo, *How Should the Police Respond to Domestic Violence: A Therapeutic Jurisprudence Analysis of Mandatory Arrest*, 39 Santa Clara L. Re. 765, 767 (1999) cited in, Supplemental Amicus Curiae Brief submitted by Maya Raghu from Legal Momentum and others on behalf of petitioners on October 15, 2008, pp. 41- 42.

<sup>157</sup> A restraining order can include provisions restricting contact; prohibiting abusive behavior; determining child custody and visitation issues; mandating offender counseling; and even forbidding firearm possession. By 1989, all 50 states and the District of Columbia had enacted statutes authorizing civil restraining orders as a means of protecting victims of domestic violence and preventing further abuse.

<sup>158</sup> David M. Zlotnick, *Empowering the Battered Woman: The Use of Criminal Contempt Sanctions to Enforce Civil Protection Orders*, 56 Ohio Street L.J. 1153, 1170 (1995) cited in, Supplemental Amicus Curiae Brief submitted by Maya Raghu from Legal Momentum and others on behalf of petitioners on October 15, 2008, p. 46.

<sup>159</sup> This national survey also showed that approximately one million victims of violence against women obtain protective or restraining orders against their attackers annually and approximately 60% of these orders are violated by the assailants. See, Patricia Tjaden and Nancy Thoennes, U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *Extent, Nature and Consequences of Intimate Partner Violence*, July 2000, pp. 52-53.

<sup>160</sup> U.S. Department of Justice, National Institute of Justice, *Research Preview: Civil Protection Orders: Victims' Views on Effectiveness*, January 1998, <http://www.ncjrs.gov/pdffiles/fs000191.pdf>.

<sup>161</sup> Martha Smithey, Susanne Green, & Andrew Giacomazzi, National Criminal Justice Reference Service, *Collaborative Effort and the Effectiveness of Law Enforcement Training Toward Resolving Domestic Violence* 19 (Jan. 14, 2002), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/191840.pdf>, cited in, Amicus Curiae Brief presented in favor of petitioners by Women Empowered Against Violence (WEAVE) before the IACHR, October 17, 2008, p. 6.

and local laws and ordinances. Over the past two decades, states have adopted a host of new laws to improve the ways that the criminal and civil justice systems respond to domestic violence.

99. Finally, the petitioners have presented a series of available statistics pointing to the alarming rates of domestic violence in the State of Colorado, uncontested by the State. Approximately half of the murders in Colorado are committed by an intimate or former partner and the victims are disproportionately female.<sup>162</sup> On average over a period of three years, 45 percent of female homicide victims statewide were killed by an intimate partner.<sup>163</sup> The Denver Metro Domestic Violence Fatality Committee (“the Denver Committee”) identified 54 domestic violence-related fatalities in Colorado for 1996; 52 for 1997; 55 for 1998; and 69 for 1999.<sup>164</sup> Between 2000 and 2005, 17 children were killed during incidents related to domestic violence.<sup>165</sup> In 2005, approximately 7,478 civil protection orders to protect from domestic violence were filed in the Colorado civil court system, and approximately 14,726 domestic violence cases were filed in Colorado county courts, constituting more than 20% of all the criminal cases filed.<sup>166</sup>

100. The petitioners also presented evidence of newspaper coverage indicating that domestic violence-related fatalities continue to rise in Colorado with alarming frequency since the murder of Leslie, Katheryn and Rebecca Gonzales. Between December 2005 and September 2006, five domestic violence-related murders were reported in the state of Colorado, two of which occurred in Castle Rock. In December 2005, a woman was stabbed to death in Denver, Colorado by her ex-boyfriend.<sup>167</sup> More specifically, on April 2006, another woman was found shot dead by her boyfriend in Pueblo, Colorado, who had been previously arrested twice for domestic violence and aggravated assault, and had four restraining orders against him.<sup>168</sup> In September 2006, a woman and her daughter were killed by the husband of the former and the stepfather of the latter in Castle Rock, Colorado; and another woman was killed when her boyfriend dragged her behind a vehicle for more than a mile.<sup>169</sup>

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<sup>162</sup> December 11, 2006 Observations from Petitioners, Tab P: Declaration of Randy James Saucedo, Advocacy and Audit Director of the Colorado Coalition Against Domestic Violence, Dated December 6, 2006, citing as sources Project Safeguard, Fatality Review Project, Colorado 2005.

<sup>163</sup> Margaret L. Abrams, Joanne Belknap & Heather C. Melton, Project Safeguard, *When Domestic Violence Kills: The Formation and Finding of the Denver Metro Domestic Violence Fatality Review Committee* 13 (2001), available at <http://www.members.aol.com/projectsafeguard/fremanual.pdf>, discussed by petitioners in their Observations Concerning the March 2, 2007, Hearing Before the Commission, May 14, 2007.

<sup>164</sup> Margaret L. Abrams, Joanne Belknap & Heather C. Melton, Project Safeguard, *When Domestic Violence Kills: The Formation and finding of the Denver Metro Domestic Violence Fatality Review Committee* 13 (2001), available at <http://www.members.aol.com/projectsafeguard/fremanual.pdf>, discussed by petitioners in their Observations Concerning the March 2, 2007, Hearing Before the Commission, May 14, 2007.

<sup>165</sup> December 11, 2006 Observations from Petitioners, Tab P: Declaration of Randy James Saucedo, Advocacy and Audit Director of the Colorado Coalition Against Domestic Violence, Dated December 6, 2006, citing as sources Project Safeguard, Fatality Review Project, Colorado 2005.

<sup>166</sup> December 11, 2006 Observations from Petitioners, Tab P: Declaration of Randy James Saucedo, Advocacy and Audit Director of the Colorado Coalition Against Domestic Violence, Dated December 6, 2006, citing as source State of Colorado Court Administration Office Website, County Court Civil Filings by Type, FY 2005.

<sup>167</sup> *Scorned Czech Boyfriend Confesses Killing Brazilian Au Pair Ex-Girlfriend in US*, Associated Press, December 15, 2005, discussed by petitioners in their Observations Concerning the March 2, 2007, Hearing Before the Commission, May 14, 2007, p. 22, note 79.

<sup>168</sup> Nick Bonham, *Police Label Homicide “Fatal-Attraction Killing”*, The Pueblo Chieftan, April 4, 2006, discussed by petitioners in their Observations Concerning the March 2, 2007, Hearing Before the Commission, May 14, 2007. p. 22, note 80.

<sup>169</sup> John C. Esslin & Tillie Fong, *Police Think Man Killed Spouse, Stepdaughter*, Rocky Mountain News, Sep. 14, 2006, and Don Mitchell, *Murder, Kidnap Charges Filed in Colorado Dragging Death, Suspect Accused of Killing Girlfriend*,  
Continues...

## **B. Considerations of Law**

101. The Commission now presents its conclusions as to the human rights violations claimed in this case under Articles I, II, IV, V, VI, VII, XVIII and XXIV of the American Declaration, based on the proven facts and the additional considerations advanced in this section.

### **1. The Right to Equality before the Law and the Obligation not to Discriminate (Article II), the Right to Life (Article I), and the Right to Special Protection (Article VII), established in the American Declaration**

102. Article II of the American Declaration provides that:

All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.

103. Article I of the American Declaration provides that:

Every human being has the right to life, liberty and the security of his person.

104. Article VII of the American Declaration, in turn, establishes that:

All women, during pregnancy and the nursing period, and all children, have the right to special protection, care and aid.

105. The petitioners argue that discrimination in violation of Article II of the American Declaration was the common thread in all of the State presumed failures to guarantee the rights of Jessica Lenahan and her daughters enumerated in said instrument. They contend that the State's failure to adequately respond to Jessica Lenahan's calls regarding the restraining order, to conduct an investigation into the death of Leslie, Katheryn and Rebecca Gonzales, and to offer her an appropriate remedy for the police failure to enforce this order, all constituted acts of discrimination and breaches to their right to equality before the law and non-discrimination under Article II of the American Declaration. They also contend that the State's duty to protect these victims from domestic violence was of broad reach, also implicating their right to life and their right to special protection under Articles I and VII of the American Declaration, given the factual circumstances of this case. The petitioners allege that the American Declaration imposes a duty on State parties to adopt measures to respect and ensure the full and free exercise of the human rights enumerated therein; a duty which under certain circumstances requires State action to prevent and respond to the conduct of private persons. They furthermore invoke the due diligence principle to interpret the scope of State obligations under the American Declaration in cases of violence against women; obligations they consider the State failed to discharge in this case.

106. The State, for its part rejects the petitioners' arguments by claiming that the tragic murders of Leslie, Katheryn and Rebecca Gonzales were not foreseen by anyone, and therefore, the State did act diligently to protect their lives, based on the information that the CRPD had available at the time of the events. The State also alleges that the state authorities adequately investigated the death of Leslie, Katheryn and Rebecca Gonzales, and therefore, did not incur in any discrimination. The State rejects the arguments presented by the parties related to the American Declaration and the applicability of the due diligence principle to the facts of this case by

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...continuation

Associated Press, September 26, 2006, discussed by petitioners in their Observations Concerning the March 2, 2007, Hearing Before the Commission, May 14, 2007, page 22, notes 81 and 83.

claiming that: a) the American Declaration is a non-binding instrument and its provisions are aspirational; b) that the American Declaration is devoid of any provision that imposes an affirmative duty on States to take action to prevent the commission of crimes by private actors; and that b) even though the due diligence principle has found expression in several international instruments related to the problem of violence against women, its content is still unclear.

107. The Commission has repeatedly established that the right to equality and non discrimination contained in Article II of the American Declaration is a fundamental principle of the inter-American system of human rights.<sup>170</sup> The principle of non-discrimination is the backbone of the universal and regional systems for the protection of human rights.<sup>171</sup>

108. As with all fundamental rights and freedoms, the Commission has observed that States are not only obligated to provide for equal protection of the law.<sup>172</sup> They must also adopt the legislative, policy and other measures necessary to guarantee the effective enjoyment of the rights protected under Article II of the American Declaration.<sup>173</sup>

109. The Commission has clarified that the right to equality before the law does not mean that the substantive provisions of the law have to be the same for everyone, but that the application of the law should be equal for all without discrimination.<sup>174</sup> In practice this means that States have the obligation to adopt the measures necessary to recognize and guarantee the effective equality of all persons before the law; to abstain from introducing in their legal framework regulations that are discriminatory towards certain groups either in their face or in practice; and to combat discriminatory practices.<sup>175</sup> The Commission has underscored that laws and policies should be examined to ensure that they comply with the principles of equality and non-discrimination; an analysis that should assess their potential discriminatory impact, even when their formulation or wording appears neutral, or they apply without textual distinctions.<sup>176</sup>

110. Gender-based violence is one of the most extreme and pervasive forms of discrimination, severely impairing and nullifying the enforcement of women's rights.<sup>177</sup> The inter-

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<sup>170</sup> See, IACHR Report 40/04, Case 12.053, *Maya Indigenous Community* (Belize), October 12, 2004, para. 163; IACHR Report 67/06, Case 12.476, *Oscar Elías Bicer et al.* (Cuba), October 21, 2006, para. 228; IACHR, *Report on Terrorism and Human Rights*, Doc. OEA/Ser.L.V/II.116 Doc. 5 rev. 1 corr. , 22 October 2002, para. 335.

<sup>171</sup> See, e.g., International Covenant on Civil and Political Rights (Articles 2 and 26); International Covenant on Economic, Social and Cultural Rights (Articles 2.2 and 3); European Convention on Human Rights (Article 14); African Charter on Human and People's Rights (Article 2).

<sup>172</sup> IACHR, Report N° 40/04, Case 12.053, *Maya Indigenous Community* (Belize), October 12, 2004, para. 162.

<sup>173</sup> IACHR, Report N°40/04, Case 12.053, *Maya Indigenous Community* (Belize), October 12, 2004, para. 162.

<sup>174</sup> IACHR, Report N° 57/96, Case 11.139, *William Andrews* (United States), December 6, 1996, para. 173.

<sup>175</sup> IACHR, Report N° 67/06, Case 12.476, *Oscar Elías Bicer et al.* (Cuba), October 21, 2006, paras. 228-231; IACHR Report N° 40/04, Case 12.053, *Maya Indigenous Community* (Belize), October 12, 2004, paras. 162 and 166.

<sup>176</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L.V/II. doc.68, January 20, 2007, para. 90.

<sup>177</sup> See, e.g., United Nations General Assembly Resolution, Human Rights Council, *Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*, A/HRC/14/L.9/Rev.1, 16 June 2010; United Nations Declaration on the Elimination of Violence against Women, General Assembly Resolution 48/104, December 20, 1993, A/RES/48/104, February 23, 1994; United Nations, *Beijing Declaration and Platform for Action*, Fourth World Conference on Women, September 15, 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995); CEDAW Committee, *General Recommendation 19: Violence against Women*, (11<sup>th</sup> Session 1992), U.N. Doc.A/47/38 at 1 (1993).

American system as well has consistently highlighted the strong connection between the problems of discrimination and violence against women.<sup>178</sup>

111. In the same vein, the international and regional systems have pronounced on the strong link between discrimination, violence and due diligence, emphasizing that a State's failure to act with due diligence to protect women from violence constitutes a form of discrimination, and denies women their right to equality before the law.<sup>179</sup> These principles have also been applied to hold States responsible for failures to protect women from domestic violence acts perpetrated by private actors.<sup>180</sup> Domestic violence, for its part, has been recognized at the international level as a human rights violation and one of the most pervasive forms of discrimination, affecting women of all ages, ethnicities, races and social classes.<sup>181</sup>

112. Various international human rights bodies have moreover considered State failures in the realm of domestic violence not only discriminatory, but also violations to the right to life of women.<sup>182</sup> The Commission has described the right to life "as the supreme right of the human being, respect for which the enjoyment of all other rights depends."<sup>183</sup> The importance of the right to life is reflected in its incorporation into every key international human rights instrument.<sup>184</sup> The right to life is one of the core rights protected by the American Declaration which has undoubtedly attained the status of customary international law.<sup>185</sup>

113. The Commission has also recognized that certain groups of women face discrimination on the basis of more than one factor during their lifetime, based on their young age, race and ethnic origin, among others, which increases their exposure to acts of violence.<sup>186</sup> Protection measures are considered particularly critical in the case of girl-children, for example,

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<sup>178</sup> See generally, IACHR, Report N° 28/07, Cases 12.496-12.498, *Claudia Ivette González and Others*, (Mexico), March 9, 2007; IACHR, Report N° 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), Annual Report of the IACHR 2001; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, Inter-Am. C.H.R., OEA/Ser.LV/II, Doc. 68 (January 20, 2007); I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*, Judgment of November 16, 2009.

<sup>179</sup> See generally, CEDAW Committee, Communication 2/2003, *Ms. A.T. v. Hungary*, 26 January 2005; European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, 9 June 2009; IACHR, Report N° 28/07, Cases 12.496-12.498, *Claudia Ivette González and Others* (Mexico), March 9, 2007; I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*, Judgment of November 16, 2009.

<sup>180</sup> See generally, IACHR, Report N° 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), April 16, 2001; European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, 9 June 2009.

<sup>181</sup> United Nations General Assembly, *Elimination of Domestic Violence against Women*, U.N. Doc. A/Res/58/147 (February 19, 2004).

<sup>182</sup> See generally, European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, 9 June 2009; European Court of Human Rights, *Kontrová v. Slovakia*, no. 7510/04, ECHR 2007-VI (extracts); CEDAW Committee, Views on Communication No. 5/2005, *Sahide Goekce v. Austria*, July 21, 2004.

<sup>183</sup> IACHR, Report 97/03, Case 11.193, *Gary T. Graham* (Shaka Sankofa) v. United States, December 29, 2003, para. 26; IACHR, Report 62/02, Case 12.285, *Michael Domingues* (United States), October 22, 2002, para. 38.

<sup>184</sup> See, e.g., Universal Declaration of Human Rights, article 3; International Covenant on Civil and Political Rights, article 6; European Convention on Human Rights, article 2; African Charter on Human Rights and Peoples' Rights, article 4, among others.

<sup>185</sup> IACHR, *Report on Terrorism and Human Rights*, Doc. OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr., 22 October 2002, para. para. 38, note 103.

<sup>186</sup> IACHR, Report N° 28/07, Cases 12.496-12.498, *Claudia Ivette González and Others* (Mexico), March 9, 2007, paras. 251-252; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. LV/II. doc.68, January 20, 2007, paras. 195-197; IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/LV/II. 124/Doc.6, October 18, 2006, paras. 102-106; IACHR, *Report on the Rights of Women in Haiti to be Free from Violence and Discrimination*, OEA/Ser.LV/II, Doc. 64, March 10, 2009, para. 90.

since they may be at a greater risk of human rights violations based on two factors, their sex and age. This principle of special protection is contained in Article VII of the American Declaration.

114. In light of the parties' arguments and submissions, there are three questions before the Commission under Articles I, II and VII of the American Declaration that it will review in the following section. The first is whether the obligation not to discriminate contained in Article II of the American Declaration requires member States to act to protect women from domestic violence; understanding domestic violence as an extreme form of discrimination. The second question pertains to the content and scope of this legal obligation under the American Declaration in light of the internationally recognized due diligence principle, and when analyzed in conjunction with the obligations to protect the right to life and to provide special protection contained in Articles I and VII of the American Declaration. The third is whether this obligation was met by the authorities in this case.



**a. Legal obligation to protect women from domestic violence under Article II of the American Declaration**

115. The Commission begins analyzing this first question by underscoring its holding at the admissibility stage,<sup>187</sup> that according to the well-established and long-standing jurisprudence and practice of the inter-American human rights system, the American Declaration is recognized as constituting a source of legal obligation for OAS member states, including those States that are not parties to the American Convention on Human Rights.<sup>188</sup> These obligations are considered to flow from the human rights obligations of Member States under the OAS Charter.<sup>189</sup> Member States have agreed that the content of the general principles of the OAS Charter is contained in and defined by the American Declaration,<sup>190</sup> as well as the customary legal status of the rights protected under many of the Declaration's core provisions.<sup>191</sup>

116. The inter-American system has moreover held that the Declaration is a source of international obligation for all OAS member states, including those that have ratified the American Convention.<sup>192</sup> The American Declaration is part of the human rights framework established by the OAS member states, one that refers to the obligations and responsibilities of States and mandates them to refrain from supporting, tolerating or acquiescing in acts or omissions that contravene their human rights commitments.

117. As a source of legal obligation, States must implement the rights established in the American Declaration in practice within their jurisdiction.<sup>193</sup> The Commission has indicated that the obligation to respect and ensure human rights is specifically set forth in certain provisions of the American Declaration.<sup>194</sup> International instruments in general require State parties not only to

<sup>187</sup> IACHR, Report on Admissibility N° 52/07, Petition 1490-05, *Jessica Gonzales and Others (United States)*, July 24, 2007, para. 56.

<sup>188</sup> See I/A Court H.R., *Advisory Opinion OC-10/89 "Interpretation of the Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights"*, July 14, 1989, Ser. A N° 10 (1989), paras. 35-45; *James Terry Roach and Jay Pinkerton v. United States*, Case 9647, Res. 3/87, 22 September 1987, Annual Report of the IACHR 1986-87, paras. 46-49.

<sup>189</sup> Charter of the Organization of American States, Arts. 3, 16, 51.

<sup>190</sup> See *e.g.* OAS General Assembly Resolution 314, AG/RES. 314 (VII-O/77), June 22, 1977 (entrusting the Inter-American Commission with the preparation of a study to "set forth their obligations to carry out the commitments assumed in the American Declaration of the Rights and Duties of Man"); OAS General Assembly Resolution 371, AG/RES (VIII-O/78), July 1, 1978 (reaffirming its commitment to "promote the observance of the American Declaration of the Rights and Duties of Man"); OAS General Assembly Resolution 370, AG/RES. 370 (VIII-O/78), July 1, 1978 (referring to the "international commitments" of OAS member states to respect the rights recognized in the American Declaration of the Rights and Duties of Man).

<sup>191</sup> IACHR, Report N° 19/02, Case 12.379, *Lare-Reyes et al.* (United States), February 27, 2002, para. 46.

<sup>192</sup> See I/A Court H.R., *Advisory Opinion OC-10/89 "Interpretation of the Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights"*, July 14, 1989, Ser. A N° 10 (1989), para. 45 (The Court held that "for the member states of the Organization, the Declaration is the text that defines the human rights referred to in the Charter").

<sup>193</sup> See, *as reference*, Statute of the Inter-American Commission on Human Rights (1979), article 1, providing that the Commission was created "to promote the observance and defense of human rights" and defining human rights as those rights set forth both in the American Declaration and the American Convention. See also, American Convention on Human Rights, article 29 (d), stating that no provision of the Convention should be interpreted "excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have;" See also, Rules of Procedure of the Inter-American Commission of Human Rights (2009), articles 51 and 52, empowering the Commission to receive and examine petitions that allege violations of the rights contained in the American Declaration in relation to OAS members states that are not parties to the American Convention.

<sup>194</sup> Inter-American Commission on Human Rights, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr. 22 October 2002, para. 339. The report cites as examples Articles XVIII and XXIV of the American Declaration.

respect the rights enumerated therein, but also to ensure that individuals within their jurisdictions also exercise those rights. The continuum of human rights obligations is not only negative in nature; it also requires positive action from States.

118. Consonant with this principle, the Commission in its decisions has repeatedly interpreted the American Declaration as requiring States to adopt measures to give legal effect to the rights contained in the American Declaration, including cases alleging violations under Article II.<sup>195</sup> The Commission has not only required States to refrain from committing human rights violations contrary to the provisions of the American Declaration,<sup>196</sup> but also to adopt affirmative measures to guarantee that the individuals subject to their jurisdiction can exercise and enjoy the rights contained in the American Declaration.<sup>197</sup> The Commission has traditionally interpreted the scope of the obligations established under the American Declaration in the context of the international and inter-American human rights systems more broadly, in light of developments in the field of international human rights law since the instrument was first adopted, and with due regard to other rules of international law applicable to members states.<sup>198</sup>

119. In its analysis of the legal obligations contained in the American Declaration, the Commission has also noted that a State can be held responsible for the conduct of non-State actors in certain circumstances.<sup>199</sup> It has moreover held that the rights contained in the American Declaration may be implicated when a State fails to prevent, prosecute and sanction acts of domestic violence perpetrated by private individuals.<sup>200</sup> Furthermore, the Commission notes that both the universal system of human rights and the inter-American system of human rights – referring to the International Covenant on Civil and Political Rights, the American Convention, and other international instruments - have underscored that the duty of the State to implement human rights obligations in practice can extend to the prevention and response to the acts of private actors.<sup>201</sup>

<sup>195</sup> IACHR, Report N° 40/04, Case 12.053, *Maya Indigenous Community* (Belize), October 12, 2004, para. 162; IACHR Report N° 67/06, Case 12.476, *Oscar Elías Bicet et al.* (Cuba), October 21, 2006, paras. 227-231.

<sup>196</sup> See, e.g., IACHR, Report 63/08, Case 12.534, *Andrea Mortlock* (United States), July 25, 2008, paras. 75-95; IACHR, Report 62/02, Case 12.285, *Michael Domingues* (United States), October 22, 2002, paras. 84-87.

<sup>197</sup> See, e.g., IACHR, Report N° 81/10, Case 12.562, *Wayne Smith, Hugo Armendariz, et al.* (United States), July 12, 2010 paras. 61-65; IACHR, Report N° 40/04, Case 12.053, *Maya Indigenous Community* (Belize), October 12, 2004, paras. 122-135, 162, and 193-196; IACHR, Report N° 75/02, Case 11.140, *Mary and Carrie Dann* (United States, December 27, 2002, paras. 124-145.

<sup>198</sup> See, generally, IACHR, Report N° 81/10, Case 12.562, *Wayne Smith, Hugo Armendariz, et al.* (United States), July 12, 2010; IACHR, Report N° 63/08, Case 12.534, *Andrea Mortlock (United States)*, July 25, 2008; IACHR, Report N° 40/04, Case 12.053, *Maya Indigenous Community* (Belize), October 12, 2004; IACHR, Report N° 75/02, Case 11.140, *Mary and Carrie Dann* (United States, December 27, 2002; IACHR, Report N° 62/02, Case 12.285, *Michael Domingues* (United States), October 22, 2002.

<sup>199</sup> IACHR, Report N° 40/04, Case 12.053, *Maya Indigenous Community* (Belize), October 12, 2004, paras. 136-156 (The Commission found the State of Belize responsible under the American Declaration when it granted logging and oil concessions to third parties to utilize the land occupied by the Maya people, without the effective consultation and the informed consent of this indigenous community, resulting in significant environmental damage); IACHR, Resolution 12/85, Case 7615 (Brazil), March 5, 1985 (The Commission found the State of Brazil responsible under the American Declaration when it failed to undertake timely and effective measures to protect the Yanomami indigenous community from the acts of private individuals settling in their territory - due to the construction of a highway - which resulted in the widespread influx of epidemics and disease).

<sup>200</sup> See, Report N° 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), Annual Report of the IACHR 2001, paras. 3, 37-44.

<sup>201</sup> See, e.g, Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, May 26, 2004; I/A Court H.R., *Velásquez Rodríguez* Case, Judgment of July 29, 1988, Series C No. 4.

120. In light of these considerations, the Commission observes that States are obligated under the American Declaration to give legal effect to the obligations contained in Article II of the American Declaration. The obligations established in Article II extend to the prevention and eradication of violence against women, as a crucial component of the State's duty to eliminate both direct and indirect forms of discrimination. In accordance with this duty, State responsibility may be incurred for failures to protect women from domestic violence perpetrated by private actors in certain circumstances.

121. The Commission also underscores that a State's breach of its obligation to protect women from domestic violence under Article II may also give rise to violations of the right to life established in Article I of the American Declaration, and the duty to provide special protection under Article VII of the American Declaration in given cases. These principles will be reviewed in the following section.

### **b. The American Declaration, the Due Diligence Principle and Domestic Violence**

122. The Commission notes that the principle of due diligence has a long history in the international legal system and its standards on state responsibility. It has been applied in a range of circumstances to mandate States to prevent, punish, and provide remedies for acts of violence, when these are committed by either State or non-State actors.<sup>202</sup>

123. The Commission moreover observes that there is a broad international consensus over the use of the due diligence principle to interpret the content of State legal obligations towards the problem of violence against women; a consensus that extends to the problem of domestic violence. This consensus is a reflection of the international community's growing recognition of violence against women as a human rights problem requiring State action.<sup>203</sup>

124. This consensus has found expression in a diversity of international instruments, including General Assembly resolutions adopted by consensus,<sup>204</sup> broadly-approved declarations and platforms,<sup>205</sup> treaties,<sup>206</sup> views from treaty bodies,<sup>207</sup> custom,<sup>208</sup> jurisprudence from the universal

<sup>202</sup> For a more detailed discussion, see generally J. Hessbruegge. 2004. "The Historical development of the doctrines of attribution and due diligence in international law", New York University Journal of International Law, vol. 36; Robert P. Barnidge, Jr., The Due Diligence Principle under International Law, International Community Law Review (2006); Johanna Bourke-Martignoni, *The History and Development of the Due Diligence Standard in International Law and its Role in the Protection of Women against Violence*, Due Diligence and its Application to Protect Women from Violence (2008); Report from Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, *The Due Diligence Standard as a Tool for the Elimination of Violence against Women*, E/CN.4/2006/61.

<sup>203</sup> See, e.g., *Vienna Declaration and Programme of Action*, A/CONF.157/23, 12 July 1993, paras. 18 and 38.

<sup>204</sup> See, e.g., United Nations General Assembly Resolution, Human Rights Council, *Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*, A/HRC/14/L.9/Rev.1, 16 June 2010 (adopted without a vote); United Nations General Assembly Resolution, *Intensification of efforts to eliminate all forms of violence against women*, A/RES/64/137, 11 February 2010 (adopted without a vote); United Nations, *Declaration on the Elimination of Violence against Women*, General Assembly resolution 48/104, December 20, 1993, A/RES/48/104, February 23, 1994 (adopted without a vote). See also, *Elimination of Domestic Violence against Women*, G.A. Res. 58/147, U.N. GAOR, 58<sup>th</sup> Sess., U.N. Doc. A/Res/58/147 (February 19, 2004) (adopted without a vote).

<sup>205</sup> See, e.g., United Nations, *Beijing Declaration and Platform for Action*, Fourth World Conference on Women, September 15, 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995), paras. 112-126.

<sup>206</sup> See, e.g., Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter "Convention of Belém do Pará"), Article 7(b).

<sup>207</sup> See, e.g., United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 19, Violence against women*, U.N. Doc. HRI/GEN/1/Rev.1 (1994), para. 11.

and regional systems,<sup>209</sup> and other sources of international law. For example, the United Nations Human Rights Council, has underscored this year that States must exercise due diligence to prevent, investigate, prosecute and punish the perpetrators of violence against women and girl-children, and that the failure to do so "violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms."<sup>210</sup>

125. The international community has consistently referenced the due diligence standard as a way of understanding what State's human rights obligations mean in practice when it comes to violence perpetrated against women of varying ages and in different contexts, including domestic violence. This principle has also been crucial in defining the circumstances under which a State may be obligated to prevent and respond to the acts or omissions of private actors. This duty encompasses the organization of the entire state structure – including the State's legislative framework, public policies, law enforcement machinery and judicial system - to adequately and effectively prevent and respond to these problems.<sup>211</sup> Both the Inter-American Commission and the Court have invoked the due diligence principle as a benchmark to rule on cases and situations of violence against women perpetrated by private actors, including those pertaining to girl-children.<sup>212</sup>

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<sup>208</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, *The Due Diligence Standard as a Tool for the Elimination of Violence against Women*, Commission on Human Rights, Sixty-second session, E/CN.4/2006/61, January 20, 2006, para. 29 (The United Nations Special Rapporteur on Violence against Women therein established that the duty of due diligence has attained the status of a norm of customary international law, which obligates States to prevent and respond with due diligence to acts of violence against women).

<sup>209</sup> See, e.g., European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, 9 June 2009, para. 246; Committee on the Elimination of Discrimination against Women, Views on Communication No. 6/2005, *Fatma Yildirim v. Austria*, July 21, 2004, para. 12.1.1; Committee on the Elimination of Discrimination against Women, Views on Communication No. No. 2/2003, *A.T. v. Hungary*, January 26, 2003, para. 9.2.

<sup>210</sup> United Nations General Assembly Resolution, Human Rights Council, *Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*, A/HRC/14/L.9/Rev.1, 16 June 2010.

<sup>211</sup> See, e.g., United Nations General Assembly Resolution, Human Rights Council, *Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*, A/HRC/14/L.9/Rev.1, 16 June 2010, paras. 1-16; United Nations, *Declaration on the Elimination of Violence against Women*, General Assembly resolution 48/104, December 20, 1993, A/RES/48/104, February 23, 1994, Article 4; United Nations General Assembly Resolution, *Intensification of efforts to eliminate all forms of violence against women*, A/RES/63/155, January 30, 2009, paras. 8-16; CEDAW, General Recommendation 19: *Violence against Women*, (11<sup>th</sup> Session 1992), U.N. Doc.A/47/38 at 1 (1993), paras. 1-23.

See also, IACHR, Report 28/07, Cases 12.496-12.498, *Claudia Ivette González and Others*, March 9, 2007; IACHR, Report N° 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), April 16, 2001; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007; I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*, Judgment of November 16, 2009.

For references to the European and African systems of human rights see, European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, 9 June 2009; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, 11 July 2003, Article 4.

<sup>212</sup> See, e.g., IACHR, Report N° 28/07, Cases 12.496-12.498, *Claudia Ivette Gonzalez and Others* (Mexico), March 9, 2007, paras. 160-255; IACHR, Report N° 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), April 16, 2001, paras. 55-58; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, paras. 26-58; IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003, para. 104; IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/LN/II. 124/Doc.6, October 18, 2006, para. 24; IACHR, *Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres*, OEA/Ser.L/V/II.134, Doc. 63, March 10, 2009, para. 44; IACHR, *Report on the Rights of Women in Haiti to be Free from Violence and Discrimination*, OEA/Ser.L/V/II, Doc. 64, March 10, 2009, para. 80. See also generally, I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205.

126. The evolving law and practice related to the application of the due diligence standard in cases of violence against women highlights in particular four principles. First, international bodies have consistently established that a State may incur international responsibility for failing to act with due diligence to prevent, investigate, sanction and offer reparations for acts of violence against women; a duty which may apply to actions committed by private actors in certain circumstances.<sup>213</sup> Second, they underscore the link between discrimination, violence against women and due diligence, highlighting that the States' duty to address violence against women also involves measures to prevent and respond to the discrimination that perpetuates this problem.<sup>214</sup> States must adopt the required measures to modify the social and cultural patterns of conduct of men and women and to 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.

127. Third, they emphasize the link between the duty to act with due diligence and the obligation of States to guarantee access to adequate and effective judicial remedies for victims and their family members when they suffer acts of violence.<sup>215</sup> Fourth, the international and regional systems have identified 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, among these girl-children, and women pertaining to ethnic, racial, and minority groups; a factor which must be considered by States in the adoption of measures to prevent all forms of violence.<sup>216</sup>

128. The protection of the right to life is a critical component of a State's due diligence obligation to protect women from acts of violence. This legal obligation pertains to the entire state institution, including the actions of those entrusted with safeguarding the security of the State, such as the police forces.<sup>217</sup> It also extends to the obligations a State may have to prevent and respond to the actions of non-state actors and private persons.<sup>218</sup>

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<sup>213</sup> See generally, IACHR, Report N° 28/07, Cases 12.496-12.498, *Claudia Ivette González and Others* (Mexico), March 9, 2007; European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, 9 June 2009; CEDAW Committee, Views on Communication 6/2005, *Fatma Yildirim v. Austria* (July 21, 2004).

<sup>214</sup> See, e.g., United Nations, *Declaration on the Elimination of Violence against Women*, General Assembly resolution 48/104, December 20, 1993, A/RES/48/104, February 23, 1994, articles 3 and 4; United Nations, Committee on the Elimination of Discrimination against Women, General Recommendation 19, *Violence against women*, U.N. Doc. HRI/GEN/1/Rev.1 (1994), paras. 1, 11, and 23; IACHR, Report N° 4/01, *Maria Eugenia Morales de Sierra* (Guatemala), January 19, 2001, para. 44.

<sup>215</sup> See, e.g., United Nations General Assembly Resolution, *Intensification of efforts to eliminate all forms of violence against women*, A/RES/63/155, January 30, 2009, paras. 11, 14, 15 and 16; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, Inter-Am. C.H.R., OEA/Ser.LV/II, Doc. 68 (January 20, 2007), paras. 123-216; IACHR, Report N° 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), Annual Report of the IACHR 2001, paras. 36-44.

<sup>216</sup> United Nations General Assembly Resolution, Human Rights Council, *Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*, A/HRC/14/L.9/Rev.1, 16 June 2010, para. 10; IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/LN/II.124/Doc.6, October 18, 2006, para. 140; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, Inter-Am. C.H.R., OEA/Ser.LV/II, Doc. 68 (January 20, 2007), para. 272; CEDAW Committee, General Recommendation 25, on *Temporary Special Measures*, U.N. Doc./CEDAW/C/2004/1/WP.1/Rev.1 (2004), section II, para. 12.

<sup>217</sup> See, IACHR, Report N° 28/07, Cases 12.496-12.498, *Claudia Ivette Gonzalez and Others* (Mexico), March 9, 2007, paras. 247-255; I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 245.

<sup>218</sup> See, IACHR, Report N° 28/07, Cases 12.496-12.498, *Claudia Ivette Gonzalez and Others* (Mexico), March 9, 2007, paras. 247-255.

129. The duty of protection related to the right to life is considered especially rigorous in the case of girl-children.<sup>219</sup> This stems, on the one hand, from the broadly-recognized international obligation to provide special protection to children, due to their physical and emotional development.<sup>220</sup> On the other, it is linked to the international recognition that the due diligence duty of States to protect and prevent violence has special connotations in the case of women, due to the historical discrimination they have faced as a group.<sup>221</sup>

130. In light of these considerations, the Commission observes that the evolving standards related to the due diligence principle are relevant to interpret the scope and reach of States' legal obligations under Articles I, II, and VII of the American Declaration in cases of violence against women and girl-children taking place in the domestic context. Cases of violence against women perpetrated by private actors require an integrated analysis of the State's legal obligations under the American Declaration to act with due diligence to prevent, investigate, sanction and offer remedies.

131. International and regional human rights bodies have also applied the due diligence principle to individual cases of domestic violence. The Inter-American Commission, for its part, established in the case of *Maria Da Penha Maia Fernandes v. Brazil* that the obligation of States to act with the due diligence necessary to investigate and sanction human rights violations applies to cases of domestic violence.<sup>222</sup> The Commission interpreted the duty to act with due diligence towards domestic violence broadly, encompassing not only the prompt investigation, prosecution, and sanction of these acts, but also the obligation "to prevent these degrading practices."<sup>223</sup> Furthermore, it found the existence of a general pattern of State tolerance and judicial inefficiency towards cases of domestic violence, which promoted their repetition, and reaffirmed the inextricable link between the problem of violence against women and discrimination in the domestic setting.<sup>224</sup>

132. In the realm of prevention, the European Court of Human Rights and the CEDAW Committee have also issued a number of rulings finding States responsible for failures to protect victims from imminent acts of domestic violence when they have considered that the authorities knew of a situation of real and immediate risk to the wife, her children, and/or other family members, created by the estranged husband, and the authorities failed to undertake reasonable measures to protect them from harm. In determining the question of knowledge, one common feature of these rulings is that the State authorities had already recognized a risk of harm to the victim and/or her family members, but had failed to act diligently to protect them. The recognition

<sup>219</sup> See, IACHR, Report N° 28/07, Cases 12.496-12.498, *Claudia Ivette Gonzalez and Others* (Mexico), March 9, 2007, paras. 247-255; I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 245.

<sup>220</sup> See, IACHR, Report N° 62/02, Case 12.285, *Michael Domingues* (United States), October 22, 2002, para. 83.

<sup>221</sup> See, e.g., United Nations General Assembly Resolution, Human Rights Council, *Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*, A/HRC/14/L.9/Rev.1, 16 June 2010; United Nations General Assembly Resolution, *Intensification of efforts to eliminate all forms of violence against women*, A/RES/64/137, 11 February 2010 and A/RES/63/155, January 30, 2009; United Nations, *Declaration on the Elimination of Violence against Women*, General Assembly resolution 48/104, December 20, 1993, A/RES/48/104, February 23, 1994; United Nations, *Beijing Declaration and Platform for Action, Fourth World Conference on Women*, September 15, 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995); CEDAW, General Recommendation 19: *Violence against Women*, (11<sup>th</sup> Session 1992), U.N. Doc.A/47/38 (1993).

<sup>222</sup> In this case, the Commission noted that more than 17 years had passed since the launching of the investigation into the attacks suffered by the victim and to date the case against the accused remained opened without a final ruling.

<sup>223</sup> IACHR, Report N° 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), April 16, 2001, para. 56.

<sup>224</sup> IACHR, Report N° 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), April 16, 2001, para. 55.

of risk was reflected in the issuance of protection orders,<sup>225</sup> the detention of the aggressor,<sup>226</sup> assistance to the victim and/or her family members in the filing of complaints,<sup>227</sup> and the institution of criminal proceedings,<sup>228</sup> in response to the victim's and/or her family members repeated contacts with the authorities. This line of reasoning has also been followed by the European Court in cases where social services had already recognized a risk of harm to children who were abused in the home setting, and failed to adopt positive measures to prevent further abuse from taking place.<sup>229</sup>

133. In several of these cases, the States have been held responsible for violations to the right to life when their authorities failed to undertake reasonable measures to protect children from domestic violence resulting in their death even though they knew or should have known of a situation of risk.<sup>230</sup> Among these are cases where children were murdered by a parent in a domestic violence situation, and the authorities had already recognized the risk involved after one of their parents had filed complaints related to domestic violence.<sup>231</sup>

134. In the analysis of the cases referred to, the European Court of Human Rights has advanced important principles related to the scope and content of the State's obligation to prevent acts of domestic violence. The European Court has considered the obligation to protect as one of reasonable means, and not results, holding the State responsible when it failed to take reasonable measures that had a real prospect of altering the outcome or mitigating the harm.<sup>232</sup> The Court has established that authorities should consider the prevalence of domestic violence, its hidden nature and the casualties of this phenomenon in the adoption of protection measures; an obligation which may be applicable even in cases where victims have withdrawn their complaints.<sup>233</sup> Given the nature of domestic violence, under certain circumstances authorities may have reason to know that the withdrawal of a complaint may signify a situation of threats on the part of the aggressor, or the State may at a minimum be required to investigate that possibility.<sup>234</sup> Lastly, the Court has ruled that a State's failure to protect women from domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional.<sup>235</sup>

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<sup>225</sup> See CEDAW Committee, Views on Communication No. 5/2005, *Sahide Goekce v. Austria*, July 21, 2004; CEDAW Committee, Views on Communication No. 6/2005, *Fatma Yildirim v. Austria*, July 21, 2004.

<sup>226</sup> See, European Court of Human Rights, *Branko Tomasic and Others v. Croatia*, Application No. 46598/06, 15 January 2009.

<sup>227</sup> See, European Court of Human Rights, *Kontrová v. Slovakia*, Application No. 7510/04, ECHR 2007-VI (extracts).

<sup>228</sup> See, European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, 9 June 2009.

<sup>229</sup> European Court of Human Rights, *Case of E. and Others v. the United Kingdom*, Application No. 33218/96; *Z and Others v. the United Kingdom* [GC], Application no. 29392/95 ECHR 2001-V.

<sup>230</sup> See, European Court of Human Rights, *Kontrová v. Slovakia*, Application No. 7510/04, ECHR 2007-VI (extracts); European Court of Human Rights, *Branko Tomasic and Others v. Croatia*, Application No. 46598/06, 15 January 2009; see also I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205.

<sup>231</sup> See, European Court of Human Rights, *Kontrová v. Slovakia*, Application No. 7510/04, ECHR 2007-VI (extracts); European Court of Human Rights, *Branko Tomasic and Others v. Croatia*, Application No. 46598/06, 15 January 2009.

<sup>232</sup> European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, 9 June 2009, para. 136; *E. and Others v. the United Kingdom*, no. 33218/96, para. 99.

<sup>233</sup> European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, 9 June 2009, para. 132.

<sup>234</sup> See, generally, European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, 9 June 2009.

<sup>235</sup> European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, 9 June 2009, para. 191.

135. As the Commission has previously held in cases involving the American Declaration, while the organs of the Inter-American System are not bound to follow the judgments of international supervisory bodies, their jurisprudence can provide constructive insights into the interpretation and application of rights that are common to regional and international human rights systems.<sup>236</sup>

136. In the following section, the Commission will apply these considerations to the specific case of Jessica Lenahan and Leslie, Katheryn and Rebecca Gonzales.

**c. Analysis of the response of the authorities in this case**

137. Considering the specific circumstances of this case, the Commission proceeds to review: i) whether the state authorities at issue should have known that the victims were in a situation of imminent risk of domestic violence; and ii) whether the authorities undertook reasonable measures to protect them from these acts. The Commission's examination in this case will not be limited to the actions of just the Castle Rock Police Department, since the State's due diligence obligation requires the organization and coordination of the work of the entire State structure to protect domestic violence victims from imminent harm.

**i. The authorities' knowledge that victims were in a situation of risk**

138. The undisputed facts of this case show that Jessica Lenahan possessed a valid restraining order at the time of the events, initially granted by the justice system on a temporary basis on May 21, 1999,<sup>237</sup> and then rendered permanent on June 4, 1999.<sup>238</sup> The terms of the temporary order included both Jessica Lenahan and her daughters as beneficiaries and indicated expressly that "physical or emotional harm" would result if Simon Gonzales was not excluded from their home. When the order was rendered permanent, Jessica Lenahan was granted temporary sole physical custody of her three daughters. Simon Gonzales was also granted parenting time under the terms of the protection order, under certain conditions. Simon Gonzales' time with his daughters during the week was restricted to a "mid-week dinner visit" that Simon Gonzales and Jessica Lenahan had to previously arrange "upon reasonable notice."

139. The reverse side of the temporary order contained important notices for the restrained party and for law enforcement officials.<sup>239</sup> The order indicated to the restrained party the following:

....IF YOU VIOLATE THIS ORDER THINKING THAT THE OTHER PARTY OR A CHILD NAMED IN THIS ORDER HAS GIVEN YOU PERMISSION **YOU ARE WRONG**, AND CAN BE ARRESTED AND PROSECUTED...

THE TERMS OF THE ORDER CANNOT BE CHANGED BY AGREEMENT OF THE OTHER PARTY OR THE CHILD(REN). ONLY THE COURT CAN CHANGE THIS ORDER...

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<sup>236</sup> IACHR, Report 63/08, Case 12.534, *Andrea Mortlock* (United States), July 25, 2008, para. 80; IACHR, Report 98/03, *Statehood Solidarity Committee* (United States), December 29, 2003, paras. 91-93.

<sup>237</sup> See Petitioners' petition dated December 27, 2005, Exhibit A: Temporary Restraining Order dated May 21, 1999.

<sup>238</sup> See Petitioners' petition dated December 27, 2005: Exhibit B: Decision of District Court, County of Douglas, State of Colorado making temporary restraining order permanent on June 4, 1999.

<sup>239</sup> See Petitioners' petition dated December 27, 2005, Exhibit A: Temporary Restraining Order dated May 21, 1999.



140. For law enforcement officials, the order stated the following, mirroring the terms of the Colorado Mandatory Arrest Statute<sup>240</sup> in force at the time of the events:

YOU SHALL USE EVERY REASONABLE MEANS TO ENFORCE THE RESTRAINING ORDER.

YOU SHALL ARREST OR, IF AN ARREST WOULD BE IMPRACTICAL UNDER THE CIRCUMSTANCES, SEEK A WARRANT FOR THE ARREST OF THE RESTRAINED PERSON WHEN YOU HAVE INFORMATION AMOUNTING TO PROBABLE CAUSE THAT THE RESTRAINED PERSON HAS VIOLATED OR ATTEMPTED TO VIOLATE ANY PROVISION OF THIS ORDER.

YOU SHALL ENFORCE THIS ORDER EVEN IF THERE IS NO RECORD OF IT IN THE CENTRAL REGISTRY.

YOU ARE AUTHORIZED TO USE EVERY REASONABLE EFFORT TO PROTECT THE ALLEGED VICTIM AND THE ALLEGED VICTIM'S CHILDREN TO PREVENT FURTHER VIOLENCE.

141. The Commission considers that the issuance of this restraining order and its terms reflect that the judicial authorities knew that Jessica Lenahan and her daughters were at risk of harm by Simon Gonzales. The petitioners have construed this order before the Commission as a judicial determination of that risk upon breach of its terms; an allegation uncontested by the State. The order precludes even the parties from changing the terms by agreement, since only the relevant Court can change this order.

142. The Commission considers that the issuance of a restraining order signals a State's recognition of risk that the beneficiaries would suffer harm from domestic violence on the part of the restrained party, and need State protection. This recognition is typically the product of a determination from a judicial authority that a beneficiary – a woman, her children and/or other family members – will suffer harm without police protection. The United States itself acknowledges in its pleadings that it has adopted a series of measures at the federal and state levels to ensure that protection orders are effectively implemented by the police, since they represent an assessment of risk and a form of State protection.<sup>241</sup>

143. Therefore, the Commission considers that the State's recognition of risk in this domestic violence situation through the issuance of a restraining order – and the terms of said order - is a relevant element in assessing the human rights implications of the State's action or inaction in responding to the facts presented in this case. It is a key component in determining whether the State authorities should have known that the victims were in a situation of imminent risk of domestic violence upon breach of the terms of the order. It is also an indicator of which actions could have been reasonably expected from the authorities.

144. With respect to the question of which actions could have reasonably been expected, the justice system included language in this order indicating that its enforcement terms were strict; and that law enforcement authorities were responsible for implementing this order when needed. The order expressly mandates law enforcement officials – by employing the word "shall" – to act diligently to either arrest or to seek a warrant for the arrest of the aggressor in the presence of information amounting to probable cause of a violation. The order authorizes and requires law enforcement officials to use every reasonable effort to protect the alleged victim and her children from violence.

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<sup>240</sup> See C.R.S. § 18-6-803.5 (3), *Colorado's Mandatory Arrest Statute*, Petitioners' petition dated December 27, 2005.

<sup>241</sup> See, Reply by the Government of the United States of America to the Final Observations Regarding the Merits of the Case by the Petitioners, October 17, 2008, pages 25-34.

145. In light of this judicial recognition of risk, and the corresponding need for protection, the State was obligated to ensure that its apparatus responded effectively and in a coordinated fashion to enforce the terms of this order to protect the victims from harm. This required that the authorities entrusted with the enforcement of the restraining order were aware of its existence and its terms; that they understood that a protection order represents a judicial determination of risk and what their responsibilities were in light of this determination; that they understood the characteristics of the problem of domestic violence; and were trained to respond to reports of potential violations. A proper response would have required the existence of protocols or directives and training on how to implement restraining orders, and how to respond to calls such as those placed by Jessica Lenahan.

**ii. Measures undertaken to protect the victims**

146. In this case, it is undisputed that Jessica Lenahan had eight contacts with the Castle Rock Police Department throughout the evening of June 22<sup>nd</sup> and the morning of June 23<sup>rd</sup> of 1999, and that during each of these contacts she informed the Castle Rock Police Department that she held this restraining order. She also informed them that she did not know the whereabouts of her daughters, that they were very young girls, and that she was afraid they had been picked up by their father without notice, along with their friend.

147. Therefore, in this case the CRPD was made aware that a restraining order existed. Knowing that this restraining order existed, they would have reasonably been expected to thoroughly review the terms of the order to understand the risk involved, and their obligations towards this risk. According to the requirements of the order itself, the CRPD should have promptly investigated whether its terms had been violated. If in the presence of probable cause of a violation, they should have arrested or sought a warrant for the arrest of Simon Gonzales as the order itself directed. This would have been part of a coordinated protection approach by the State, involving the actions of its justice and law enforcement authorities.

148. National law enforcement guidelines provided by the parties concerning the enforcement of restraining orders are instructive on the minimum measures that police authorities should have adopted to determine whether the order at issue had been violated. Guidelines from the International Association of Chiefs of Police,<sup>242</sup> presented by the petitioners, provide that an officer must read an order in its entirety in determining its potential violation; that when a victim does not have a copy of her order, police officers should attempt to verify its existence; and that when missing, officers should attempt to locate and arrest the abuser and seize firearms subject to state, territorial, local or tribal prohibitions. There are some factors that police officers can weigh to determine the potential risk due to a restraining order violation, including threats of suicide from the aggressor; a history of domestic violence and violent criminal conduct; the separation of the parties; depression or other mental illness; obsessive attachment to the victim; and possession or access to weapons, among others. When an abuser has fled the scene, the guidelines instruct police officers to: determine whether the abuser's actions warrant arrest; and to follow departmental procedure for dealing with a criminal suspect who has fled the scene.

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<sup>242</sup> International Association of Chiefs of Police, *A Law Enforcement Officer's Guide to Enforcing Orders of Protection Nationwide* (2006), presented as Exhibit K of December 11, 2006 Observations from Petitioners.

149. The Law Enforcement Training Manual published by the Colorado Coalition against Domestic Violence,<sup>243</sup> mentioned by the State,<sup>244</sup> offers similar guidelines to law enforcement officials when responding to potential restraining order violations in compliance with the Colorado Mandatory Arrest Statute. The Manual underscores as critical that the police should be trained on the complex dynamics of the problem of domestic violence in order to appropriately respond to victims' calls. For example, an aggressor's control tactics over the victim may include abusing the children, since they are often what is most important to the victim. The manual identifies red flags that indicate that life-threatening violence against the victim or her family members is more likely to occur: the separation or divorce of the parties; the obsessive possessiveness on the part of the aggressor; threats to commit suicide; the issuance of protection or restraining orders; depression on the part of the abuser; a prior history of criminal behavior on the part of the abuser; incidents related to stalking; and an aggressor's access to weapons. The manual indicates that police officers should not base their assessment of potential lethality on the victim's tone or demeanor, since it may not correspond to the seriousness of the situation, and may be the product of the unequal power relations inherent to domestic violence.

150. Based on a thorough review of the record, the Commission considers that the CRPD failed to undertake the mentioned investigation actions with the required diligence and without delay. Its response can be at best characterized as fragmented, uncoordinated and unprepared; consisting of actions that did not produce a thorough determination of whether the terms of the restraining order at issue had been violated.

151. The Commission presents below some observations concerning the CRPD response from the evidence presented by the parties.

152. First, the Commission does not have any information indicating that the police officers who responded to Jessica Lenahan's calls and those who visited her house ever thoroughly reviewed the permanent restraining order to ascertain its terms and their enforcement obligations. Available information indicates that they took note of the existence of the order based on the information that Jessica Lenahan provided throughout the evening, and their conclusions and biases regarding this information, and not on the actual terms of the order. For example, as soon as they heard from Jessica Lenahan that the protection order provided Simon Gonzales with parenting time, there was no follow-up to determine whether the terms of the order limited this parenting time. Jessica Lenahan told dispatchers and officers consistently, and repeatedly, throughout the evening of June 22<sup>nd</sup> and the morning of June 23<sup>rd</sup> that she was concerned over the whereabouts of her daughters. While Jessica Lenahan did indicate at a point in the evening

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<sup>243</sup> Colorado Coalition Against Domestic Violence, Law Enforcement Training Manual, 2<sup>nd</sup> Edition (October 2003), mentioned in Reply by the Government of the United States of America to the Final Observations Regarding the Merits of the Case by the Petitioners, October 17, 2008, p. 32.

<sup>244</sup> The State mentions this manual as an example of positive steps taken at the state level to respond to domestic violence and to provide adequate training to police officers. The State claims that aside from mandatory training programs, there are several elective training programs that many police departments in Colorado provide as additional training to police officers. One example is the training provided by the Colorado Coalition against Domestic Violence (CCADV), a non-profit organization, with this law enforcement manual, which the State describes as "comprehensive." The State also claims that this manual "explores in depth the dynamics of domestic violence and the legislative history of Colorado statutory provisions on domestic violence, the law enforcement response, domestic violence risk factors, restraining and protection orders, full faith and credit, violation of protection orders, other Colorado statutes governing protection orders, and the procedure of enforcement of protection orders and other considerations." See Reply by the Government of the United States of America to the Final Observations Regarding the Merits of the Case by the Petitioners, October 17, 2008, pp. 24, 32 - 33.

that she did not think Simon Gonzalez would harm his daughters,<sup>245</sup> the dispatchers and officers apparently applied only their personal perceptions in determining that the girls were safe because they were with their father. From the record, it is also evident that information pertaining to the existence of the restraining order was not adequately communicated between the dispatchers and police officers throughout the evening, and that Jessica Lenahan was consistently asked the same questions during each of her calls.<sup>246</sup>

153. Second, by 8:49 p.m in the evening of June 22nd, Jessica Lenahan had informed the police that Simon Gonzales had taken the girls to another jurisdiction in Colorado without notice. However, the police officers' actions to locate Katheryn, Leslie and Rebecca were limited to Castle Rock until their bodies were found early the next morning. The police officers should have called the Denver police department to alert them of the situation, but they failed to do so. They knew by midnight that Simon Gonzales might have taken them to the Pueblo Area, but they failed to perform any actions to search for them there.

154. Third, the file before the Commission also shows that the police officers never did a thorough check of Simon Gonzales' previous criminal background and contacts with the police. This history displayed a pattern of emotional issues, and unpredictable behavior that would have been important in understanding the risk of a violation of the protection order.

155. Fourth, the information before the Commission indicates there were apparently no protocols or directives in place guiding police officers on how to respond to reports of potential restraining order violations involving missing children, which contributed to delays in their response. For example, the undisputed facts show that it took a dispatcher an hour – between 2:15 – 3:25 a.m. - to find the guidelines to enter an "Attempt to Locate BOLO" for Simon Gonzales and his vehicle.<sup>247</sup> She also reported having problems entering information into the screens for the "Attempt to Locate" because she was missing crucial information such as the physical descriptions of the children. This information was never requested from Jessica Lenahan despite her eight contacts with the police during that evening.

156. Fifth, the lack of training of the Castle Rock police officers throughout the evening of June 22<sup>nd</sup> and the morning of June 23<sup>rd</sup> was evident. The response of the Castle Rock police officers, when assessed as a whole throughout this time period, displays misunderstandings and misinformation regarding the problem of domestic violence. Even the State concedes in its pleadings that, from the point of view of the CRPD, this situation appeared to be a "misunderstanding" between Mr. and Ms. Gonzales, and the officers had a sense of relief that the children were at least in a known location with their father, even though he was subject to a restraining order.<sup>248</sup>

157. Some statements display that police officers did not understand the urgency or seriousness of the situation. When Jessica Lenahan called the CPRD for a third time at 9:57 p.m. to

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<sup>245</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab F, Castle Rock Police Department Incident Report 90623004, 06/23/99, 00:06 hrs.

<sup>246</sup> See, for example, U.S. Response to petition alleging violations of the human rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab G: Statement Signed by Cpl. Patricia Lisk.

<sup>247</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab G: Statement signed by Cpl. Patricia A. Lisk.

<sup>248</sup> Reply by the Government of the United States of America to the Final Observations Regarding the Merits of the Case by the Petitioners, October 17, 2008, p. 7.

report that her children were still not home, the dispatcher asked her to call back on a “non-emergency line,” and told her she wished that she and Simon Gonzales had made some arrangements since “that’s a little ridiculous making us freak out and thinking the kids are gone.”<sup>249</sup>

158. Sixth, the Commission notes that the police officers throughout the evening evidence that they did not understand that they were the ones responsible for ascertaining whether the restraining order had been violated. They kept on asking Jessica Lenahan to call them back throughout the evening, and to contact Simon Gonzalez herself, even though they were aware that this was a domestic violence situation. The State itself in its pleadings has presented as a defense that Jessica Lenahan never reported to the police officers that the restraining order had been violated. The Commission has manifested its concern on how States mistakenly take the position that victims are themselves responsible for monitoring the preventive measures, which leaves them defenseless and in danger of becoming the victims of the assailant’s reprisals.<sup>250</sup>

159. Seventh, the established facts also show systemic failures not only from the CRPD, but from the Federal Bureau of Investigations. On June 22, 1999, Simon Gonzales purchased a Taurus 9mm handgun with 9 mm ammunition, from William George Palsulich, who held a Federal Firearms License since 1992.<sup>251</sup> Simon Gonzales contacted Palsulich at 6:00 p.m on June 22, 1999, in response to an advertisement Palsulich had placed in the newspaper concerning the sale of the gun, asking whether he could purchase the gun and ammunition.<sup>252</sup> Simon Gonzales went to Palsulich’s house at 7:10 p.m on June 22, 1999 with Leslie, Katheryn and Rebecca Gonzales to purchase this gun.<sup>253</sup> The record before the Commission indicates that the seller processed a background check through the Federal Bureau of Investigations in order to make the sale to Simon Gonzalez.<sup>254</sup> Palsulich initially had to decline the sale since the FBI refused the background check, but the FBI later called and informed Palsulich that the transaction had been approved.<sup>255</sup> The State has not contested this point, nor it has indicated how the background check of a person, such as Simon Gonzales, subject to a restraining order and having a criminal history, could have been approved. The State has not explained either why the restraining order apparently did not show up in the review of data performed as part of the background check.

<sup>249</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab D: Investigator’s Progress Report, Castle Rock Police Department, Castle Rock, Colorado, Cr #99-3226, Third Call at 21:57 hours.

<sup>250</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc. 68, January 20, 2007, para. 170.

<sup>251</sup> December 11, 2006 Observations from Petitioners, Tab N: Interview with William George Palsulich by 18<sup>th</sup> Judicial District Critical Incident Team Detectives Bobbie Garret and Christian Contos, June 23, 1999, 7:04 p.m; Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, Ex. C: 18<sup>th</sup> Judicial Critical Incident Team Shooting of Simon Gonzales Castle Rock PD Case #99-3226, p. 32.

<sup>252</sup> December 11, 2006 Observations from Petitioners, Tab N: Interview with William George Palsulich by the 18<sup>th</sup> Judicial District Critical Incident Team Detectives Bobbie Garret and Christian Contos, June 23, 1999, 7:04 p.m.

<sup>253</sup> December 11, 2006 Observations from Petitioners, Tab N: Interview with William George Palsulich by 18<sup>th</sup> Judicial District Critical Incident Team Detectives Bobbie Garret and Christian Contos, June 23, 1999, 7:04 p.m; Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, Ex. C: 18<sup>th</sup> Judicial Critical Incident Team Shooting of Simon Gonzales Castle Rock PD Case #99-3226, p. 32.

<sup>254</sup> December 11, 2006 Observations from Petitioners, Tab N: Interview with William George Palsulich by 18<sup>th</sup> Judicial District Critical Incident Team Detectives Bobbie Garret and Christian Contos, June 23, 1999, 7:04 p.m; Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, Ex. C: 18<sup>th</sup> Judicial Critical Incident Team Shooting of Simon Gonzales Castle Rock PD Case #99-3226, p. 32.

<sup>255</sup> December 11, 2006 Observations from Petitioners, Tab N: Interview with William George Palsulich by 18<sup>th</sup> Judicial District Critical Incident Team Detectives Bobbie Garret and Christian Contos, June 23, 1999, 7:04 p.m; Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, Ex. C: 18<sup>th</sup> Judicial Critical Incident Team Shooting of Simon Gonzales Castle Rock PD Case #99-3226, p. 32.

### iii. Conclusions

160. Based on these considerations, the Commission concludes that even though the State recognized the necessity to protect Jessica Lenahan and Leslie, Katheryn and Rebecca Gonzales from domestic violence, it failed to meet this duty with due diligence. The state apparatus was not duly organized, coordinated, and ready to protect these victims from domestic violence by adequately and effectively implementing the restraining order at issue; failures to protect which constituted a form of discrimination in violation of Article II of the American Declaration.

161. These systemic failures are particularly serious since they took place in a context where there has been a historical problem with the enforcement of protection orders;<sup>256</sup> a problem that has disproportionately affected women - especially those pertaining to ethnic and racial minorities and to low-income groups - since they constitute the majority of the restraining order holders.<sup>257</sup> Within this context, there is also a high correlation between the problem of wife battering and child abuse, exacerbated when the parties in a marriage separate. Even though the Commission recognizes the legislation and programmatic efforts of the United States to address the problem of domestic violence, these measures had not been sufficiently put into practice in the present case.<sup>258</sup>

162. The Commission underscores that all States have a legal obligation to protect women from domestic violence: a problem widely recognized by the international community as a serious human rights violation and an extreme form of discrimination. This is part of their legal obligation to respect and ensure the right not to discriminate and to equal protection of the law. This due diligence obligation in principle applies to all OAS Member States.

163. The States' duties to protect and guarantee the rights of domestic violence victims must also be implemented in practice. As the Commission has established in the past, in the discharge of their duties, States must take into account that domestic violence is a problem that disproportionately affects women, since they constitute the majority of the victims.<sup>259</sup> Children are also often common witnesses, victims, and casualties of this phenomenon.<sup>260</sup> Restraining orders are critical in the guarantee of the due diligence obligation in cases of domestic violence.<sup>261</sup> They are often the only remedy available to women victims and their children to protect them from imminent harm. They are only effective, however, if they are diligently enforced.

<sup>256</sup> See U.S. Department of Justice, Attorney General's Task Force on Domestic Violence: Final Report, pages. 18-19 (1984). For a more detailed review of this issue, see section on "findings of fact" *supra* paras. 91-99.

<sup>257</sup> See, U.S. Department of Justice, Bureau of Justice Statistics, National Crime Victimization Survey (2007); Centers for Disease Control and Prevention (CDC), Costs of Intimate Partner Violence in the United States (2003); Patricia Tjaden and Nancy Thoennes, U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *Extent, Nature and Consequences of Intimate Partner Violence*, July 2000; Lawrence A. Greenfield et al., U.S. Department of Justice, *Violence by Intimates* 38 (1998). For a more detailed review of this issue, see section on "findings of fact" *supra* paras. 91-99.

<sup>258</sup> IACHR, Report N° 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), April 16, 2001, para. 57.

<sup>259</sup> IACHR, Report N° 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), April 16, 2001, para. 47.

<sup>260</sup> See, Study of Dr. Paulo Sergio Pinheiro as Independent Expert for the United Nations Study on Violence against Children pursuant to General Assembly Resolution 60/231, 29 August 2006, paras. 38-47.

<sup>261</sup> United Nations, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, *The Due Diligence Standard as a tool for the Elimination of Violence against Women*, E/CN.4/2006/61, para. 49; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc. 68, January 20, 2007, para. 53.

164. In the case of Leslie, Katheryn and Rebecca Gonzales, the Commission also establishes that the failure of the United States to adequately organize its state structure to protect them from domestic violence not only was discriminatory, but also constituted a violation of their right to life under Article I and their right to special protection as girl-children under Article VII of the American Declaration. As with other obligations under the American Declaration, States are not only required to guarantee that no person is arbitrarily deprived of his or her life. They are also under a positive obligation to protect and prevent violations to this right, through the creation of the conditions that may be required for its protection. In the case of Leslie, Katheryn and Rebecca Gonzales, the State had a reinforced duty of due diligence to protect them from harm and from deprivations of their life due to their age and sex, with special measures of care, prevention and guarantee. The State's recognition of the risk of harm and the need for protection – through the issuance of a protection order which included them as beneficiaries – made the adequate implementation of this protection measure even more critical.

165. The State's duty to apply due diligence to act expeditiously to protect girl-children from right to life violations requires that the authorities in charge of receiving reports of missing persons have the capacity to understand the seriousness of the phenomenon of violence perpetrated against them, and to act immediately.<sup>262</sup> In this case, the police appear to have assumed that Jessica Lenahan's daughters and their friend would be safe with Simon Gonzales because he was Leslie, Katheryn and Rebecca's father. There is broad international recognition of the connection between domestic violence and fatal violence against children perpetrated by parents, and the CRPD officers should have been trained regarding this link.<sup>263</sup> The police officers should also have been aware that the children were at an increased risk of violence due to the separation of their parents, Simon Gonzales' efforts to maintain contact with Jessica Lenahan, and his criminal background. Moreover, the Commission knows of no protocols and/or directives that were in place to guide the police officers at hand on how to respond to reports of missing children in the context of domestic violence and protection orders.<sup>264</sup> The police officers' response throughout the evening was uncoordinated, and not conducive to ascertaining whether the terms of the order had been violated by Simon Gonzales.

166. As part of its conclusions, the Commission notes that when a State issues a protection order, this has safety implications for the women who requested the protection order, her children and her family members. Restraining orders may aggravate the problem of separation violence, resulting in reprisals from the aggressor directed towards the woman and her children, a problem which increases the need of victims to receive legal protection from the State after an order of this kind has been issued. Jessica Lenahan has declared before the Commission

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<sup>262</sup> See generally, IACHR, Report N° 28/07, Cases 12.496-12.498, *Claudia Ivette Gonzalez and Others* (Mexico), March 9, 2007, paras. 247-255; I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 285.

<sup>263</sup> The recent United Nations Study on Violence against Children confirms that the majority of violent acts experienced by children are perpetrated by people who are part of their lives, including parents, and that intimate partner violence heavily affects children. See, Study of Paulo Sergio Pinheiro as Independent Expert for the United Nations Study on Violence against Children, pursuant to General Assembly Resolution 60/231, 29 August 2005, para. 28. A recent United Nations Study on Violence against Women has highlights that "[c]hildren are often present during episodes of domestic violence" and that "[d]omestic or intimate partner violence can....be fatal for children". See, United Nations, Report of the Secretary-General, *In Depth Study on All Forms of Violence against Women*, A/61/122/Add.1, July 6, 2006, para. 169.

<sup>264</sup> See, e.g., National Center for Missing and Exploited Children, Missing and Abducted Children, *A Law Enforcement Guide to Case Investigation and Case Management*, Third Edition (2006).

how she desisted from taking more actions to find her daughters that evening thinking that the State would do more to protect them, since she held a restraining order.<sup>265</sup>

167. The Commission notes with particular concern the insensitive nature of some of the CRPD comments to Jessica Lenahan's calls, considering that in her contacts she demonstrated that she was concerned for the well-being of her daughters. For example, and as noted earlier, when Jessica Lenahan called the CPRD for a third time at 9:57 p.m. to report that her children were still not home, the dispatcher told her she wished that she and Simon Gonzales had made some arrangements since "that's a little ridiculous making us freak out and thinking the kids are gone."<sup>266</sup> Her pleas for police action became more disturbing as the evening progressed.<sup>267</sup> The Commission accentuates that this form of mistreatment results in a mistrust that the State structure can really protect women and girl-children from harm, which reproduces the social tolerance toward these acts.<sup>268</sup> The Commission also underscores the internationally-recognized principle that law enforcement officials "shall respect and protect human dignity and maintain and uphold the human rights of all persons in the performance of their duties."<sup>269</sup>

168. The Commission reiterates that State inaction towards cases of violence against women fosters an environment of impunity and promotes the repetition of violence "since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts."<sup>270</sup>

169. The Commission also observes that the State's obligations to protect Jessica Lenahan and her daughters from domestic violence did not conclude that evening. They extended to offering Jessica Lenahan a remedy for these failures and to investigating the circumstances of Leslie, Katheryn and Rebecca Gonzales' death, as will be discussed in the following section.

170. Based on these considerations, the Commission holds that the systemic failure of the United States to offer a coordinated and effective response to protect Jessica Lenahan and her daughters from domestic violence, constituted an act of discrimination, a breach of their obligation not to discriminate, and a violation of their right to equality before the law under Article II of the American Declaration. The Commission also finds that the State failure to undertake reasonable

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<sup>265</sup> Hearing on the matter of *Jessica Gonzales v. United States* at the 127th Ordinary Period of Sessions of the Inter-American Commission on Human Rights, March 2, 2007.

<sup>266</sup> U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, Tab D: Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, Cr #99-3226, Third Call at 21:57 hours.

<sup>267</sup> During her first call, Jessica Lenahan described the situation to the dispatcher as "scary" and "that she did not know what to do." During her telephone conversation with Officer Brink, she communicated that she considered Simon Gonzales' taking of his daughters and their friend to the park, "unusual", "wrong" and "weird." During her third call at 9:57 p.m. that evening, Jessica Lenahan informed the dispatcher that she was a "little wiggged out" because her daughters were still not home and that she "did not know what to do," that she was a "mess," and that she was "freaking out." During her last call to the CRPD at midnight, she reported that her daughters were still not home, that Simon Gonzales had run off with the girls, and that she was very worried about her children. When Jessica Lenahan visited the CRPD at 12:30 a.m., she was crying, and she informed Officer Ahlfinger that she still "didn't know what to do" and was "scared" for her children, that she was afraid Simon Gonzales had "lost it," and that he might be "suicidal." For a more detailed discussion, see paragraphs 71-79 of this report.

<sup>268</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, paras. 172-180.

<sup>269</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 134.

<sup>270</sup> IACHR, Report N° 54/01, Case 12.051, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, para. 56.



measures to protect the life of Leslie, Katheryn and Rebecca Gonzales, and that this failure constituted a violation of their right to life established in Article I of the American Declaration, in relation to their right to special protection contained in Article VII of the American Declaration.

## 2. The right to judicial protection under Article XVIII

171. Article XVIII of the American Declaration provides:

Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

172. Article XVIII of the American Declaration establishes that all persons are entitled to access judicial remedies when they have suffered human rights violations.<sup>271</sup> This right is similar in scope to the right to judicial protection and guarantees contained in Article 25 of the American Convention on Human Rights, which is understood to encompass: the right of every individual to go to a tribunal when any of his or her rights have been violated; to obtain a judicial investigation conducted by a competent, impartial and independent tribunal that establishes whether or not a violation has taken place; and the corresponding right to obtain reparations for the harm suffered.<sup>272</sup>

173. The inter-American system has affirmed for many years that it is not the formal existence of such remedies that demonstrates due diligence, but rather that they are available and effective.<sup>273</sup> Therefore, when the State apparatus leaves human rights violations unpunished and the victim's full enjoyment of human rights is not promptly restored, the State fails to comply with its positive duties under international human rights law.<sup>274</sup> The same principle applies when a State allows private persons to act freely and with impunity to the detriment of the rights recognized in the governing instruments of the inter-American system.

174. The petitioners raise several claims related to the scope of the right to judicial protection under Article XVIII of the American Declaration. They claim that Jessica Lenahan's rights were violated because she has not obtained: a remedy for the non-enforcement of her protection order; adequate access to the United States Courts; and a diligent investigation into her daughters' deaths. As part of their claims related to the investigation, the petitioners also allege that Jessica Lenahan's and her next-of-kin's right to truth has been violated due to the State's failure to provide them information surrounding the deaths of Leslie, Katheryn and Rebecca Gonzales. The petitioners also raise these claims under the right to petition established in Article XXIV of the American Declaration, and the right to freedom of investigation, opinion, expression and dissemination under Article IV of the American Declaration.

175. The State for its part claims that Article XVIII of the American Declaration does not comprehend a right to a remedy related to the non-enforcement of restraining orders; that the

<sup>271</sup> IACHR, Report N° 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), April 16, 2001, para. 37.

<sup>272</sup> IACHR, Report N° 40/4, Case 12.053, *Maya Indigenous Community* (Belize), para. 174; IACHR, Report N° 54/01, Case 12.051, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, para. 37.

<sup>273</sup> See, IACHR, Report N° 81/10, Case 12.562, *Wayne Smith, Hugo Armendatiz, et al.*, United States, July 12, 2010, para. 62; IACHR, ACHR, Report on Admissibility N° 52/07, Petition 1490-05, *Jessica Gonzales and Others (United States)*, July 24, 2007, para. 42; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.LV/II, Doc. 68 (January 20, 2007), para. 26; I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 235.

<sup>274</sup> IACHR, *The Situation of the Rights of Women in Ciudad Juarez*, OEA/Ser. LV/II.117. Doc. 44 (March 7, 2003), para. 51.

United States' judicial system was available to Jessica Lenahan since her case was seen by the United States Supreme Court; that Jessica Lenahan had other valid legal avenues available to adjudicate facts related to the death of her daughters which she failed to pursue; and that the State undertook two extensive investigations following the tragic deaths of Leslie, Katheryn and Rebecca Gonzales which conformed to existing human rights standards. Concerning the right to truth, the State claims that the Commission should not rule on this claim under Article IV of the American Declaration since it was not raised at the admissibility stage.

176. The Commission will discuss how the obligations under Article XVIII apply to the given case in the following order: i) claims related to remedies for the non-enforcement of the protection order; and ii) claims related to the investigation of Leslie, Katheryn and Rebecca Gonzales' deaths, including allegations pertaining to access to information and the right to truth.

**i. Claims related to remedies for the non-enforcement of a protection order**

177. The Commission has identified the duty of State parties to adopt legal measures to prevent imminent acts of violence, as one side of their obligation to ensure that victims can adequately and effectively access judicial protection mechanisms.<sup>275</sup> The Commission has identified restraining orders, and their adequate and effective enforcement, among these legal measures.<sup>276</sup> According to this principle, the failures of the State in this case to adequately and effectively organize its apparatus to ensure the implementation of the restraining order also violated the right to judicial protection of Jessica Lenahan and Leslie, Katheryn and Rebecca Gonzales.

178. The Commission also considers that when there are State failures, negligence and/or omissions to protect women from imminent acts of violence, the State also has the obligation to investigate systemic failures to prevent their repetition in the future. This involves an impartial, serious and exhaustive investigation of the State structures that were involved in the enforcement of a protection order, including a thorough inquiry into the individual actions of the public officials involved.<sup>277</sup> States must hold public officials accountable – administratively, disciplinarily or criminally - when they do not act in accordance with the rule of law.<sup>278</sup>

179. The State should undertake this systemic inquiry on its own motion and promptly.<sup>279</sup> A delay in this inquiry constitutes a form of impunity in the face of acts of violence against women and promotes their repetition.<sup>280</sup>

<sup>275</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II, Doc. 68 (January 20, 2007), para. 56.

<sup>276</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II, Doc. 68 (January 20, 2007), para. 56.

<sup>277</sup> IACHR, Report N° 28/07, Case 12, 496, *Claudia Ivette González and Others* (Mexico), March 9, 2007, para. 242, Recommendation 2.

<sup>278</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II, Doc. 68 (January 20, 2007), para. 77; United Nations, *Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women*, resolution approved by the United Nations General Assembly, A/RES/52/86, February 2, 1998, Annex, Section II.

<sup>279</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II, Doc. 68 (January 20, 2007), para. 77; United Nations, *Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women*, resolution approved by the United Nations General Assembly, A/RES/52/86, February 2, 1998, Annex, Section II.

<sup>280</sup> IACHR, *The Situation of the Rights of Women in Ciudad Juarez*, OEA/Ser. L/V/II.117. Doc. 44 (March 7, 2003), para. 142; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II, Doc. 68 (January 20, 2007), Recommendation 1.

180. The Commission does not have information indicating that the State authorities have undertaken any inquiry into the response actions of the Castle Rock police officers in their contacts with Jessica Lenahan throughout the evening of June 22nd and the morning of June 23rd. The Commission does not have information indicating either that any inquiry has been undertaken at the level of the Federal Bureau of Investigations for the approval of the gun-purchase. The two investigations before the Commission appear to have focused exclusively on clarifying the circumstances of the shooting death of Simon Gonzales, and not on determining individual responsibilities on the part of public officials for failures to act in accordance with the relevant state and federal laws. Therefore, the Commission notes that the State responsibilities in this case were not met by the United States Supreme Court decision regarding Jessica Lenahan's constitutional claims and extended to investigating the systemic failures which occurred during the evening of June 22<sup>nd</sup> and the morning of June 23<sup>rd</sup> in enforcing the restraining order at issue.

**ii. The investigation of Leslie, Katheryn and Rebecca's deaths, access to information, and the right to truth**

181. The Commission has emphasized the principle that the ability of victims of violence against women to access judicial protection and remedies includes ensuring clarification of the truth of what has happened.<sup>281</sup> Investigations must be serious, prompt, thorough, and impartial, and must be conducted in accordance with international standards in this area.<sup>282</sup> In addition, the IACHR has established that the State must show that the investigation "was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth."<sup>283</sup> The State is ultimately the one responsible for ascertaining the truth on its own initiative, and this does not depend on the efforts of the victim or her next-of-kin.<sup>284</sup> In accordance with its special protection obligation and the due diligence principle, this obligation is particularly critical in cases implicating the right to life of girl-children.<sup>285</sup>

182. The inter-American system has referred to the "Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions," adopted by the Economic and Social Council of the United Nations by UN Resolution 1989/65, as guidelines that must be observed in the investigation of a violent death.<sup>286</sup> These principles require that in cases such as that of Leslie, Katheryn and Rebecca Gonzales, the investigation of every suspicious death must have the following objectives: to identify the victim; to recover and analyze all the material and documentary evidence; to identify possible witnesses and collect their testimony; to determine the cause, manner and time of death, as well as the procedure, practice, or instruments which may

<sup>281</sup> IACHR, Report N° 28/07, Case 12, 496, *Claudia Ivette González and Others* (Mexico), March 9, 2007, para. 206; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.LV/II, Doc. 68 (January 20, 2007), para. 40.

<sup>282</sup> IACHR, Report N° 53/01, *Ana, Beatriz and Celia González Pérez* (Mexico), Case 11.565, April 4, 2001, paras. 84-88; IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination*, OEA/Ser.LV/II.117, Doc. 44, March 7, 2003, para. 132.

<sup>283</sup> IACHR, Report N° 55/97, *Juan Carlos Abella et al.* (Argentina), November 18, 1997, para. 412.

<sup>284</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.LV/II, Doc. 68 (January 20, 2007), para. 40; I/A Court H.R., *Godínez Cruz Case*. Judgment of January 20, 1989. Series C No. 5, para. 188.

<sup>285</sup> IACHR, Report N° 28/07, Cases 12.496-12.498, *Claudia Ivette González and Others* (Mexico), March 9, 2007, para. 247.

<sup>286</sup> IACHR, Report N° 28/07, Cases 12.496-12.498, *Claudia Ivette González and Others* (Mexico), March 9, 2007, paras. 216-217; IACHR, Report N° 10/95, Case 10.580, *Manuel Stalín Bolaños*, Ecuador, Annual Report of the IACHR 1995, OEA/Ser.LV/II.91, Doc. 7, rev. 3, April 3, 1996, paras. 32-34.

have caused the death; to distinguish between natural death, accidental death, suicide, and homicide; and to identify and apprehend the person or persons who may have participated in the execution.<sup>287</sup>

183. The regional system has also referred to the guidelines established in the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, noting that one of the most important aspects of a “full and impartial” investigation of an extralegal, arbitrary, or summary execution is gathering and analyzing the evidence for each suspicious death.<sup>288</sup> To this end, the manual establishes that in relation to the crime scene, that investigators must, at a minimum, photograph that scene, any other physical evidence, and the body as found and after being moved; all samples of blood, hair, fibers, threads, or other clues should be collected and conserved; examine the area in search of footprints of shoes or anything else in the nature of evidence; and make a report detailing any observation of the scene, the actions of the investigators, and the disposition of all evidence collected.<sup>289</sup> In addition, it is necessary to investigate the crime scene exhaustively, autopsies should be performed, and human remains must be analyzed rigorously by competent professionals.

184. In light of these international standards, the United States had the duty to undertake, on its own initiative, a prompt, thorough and separate investigation aimed at clarifying the cause, time and place of the deaths of Leslie, Katheryn and Rebecca Gonzales.

185. The petitioners claim that the investigations conducted by the authorities solely related to the shooting death of Simon Gonzales. According to them, these documents raise many unanswered questions and demonstrate the inadequate nature of the investigation into the death of the three girls. They claim that the evidence in these documents is insufficient to determine which bullets killed Jessica Lenahan’s daughters, those of the CRPD or those of Simon Gonzales. The State, for its part, claims that in the wake of the tragedy two investigations were undertaken by the Colorado Bureau of Investigations and by the Critical Incident Team of the 18<sup>th</sup> Judicial District which were prompt, extensive and thorough.<sup>290</sup> The State is surprised that the petitioners now argue that because there was no adequate investigation, the actual cause of the death of the Leslie, Katheryn and Rebecca Gonzales is unknown. The State considers that the petitioners’ suggestion that the gunfire originating from the CRPD officers may have killed the children is contradictory to the evidence amassed in the investigative reports mentioned by the State, which suggests that Simon Gonzales murdered the girl-children.

186. The established facts before the Commission reveal that two investigations were undertaken by the State related to the case at hand,<sup>291</sup> one by the Colorado Bureau of

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<sup>287</sup> United Nations, Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Recommended by Economic and Social Council Resolution 1989/65.

<sup>288</sup> United Nations Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, Doc. E/ST/CSDHA/12 (1991).

<sup>289</sup> IACHR, Report N° 28/07, Cases 12.496-12.498, *Claudia Ivette González and Others* (Mexico), March 9, 2007, paras. 218; I/A Court H.R., *Case of González et al. (“Cotton Field”). Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205, para. 301.

<sup>290</sup> Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, Ex. B: Colorado Bureau of Investigation: Report of Investigation, prepared by Agents J. Clayton Jr. & D. Sollars, July 19, 1999 and Ex. C: 18th Judicial Critical Incident Team Shooting of Simon Gonzales Castle Rock PD Case #99-3226.

<sup>291</sup> Investigation by the Colorado Bureau of Investigation (CBI) and Investigation by Critical Incident Team (CIT) of 18<sup>th</sup> Judicial District, Exhibits B and C respectively of Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008. The State also presents a supplemental report related to the CIT investigation dated July 1,

Investigations and one by the Critical Incident Team of the 18th Judicial District, but these mainly focused on clarifying the facts surrounding the shooting death of Simon Gonzales, and not the murder of Leslie, Katheryn and Rebecca Gonzales.<sup>292</sup> No investigation reports before the Commission indicate as their main objective the clarification of the circumstances related to the girl-children deaths. Documents related to the investigations conclude in summary fashion that Simon Gonzales murdered his daughters before the shooting at the CRPD station, and that they were not struck by any of the rounds fired by the police officers, but fail to provide any foundation for this premise.<sup>293</sup>

187. Available information regarding the circumstances of the shooting leave doubt as to the conclusion that Simon Gonzales's bullets were the ones that killed his daughters. Each girl was found to be shot in the head and chest from multiple angles.<sup>294</sup> The CIT investigation report reveals that several witness accounts mentioned hearing screams, two from female voices, at the time of the shooting in front of the Castle Rock Police Department.<sup>295</sup> However, there is no indication in the record that these aspects were investigated. The investigations before the Commission also reveal important omissions such as the quick disposal of Simon Gonzales' truck, even though it contained blood, clothing and other evidence related to the girl-children, making the truck an important piece of evidence in the clarification of the circumstances of the girl-children's deaths.<sup>296</sup>

188. An expert report prepared by Peter Diaczuk,<sup>297</sup> a forensic scientist, presented by the petitioners on July 16, 2009 and uncontested by the State, reviews in detail documentation related to these two investigations and identifies significant irregularities pertaining to the inquiry into Leslie, Katheryn and Rebecca's deaths. He notes that the "incomplete handling, documentation, and analysis of the evidence in this case resulted in unnecessary uncertainty surrounding the time, place, and circumstances of the three girls' deaths;" and that "while many answers appeared

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...continuation

1999 in Tab E of its U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006.

The Commission observes that on August 3, 2009, it requested from the United States the entire investigation file related to the death of Leslie, Katheryn and Rebecca Gonzales, but this request has not been met. Therefore, the Commission bases the analysis of these two investigations on the information that has been provided to date by the parties.

<sup>292</sup> The documents related to these two investigations read in conjunction also show that their main objective was to investigate the exchange of gunfire between the police and Simon Gonzales. See, for example, Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, Exhibit H: Letter to Colorado Bureau of Investigations from Agents Contos and Vanecek, June 28, 1999; Reply by the Government of the United States of America to the Final Observations Regarding the Merits of the Case by the Petitioners, October 17, 2008, Tab I: Letter from the District Attorney, 18<sup>th</sup> Judicial District to Castle Rock Police Department, August 13, 1999.

<sup>293</sup> Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, Exhibit C: 18<sup>th</sup> Judicial Critical Incident Team Shooting of Simon Gonzales Castle Rock PD Case #99-3226, p. 38.

<sup>294</sup> Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, Exhibit E: Douglas County Coroner's Report: Rebecca Gonzales, Exhibit F: Douglas County Coroner's Report: Katheryn Gonzales, and Exhibit G: Douglas County Coroner's Report: Leslie Gonzales.

<sup>295</sup> See, December 11, 2006 Observations from Petitioners, Ex. I: Critical Incident Team Report, Dated June 23, 1999, R. E. Garrett, Detective.

<sup>296</sup> Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, Exhibit B: Colorado Bureau of Investigation: Report of Investigation, prepared by Agents J. Clayton, Jr. & D. Sollars, July 19, 1999.

<sup>297</sup> Expert Report by Peter Diaczuk, Forensic Scientist and the Director of Forensic Science Training at the Center for Modern Forensic Practice, John Jay College of Criminal Justice, City University of New York, presented by petitioners to the Commission on July 16, 2009 (hereinafter "Expert Report by Peter Diaczuk").

within reach, law enforcement officials simply did not take the steps necessary to fully uncover them.”<sup>298</sup>

189. Professor Diaczuk in his report notes key differences between the quality of the investigation of elements found outside of Simon Gonzales’ pick-up truck, and the evidence found inside the truck, where the three bodies of the girl-children were found. For example, he observes that even though law enforcement used care in photographing and documenting the outside crime scene and evidence found at the street level, near Simon Gonzales’ body, the bodies of the girls and the interior of the truck were photographed hastily, without use of the proper lighting equipment or measurements. Even though important items of physical evidence at the crime scene were recognized, photographed, documented and collected, most of the items collected from inside of the truck were not routed to the laboratory for analysis, as opposed to the items collected outside the truck, which were properly analyzed. Professor Diaczuk highlights as a particularly troubling aspect the Colorado authorities’ analysis and accounting of the firearm evidence found inside of Simon Gonzales’ truck, noting that pursuant to investigatory procedures, a laboratory examination of all cases, projectiles and fragments – including those found inside and outside of the truck – was critical; but was not performed in this case. He furthermore notes that the truck in which the bodies of the girl-children were found was disposed of quickly, before time, location and circumstances surrounding the deaths of Jessica Lenahan’s children were even recorded on their death certificates, even though inquiries into the girl-children’s deaths were still pending.

190. Professor Diaczuk concludes overall that even if circumstantial evidence may have suggested to the authorities that Simon Gonzales was responsible for the deaths of the girl-children, the forensic analyses he reviewed do not sustain this conclusion, instead showing that the investigation of their deaths was prematurely concluded. He indicated that the death of each victim should have been treated as a separate occurrence, and investigated in its own right.

191. The Commission notes that the State has not challenged the expert report presented by Professor Peter Diaczuk. The State has responded overall to the petitioners’ claims by stating that if the petitioners considered the investigation of the girl-children’s deaths inappropriate and incomplete, they should have availed themselves of the Citizen Complaint Procedure of the Castle Rock Police Department. Regarding this State claim, the Commission established at the admissibility stage that the State had not indicated how the alternative administrative remedy it mentions could have provided Jessica Lenahan with a different judicial redress for her pretensions, or how this could have been adequate and effective in remedying the violations alleged.<sup>299</sup>

192. Regarding this issue, the Commission finally underscores that the State had the obligation to investigate the death of Leslie, Katheryn and Rebecca Gonzales as separate occurrences, on its own motion and initiative, and in a prompt, exhaustive and impartial manner.

193. The Commission has also identified the right to access information in respect to existing investigations as a crucial component of a victim’s adequate access to judicial remedies.<sup>300</sup> A critical component of the right to access information is the right of the victim, her family

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<sup>298</sup> Expert Report by Peter Diaczuk, para. 54.

<sup>299</sup> IACHR, Report on Admissibility N° 52/07, Petition 1490-05, *Jessica Gonzales and Others (United States)*, July 24, 2007, Annual Report of the IACHR 2007, para. 48.

<sup>300</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II, Doc. 68 (January 20, 2007), paras. 54, 134, 139, 172 and 177.

members and society as a whole to be informed of all happenings related to a serious human rights violation.<sup>301</sup> The inter-American system has established that this right - the right to truth - is not only a private right for relatives of the victims, affording them a form of reparation, but also a collective right that ensures that society has access to information essential for the workings of democratic systems.<sup>302</sup>

194. Eleven years have passed since the murders of Leslie, Katheryn and Rebecca Gonzales, and the State has not fully clarified the cause, time and place of their deaths. The State has not duly communicated this information to their family. The petitioners have presented information highlighting the challenges that Jessica Lenahan and her family members have faced to obtain basic information surrounding the circumstances of Leslie, Katheryn and Rebecca Gonzales' deaths.<sup>303</sup> They also indicate that Leslie, Katheryn and Rebecca Gonzales' gravestones still do not contain information about the time and place of their death. In regards to concrete efforts, Jessica Lenahan's mother, Tina Rivera, has declared the following before the Commission:

Despite our repeated requests for information and documentation about the circumstances of the deaths of Rebecca, Katheryn and Leslie in the days following their shooting, the CRPD gave us nothing.... For several weeks, Jessica, Rosalie Ochoa, and I attempted to obtain information from the Castle Rock and Colorado officials. Jessica and Rosalie went to the Douglas County Court House several times to try to obtain the tapes of Jessica's 911 calls. They also made repeated in-person trips to the CRPD, requesting access to the police records from the night that my granddaughters were killed. They traveled to Denver General Hospital's mental health center and Simon Gonzales' employer to find more information about Simon Gonzales.....However, officials at the Douglas County Court House and CRPD were not cooperative and tried to dissuade us from our efforts. We were denied access to the files and documents we sought. While denying our requests, the Police and Court House officials treated us in a dismissive and harassing manner. We felt treated as criminals, not victims.<sup>304</sup>

195. The Commission underscores that under the American Declaration, the State is obligated to investigate the circumstances surrounding Leslie, Katheryn and Rebecca Gonzales' deaths and to communicate the results of such an investigation to their family. Compliance with this State obligation is critical to sending a social message in the United States that violence against girl-children will not be tolerated, and will not remain in impunity, even when perpetrated by private actors.

196. In light of the considerations presented, the Commission finds that the United States violated the right to judicial protection of Jessica Lenahan and her next-of-kin under Article XVIII, for omissions at two levels. First, the State failed to undertake a proper inquiry into systemic failures and the individual responsibilities for the non-enforcement of the protection order. Second, the State did not perform a prompt, thorough, exhaustive and impartial investigation into

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<sup>301</sup> See, i.e., IACHR, Report on the Merits N° 136/99, Case 10.488, *Ignacio Ellacuria and Others* (El Salvador), December 12, 1999, paras. 224-226.

<sup>302</sup> See, i.e., IACHR, Report on the Merits N° 136/99, Case 10.488, *Ignacio Ellacuria and Others* (El Salvador), December 12, 1999, para. 224.

<sup>303</sup> Hearing on the matter of *Jessica Gonzales v. United States* at the 133th Ordinary Period of Sessions of the Inter-American Commission on Human Rights, October 22, 2008; Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, Ex. A: Declaration of Tina Rivera, March 17, 2008.

<sup>304</sup> Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, Ex. A: Declaration of Tina Rivera, March 17, 2008.

the deaths of Leslie, Katheryn and Rebecca Gonzales, and failed to convey information to the family members related to the circumstances of their deaths.

197. The Commission considers that it does not have sufficient information to find the State internationally responsible for failures to grant Jessica Lenahan an adequate access to courts under Article XVIII. The Commission notes that Jessica Lenahan chose to raise her claims at the national level before federal courts. The undisputed facts show that her allegations reached the U.S. Supreme Court, the highest judicial instance and appellate court in the United States. The Supreme Court ruled on her claims on June 27, 2005. Even though this ruling was unfavorable to the victim, the record before the Commission does not display that this legal process was affected by any irregularities, omissions, delays, or any other due process violations that would contravene Article XVIII of the American Declaration.

198. Regarding Articles XXIV and IV of the American Declaration, the Commission considers that the claims related to these articles were addressed under Article XVIII of the American Declaration.

## **V. CONCLUSIONS**

199. Based on the foregoing considerations of fact and law, and having examined the evidence and arguments presented by the parties during the proceedings, the Commission concludes that the State failed to act with due diligence to protect Jessica Lenahan and Leslie, Katheryn and Rebecca Gonzales from domestic violence, which violated the State's obligation not to discriminate and to provide for equal protection before the law under Article II of the American Declaration. The State also failed to undertake reasonable measures to prevent the death of Leslie, Katheryn and Rebecca Gonzales in violation of their right to life under Article I of the American Declaration, in conjunction with their right to special protection as girl-children under Article VII of the American Declaration. Finally, the Commission concludes that the State violated the right to judicial protection of Jessica Lenahan and her next-of kin, under Article XVIII of the American Declaration.

200. The Commission does not find that it has sufficient information to find violations of articles V and VI. As to Articles XXIV and IV of the American Declaration, it considers the claims related to these articles to have been addressed under Article XVIII of the American Declaration.

## **VI. RECOMMENDATIONS**

201. Based on the analysis and conclusions pertaining to the instant case, the Inter-American Commission on Human Rights recommends to the United States:

1. To undertake a serious, impartial and exhaustive investigation with the objective of ascertaining the cause, time and place of the deaths of Leslie, Katheryn and Rebecca Gonzales, and to duly inform their next-of-kin of the course of the investigation.

2. To conduct a serious, impartial and exhaustive investigation into systemic failures that took place related to the enforcement of Jessica Lenahan's protection order as a guarantee of their non-repetition, including performing an inquiry to determine the responsibilities of public officials for violating state and/or federal laws, and holding those responsible accountable.

3. To offer full reparations to Jessica Lenahan and her next-of-kin considering their perspective and specific needs.



4. To adopt multifaceted legislation at the federal and state levels, or to reform existing legislation, making mandatory the enforcement of protection orders and other precautionary measures to protect women from imminent acts of violence, and to create effective implementation mechanisms. These measures should be accompanied by adequate resources destined to foster their implementation; regulations to ensure their enforcement; training programs for the law enforcement and justice system officials who will participate in their execution; and the design of model protocols and directives that can be followed by police departments throughout the country.

5. To adopt multifaceted legislation at the federal and state levels, or reform existing legislation, including protection measures for children in the context of domestic violence. Such measures should be accompanied by adequate resources destined to foster their implementation; regulations to ensure their enforcement; training programs for the law enforcement and justice system officials who will participate in their execution; and the design of model protocols and directives that can be followed by police departments throughout the country.

6. To continue adopting public policies and institutional programs aimed at restructuring the stereotypes of domestic violence victims, and to promote the eradication of discriminatory socio-cultural patterns that impede women and children's full protection from domestic violence acts, including programs to train public officials in all branches of the administration of justice and police, and comprehensive prevention programs.

7. To design protocols at the federal and state levels specifying the proper components of the investigation by law enforcement officials of a report of missing children in the context of a report of a restraining order violation.

## **VII. ACTIONS SUBSEQUENT TO REPORT No. 114/10**

202. On October 21, 2010, the IACHR adopted Report No. 114/10 on the merits of this case. This report was sent to the State on November 15, 2010, with a time period of two months to inform the Inter-American Commission on the measures adopted to comply with its recommendations. On the same date, the petitioners were notified of the adoption of the report.

203. On January 14, 2011, the State requested an extension to present its response to the merits report. The Commission granted an extension to the State until March 15, 2011 to present its observations, in accordance with Article 37(2) of the IACHR's Rules of Procedure.

204. The petitioners presented their observations regarding the report on January 28, 2011, which were forwarded to the State on February 15, 2011, with a one-month period to send its observations. The petitioners also forwarded additional information to the Commission on February 18, 2011, which was transmitted to the State for its information on March 11, 2011.

205. In the present case, the State requested an extension in which to present information, but did not do so within the time period provided. The petitioners, for their part, provided a series of observations with respect to the analysis and determinations made by the Commission in its merits report, concerning such issues as: ongoing violence against women in Castle Rock; the scope of the right to an adequate and effective remedy in United States courts; the reiteration of arguments concerning the applicability of Articles I, V, VI and VII of the American Declaration in the case; and the need for the United States to ensure compliance with its obligations under the American Declaration in a way that resolves the challenges of federalism. The petitioners also requested that the Commission adopt a number of more detailed recommendations and proposed measures of follow-up on compliance.

206. In accordance with the objectives of the individual case system and the applicable terms of the Commission's Rules of Procedure, in cases in which the IACHR has established a violation of the duties set forth in the American Declaration, it transmits the report to the State in question in order for the latter to report on compliance with the recommendations issued. The Commission notifies the petitioners as well, with the same objective of receiving information with respect to compliance with its recommendations. This phase of the proceedings does not serve as an opportunity to reopen questions that have been analyzed and decided by the Commission.

207. Given the lack of information from the State, the Commission must conclude that the recommendations issued have not been implemented, and that their compliance thus remains pending. The Commission is accordingly required to reiterate those recommendations and continue monitoring compliance.

208. With respect to the submissions of the petitioners, the information presented goes not toward issues of compliance but toward questions of law that, for the most part, were analyzed by the Commission.

209. The petitioners make one observation, however, that suggests a need for clarification as to the scope of the Commission's findings with respect to judicial protection. In their submission, the petitioners take issue with what they consider to have been an overly narrow reading of the right to an adequate and effective remedy in the United States court system. They claim that: "In the Commission's view, Ms. Lenahan's right to a remedy was not violated because she was able to present her allegations to the country's highest court and the legal process she followed was unaffected 'by any irregularities, omissions, delays or any other due process violations....'" [Citation omitted.] The petitioners also claim that this narrow view of the right to a remedy fails to take into consideration the long-standing jurisprudence of the inter-American human rights system, as well as guidance from other international authorities, recognizing that the right to a remedy must be effective, "not merely illusory or theoretical," and that it must be suitable to grant appropriate relief for the legal right that is alleged to have been infringed. They reiterate that taken together, three United States Supreme Court holdings – in the cases of *Castle Rock v. Gonzales*, *DeShaney v. Winnebago County Department of Social Services*, and *United States v. Morrison* – act as a categorical bar to victims and survivors of domestic violence initiating legal proceedings against government officials under the United States Constitution to vindicate their rights to be protected from such violence.

210. With respect to this point, the Commission considers it pertinent to reiterate certain aspects of its findings. On the one hand, the Commission was asked to pronounce upon the response that Jessica Lenahan encountered when she filed a federal suit under the due process clause of the Fourteenth Amendment. On this specific question, the Commission concluded that Ms. Lenahan was able to present her claims and be heard. This aspect of the Commission's analysis related to the claim that was in fact brought in the present case.

211. The petitioners have underlined concerns about limitations in the availability and scope of federal claims of action for victims of violence. These questions are important, and the Commission has taken due note of the restrictive approach employed by the Supreme Court in this regard. As the Special Rapporteur on Violence against Women of the United Nations indicated at the close of a recent visit to the United States:

Although VAWA's [Violence against Women's Act] intentions are laudable, there is little in terms of actual legally binding federal provisions which provide substantive protection or prevention for acts of domestic violence against women. This challenge has been further

exacerbated by jurisprudence emanating from the Supreme Court. The effect of cases such as *DeShaney*, *Morrison* and *Castle Rock* 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 of assistance from victims of domestic violence, there is no constitutional or statutory remedy at the federal level.<sup>305</sup>

212. The Commission also underscores, as established in the present report, that the inter-American system has affirmed for many years that it is not the formal existence of judicial remedies that demonstrates due diligence, but rather that they are available and effective.<sup>306</sup> Therefore, when the State apparatus leaves human rights violations unpunished and the victim's full enjoyment of human rights is not promptly restored, the State fails to comply with its positive duties under international human rights law.<sup>307</sup> The same principle applies when a State allows private persons to act freely and with impunity to the detriment of the rights recognized in the governing instruments of the inter-American system.

213. The key aspect of the Commission's analysis in this case did not deal with the scope of federal claims of action under national law, but rather with the deficiencies in the judicial response of the State at all levels to the concrete events of the present case. This analysis was centered on the obligation of the state to provide judicial remedies to Ms. Lenahan with respect to the non-enforcement of the protection order and the subsequent deaths of her daughters. This obligation covers a range of required responses on the part of the State that were not provided, beginning first with the duty to respond to Ms. Lenahan's calls and complaints that her daughters were at risk due to the violation of the terms of the restraining order. That restraining order was the only means available to her at the state level to protect herself and her children in a context of domestic violence, and the police did not effectively enforce it. Given the failure to effectively enforce that restraining order, the state is required to investigate the circumstances in order to identify the reasons, remedy them where required, and hold those responsible to account. Further, as established in the Commission's report, the state is obliged to investigate and clarify the circumstances of the deaths of Leslie, Katheryn and Rebecca Gonzales, and to provide Jessica Lenahan access to that information. That investigation must be prompt, thorough and effective, and undertaken by the state at its own initiative. The state's failure to comply with the foregoing obligations gives rise to the requirement to adopt concrete measures to remedy the violations.

214. On April 4, 2011, the Commission transmitted Report N° 62/11 to the parties and requested the State to present information on compliance with the recommendations within one month from the date of transmittal. No further submission on this matter was received from either party. Accordingly, based on the information available, the Commission decided to ratify its conclusions and to reiterate its recommendations in this case, as set forth below.

## VIII. FINAL CONCLUSIONS AND RECOMMENDATIONS

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<sup>305</sup> Statement from Special Rapporteur on violence against women, its causes, and consequences, at the conclusion of her fact finding mission to the United States of America, February 8, 2011, *available at* <http://www.ohchr.org>.

<sup>306</sup> See, IACHR, Report N° 81/10, Case 12.562, *Wayne Smith, Hugo Armendatriz, et al.*, United States, July 12, 2010, para. 62; IACHR, Report on Admissibility N° 52/07, Petition 1490-05, *Jessica Gonzales and Others (United States)*, July 24, 2007, para. 42; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.LN/II, Doc. 68 (January 20, 2007), para. 26; I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*, Judgment of November 19, 1999. Series C No. 63, para. 235.

<sup>307</sup> IACHR, *The Situation of the Rights of Women in Ciudad Juarez*, OEA/Ser. L/V/II.117. Doc. 44 (March 7, 2003), para. 51.

215. On the basis of the facts and information provided, the IACHR finds that the State has not taken measures toward compliance with the recommendations in the merits report in this case. Accordingly,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES ITS RECOMMENDATIONS THAT THE UNITED STATES:**

1. Undertake a serious, impartial and exhaustive investigation with the objective of ascertaining the cause, time and place of the deaths of Leslie, Katheryn and Rebecca Gonzales, and to duly inform their next-of-kin of the course of the investigation.

2. Conduct a serious, impartial and exhaustive investigation into systemic failures that took place related to the enforcement of Jessica Lenahan's protection order as a guarantee of their non-repetition, including performing an inquiry to determine the responsibilities of public officials for violating state and/or federal laws, and holding those responsible accountable.

3. Offer full reparations to Jessica Lenahan and her next-of-kin considering their perspective and specific needs.

4. Adopt multifaceted legislation at the federal and state levels, or to reform existing legislation, making mandatory the enforcement of protection orders and other precautionary measures to protect women from imminent acts of violence, and to create effective implementation mechanisms. These measures should be accompanied by adequate resources destined to foster their implementation; regulations to ensure their enforcement; training programs for the law enforcement and justice system officials who will participate in their execution; and the design of model protocols and directives that can be followed by police departments throughout the country.

5. Adopt multifaceted legislation at the federal and state levels, or reform existing legislation, including protection measures for children in the context of domestic violence. Such measures should be accompanied by adequate resources destined to foster their implementation; regulations to ensure their enforcement; training programs for the law enforcement and justice system officials who will participate in their execution; and the design of model protocols and directives that can be followed by police departments throughout the country.

6. Continue adopting public policies and institutional programs aimed at restructuring the stereotypes of domestic violence victims, and to promote the eradication of discriminatory socio-cultural patterns that impede women and children's full protection from domestic violence acts, including programs to train public officials in all branches of the administration of justice and police, and comprehensive prevention programs.

7. Design protocols at the federal and state levels specifying the proper components of the investigation by law enforcement officials of a report of missing children in the context of a report of a restraining order violation.

#### **IX. PUBLICATION**

216. In light of the above and in accordance with Article 47 of its Rules of Procedure, the IACHR decides to make this report public, and to include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, according to the norms contained in the instruments which govern its mandate, will continue evaluating the measures adopted by the United States with respect to the above recommendations until it determines there has been full compliance.

Done and signed in the city of Washington, D.C., on the 21<sup>th</sup> day of July 2011.  
(Signed): José de Jesús Orozco Henríquez, First Vice President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commission Members.

**C.K.(A CHILD) through Ripples International as her guardian and Next friend) & 11 others v COMMISSIONER OF POLICE/INSPECTOR GENERAL OF THE NATIONAL POLICE SERVICE & 3 others [2013] eKLR**



**REPUBLIC OF KENYA**

**High Court at Meru**

**Petition 8 of 2012**

C.K.(A CHILD) through Ripples International as her guardian and Next friend).....	1 <sup>ST</sup>
PETITIONER	
F.K.(A CHILD)through Ripples International as her guardian and Next friend).....	2 <sup>ND</sup>
PETITIONER	
M.M..(A CHILD)through Ripples International as her guardian and Next friend).....	3 <sup>RD</sup>
PETITIONER	
E.K.M.(A CHILD)through Ripples International as her guardian and Next friend).....	4 <sup>TH</sup>
PETITIONER	
P.K.(A CHILD)through Ripples International as her guardian and Next friend).....	5 <sup>TH</sup>
PETITIONER	
M.N.M.(A CHILD)through Jane Mwakiuma as her guardian and Next friend).....	6 <sup>TH</sup>
PETITIONER	
Y.N.(A CHILD)through Gladys Ng'inombabu as her guardian and Next friend).....	7 <sup>TH</sup>
PETITIONER	
L.W.(A CHILD)through Ripples International as her guardian and Next friend).....	8 <sup>TH</sup>
PETITIONER	
PAMELA WARUGURU.....	
.9 <sup>TH</sup> PETITIONER	
I.K(A CHILD)through Ripples International as her guardian and Next friend).....	10 <sup>TH</sup>
PETITIONER	
T.M.(A CHILD)through Agnes Gakii as her Guardian and Next friend).....	11 <sup>TH</sup>
PETITIONER	
RIPPLES INTERNATIONAL.....	12 <sup>TH</sup>
PETITIONER	
VERSUS	
THE COMMISSIONER OF POLICE/INSPECTOR GENERAL OF THE NATIONAL POLICE SERVICE.....	1 <sup>ST</sup>
RESPONDENT	
THE DIRECTOR OF PUBLIC PROSECUTIONS.....	2 <sup>ND</sup>
RESPONDENT	
MINISTER FOR JUSTICE, NATIONAL COHESION & CONSTITUTIONAL AFFAIRS.....	3 <sup>RD</sup>
RESPONDENT	
AND	

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS.....AMICUS CURIAE**

**J U D G M E N T**

The twelve petitioners through a petition dated 11<sup>th</sup> October, 2012 brought under Articles 2, 10, 19, 21, 22, 23, 27, 28, 29, 48, 50(1) and 53 of the Constitution of Kenya, 2010, Article 1, 2, 3, 5, 7, 8 and 10 of the Universal Declaration of Human Rights, Articles 1, 2, 3, 4, 16 and 27 of the African Charter on the Rights and Welfare of the Child, Articles 2, 3, 4, 5, 6, 7 and 8 of the African Charter of Human and Peoples Rights, Section 3, 5, 15 and 22 of the Children Act 2001 (Chapter 141) of the Laws of Kenya, the Sexual Offences Act, 2006 (Act No. 3 of 2006) and the Police Act (Chapter 84) of the Laws of Kenya seek the following reliefs:-

**1. A declaration to the effect that the neglect, omission, refusal and/or failure of the police to conduct prompt, effective, proper and professional investigations into the first eleven petitioners' complaints of defilement violates the first eleven petitioners' fundamental rights and freedoms-**

**(a) to special protection as members of a vulnerable group'**

**(b) to equal protection and benefit of the law;**

**(c) not to be discriminated against'**

**(d) to inherent dignity and the right to have the dignity protected;**

**(e) to security of the person**

**(f) not to be subjected to any form of violence from public or private sources or torture or cruel or degrading treatment; and**

**(g) to access to justice as respectively set out in Articles 21(1), 21(3), 27, 28, 29, 48, 50(1) and 53(1) (c) of the Constitution.**

**2. A declaration to the effect that the neglect, omission, refusal and/or failure of the police to conduct prompt, effective, proper and professional investigations into the first eleven petitioners' respective complaints violates the first eleven petitioners' fundamental rights and freedoms under-**

**(a) Articles 1 to 8 (inclusive) and 10 of the Universal Declaration of Human Rights,**

**(b) Articles 2, 4, 19, 34 and 39 of the United Nations Convention on the rights of the child;**

**(c) Articles 1, 3, 4, 16 and 27 of the African Charter on the Rights and welfare of the child, and**

**(d) Articles 2 to 7 (inclusive) and 18 of the African Charter on Human and people's rights.**

**3. An order of mandamus directing the 1<sup>st</sup> respondent together with his agents, delegates and/or subordinates to conduct prompt, effective, proper and professional investigations into the 1<sup>st</sup> to 11<sup>th</sup> petitioners' respective complaints of defilement and other forms of sexual violence.**

**4. an order of mandamus directing the 3<sup>rd</sup> respondent together with his agents, delegates and/or subordinates to-**

**(a) formulate the National Policy Framework envisioned by Section 46 of the Sexual Offences Act, 2006 through a consultative and participatory process, ensuring its compliance with the Constitution and to disseminate, implement and widely and regularly publicize the National Policy Framework, and**

**(b) Make and/or cause the National Policy Framework in (a) above to be made a mandatory component of the training curricular at all police training colleges and institutions.**

**5. An order of mandamus directing the 3<sup>rd</sup> respondent together with his agents, delegates and/or subordinates to implement the guidelines provided in the Reference Manual on the Sexual Offences Act, 2006 for prosecutors, Sections 27-36, excepting section 34.**

**6. An order of mandamus directing the 1<sup>st</sup> respondent together with his agents, delegates and/or subordinates to implement Article 244 of the Constitution in as far as it is relevant to the matters raised in this Petition.**

**7. An Order directing the Respondents to regularly and/or account to the Honourable Court, for such period as the Honourable court may direct, on compliance and/or implementation of the orders set out in paragraphs (3) to (6) (inclusive) above.**

**8. The costs of and incidental to this petition**

**9. such other, further, additional, incidental and/or alternative reliefs or remedies as the Honourable court shall deem just and expedient.**

The learned State Counsel for the 1<sup>st</sup> and 3<sup>rd</sup> respondents, Mr. Menge filed grounds of opposition dated 6<sup>th</sup> March, 2013 and the 2<sup>nd</sup> respondent filed replying affidavit dated 17<sup>th</sup> January, 2012.

On the 3<sup>rd</sup> December, 2012 leave was granted to FIDA to be enjoined as party in this petition. On 11<sup>th</sup> March, 2013

Kenya National Commission on Human Rights was made a party to this matter and allowed to appear as Amicus Curiae. On the same day the court directed that the respondents who had not put in their written submissions do so within a month and this matter was set down for highlighting on 30<sup>th</sup> April, 2013.

On 30<sup>th</sup> April, 2013 the Counsel for the 1<sup>st</sup> and 3<sup>rd</sup> respondents had not filed his submissions, whereas the State Counsel for the 2<sup>nd</sup> respondent filed his submissions on the same day. The Advocate for the petitioners, FIDA and Kenya National Human Rights relied on their submissions filed on 11<sup>th</sup> February, 2013 and 27<sup>th</sup> February, 2013. The petitioners' submissions were filed on 11<sup>th</sup> February, 2013. All parties opted not to highlight on their aforesaid submissions.

I have carefully considered the petition and response by 2<sup>nd</sup> respondent, the affidavits in support and in opposition. The court has carefully also considered the written submissions and authorities in support and relevant provisions of law and the parties opposing positions.

The petitioners case in brief is that the eleven(11) petitioners, C.K., F.K, M.M, E.K, M.P.K, M.N.M;N.N, L.W, P.W, I.K, and T.M are Kenyan citizens by birth and residents of the Meru County in the Republic of Kenya. That each of the said petitioners were on all material dates relevant to these proceedings a "Child" and a victim of "Child abuse" and "defilement" as respectively defined under the Children Act, 2001 and the Sexual Offence Act, 2006. That each of the said 11 petitioners is averred was at all material times to these proceedings entitled to each and all fundamental rights and freedoms set out or implied in the Constitution of Kenya, 2010. That the 12<sup>th</sup> Petitioner is a Charitable Non-governmental Organization specializing in the promotion and protection of child rights and welfare within Meru County in the Republic of Kenya. That the 12<sup>th</sup> Petitioner is currently sheltering, educating and maintaining more that 200 vulnerable children from Meru County.

That the petitioners herein were on diverse dates between the year 2008 and 2012 victims of defilement and other forms of Sexual violence and child abuse. That the petitioners made reports of the acts of defilement at various police stations within Meru County and the police officers at those various Police Stations neglected, omitted, refused and or otherwise failed to conduct prompt, effective, proper and professional Investigation into the petitioners' complaints or record the petitioners' complaints in the police Occurrence Book or visit the crime scenes or interview the witnesses or collect and preserve evidence or take any other steps or put in motion such other processes of the law as would have brought the perpetrators of defilement and other forms of sexual violence to account for their unlawful acts or took such other legislative, policing and/or administrative measures as would protect the petitioners(in common with other Kenyan Children) from abuse, sexual violence, inhuman and degrading treatment. That due to neglect, commission, refusal and/or failure on the part of the police the petitioners averred and contended that they have suffered grave unspeakable and immeasurable physical and physiological trauma and that the perpetrators of the aforesaid unlawful acts roam large and free, with impunity and they continue to threaten the physical and psychological wellbeing of the petitioners.

The petitioners contended that the 1<sup>st</sup> petitioner, aged 5 years was defiled by her uncle (K) and that the 1<sup>st</sup> petitioner's family has been complicit in every cover up. The aforesaid defilement and subjecting the 1<sup>st</sup> petitioner to violence and other forms of abuse. That on 18<sup>th</sup> January, 2012, the 1<sup>st</sup> petitioner reported the defilement to Meru District Children's Officer, Kinoru Administration Police Camp and Meru Police Station. That the Kinoru Administration Police Camp Officers demanded kshs.1,000/- before they could intervene in anyway and refused to assist the 12<sup>th</sup> petitioner in rescuing the 1<sup>st</sup> petitioner. That the OCS Meru Police Station refused to investigate the complaint, claiming that the complaint had been made late. The 1<sup>st</sup> petitioner contends that the neglect, omission, refusal and/or failure of the police to conduct prompt, proper and professional investigation into her complaint violates her fundamental rights and freedoms under Article 2, 21(1),(3), 27, 29, 29, 48, 50(1) and 53(1), (c) of the Constitution of Kenya, 2010.

The 2<sup>nd</sup> petitioner contends that in August, 2011, then aged 15 years was defiled by her neighbor(MN) and as a result of the defilement, she conceived, dropped out of school and suffered grave physical and psychological trauma. That the 2<sup>nd</sup> petitioner reported the aforesaid act of defilement at Kariene Police Station on 17<sup>th</sup> January, 2012.

That the Police Officers at Kariene Police Station interrogated the 2<sup>nd</sup> petitioner loudly and in public in the hearing of all present at the police station, thereby subjecting the 2<sup>nd</sup> petitioner to humiliation, embarrassment and inhuman treatment. That the police officers refused to issue a P3 form to the 2<sup>nd</sup> petitioner, insisting that they had to wait until the 2<sup>nd</sup> petitioner's baby, conceived out of the defilement was born and further refused to arrest or interrogate the perpetrator and unlawfully, inexcusably and unjustifiably neglected, omitted and/or otherwise failed to conduct prompt, effective, proper and professional investigation into the 2<sup>nd</sup> petitioner's complaint.

The 2<sup>nd</sup> petitioner contends that the neglect, refusal and/or failure of police to conduct prompt, effective, proper and professional investigation, into her complaint violates her fundamental rights and freedom under Article 2, 21(1),(3),27,28,29,48,50(1) and 53(1),(c) of the Constitution of Kenya, 2010.

The 3<sup>rd</sup> petitioner, contends that on 27<sup>th</sup> December, 2011 when aged 8 years was defiled by a gang of three neighbours(M/S. Z K, KM and M N) and as a result of the defilement she contracted a sexually transmitted disease and suffered grave physical and psychological trauma. That the 3<sup>rd</sup> petitioner reported the said defilement at Laare



Police Station on 25<sup>th</sup> December, 2012. That the police officers at Laare Police Station arrested and charged only one of the three perpetrators in the defilement but failed to investigate, interrogate and/or arrest the other perpetrators in spite of their continued threat, harassment and intimidation of the 3<sup>rd</sup> petitioner's family. The 3<sup>rd</sup> petitioner contends that the refusal, neglect, omission and/or failure of the police to investigate, interrogate and/or arrest the other perpetrators violates her fundamental rights and freedoms under Articles 2, 2(1) 3, 27, 28, 29, 50(1) and 58(1), (c), of the Constitution of Kenya, 2010.

The 4<sup>th</sup> petitioner in June, 2010, then aged 12 years was defiled by an Administration Police Officer(JMM) as a result of which she conceived and has suffered a grave physical and psychological trauma. That the perpetrator who has since admitted to the offence is contended has been harassing, intimidating and threatening the 4<sup>th</sup> petitioner and her family. That though the perpetrator was formally charged in court, the petitioner contends, the police have frustrated and delayed the criminal proceedings by inter alia, insisting on receiving money and travel reimbursement from the petitioner, failing to avail the police investigation file and failing to timely avail DNA results. The fourth petitioner contends that the delay in the prosecution of the perpetrators and the manner of which the police have handled the case violates her fundamental rights and freedoms under Article 2, 21(1), 21(3), 27, 28, 29, 48 50(1) and 53(1),(c), of the Constitution of Kenya, 2010.

The 5<sup>th</sup> petitioner contends that on 11<sup>th</sup> May, 2011, then aged 11 years, was defiled by her neighbor(DM) causing her grave physical and psychological trauma. That the police have neglected, omitted, refused and/or otherwise failed to investigate, interrogate and/or arrest the perpetrator in spite of the 5<sup>th</sup> petitioner's complaint and ample evidence linking the perpetrator to the defilement. The 5<sup>th</sup> petitioner contends that the neglect, omission, refusal and/or failure on the part of the police to investigate, interrogate and/or arrest the perpetrator violates her fundamental rights and freedoms under Article 2, 21(1), 3(), 27, 28, 29, 48, 50(1) and 53(1) (c) of the Constitution of Kenya, 2010.

The 6<sup>th</sup> petitioner contends that she was repeatedly defiled by her father (MM) between the year, 2008 and 2011, as a result of which she has suffered grave physical and physiological trauma. The 6<sup>th</sup> petitioner averred that she reported the aforesaid acts of defilement at Tigania Police Station on 1<sup>st</sup> July, 2011 who failed, neglected, omitted and refused to conduct prompt, effective, proper and professional investigation into the 6<sup>th</sup> petitioner's complaint. The 6<sup>th</sup> petitioner contends that the neglect, omission, refusal and/or failure of the police to conduct prompt, effective, proper and professional investigations into her complaint violates her fundamental rights and freedoms under Article 2, 21(1),(3),27, 28, 29, 48, 50(1) and 53(1),(c) of the Constitution of Kenya, 2010.

The 7<sup>th</sup> Petitioner averred that on 6<sup>th</sup> August, 2011, then aged 8 years, was defiled by her neighbor(JK) causing her grave physical and psychological trauma. That a report was made to Nchiru Police Station whereby police officers are said to have demanded payment of KShs.1,000/- for fuel and as a precondition for taking 7<sup>th</sup> petitioner to the hospital and omitted, neglected, refused and failed to conduct prompt, effective, proper and professional investigation to the 7<sup>th</sup> complainant's complaint. She further contends that though the perpetrator was formally charged in court, the police offices at Nchiru have frustrated the prosecution by, inter alia, refusing to inform the 7<sup>th</sup> petitioner of the hearing dates and failing to present the perpetrator in court whenever the case is scheduled for hearing. The 7<sup>th</sup> petitioner contends her fundamental rights and freedoms under Article 2, 21(1), (3), 27, 28, 29, 48, 50(1) and 53(1)(c) of the Constitution of Kenya, 2010 had been violated by the Police Officers.

The 8<sup>th</sup> petitioner avers that on 31<sup>st</sup> August, 2011, then aged 13 years was defiled by her employer's husband(GG) and as a result of which she has undergone surgery at the Meru General Hospital and has suffered grave physical and psychological trauma. The 8<sup>th</sup> petitioner reported the defilement at Meru Police on 31<sup>st</sup> August, 2011. She contends the Police Officer at the Meru Police Station have neglected, omitted, refused and/or failed to conduct prompt, effective, proper and professional investigation into the 8<sup>th</sup> petitioner's complaint or visit the scene of crime or interrogate or arrest the perpetrator. She contends that the neglect, omission, refusal and/or failure of the police to conduct prompt, effective, proper and professional investigations into her complaint or interrogate or arrest the perpetrator violates her fundamental rights and freedoms under Article 2, 21(1),(3), 27, 28, 29, 48 50(1) and 53(1) of the Constitution of Kenya, 2010.

The 9<sup>th</sup> petitioner avers that in October, 2008, then aged 15 years, was defiled while under refuge at Huruma Children's Home(at Nkubu, Meru), as a result she conceived and suffered grave physical and psychological trauma. She reported the defilement at Nkubu Police Station on 22<sup>nd</sup> January, 2009. She contends that the police station have neglected, omitted, refused and failed to conduct prompt, effective, proper and professional investigations into her complaint and such failure violates her fundamental rights and freedoms under Articles 2, 21(1), (3),27,28,29,48,50(1) and 53(c) of the Constitution of Kenya, 2010.

The 10<sup>th</sup> petitioner avers that in June, 2008, then aged 11 years, was defiled by her neighbor(SK) and as a result of which she conceived and suffered grave physical and psychological trauma. She avers that on 21<sup>st</sup> January, 2011 she made a report at Kariene Police Station and that though the perpetrator was formally charged in court, the police have frustrated and delayed the case by, inter alia, failing to bring critical witnesses to court, failing to bring police file to court and by bringing to court witnesses who have no personal knowledge to the facts of the case. She contends that the manner in which the police have handled her case violates her fundamental rights and freedoms under Articles 2, 21(1),(3), 27, 28, 29, 48,50(1) and 53(1),(c) of the Constitution of Kenya, 2010.

The 11<sup>th</sup> petitioner avers that she was severally beaten and defiled by her step-father causing her grave physical and psychological trauma. That she reported the defilement at Meru Police Station on 4<sup>th</sup> June, 2012 but police officers refused to record or investigate her complaint. She contends that the neglect, omission, refusal, and/or failure of the police to conduct prompt, effective, proper and professional investigations into her complaint violates her fundamental rights and freedoms, under Article 2, 21(1), (3), 27, 28, 29, 48, 50(1) and 53(1), (c) of the Constitution of Kenya, 2010.

The 12<sup>th</sup> petitioner avers that it brings these proceedings in public interest and pursuant to the express and implied provisions of Article 22(2) of the Constitution of Kenya, 2010.

Section 22(1) and (2) of the Constitution of Kenya, 2010 provides:-

***“22. (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.***

***(2) In addition to a person acting in their own interest, court***

***proceedings under clause (1) may be instituted by--***

***(a) a person acting on behalf of another person who cannot act in their own name;***

***(b) a person acting as a member of, or in the interest of, a group or class of persons;***

***(c) a person acting in the public interest; or***

***(d) an association acting in the interest of one or more of its members.”***

The 12<sup>th</sup> petitioner contends that the neglect, omission, refusal and failure of the police to conduct prompt, effective, proper and professional investigations into the eleven petitioners respective complaints violates their respective fundamental rights and freedoms under, inter alia, Articles 2, 21(1), 21(3), 27, 28, 29, 48, 50(1) and 53(1), (c) of the Constitution of Kenya, 2010, Articles 1 to 8 (inclusive) and 10 of the Universal Declaration of Human Rights, Articles 2, 3, 19, 34 and 39 of United Nations Convention on Rights of the Child, Articles, 1, 2, 3, 16, and 27 of the African Charter on the rights and welfare of the child and Articles 2 to 7 (inclusive) and 18 of the African Charter on Human and people rights. The 12<sup>th</sup> petitioner further contends the police's failure to act on petitioner's complaints constitutes a grave abdication of statutory duty and express and implied provision inter alia:-

***(a) sexual offences Act, 2006(Act No.3 of 2006) and***

***(b) The Police Act(Cap.84) of the Laws of Kenya)***

The petitioners' petition is supported by affidavit of Mutuma Kirima, a Social Worker employed by the 12<sup>th</sup> Petitioner, a Charitable Non-Governmental Organization, specializing in the promotion and protection of child rights and welfare within Meru County. The affidavit supports each and every petitioner's claim as herein above analyzed and with supportive annexures MKI to MK8.

The 1<sup>st</sup> and 3<sup>rd</sup> respondents did not file any replying affidavit but grounds of opposition dated 6<sup>th</sup> March, 2013 alleging that the petition is incompetent, and bad in law as prayed against 1<sup>st</sup> and 3<sup>rd</sup> respondents. The 1<sup>st</sup> and 3<sup>rd</sup> respondents contended the petitioners have not identified the perpetrators by giving their names and that the court lacked jurisdiction to grant the prayers sought. The 1<sup>st</sup> and 3<sup>rd</sup> respondents further contended that the petitioners have not demonstrated how the respondents were involved to the order sought herein and that the petitioners had not exhausted all available avenues and a such constitutional remedies should be trivialized.

The 1<sup>st</sup> and 3<sup>rd</sup> respondents did not file any affidavit to controvert the matters raised in the affidavit of the 12<sup>th</sup> petitioner and I take the same as unchallenged and to be truthful. The names of the perpetrators have clearly been given and their whereabouts disclosed, I therefore find no merits in the 1<sup>st</sup> and 3<sup>rd</sup> respondents' objection on the ground that the particulars and names of the perpetrators have not been disclosed.

Under Article 22(1), everyone has the right to institute court proceedings for enforcement of Bill of Rights. Article 22(1),(a),(b),(c), and (d) of the Constitution of Kenya, 2010 provides:-

***“22. (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.***

***(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by--***

***(a) a person acting on behalf of another person who cannot act in their own name;***

***(b) a person acting as a member of, or in the interest of, a group or class of persons;***

***(c) a person acting in the public interest; or***

***(d) an association acting in the interest of one or more of its members.”***

Further Article 23(1) of the Constitution of Kenya, 2010 provides:

***“23. (1) The High Court has jurisdiction, in accordance with Article 165, to hear and determine***

**applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.”**

In view of the foregoing I find and hold everyone has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed and the High Court has jurisdiction to entertain such proceedings and determine applications for redress of a denial, violation or infringement of, or threat to, a right on fundamental freedom in the Bill of Rights.

I therefore find no merits on 1<sup>st</sup> and 3<sup>rd</sup> respondents grounds of opposition and the same are rejected and dismissed.

The 2<sup>nd</sup> respondent through its replying affidavit dated 17<sup>th</sup> January, 2012 by Mr. Jackson Motende, State Counsel, in the office of the Director of Public Prosecution, Meru office referred to Article 157(4) of the Constitution of Kenya, 2010 which gives the Director of Public Prosecution power to direct the Inspector-General of the National Police Service to investigate any information or allegation of criminal conduct. He averred that court directions were given in accordance with the said Article and attached a letter dated 29<sup>th</sup> May, 2012 marked “JM”. The said letter is only on complaint by 2 victims and not all petitioners in this petition as can be observed. That since the said letter, it appears there had been no follow up or response from the DCIO. Significantly the letter was not written to Inspector General nor was it copied to the said office. The affidavit of the learned State Counsel Mr. J. Motende is clear that no action has been taken on the petitioners’ complaints as he deposes that majority of the complaints contained in the petition were never received by the 2<sup>nd</sup> respondent. Strange enough there is no affidavit filed denying that the petitioners reported to the various police stations mentioned in the petition and in the supportive affidavit. I therefore do not find any basis of the 2<sup>nd</sup> respondent denying petitioners complaints were not reported to police stations mentioned in the petition. The 2<sup>nd</sup> respondent has not given any reason for their refusal, neglect, omission to act on the petitioners’ complaints and their failure to prosecute the perpetrators promptly upon receipt of the various complaints. The 2<sup>nd</sup> respondent’s assertion that it is wrongfully enjoined to this petition is without any basis. Article 157(6), (a), (b), (c) and (II) of the Constitution of Kenya, 2010 provides:-

**“(6) The Director of Public Prosecutions shall exercise State powers of prosecution and may—**

**(a) institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;**

**(b) take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; and**

**(c) subject to clause (7) and (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b).**

7.....

8.....

9.....

10.....

**(11) In exercising the powers conferred by this Article, the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.”**

It is therefore clear that it is the duty of the Director of Public Prosecutions to institute and undertake criminal proceedings against any person before any court and in doing so shall have regard to the public interest, the administration of justice and the need to prevent and avoid abuse of legal process.

The issue for determination in this petition is whether failure on the part of the police to conduct prompt, effective, proper and professional investigation into the petitioners’ complaints of defilement and other forms of sexual violence infringes on petitioners’ fundamental rights and freedoms under all or any Articles 21(1),(3),27,28,29,48,50(1) and 53(1), (d) of the Constitution of Kenya, 2010?

The petitioners as per affidavit in support, which had not been controverted by the respondents in anyway and which I find to be true having not been challenged have confirmed that they have been victims of defilement, and other forms of sexual violence and child abuse. The reports of defilement and other forms of sexual abuse were reported to various police stations. Police unlawfully, inexcusably and unjustifiably neglected, omitted and/or otherwise failed to conduct prompt, effective, proper and professional investigations to the said complaints. That failure caused grave harm to the petitioners and also created a climate of impunity for defilement as perpetrators were let free. This infringed the petitioners’ fundamental rights and freedoms under inter alia Articles 21(1),(3), 27,28,29,48,50(1) and 53(1),(d) of the Constitution of Kenya, 2010 and the general rules of international law, including any treaty or convention ratified by Kenya, which form part of the law of Kenya as per Article 2(5) and 2(6) of the Constitution of Kenya, 2010. That these international instruments are applicable to the petitioners cases. The relevant conventions include:

1. **The United Nations Convention on Rights of Child notably Article 2, 3, 4, 5, 6, 7 and 8.**
2. **The African Charter on Human and People's Rights notably Articles 2, 3, 4, 5, 6, 7 and 18.**
3. **The Convention on Elimination of all forms of discrimination against women(CEDAW) notably Articles 1 and 2.**
4. **The International Convention on Civil and political rights(ICCPR)notably Articles 3, 7, 9 and 26.**

I further find that the petitioners in this petition have suffered horrible, unspeakable and immeasurable harm due to acts of defilement committed against them. They each suffered physical harm in the form of internal and external wounds from the perpetrators assaults and some suffered consequences of unwanted pregnancies vested on children not physically mature enough to bear children. The petitioners have suffered psychological harm from assaults made worse by the threat, fear and reality of contracting HIV/AIDS and other sexually transmitted diseases or infections.

Whereas the perpetrators are directly responsible for the harms, to the petitioners, the respondents' herein cannot escape blame and responsibility. The respondent's ongoing failure to ensure criminal consequence through proper and effective investigation and prosecution of these crimes has created a "climate of Impunity" for commission of sexual offences and in particular defilement. As a result of which the perpetrators know they can commit crimes against innocent children without fear of being apprehended and prosecuted. This to me makes the respondents responsible for physical and psychological harms inflicted by perpetrators, because of their laxity and their failure to take prompt and positive action to deter defilement. The worse is that the petitioners' visited various police stations after defilements and gave names of the perpetrators being people they knew yet the respondents did not bother to take appropriate action. Instead the respondents showed disbelief, blamed the victims, humiliated them, yelled at and ignored them as they put them under vigorous cross-examination and failed to take action. The respondents are in my view directly responsible for psychological harm caused by their actions and inactions. The petitioner has since become self-doubtful, self-loathing, self-blame, and have low self-esteem. That has been documented amongst the petitioners following contact with the police.

It is as a result of the above-mentioned that the petitioners had to flee and seek protection and safety from the 12<sup>th</sup> petitioner leading to their separation from their close family members, friends, and community and removal from their homes, schools and where close support was mostly needed. The failure to act appropriately is directly liable for the psychological damage experienced by the petitioners arising from their alienation from family, schools and their own communities.

The petitioners' counsel attached opinions of two experts on Kenyan and International Police standards for establishing the standards to be applied to police treatment of defilement. The experts on Kenya Policing standards concluded inter alia that:

***"In all cases investigations were inadequate in that the Police failed to visit scenes of crime to gather evidence that is vital in collaboration of a case, did not interview witnesses/victims, samples were not taken and even those produced by victims were never forwarded to the Government analysts' for examination..."***

The expert on international policing standards concluded inter alia that:

***"The Investigations of these eleven cases fall short of international policing standards. The very basic steps required to investigate crimes of this nature have been overlooked and ignored. There seems to be a prevailing attitude that crimes of this nature are not taken seriously. These failures are significant in that there not only is an urgent need to re-assess how these cases are investigated but there is also an immediate need to adjust the attitude of the Police handling them....."***

The respondents in this petition failed to implement the rights and fundamental freedoms as enshrined under Article 21 of the Constitution of Kenya, 2010. The respondents have failed in their fundamental duties as stated under Article 21 in failing to observe, respect, protect, promote and fulfill the petitioners' fundamental rights and freedoms in particular the rights and freedoms relating to special protection as members of vulnerable group(Article 21(3), equality and freedom from non-discrimination(Article 27) humanity dignity(Article 29), access to justice (Article 48 and 50) and protection from abuse, neglect, all forms of violence and inhuman treatment(Article 53(1),(d) under the Constitution of Kenya, 2010.

The petitioners referred me to the case of **VAN EADER V MINISTER OF SAFETY AND SECURITY(2002) ZASCA 123** in which case police allowed a dangerous criminal and serial rapist to escape from their custody. The supreme court of Appeal of South Africa held:-

***"The fundamental values enshrined in the Constitution include human dignity, the achievement of equality and the advancement of human rights and freedoms.....everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources..... In all the circumstances of the present case I have come to the conclusion that the Police owed the appellant a legal duty to act positively to prevent Mohammed's***

**escape.....I have reached this conclusion mainly in view of the State's Constitutional imperatives to which I have referred."**

The court held that police had breached the applicant's fundamental rights and freedoms by allowing the rapist to escape from their custody.

In the instant petition the police have allowed the dangerous criminals to remain free and/or at large. The respondents are responsible for arrest and prosecution of the criminals who sexually assaulted the petitioners and the failure of State agents to take proper and effective measures to apprehend and prosecute the said perpetrators of defilement and protect the petitioners being children of tender years, they are in my opinion responsible for torture, defilement and conception of young girls and more particular the petitioners herein.

In case of **JESSICA LENAHAN(Gonzales) et al V UNITED STATES, Case 12.626, Report No.80/11, August, 17,2011. The inter-American Commission on Human Rights considered Police obligations to enforce a restraining order in circumstances where a father took his children from their mother's custody without permission and killed them. The Commission found that there was "broad International consensus" that States "may incur ..responsibility for failing to act with due diligence to prevent, investigate, sanction and offer reparations for acts of violence against women".....women.**

The State's duty to protect is heightened in the case of vulnerable groups such as girl-children and the State's failure to protect it need not be intentional to constitute a breach of its obligation. The courts have found that State has a clear duty to investigate crime and found the failure to do so constitute a Constitutional violation of claimant's rights.

In **R V Commissioner of Police & 3 Others** ex-parte **PHYLIS TEMWAI KIPTEYO HC.MISC.APPL.27 OF 2008,(2011) EKL(BUNGOMA)**the court stated:-

**"All the same, the life of the victim and the interests of the family are protected by the Constitution and the statutes. The State through the respondents herein are responsible for security of citizens in this country. It is the duty of the state to inquire into any crime or suspected crime affecting any of its subjects. It is the duty of the State to investigate the disappearance of the victim herein who was its subject and its employee(emphasis added)**

I agree with the above-mentioned case that once a report or complaint is made it is the duty of the police to move with speed and promptly, commence investigation and apprehend and interrogate the perpetrators of the offence and the investigation must be conducted effectively, properly and professionally short thereof amounts to violation of fundamental rights of the complainant.

In the instant case the police owed a Constitutional duty to protect the petitioners' right and that duty was breached by their neglect, omission, refusal and/or failure to conduct prompt, effective, proper and professional investigations and as such they violated the petitioners' fundamental rights and freedoms as entrusted in the Constitution.

Under Article 244 (a)-(e) of the Constitution of Kenya, 2010 it is provided:-

**"244. The National Police Service shall—**

**(a ) strive for the highest standards of professionalism and discipline among its members;**

**(b) prevent corruption and promote and practice transparency and accountability;**

**(c) comply with constitutional standards of human rights and fundamental freedoms;**

**(d) train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and**

**(e) foster and promote relationships with the broader society."**

Further Article 27(1)-(4) of the Constitution of Kenya, 2010 it is provided:-

**"27. (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.**

**(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth."**

The petitioners contend that gender-based sexual violence constitutes discrimination and referred me to Article 1 of the Convention of **Elimination of ALL FORMS OF DISCRIMINATION AGAINST WOMEN** which defines discrimination against women as including ..... "acts that inflict sexual harm".

Having considered the petitioners petition and affidavit in support and the fact that the police did not take appropriate action to ensure justice to the petitioners I find the police failure to conduct prompt, effective, proper, corruption free, and a professional investigation into petitioners complaints of defilement and other form of sexual

violence amounts to discrimination contrary to the expressly and implied provisions of Article 27 of the Constitution of Kenya, 2010 and contrary to Article 244 of the Constitution of Kenya, 2010.

Further to the above the Police failure to effectively enforce Section 8 of the Sexual Offences Act, 2006 infringes upon the petitioners right to equal protection and benefit of the law contrary to Article 27(1) of the Constitution of Kenya, 2010 and further by failing to enforce existing defilement laws the police have contributed to development of a culture of tolerance for pervasive sexual violence against girl children and impunity.

In the circumstances the respondents are responsible for violation of the petitioners' rights under Article 27 of the Constitution of Kenya, 2010. The respondents are obligated by law to protect girl children from defilement and ensure effective investigation of defilement claims (See section 14 and 14A of the Police Act (repealed and replaced by Act No. 11A of 2011), Section 2, 8 and 40 of the Sexual Offences Act and Articles 157(4) and Article 244 of the Constitution of Kenya, 2010).

In the case of **MC BULGARIA (MCV BULGARIA, EUROPEAN COURT OF HUMAN RIGHTS 39272/98, 2003)** the European Court of Human Rights held:-

***“The investigation of the applicant’s case, and in particular the approach taken by the investigators and the prosecutors in the case fell short of the requirements inherent in the States’ positive obligations-viewed in the light of the relevant modern standards in comparative and international law-to establish and apply effectively a criminal-law system punishing all forms of rape and sexual abuse.....The court thus finds that in the present case there has been a violation of the respondent State’s positive obligations under both Articles 3(on torture and inhuman/degrading treatment) and 8(on protection of the law) of the Convention.”***

In the case of **CAS ROMANIA (CAS ROMANIA, EUROPEAN COURT OF HUMAN RIGHTS 26692/05 2012)**.

The European Court of Human Rights held that an ineffective investigation of sexual assault charges violates the Human Rights convention. The court held as follows:-

***“It (the investigation) should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, inter alia, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk failing foul of this standard, and a requirement of promptness and reasonable expedition is implicit in this context. In cases under Articles 2 and 3 of the Convention where the effectiveness of the official investigation has been at issue, the court has often assessed whether the authorities reacted promptly to the complaints at the relevant time. Consideration has been given to the opening of investigations, delays in taking statements and to the length of time taken for the initial investigation.***

Yet in the case of **CARMICHELE V MINISTER SAFETY AND SECURITY AND ANOTHER (SUPRA)** the Court held:-

***“The courts are under a duty to send a clear message to the accused, and to other potential rapists and to the community. We are determined to protect the equality, dignity and freedom of all women, and we shall show no mercy to those who seek to invade those rights. South Africa also has a duty under international law to prohibit all gender-based discrimination that has the effect or purpose of impairing the enjoyment by women of fundamental rights and freedoms and to take reasonable and appropriate measures to prevent the violation of those rights. The police is one of the primary agencies of the state responsible for the protection of the public in general and women and children in particular against the invasion of their fundamental rights by perpetrators of violent crime.”***

In the case of **Gonzalez & Others (Cotton Field) V Mexica (Inter-American Court of Human Rights, judgment of November, 16, 2009)** the inter-American Court of Human rights held that State of Mexico had infringed on petitioners' rights to equality and non-discrimination, in claim relating to the discipline, torture, rape and murder of three young girls and stated as follows:-

***“Evidence provided to the court indicates, inter alia, that officials of the state of Chihuahua and the municipality of Juarez made light of the problem and even blamed the victims for their fate based on the way they dressed, the place they worked, their behavior, the fact that they were out alone, or a lack of parental care.....The Court therefore finds that, in the instant case, the violence against women constituted a form of discrimination, and declares the State violated the obligation not to discriminate contained in Article 1(1) of the Convention, in relation to the obligation to guarantee the rights embodied in the Articles 4(1), 5(1), 5(2) and 7(1) of the American Convention.”***

On sexual violence, freedom and security of a person court have held that State has an obligation to protect all citizens from violence and ensure their security of person. This is enshrined in Article 29 of our Constitution.

In case of **Carmichele V Minister of Safety and Security & Another (supra)** the court stated:

***“Thus one finds positive obligations on members of the Police force both in the IC and the Police Act. In addressing these obligations in relation to dignity and the freedom and security of the person, few things can be more important to women(and children) than freedom from the threat of sexual violence.”***

Article 48 and 50 of the Constitution of Kenya, 2010 obligates the State to ensure access to courts is not unreasonably or unjustifiably impeded and in particular where there is legitimate complaint, dispute or wrong that can be resolved by the courts or tribunals. Needless to say in criminal justice system, Police play a critical role and its abdication from that role would inevitably deprive claimant’s access to courts and lead to miscarriage of justice or deny justice altogether. The centrality of police in criminal justice system is evidenced by their functions as set out under Part III of the Police Act(Now repealed), which has been re-enacted at Section 24 of the **NATIONAL POLICE SERVICE ACT(ACT NO.11A of 2011)** as follows:-

***“24. The functions of the Kenya Police Service shall be the-***

***Provision of assistance to the public when in need;(b) maintenance of law and order;(e) investigation of crimes;(f) collection of criminal intelligence;(g) prevention and detection crime;(h) apprehension of offenders;(i) enforcement of all laws and regulations with which it is charged...”***

The police in the instant petition by failing to conduct prompt, effective, proper, corrupt free and professional investigations into the petitioners complainants, and demanding payments as preconditions for assistance, whether for fuel or P3 forms or whatever the case might have been they violated petitioners right to access of justice and right to have disputes that can be resolved by the application of law decided in a fair and in public hearing before court of law in accordance with Article 50(1) OF the Constitution of Kenya, 2010.

Under Article 53(1),(d) and (2) of the Constitution of Kenya, 2010,it is provided as follows:-

***53. (1) Every child has the right--***

***(d ) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour;***

***(2) The State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.”***

The above article clearly entitles petitioners to a fundamental inalienable right to be protected from abuse, neglect, harmful,cultural practices, all forms of violence, inhuman treatment and punishment and hazardous or exploitative labour.

The Article also provides that a child’s best interest are of paramount importance in every matter concerning the child.The police failure to act on petitioners complaints of defilement violated their rights under Article 53 of the Constitution of Kenya, 2010. The Constitutional requirement to protect the best interest of the child requires not only the establishmentof relevant laws but requires their proper enforcement by state agencies and any failure to implement laws aimed at protecting children amounts to infringement and/or violation of the Constitutional rights.

As recognized by the U.N, committee on rights of the child, under Article 19, General Convention, the State is obligated to investigate and punish those responsible for committing violence against children(see Director of Public Prosecutions, Transvaal V Minister of Justice and Constitutional Development, and others(2009) ZACC 8, 2009(4) SA 222(cc) 2009 (7) BCLR 637(CC) at para 200).

Having considered the evidence in the petitioners’ affidavit and the petition herein,the relevant articles in the Constitution of Kenya, 2010, the general rules of international law, treaty or convention ratified by Kenya and other related and relevant laws applicable in Kenya, I am satisfied that the petitioners have proved their petition and that the failure on part of the respondents to conduct prompt, effective, proper and professional investigations into the petitioners complaints of defilment and other forms of sexual violence infringes on the petitioners fundamental rights and freedoms, under Articles 21(1), 21(3), 27, 28, 29, 48, 50(1) and 53(1) (d) of the Constitution of Kenya, 2010.

In the circumstances I find the petitioners’ petition is meritorious and I proceed to grant the following orders:-

***1. A declaration be and is hereby made to the effect that the neglect, omission, refusal and/or failure of the police to conduct prompt, effective, proper and professional investigations into the first eleven petitioners’ complaints of defilement violates the first eleven petitioner’s fundamental rights and freedoms-***

***(a) to special protection as members of a vulnerable group,***

***(b) to equal protection and benefit of the law;***

***(c) not to be discriminated against,***

***(d) to inherent dignity and the right to have the dignity protected;***

*(e) to security of the person,*

*(f) not to be subjected to any form of violence either from public or private sources or torture or cruel or degrading treatment; and*

*(g) to access to justice as respectively set out in Articles 21(1), 21(3), 27,28,29,48,50(1) and 53(1) (c) of the Constitution of Kenya.*

**2. A declaration be and is hereby made to the effect that the neglect, omission, refusal and/or failure of the police to conduct prompt, effective, proper and professional investigations into the first eleven petitioners' respective complaints violates the first eleven petitioners' fundamental rights and freedoms under-**

**(a) Articles 1 to 8(inclusive) and 10 of the Universal Declaration of Human Rights,**

**(b) Articles 2, 4, 19, 34 and 39 of the United Nations Convention on the rights of the child;**

**(c) Articles 1, 3, 4,16 and 27 of the African Charter on the Rights and welfare of the child, and**

**(d) Articles 2 to 7(inclusive) and 18 of the African Charter on Human and people's rights.**

**3. An order of mandamus be and is hereby made directing the 1<sup>st</sup> respondent together with his agents, delegates and/or subordinates to conduct prompt, effective, proper and professional investigations into the 1<sup>st</sup> to 11<sup>th</sup> petitioners' respective complaints of defilment and other forms of sexual violence.**

**4. Prayer No.4 is refused**

**5. Prayer No.5 is refused**

**6. An order of mandamus be and is hereby made directing the 1<sup>st</sup> respondent together with his agents, delegates and/or subordinates to implement Article 244 of the Constitution in as far as it is relevant to the matters raised in this Petition.**

**Prayer 7 is refused.**

Costs of the petition to the petitioners against the 1<sup>st</sup> and 2<sup>nd</sup> respondents jointly and severally.

DATED, SIGNED AT MERU THIS 27<sup>th</sup>DAY OF MAY, 2013.

**J. A. MAKAU**

**JUDGE**

DELIVERED IN OPEN COURT IN THE PRESENCE OF:-

**1. Mr. Muthomi for the petitioner**

**2. Mr. Menge for 1<sup>st</sup> and 3<sup>rd</sup> Respondents**

**3. Mr. Makori for 2<sup>nd</sup> respondent**

**4. Mr. Mwakosi(Amicus curae) for Kenya National Commission on Human Rights.**

**5. M/S Beatrice Chalangat for FIDA.**

**J.A . MAKAU**

**JUDGE**



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**ISLAMIC REPUBLIC  
OF  
AFGHANISTAN  
MINISTRY OF JUSTICE**

**OFFICIAL GAZETTE**

EXTRAORDINARY ISSUE

**Law on Elimination of Violence against  
Women (EVAW)**

**Date: 1<sup>st</sup> August 2009**

**Issue No: (989)**

**Presidential Decree on Endorsement of Law on Elimination of Violence against Women (EVAW)**

**No: 91**

Date: 20, 07, 2009

**Article1:**

Based on provision of article 79 of the Afghan Constitution, I hereby, endorse the Law on Elimination of Violence against Women that has been approved by the Council of Ministers in its approval No. 16 dated 6, 07, 2009 in 4 chapters and 44 articles.

**Article 2:**

Minister of Justice and the State Minister in Parliamentary Affairs are assigned to submit this law to the National Assembly within 30 days from its first session.

**Article 3:**

This decree shall be enforceable upon the date signed and shall be published along with the law in the Official Gazette.

**Hamid Karzai**

**President of the Islamic Republic of Afghanistan**

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In the name of Allah the most compassionate the most merciful

Law on Elimination of Violence against Women (EVAW)

## Chapter One

### General Provisions

#### Basis

##### Article 1

This law has been enacted in accordance with the provisions set forth in Articles 24 and 54 of the Afghan Constitution.

#### Objectives

##### Article 2

This law has the following objectives:

1. Ensuring *Sharia* and legal rights and protecting the human dignity of women.
2. Maintaining family integrity and fighting against customs, traditions and practices which contradict Islamic *Sharia* and cause violence against women.
3. Protecting women who are victims or at risk of violence.
4. Preventing violence against women.
5. Providing public awareness and training on violence against women.
6. Prosecuting perpetrators of violence against women.

#### Terms

##### Article 3

The bellow terms in this law have the following meanings:

1. Woman: An adult or underage female person.
2. Violence: committing those acts mentioned in article 5 of this law which cause damage to the personality, body, property, and spirit of a woman.
3. Sexual Assault: committing fornication and pederasty act on adult women with force or committing such acts on underage woman, or assaulting to the chastity and honor of a woman.
4. *Baad*: Marrying a woman to someone as blood money or for the purpose of bringing peace and reconciliation among the families regarding murder, sexual assault or other circumstances following wrong customs and traditions.

5. Humiliation: Using words or committing acts which result in degradation of personality of a woman.
6. Intimidation: committing acts or using words which cause fear to a woman.
7. Persecution: using words or committing acts by any means which causes damage to the personality, body and spirit of a woman.
8. Forced isolation: preventing a woman from visiting her legal intimates.
9. Preventive measures: Practical measures that are taken for elimination of factors of violence and preventing its happening.
10. Supportive measures: Practical measures that are taken in purpose to support victims of violence.

## **Prevention of violence**

### Article 4

Violence is a crime; no one shall be entitled to commit violence at residential area, government or non-government institution, organizations, public places, transport or any other places. If committed, he/she shall be punished in accordance to the provisions of this law.

## **Instances of violence**

### Article 5

The commission of the following acts shall be deemed as violence against women:

1. Sexual assault;
2. Forced prostitution;
3. Recording the identity of the victim and publishing it in a way that damages her personality;
4. Burning, using chemicals or other dangerous substances;
5. Forcing one to burn herself or to commit suicide or using poison or other dangerous substances;
6. Causing injury or disability;
7. Beating;
8. Selling and buying women for the purpose of or on the pretext of marriage;
9. Giving *Baad*;
10. Forced marriage;
11. Prohibiting from the right of marriage or right to chose spouse;
12. Underage marriage;
13. Abusing, humiliating, intimidating;
14. Harassment/persecution;
15. Forced isolation;
16. Forced addiction;

17. Depriving from inheritance;
18. Prohibiting to access personal property;
19. Prohibiting from the right to education, work and access to health services;
20. Forced labor;
21. Marrying more than one wife without observing Article 86 of Civil Code; and
22. Denial of relationship.

## **The Rights of Victim**

### Article 6

The victims of violence have the following rights:

1. Prosecuting the offenders of violence based on provisions of the law;
2. Having access to shelter or other safe place (s) with the consent of the victim;
3. Having free access to emergency health services;
4. Having advocate or legal aid provider;
5. Compensation to damage resulted from the act of violence;
6. Confidentiality of relevant matter; and
7. Other rights which have been stipulated in the legislative documents for the victim.

## **Referring to the Institutions**

### Article 7

1. The victim of violence, by herself or her relatives, may complain in written to police, *Huqooq* Department, courts and other relevant authorities.
2. The institutions mentioned in paragraph (1) of this Article are obliged to register the received complaints and address them in accordance with the provisions of the law, and shall inform, in written, the Ministry of Women Affairs.
3. The Ministry of Women Affairs shall, upon receiving written information or direct complaint by the victim or her relatives, take and implement necessary measures in order to contact the victim.
4. Prosecutors' office and court are obliged to take violence case as a priority and process it as expeditiously as possible.
5. The authorities mentioned in paragraph (1) of this article are obliged to consider the special code of conduct developed by the Elimination of Violence against Women Commission while addressing received complaints.

## Chapter Two

### Preventive and Protective Measures

#### Obligation of the Ministry of Women Affairs

##### Article 8

In order to prevent the violence, the Ministry of Women Affairs in cooperation with other Ministries, governmental and non governmental agencies and relevant organizations shall adopt the following preventive and protective measures:

1. Coordinating the activities of the governmental and non governmental agencies and organizations provide services regarding the prevention of violence;
2. To improve awareness of men and women regarding their legal and religious rights and obligations;
3. Providing protection for the victims of violence in protection centers (shelter), or if protection center is not available, other safe places, as well as monitoring and evaluating them;
4. To conduct seminars, workshops, conferences and other training programs for the staff of governmental and non governmental institutions, organizations and local residents in order to increase public awareness, identification of violence cases and their consequences, and find solutions;
5. To explain factors of violence and their consequences based on provisions of *Sharia* and Law through relevant publications;
6. To make sure the implementation of training programs and capacity of non governmental institutions and relevant organizations.

#### Obligations of Ministry of Religious Affairs

##### Article 9

In order to prevent the violence, the Ministry of Religious Affairs shall adopt the following preventive measures:

1. Developing regular programs for the presentation of preaches and orations regarding Islamic rights and obligations of men and women by *Mullahs*, preachers and orators in Mosques and other religious places and making sure of its implementation.
2. Conducting seminars, workshops and conferences for Mullahs, Preachers and orators.



3. Explaining and describing the factors of violence and their consequences based on the provisions of the Islamic *Sharia* and law through the relevant publications.

## **Obligations of the Ministries of Education and Higher Education**

### Article 10

In order to prevent the violence, the Ministries of Education and Higher Education shall adopt the following preventive measures:

1. To include issues pertaining to violence and its consequences and the ways of its prevention in the related educational curriculum.
2. To conduct seminars, workshops and conferences for the relevant students and staff.
3. To take appropriate measures for the purpose of prohibiting occurrence of violence in the relevant academic areas.
4. To explain and describe the factors of violence and their consequences based on the provisions of the Islamic *Sharia* and law through the relevant publications.

## **Obligations of Ministry of Information and Culture**

### Article 11

In order to prevent violence, the Ministry of Information and Culture shall adopt the following preventive measures:

1. To arrange and broadcast radio and television programs about factors of violence and its consequences and to publish the relevant matters in the newspapers, gazettes and magazines.
2. To facilitate publication and broadcasting of issues related to prohibition of violence by the ministries, governmental institutions and other real and legal persons through their media.
3. To prohibit broadcasting of programs promoting violence through mass media.

## **Obligations of Ministry of Justice**

### Article 12

In order to prevent violence, the Ministry of Justice shall adopt the following preventive measures:

1. To increase the awareness level of men and women of their legal and *Sharia* rights and obligations.

2. To facilitate explanation and description of matters pertaining to the factors of violence and its consequences for men and women under detention and custody or imprisoned by the relevant authorities and other relevant social organizations.
3. To conduct seminars and workshops for the awareness of *Hoquq* and Legal Aid Departments staff regarding the provisions of this law and facilitating its better implementation.
4. To assign a legal aid provider if requested by the victim of violence.

## **Obligation of the Ministry of Interior Affairs**

### Article 13

In order to prevent the violence, the Ministry of Interior Affairs shall adopt and exercise special preventive and protective measures in all public locations and places.

## **Obligation of the Ministry of Public Health**

### Article 14

The Ministry of Public Health shall promptly provide free and urgent treatment services to the victims of violence in the health centers and report accordingly to the Ministry of Women Affairs.

## **Elimination of Violence against Women (EVAW) High Commission**

### Article 15

For the purpose of effectively combating violence and establishing coordination among the governmental, non governmental institutions and relevant organizations, the EVAW high commission shall be established under the presidency of the Minister of Women Affairs in the following structure:

1. Deputy of the Attorney General Office.
2. Deputy of the Ministry of Interior.
3. Deputy of the Ministry of Justice.
4. Deputy of the Ministry of Public Health.
5. Deputy of the Ministry of Information and Culture
6. Deputy of the Ministry of Education.
7. Deputy of the Ministry of Higher Education.
8. Deputy of the Ministry of Labor, Social Affairs, Martyrs and Disabled.
9. Deputy of the Ministry of Religious Affairs.
10. Member of the Afghanistan Independent Human Rights Commission.

11. Head of Kabul Specialized Family Court.
12. Head of Afghanistan Independent Bar of Association.

## **Duties and Responsibilities of the EVAW Commission**

### Article 16

(1) The EVAW commission shall have the following duties and responsibilities:

1. Study and evaluate factors of violence in the country and adopt appropriate preventive measures in this regard;
2. Arranging public awareness programs for the purpose of prohibiting commission of violence;
3. Coordinating the activities of the relevant governmental and non governmental agencies on combating violence;
4. Collecting statistics and figures of violence related crimes;
5. Providing suggestions on amendments to this law;
6. Suggesting adoption of regulations and relevant rules and procedures for the purpose of better implementation of this law;
7. Asking for information on violence cases from Police, Prosecutor's office and Court;
8. Preparing annual report of its activity and submitting it to the Council of Ministers; and
9. Other duties given by the government.

(2) The activities of the commission will be regularized by a separate job description which will be approved by the commission.

## **Chapter three**

### **Criminal Provisions**

## **Sexual Assault**

### Article 17

(1) If a person commits sexual assault on an adult woman, the offender shall be sentenced to continued imprisonment in accordance with the provision of Article

(426) of the Penal Code, and if it results to death of the victim, the perpetrator shall be sentenced to death penalty.

- (2) If a person commits sexual assault with an underage woman, the offender shall be sentenced to the maximum continued imprisonment according to the provision of Article (426) of Penal Code, and if it results to death of the victim, the perpetrator shall be sentenced to death penalty.
- (3) In the cases mentioned in paragraphs (1 & 2) of this Article the perpetrator shall be convicted to pay an amount equivalent to dowry (*Mahre Mesl*) to the victim.
- (4) If a person commits assault on chastity of a woman but his act does not result to adultery or pederasty (*Tafkhiz and Mosahiqah etc...*) - *rubbing together of sexual organs* -, considering the circumstances he shall be sentenced to long term imprisonment not exceeding 7 years.
- (5) If the victim mentioned in paragraph 4 of this Article has not attained the age of 18 or the perpetrator is a close relative up to degree 3, teacher, servant, doctor, or has influence and authority over the victim, considering the circumstances the perpetrator shall be sentenced to long term imprisonment not exceeding 10 years.

## **Forcing into prostitution**

### Article 18

1. If a person forces an adult woman into prostitution, considering the circumstances he will be sentenced to long term imprisonment not less than 7 years.
2. If the victim mentioned in paragraph (1) of this Article is not an adult woman, considering the circumstances the perpetrator shall be sentenced to long term imprisonment not less than 10 years.

## **Recording and publishing the identity of the victim**

### Article 19

A person who records the identity of the victim of rape, or the victim of compulsory prostitution or in contradiction to the law publishes and broadcasts their pictures, considering the circumstances he/she will be sentenced to medium imprisonment not less than 3 years.

## **Burning or Using Chemical Substances:**

### Article 20

1. If a person burns a woman or sprays chemical or other poisonous substances on her body causing injury, or makes her eat a poisonous substance or injects it into

- her body, taking into account the circumstances the offender shall be sentenced to long term imprisonment not less than 10 years.
2. If the crime mentioned in paragraph (1) of this Article is committed to spread fear and terror in the society in order to prohibit women from exercising their civil rights or results in the death of the victim, considering the circumstances the offender shall be sentenced to continued imprisonment or death penalty.

## **Self-Ignition and Suicide**

### Article 21

If the violence against a woman forces her to commit self-ignition, suicide or to use chemical or other poisonous substances on herself, the offender shall be sentenced to medium imprisonment in case of injury or disability and to long term imprisonment not exceeding 10 years in case of death of victim.

## **Injury and Disability**

### Article 22

1. If a person beats a woman, considering the mitigating and aggravating circumstances the offender shall be sentenced in accordance with Article 407 – 410 of the Penal Code.
2. If the acts mentioned in paragraph (1) of this Article result in the death of the victim, the offender shall be sentenced in accordance with Article 395 – 399 of Penal Code.

## **Beating**

### Article 23

If a person beats a woman which does not result to injury or disability of the victim, the offender in view of the circumstances shall be sentenced to short term imprisonment not exceeding 3 months.

## **Selling and buying women for the purpose of or on the pretext of marriage**

### Article 24

A person who sells a woman for the purpose of marriage, or purchases a woman or facilitates the process, considering the circumstances he/she shall be sentenced to long term imprisonment not exceeding 10 years.

## **Giving Baad**

### Article 25

1. If a person marries with or gives in marriage a woman under the name of *Baad*, considering the circumstances the offender shall be sentenced to a long term imprisonment, not exceeding 10 years.
2. In the situation mentioned in paragraph (1) of this Article, considering the circumstances the persons involved (the witnesses, the proxy, *Aqid* "one who weds the couple" and conciliator) each shall be sentenced to a medium imprisonment, and based on the request of the victim and in accordance with the provisions of the law the marriage contract shall be revoked.

## **Forced Marriage**

### Article 26

If a person engages or marries a woman who has attained the legal age of marriage without her consent, considering the circumstances he/she shall be sentenced to medium imprisonment of not less than 2 years and the marriage or engagement shall be revoked in accordance with the provisions of law.

## **Prohibiting from the right of marriage**

### Article 27

If a person prohibits a woman from marriage or deprives her from choosing her spouse, taking into account the circumstances the offender shall be sentenced to short term imprisonment.

## **Underage Marriage**

### Article 28

If a person marries a woman who has not attained the legal age of marriage without considering Article 71 of Civil code, the offender considering the circumstances shall be sentenced to medium imprisonment of not less than 2 years, and based on the request of the victim the marriage shall be revoked in accordance with the provision of law.

## **Abusing, humiliating, intimidating**

### Article 29

If a person curses, intimidates or degrades a woman, considering the circumstances he/she shall be sentenced to short term imprisonment of not less than 3 months.

## **Harassment/ persecution**

Article 30

1. If a person harasses/persecutes a woman, considering the circumstances he/she shall be sentenced to short term imprisonment of not less than 3 months.
2. If the crime mentioned in paragraph 1 of this Article has been committed by using authority and position, the offender considering the circumstances shall be sentenced to short term imprisonment of not less than 6 months.

## **Forced isolation**

Article 31

If a person forces a woman to isolation, considering the circumstance the offender shall be sentenced to short term imprisonment not exceeding 3 months.

## **Forced addiction**

Article 32

If a person forces a woman to addiction, he/she shall be sentenced to short term imprisonment of not less than 3 months.

## **Depriving from inheritance**

Article 33

A person who prohibits a woman getting her inheritance, in addition to restoring her legal share, he/she shall be sentenced to short term imprisonment not exceeding one month.

## **Prohibiting to access personal property**

Article34

A person who possesses personal property of a woman or prevents her from acquiring it, based on the circumstances he/she shall be sentenced to short term imprisonment not exceeding 3 months and the property shall be given back to her.

## **Prohibiting from the right to education, work and access to health services**

Article 35

If a person prohibits a woman from the right of education, work, access to health services or exercising other rights provided by law, considering the circumstance the offender shall be sentenced to short term imprisonment not exceeding 6 months.

## **Forced labor**

Article 36

A person who forces a woman to work, the offender beside paying the compensation, considering the circumstances he shall be sentenced to short term imprisonment not exceeding 6 months.

## **Marrying more than one wife**

Article 37

A person who marries with more than one woman without the observing the provisions of Articles 86 and 89 of the Civil Code, considering the circumstances he shall be sentenced to short term imprisonment of not less than 3 months.

## **Denial of relationship**

Article 38

If a person denies the relationship with a woman, but the verdict of the court proves otherwise, considering the circumstances he shall be sentenced to short term imprisonment not exceeding 6 months.

## **Prosecution**

Article 39



1. Proceeding of relevant cases and prosecution of the perpetrators of crimes set forth in Articles 22 - 39 of this law shall be conducted based on the complaint filed by the victim or her representative.
2. In circumstances mentioned in paragraph 1 of this article the victim may withdraw her case at any stage of prosecution (detection, investigation, trial or conviction) which results in the stoppage of proceeding and imposition of punishment.

## **Contribution in the commission of crimes**

### Article 40

If a person accompanies another person to commit the crimes set forth in this chapter, considering the circumstances he/she shall be sentenced in accordance with the provisions of Articles 39 and 41 - 48 of Penal Code.

## **Compensation**

### Article 41

Perpetrators of crimes mentioned in this law shall, in addition to the prescribed punishments, taking into account the circumstances be convicted to compensation.

## **Chapter Four**

### **Final Provisions**

## **Non suspension, non exemption and non mitigation of punishments**

### Article 42

The punishments of persons convicted for violence crimes shall not be suspended, pardoned or mitigated.

## **Preference**

### Article 43

In case of any contradiction between provisions of this law and of other laws the provisions of this law shall prevail.

## **Enforcement**

### Article 44

This law shall be enforced upon publication in the Official Gazette.

REPORT Nº 54/01

CASE 12.051  
MARIÁ DA PENHA MAIA FERNANDES  
BRAZIL  
April 16, 2001

I. SUMMARY

1. On August 20, 1998, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a complaint presented by Mrs. Maria da Penha Maia Fernandes, the Center for Justice and International Law (CEJIL) and the Latin American Committee for the Defense of Women's Rights (CLADEM) (hereinafter "the petitioners"), based on the jurisdiction granted to it by articles 44 and 46 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and article 12 of the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (Convention of Belém do Pará or CMV).

2. The complaint alleges tolerance by the Federative Republic of Brazil (hereinafter "Brazil" or "the State") of the violence perpetrated at his home in the city of Fortaleza, State of Ceará, by Marco Antônio Herédia Viveiros in harm to his then wife Maria da Penha Maia Fernandes during the years of their marital coexistence and which culminated in an attempted murder and new attacks in May and June 1983. Maria da Penha, as a result of these attacks, has suffered from irreversible paraplegia and other ailments since 1983. State tolerance is denounced for not having taken effective measures necessary for more than fifteen years to prosecute and punish the aggressor, despite the complaints made. The violation of articles 1(1) (Obligation to Respect Rights) is denounced; 8 (Judicial Guarantees); 24 (Equality before the Law) and 25 (Judicial Protection) of the American Convention, in relation to Articles II and XVIII of the American Declaration of the Rights and Duties of Man ("the Declaration"), as well as Articles 3, 4(a), (b), (c), (d), (e), (f) and (g); 5 and 7 of the Belém do Pará Convention. The Commission processed the request in accordance with regulations. Given that the State did not offer comments on it, despite the Commission's repeated requests, the petitioners requested that the facts reported in the petition be presumed true by applying Article 42 of the Commission's Regulations.

3. In this report, the Commission analyzes the admissibility requirements and considers that the petition is admissible in accordance with articles 46(2)(c) and 47 of the American Convention, and 12 of the Convention of Belém do Pará. Regarding the substance of the matter reported, the Commission concludes in this report, drafted in accordance with Article 51 of the Convention, that the State violated to the detriment of Mrs. Maria da Penha Maia Fernandes the rights to judicial guarantees and protection, judicial protection, guaranteed by Articles 8 and 25 of the American Convention, in accordance with the general obligation to respect and guarantee rights, provided for in Article 1(1) of said instrument and in Articles II and XVII of the Declaration, as well as such as article 7 of the Belém do Pará Convention. It also concludes that this violation occurs as part of a discriminatory pattern regarding tolerance of domestic violence against women in Brazil due to the ineffectiveness of judicial action. The Commission recommends that the State carry out a serious, impartial and exhaustive investigation to determine the criminal responsibility of the perpetrator of the crime of attempted homicide to the detriment of Mrs. Fernandes and to determine if there are other facts or actions of state agents that have prevented the rapid and effective prosecution of the person responsible; It also recommends effective and prompt reparation for the victim, as well as the adoption of measures at the national level to eliminate this state tolerance against domestic violence against women.

II. PROCESSING BEFORE THE COMMISSION AND OFFER OF A FRIENDLY SOLUTION

4. On August 20, 1998, the Inter-American Commission received the petition regarding this case and on September 1 of the same year it sent a communication to the petitioners acknowledging receipt of their complaint and informing them that the case had been processed. On October 19, 1998, the Inter-American Commission forwarded the petition to the State and requested information on the matter.

5. Given the lack of response from the State, on August 2, 1999, the petitioners requested the application of Article 42 of the Commission's Regulations with the purpose of presuming the facts reported in the complaint to be true, given that More than 250 days had passed since the transfer of the petition to Brazil and it had not presented its observations in the present case.

6. On August 4, 1999, the Inter-American Commission reiterated to the State its request to send the information it considered pertinent, warning of the possibility of applying Article 42 of its Regulations.

7. On August 7, 2000, the Commission made itself available to the parties for thirty days to initiate a friendly settlement process in accordance with articles 48(1)(f) of the Convention and 45 of the Commission's Regulations. Without having received an affirmative response from any of the parties to date, so the Commission considers that at this procedural stage, the matter is not susceptible to resolution by this means.

III. POSITIONS OF THE PARTIES

A. The petitioners

8. According to the complaint, on May 29, 1983, Mrs. Maria da Penha Maia Fernandes, a pharmacist by profession, was the victim of attempted murder at her home in Fortaleza, State of Ceará, by her then husband, Mr. Marco Antônio Herédia Viveiros, an economist by profession, who shot her with a revolver while she was sleeping, culminating a series of attacks during their married life. As a result of this attack, Mrs. Fernandes was seriously injured and had to undergo countless operations. As a result of her husband's aggression, she suffers from irreversible paraplegia and other physical and psychological traumas. [1]

9. The petitioners indicate that Mr. Herédia Viveiros had an aggressive and violent temperament and that he attacked his wife and three daughters during their marital relationship, a situation that according to the victim became unbearable, although out of fear he did not dare to take the action, initiative to separate. They maintain that the husband tried to cover up the attack by reporting it as an attempted robbery and attacks by thieves who had escaped. Two weeks after Mrs. Fernandes returned from the hospital and while she was recovering from the homicidal attack on May 29, 1983, she suffered a second attempt on her life by Mr. Herédia Viveiros, who allegedly tried to electrocute her while she was lying, bathed. At this point she decided to judicially separate from him. [2]

10. They claim that Mr. Herédia Viveiros acted premeditatedly, since weeks before the attack he tried to convince his wife to take out life insurance on his behalf, and five days before attacking her he tried to force her to sign a document in which she was selling the car, owned by her, without stating the name of the buyer. They indicate that Mrs. Fernandes later learned that Mr. Viveiros had a criminal record; that he was a bigamist and had a son in Colombia, information that he had hidden from her.

11. They add that due to the resulting paraplegia, the victim must undergo multiple physical recovery treatments, in addition to experiencing a severe state of dependency that makes her require the constant help of nurses to mobilize. These permanent expenses on medications and physiotherapists are expensive and Mrs. Maria da Penha does not receive financial help from her ex-husband to face them. He also does not comply with the alimony payments prescribed in the separation trial.

12. The petitioners allege that during the judicial investigation, which began days after the attack on June 6, 1983, statements were collected that proved the authorship of the attack by Mr. Herédia Viveiros, despite the fact that he maintained that the attack was had been caused by thieves who tried to enter the common home. During the judicial process, evidence was presented showing that Mr. Herédia Viveiros had intentions to kill her and a shotgun belonging to her was found in the house, contradicting her statement denying possessing firearms. Later analysis indicated that it was the weapon used in the crime. Based on all this, the Public Ministry presented its complaint against Mr. Herédia Viveiros on September 28, 1984, as a Public Criminal Action before the 1st. *Vara de Juri* of Fortaleza, State of Ceará.

13. The petitioners point out that despite the forcefulness of the accusation and evidence, [3] the case took eight years to reach a decision by *Juri*, which on May 4, 1991 handed down a conviction against Mr. Viveiros, applying to him his degree of guilt in the assault and attempted murder, fifteen years in prison reduced to ten years because there were no previous convictions.

14. They indicate that that same day, May 4, 1991, the defense filed an appeal against the *Juri's* decision. This appeal, according to article 479 of the Brazilian Criminal Procedure Code, was untimely, since it could only be formulated during the processing of the trial but not afterwards. This legal impossibility is repeatedly maintained by Brazilian jurisprudence and by the Public Ministry itself in the case under analysis.

15. Another three years passed until, on May 4, 1995, the Court of Appeal ruled on the appeal. In that ruling he accepted the argument presented out of time and based on the defense's argument that there were defects in the formulation of questions to the jury, he annulled the *Juri's* decision.

16. They allege that at the same time another judicial incident was taking place due to the appeal against the sentence of "pronounce" (first judicial decision by which the Judge decides that there are indications of authorship that justify taking the case to *Juri*), an appeal that would have also been untimely and that was declared by the Judge. This decision was also appealed to the Court of Justice of the State of Ceará, which agreed to consider the appeal and rejected it, confirming on April 3, 1995 the decision of "pronounces" reaffirming once again that there were sufficient indications of authorship.

17. The complaint about judicial inefficiency and delay in justice continues, maintaining that two years after the annulment of the sentence handed down by the first *Juri*, on March 15, 1996, a second trial was held by *Juri* in which Mr. Viveiros was sentenced to ten years and six months in prison.

18. The petitioners state that the Court once again accepted a second appeal from the defense, in which it was alleged that the prisoner was tried ignoring the evidence in the record. Since April 22, 1997, the process has been awaiting the decision of the appeal in the second instance before the Court of Justice of the State of Ceará and until the date of the presentation of the petition before the Commission, the appeal had not been resolved.

19. The petitioners allege that at the date of the petition, the Brazilian justice system had taken more than fifteen years without reaching a final sentence against Mrs. Fernandes' ex-husband, who was free for all that time despite the seriousness of the accusation, and the numerous evidence against him and despite the seriousness of the crimes committed against Mrs. Fernandes. In this way, the Judiciary of Ceará and the Brazilian State have acted ineffectively, failing to conduct the judicial process quickly and effectively, and creating a high risk of impunity, since the punitive prescription in this case occurs after 20 years, of the fact, a date that is approaching. They maintain that the Brazilian State's action should have had as its main objective the reparation of the violations suffered by Maria de la Penha, guaranteeing her a fair trial within a reasonable period of time. [4]

20. They maintain that this complaint does not represent an isolated situation in Brazil and that the present case is an example of a pattern of impunity in cases of domestic violence against women in Brazil, since the majority of complaints do not become criminal proceedings, and of the few that reach trial, only a minority manages to convict the perpetrators. They remember the terms of the Commission itself when it stated in its Report on Brazil that:

The crimes that are included in the concept of violence against women constitute a violation of human rights in accordance with the American Convention and the more specific terms of the Belém do Pará Convention. When perpetrated by agents of the State, the use of violence against the physical and/or mental integrity of a woman or a man is the direct responsibility of the State. Furthermore, the State has the obligation, in accordance with Article 1(1) of the American Convention and Article 7(b) of the Convention of Belém do Pará, to act with due diligence to prevent violations of human rights. This means that even when the conduct is not originally imputable to the State (for example because the aggressor is anonymous or is not an agent of the State), an act of rape may entail state responsibility "not for the act itself, but for the lack of due diligence," diligence to prevent or respond to the violation as required by the Convention. [5]

21. They allege that the State has not taken effective prevention and legal punishment measures against domestic violence in Brazil despite its international obligation to prevent and punish it. They also point out the situation that the data on homicides and sexual violence against women are perpetrated in the majority of cases by their partners or acquaintances. [6]

22. They allege that in accordance with its international commitments, the State of Brazil should act preventively - and it does not do so - to reduce the rate of domestic violence, in addition to investigating, prosecuting and punishing the aggressors within a period considered reasonable according to the obligations assumed internationally in the protection of human rights. In the case of Mrs. Fernandes, the Brazilian Government should have proceeded with the main objective of repairing the violations suffered and guaranteeing a fair trial against the aggressor within a reasonable period of time.

23. They consider it proven that domestic remedies have not been effective to repair the human rights violations suffered by Maria da Penha Maia Fernandes; And to aggravate this fact, the delay of the Brazilian justice system in providing a final decision could lead to the prescription of the crime in 2002 for twenty years from its commission, preventing the State from exercising *jus punendi* and the accused being held accountable, the crime committed. This ineffectiveness of the State also causes the victim's inability to obtain the corresponding civil reparation.

24. Finally, the petitioners requested the application of Article 42 of the Commission's Regulations, to establish the presumption of truthfulness of the facts alleged in the complaint due to the lack of response from the State, despite more than 250 days having passed since the transmission of the complaint to Brazil.

B. The State

25. The State of Brazil has not provided the Commission with any response regarding the admissibility or merits of the petition, despite the requests made by the Commission to the State on October 19, 1998, August 4, 1999 and on August 7, 2000.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. The competence of the Commission

26. The petitioners maintain that the State has violated the rights of the victim in accordance with articles 1(1), 8, 24 (in relation to articles II and XVIII of the American Declaration), and 25 of the American Convention (ratified by Brazil on November 25, 1992); and articles 3, 4, 5, and 7 of the Convention of Belém do Pará (ratified on November 27, 1995) for violations that occurred starting on May 29, 1983 and continuously until the present. They maintain that the lack of effective action and tolerance of the State is a continued fact under the supervening validity of these two Inter-American Conventions.

27. The Commission considers that it has jurisdiction *ratione materiae*, *ratione loci* and *ratione temporis* because the petition deals with rights originally protected by the American Declaration of the Rights and Duties of Man, and by the American Convention and the Convention of Belém do Pará since their respective binding validity with respect to the Federative Republic of Brazil. Although the original aggression occurred in 1983, under the validity of the American Declaration, the Commission considers with respect to the alleged lack of guarantees of respect for due process that, since they are continuous violations, they would also fit under the supervening validity of the American Convention and that of Belém do Pará, because the alleged tolerance of the State in this regard could constitute a continued denial of justice to the detriment of Mrs. Fernandes that could make it impossible to convict the person responsible and provide reparation to the victim. Consequently, the State would have tolerated a situation of impunity and defenselessness with lasting effects even after the date on which Brazil submitted to the American Convention and the Convention of Belém do Pará. [7]

28. In relation to its competence regarding the application of the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women "Convention of Belém do Pará" (CVM), the Commission has general competence as this is an inter-American instrument of human rights, and also by that specifically assigned to it by the States in article 12 of said Convention, which says:

Any person or group of persons, or non-governmental entity legally recognized in one or more member states of the Organization, may submit to the Inter-American Commission on Human Rights petitions containing denunciations or complaints of violation of Article 7 of this Convention by a State. Party, and the Commission will consider them in accordance with the rules and procedural requirements for the presentation and consideration of petitions stipulated in the American Convention on Human Rights and in the Statute and Regulations of the Inter-American Commission on Human Rights.

29. With respect to *ratione personae jurisdiction*, the petition was presented jointly by Mrs. Maria da Penha Maia Fernandes, the Center for Justice and International Law (CEJIL) and the Latin American Committee for the Defense of Women's Rights (CLADEM), all of whom have the legal capacity to petition before the Commission according to Article 44 of the American Convention. Furthermore, in relation to the State, in accordance with Article 28 of the American Convention, when it is a federative State such as Brazil, the national Government is responsible in the international sphere both for its own acts and for those carried out by agents, of the entities that make up the Federation.

B. Admissibility requirements of the petition

a. Depletion of internal resources

30. According to article 46(1)(a) of the Convention, the exhaustion of domestic jurisdictional remedies is necessary for a petition to be admissible before the Commission. However, it also establishes in its section 46(2)(c) that when there is unjustified delay in the decision of domestic resources that provision will not apply. As the Inter-American Court pointed out, this is a rule whose invocation can be waived expressly or tacitly by the State, and to be timely, it must be raised in the first stages of the procedure, failing which the tacit waiver of be used by the interested State. [8]

31. The Brazilian State has not responded to the repeated communications by which this request has been transmitted to it, and consequently has not invoked this exception either. The Commission considers that this silence of the State constitutes, in this case, a tacit renunciation of invoking this requirement, which relieves it of further consideration of its compliance.

32. However, for the sake of completeness, the Commission considers it appropriate to recall here the uncontested fact that the Brazilian justice system has taken more than fifteen years without issuing a final ruling in this case; and that since 1997 the process has been awaiting the decision of the second appeal before the Court of Justice of the State of Ceará. In this regard, the Commission additionally considers that there has been an unjustified delay in the processing of the complaint, a delay aggravated by the fact that this delay may lead to the prescription of the crime and, consequently, the definitive impunity of the perpetrator, and the impossibility of compensation to the victim and that, consequently, the exception provided for in article 46(2)(c) of the Convention could also apply.

b. Submission deadline

33. In accordance with Article 46(1)(b) of the American Convention, the admission of a petition is subject to the requirement that it be presented in a timely manner, within six months of the date on which the complaining party was notified of the final sentence at the domestic level. Since there was no final ruling, the Commission considers that the petition was presented within a reasonable period of time according to the analysis of the information presented by the petitioners, and that the exception regarding the six-month period contemplated in Article 46(2) applies, c) and in article 37(2)(c) of the Commission's Regulations. The Commission states that this consideration also applies to its jurisdiction with respect to the Convention of Belém do Pará, as provided in its article 12 *in fine*.

c. Duplication of procedures

34. In relation to the duplication of procedures, there is no evidence that the facts under study have been reported to another instance and the State has not expressed itself on the matter; Therefore, the Commission considers that the petition is admissible in accordance with Articles 46(c) and 47(d) of the American Convention.

d. Conclusions on jurisdiction and admissibility

35. For all of the above, the Commission considers that it is competent to decide this case and that the present petition meets the admissibility requirements provided for by the American Convention on Human Rights and the Convention of Belém do Pará.

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\* The member of the Commission, Hélio Bicudo, of Brazilian nationality, did not participate in the debate or vote in this case in compliance with article 19(2)(a) of the Commission's Regulations.

[1] According to the complaint and the annexes presented by the petitioners, Mr. Viveiros shot his wife with a firearm while she was sleeping. Out of fear and to avoid a second shot, Mrs. Fernandes lay in bed pretending to be dead; However, upon her admission to the hospital she was in shock and had tetraplegia resulting from destructive injuries to the third and fourth vertebrae, among other injuries that manifested later. Briefed by the petitioners dated August 13, 1998, received at the Secretariat of the IACHR on August 20 of the same year, page 2; and FERNANDES (Maria da Penha Maia), *Solobivivo 00882/01*, Fortaleza, 1994, pages 28-30 (Annex 1 of the complaint).

[2] According to the victim's statements, the second weekend after her return from Brasília, Ms. Viveiros asked her if she wanted to take a bath and when she was in the shower she felt an electric shock with the curtain of water. Mrs. Fernandes became desperate and tried to get out of the shower; meanwhile her husband replied that a small electric shock was not going to kill her. She states that at that moment she understood why since his return, Mr. Viveiros only used his daughters' bathroom to bathe. Brief of the petitioners dated August 13, 1998, page 5 and annex 2 of the same document.

[3] The complaint says that "several pieces of evidence were collected showing that Maria da Penha's ex-husband had the intention of killing her and plotting an assault on her home." They add a copy of the Technical Police Report and the testimonial statements of the domestic employees that in great detail describe indications about the guilt of Mr. Herédia Viveiros. Among the elements they describe is the defendant's denial that he possessed a shotgun (espingarda), a weapon that it was later proven he had; regarding his constant physical attacks on his wife and serious contradictions in his story of the events.

[4] The same Trial Court expressed itself about the high degree of guilt of the prisoner, as well as his dangerous personality that was revealed in the commission of the crime and its serious consequences, by handing down the sentence of fifteen years in prison in the first judging; FERNANDES (Maria da Penha Maia), *Solobivivo 00882/01*, Fortaleza, 1994, p. 74.

[5] IACHR, Report on the Situation of Human Rights in Brazil 1997. Chap. VIII.

[6] The petitioners indicate that this situation has even been recognized by the United Nations and present journalistic notes as annexes to their complaint. They point out that 70% of incidents of violence against women occur within their homes (*Human Rights Watch*, Report on Brazil, 1991, page 35); and that a police delegate from Rio de Janeiro indicated that of the more than 2,000 cases of statutory rape and punishment by beating registered in her Delegation, she did not know of any that had led to the punishment of the accused (HRW Report, page 367).

[7] In this sense, the Commission has found jurisprudence, see IACHR, Case 11,516, Ovelario James, Annual Report 1998 (Brazil) par.26 and 27, Case 11,495 Newton Coutinho Mendes et al., Report 1998 (Brazil), see IACHR, Case 11,598 Alonso Eugenio da Silva, Annual Report 1998 (Brazil), par. 19 and 20, Case 11,287 João Camato de Oliveira, Annual Report 1997 (Brazil).

The Inter-American Court of Human Rights has ruled on several occasions in relation to the concept of continued violation, especially applied to the issue of forced disappearances:

Forced disappearance implies the violation of several rights recognized in international human rights treaties, including the American Convention, and that the effects of these violations, even when some, as in this case, have been consumed, can continue continuously, in permanent until the moment the victim's fate is established.

By virtue of this above, since the fact or shortcomings of Mr. Blake was not known to the victim's relatives until June 14, 1992, that is, after the date on which Guatemala submitted to the contentious jurisdiction of this Court, the preliminary exception asserted by the Government must be considered unfounded in terms of the effects and conduct subsequent to said submission. For this reason, this Court has jurisdiction to hear the possible violations that the Commission attributes to the Government itself regarding said effects and conduct.

Inter-American Court, Blake Case, Preliminary Objections Judgment of July 2, 1996, paragraphs 39 and 40. In the same sense, see: Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 155; and Godínez Cruz Case, Judgment of January 20, 1989, para. 163. Likewise, it has accepted in the Genie Lacayo case (paragraphs 21 and 24 Pre). Exceptions to be heard about the violation of articles 2, 8, 24 and 25 that were part of a denial of justice that began prior to the non-retroactive acceptance of the jurisdiction of the Court, but they continued after it.

Furthermore, the notion of continued situation also has judicial recognition by the European Court of Human Rights, in decisions on cases related to detention dating back to the 1960s; and by the Human Rights Committee whose practice under the United Nations Covenant on Civil and Political Rights and its First Optional Protocol, starting in the early 1980s, contains examples of the examination of continuing situations generating events that occurred or persisted after the date of entry into force of the Covenant and Protocol with respect to the State in question, and which constituted per se violations of rights enshrined in the Covenant.

[8] Inter-American Court, Godínez Cruz Case, Preliminary Objections, Judgment of June 26, 1987. Series C No.3, paragraph 90 and 91 of which read: "By the generally recognized principles of international law, it appears, first of all, that this is a rule whose invocation can be expressly or renounced, tacitly by the State that has the right to invoke it, which has already been accepted on a previous occasion (c. *Matter of Veloz Gollardo et al.* , Decision of November 13, 1981, No. G 101/81, Series A, para. 26). Secondly, that the exception of non-exhaustion of domestic remedies, to be timely, must be raised in the first stages of the procedure, failing which the tacit renunciation of using it by the interested State may be presumed. Thirdly, the State that alleges non-exhaustion is responsible for identifying the domestic resources that must be exhausted and their effectiveness."

"When applying the previous principles to the present case, the Court observes that the record shows that the Government did not file the exceptions in a timely manner, when the Commission began to consider the complaint filed before it, and that it did not even assert it late during all the time that the matter was substantiated by the Commission."

