INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

AMICI CURIAE BRIEF

PRESENTED BY

Center for Justice and International Law (CEJIL)

CLADEM, the Latin American and Caribbean Committee for the Defense of Women's Rights

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 de 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., Cd. 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

in the case of

Jessica Ruth Gonzales

Petition No. P-1490-05 (United States)

Andrew Rhys Davies
Katherine L. Caldwell
Allen & Overy LLP
1221 Avenue of the Americas
New York, NY 10020 U.S.A.
+1.212.756.1194

Attorneys for Amici Curiae
TABLE OF CONTENTS

INTEREST OF AMICI ........................................................................................................... 1

INTRODUCTION AND SUMMARY OF ARGUMENT ............................................................. 1

STATEMENT OF THE CASE ................................................................................................. 3

ARGUMENT ........................................................................................................................ 4

1. The Pervasive And Severe Nature Of Domestic Violence Throughout The Americas Necessitates Recognition By The Commission Of OAS Member States’ Affirmative Duty To Protect Victims Of Domestic Violence ................................................................. 4

2. OAS Member States Have An Affirmative Duty Under The American Declaration, The American Convention, And The Convention Of Belém Do Pará To Exercise Due Diligence In The Protection Of Victims Of Domestic Violence ......................................................... 7

3. Legislative Reforms Alone Are Not Sufficient To Satisfy The State’s Duty To Exercise Due Diligence .................................................................................................................. 9

4. The Articulation Of The Due Diligence Standard By The Commission Will Benefit Victims Of Domestic Violence And Their Advocates Throughout The Americas ................................................................................................. 13

CONCLUSION .................................................................................................................... 15
AMICI CURIAE BRIEF
IN FAVOR OF PETITIONER
INTEREST OF AMICI

1. This brief amici curiae in favor of Petitioner Jessica Ruth Gonzales is submitted on behalf of the above-listed national and international non-governmental organizations dedicated to the protection of human rights and specifically to the protection of women and children from domestic violence. Because we believe that the issues raised in the case of Jessica Ruth Gonzales vs. The United States of America and the resolution of the case by the Commission will bear significantly upon the wider protection of human rights and the rights of women and children within the Americas and beyond, we respectfully submit this brief in favor of the Petitioner. Descriptions of the signatory organizations can be found in the attached Appendix.

INTRODUCTION AND SUMMARY OF ARGUMENT


3. Within this context, amici submit this brief to urge the Commission to reiterate and elaborate Organization of American States (“OAS”) Member States’ duty to exercise due diligence in preventing, investigating, punishing, and remediying domestic violence against women and children, and in protecting victims and their children.

4. As this brief will demonstrate, domestic violence against women and children is a serious and widespread problem throughout the Americas. As the statistics provided below indicate, the problem is pervasive and severe across the OAS Member States. While efforts to protect victims through legislative reform have been made in many States and must continue to be made in order for States to meet their international obligations, legislative reforms alone are not sufficient to fulfill States’ obligations to victims. The laws on the books must be enforced in such a way that protects domestic violence victims in practice. As the Commission has recently stated, “[i]t is clear that the next step in the fight to protect the rights of women victims of violence and discrimination and to ensure their access to justice, is to move from de jure recognition of their rights to de facto exercise of those rights.” Access to Justice for Women Victims of Violence in the Americas, Inter-Am. C.H.R., OEA/Ser.L/V/II, Doc. 68, ¶ 18 (Jan. 20, 2007) (hereinafter “Access to Justice, Inter-Am. C.H.R.”).

5. Women and children throughout the Americas who face violence from non-State actors, such as the victims in the instant case, have a human right to be protected from such violence. All OAS Member States have a duty to guarantee women’s and children’s human rights pursuant to their obligations, whether under the American Declaration, the American
Convention on Human Rights ("American Convention"), or the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará").

6. In this regard, the Commission recently published an important report regarding the obstacles faced throughout the Americas by female victims of violence such as Ms. Gonzales when they seek judicial protection to redress acts of violence. The core premise of this report is that the American Declaration, the American Convention, and the Convention of Belém do Pará “establish the State’s obligation to act with due diligence to prevent, prosecute and punish these acts of violence and provide redress.” Access to Justice, Inter-Amer. C.H.R. ¶ 23.

7. The obligation of respecting and protecting human rights under the American Declaration and American Convention is an obligation of the State toward all individuals subject to its jurisdiction and does not simply restrict the exercise of State power but also obligates the State to take the affirmative steps necessary to prevent, investigate, and punish acts of violence, whether perpetrated by State or non-State actors, and to protect victims and their children. The Inter-American human rights system “has established that the obligation of the States to act with due diligence in response to acts of violence applies as well to non-State actors, third persons and private parties.” Access to Justice, Inter-Amer. C.H.R. ¶ 29.

8. In reference to situations similar to that of Petitioner, the Commission found that “[i]n many cases, women end up becoming the victims of fatal assaults even after having sought preventive protection from the State; all too often protective measures may be ordered on a woman’s behalf only to be improperly implemented or monitored.” Access to Justice, Inter-Amer. C.H.R. ¶ 9, 166.

9. Specifically, “the Commission has found that State authorities – the police in particular – fail to fulfill their duty to protect women victims of violence against imminent threats. Enforcement and supervision of restraining orders and other court-ordered protective measures are seriously flawed, which can have particularly disastrous consequences in cases of intrafamily violence.” Access to Justice, Inter-Amer. C.H.R. ¶ 9, 166.

10. On a global level, the conduct of police and their failure to intervene to prevent acts of violence and implement protective orders has been ranked by the United Nations Special Rapporteur on Violence Against Women as “among the chief obstacles to the practice of due diligence at the global level.” Access to Justice, Inter-Amer. C.H.R. ¶ 167 (citing 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).

11. In light of these findings and principles, and due to the severe and pervasive nature of domestic violence throughout the Americas, amici submit this brief to assert the importance throughout the hemisphere of an elaboration by the Commission in the context of this case of the affirmative obligations of States to exercise due diligence to protect victims of domestic violence. In particular, we urge the Commission to confirm that States are obligated to exercise due diligence in preventing and remedying, as well as investigating and punishing, domestic violence against women and children, including the enforcement and supervision of court-ordered protective measures.
12. By recognizing the standard of due diligence in the context of domestic violence, the Commission will encourage States to bring their laws into conformity with international standards for the prevention of domestic violence and — of equal importance — will confirm the duty of all OAS Member States to take effective steps to ensure that those laws are diligently enforced.

13. In the instant case, the ineffective police response and denial of any meaningful domestic judicial remedy in the case of Jessica Gonzales fell tragically short of the standard of due diligence owed by all States to victims of domestic violence. This brief joins fully in the arguments asserted by the Petitioner before the Commission. We therefore urge the Commission to find that the United States of America has violated its obligations under the American Declaration with respect to Jessica Gonzales, and to articulate a clear standard concerning States’ obligations under the American Declaration, the American Convention, and the Convention of Belém do Pará to respond with due diligence to the epidemic of domestic violence.

**STATEMENT OF THE CASE**

14. This case arises from the events of the evening of June 22, 1999, which culminated in the tragic deaths of Jessica Gonzales’ three daughters, after they were abducted by their father, Simon Gonzales, in violation of a court-ordered restraining order.

15. The facts of the case are set forth in detail in Jessica Gonzales’ original Petition to the Commission dated December 23, 2005, in the Observations Concerning the September 22, 2006 Response of the United States Government submitted to the Commission on December 11, 2006, and in the Observations Concerning the March 2, 2007 Hearing Before the Commission submitted on May 14, 2007, and we will not repeat them here.

16. Following the murders, Ms. Gonzales vigorously pursued a judicial remedy for the police department’s failure to take the legally required actions to enforce the restraining order she had previously obtained against Mr. Gonzales from a state court. The Supreme Court of the United States dismissed Ms. Gonzales’ complaint.

17. The Supreme Court’s decision was both the end of any hope for legal remedy in the United States for Ms. Gonzales and a source of concern and confusion for victims of domestic violence and their advocates. Women who possessed restraining orders against their abusers were worried that these restraining orders were no longer valid or enforceable. Police officers were unclear as to the enforceability of restraining orders and as to whether mandatory arrest laws were still in effect, and they were uncertain as to whether their duties as officers had changed in relation to domestic violence. See Declaration of Randy Saucedo, Petitioner’s Observations Concerning the March 2, 2007 Hearing Before the Commission submitted on May 14, 2007, Exhibit P, ¶10. The Commission’s elaboration of the due diligence standard in this case will therefore serve to clarify the United States’ duties to domestic violence victims and their children.

18. The underlying facts and the domestic proceedings in the instant case pertain specifically to the case of Ms. Gonzales and to the United States. However, the hemisphere-wide prevalence and severity of domestic violence make imperative an articulation by the Commission of the regional standard of due diligence that must be exercised by States in
order to meet their obligations as members of the OAS. States must recognize their duty to act diligently to protect victims of domestic violence, not only by enacting appropriate legislation, but also by ensuring the enforcement of victims' legal rights in practice, including the right to life and to be free from inhumane treatment, the right to equality, the right of women and children to special protection in appropriate circumstances, and the right to an adequate and effective remedy.

ARGUMENT

1. THE PERVERSIVE AND SEvere NATURE OF DOMESTIC VIOLENCE THROUGHOUT THE AMERICAS NECESSITATES RECOGNITION BY THE COMMISSION OF OAS MEMBER STATES’ AFFIRMATIVE DUTY TO PROTECT VICTIMS OF DOMESTIC VIOLENCE

19. The pervasive nature of domestic violence as a severe human rights violation throughout the Americas necessitates that the obligation to exercise due diligence in the protection of victims be recognized as an affirmative duty of all OAS Member States.

20. Due to the significant logistical and cultural difficulties of obtaining accurate and comprehensive statistics regarding domestic violence, the precise number of victims and the severity of the violence is impossible to estimate. As the Commission has observed, “[r]udimentary and uncoordinated data systems make it difficult to obtain the statistics on incidents and cases of violence against women” and thus “uniform national statistics on cases of violence against women are difficult to obtain; the effect is to render the problem of violence against women invisible which makes it difficult if not impossible to shape public policies in the judicial area that match the severity and scale of the problem.” Access to Justice, Inter-Amer. C.H.R. ¶ 10, 13.

21. As advocates for victims of domestic violence, we can confirm that the number of violations reported and therefore captured in official studies inevitably underestimates the occurrence of such violence. Still, the following statistics indicate that domestic violence, even when underestimated, is a widespread and severe human rights violation affecting women and children throughout the Americas, in States that are signatories to the American Convention on Human Rights, as well as in those that are not.

Argentina

22. Although the lack of official statistical information makes difficult any reliable assessment of any increase or decrease in violence against women in Argentina, it has been estimated that episodes of violence, of various degrees, occur in one out of every five couples. Forty-two percent of women homicide victims where the perpetrator is identified were killed by their partners. Thirty-seven percent of women hit by their husbands had endured over 20 years of such abuse.¹

Brazil and Peru

23. In Brazil and Peru, the WHO Multi-Country Study on Women’s Health and Domestic Violence Against Women, published in 2005 (the “WHO Study”), compared data from a large city with data from a provincial setting. The WHO Study indicated that 69% of women

in the Peruvian province who had ever had a partner had experienced physical or sexual violence, or both. The corresponding figure in the Peruvian city was not much lower—51%. For the Brazilian province, the corresponding figure was 37%, and for the Brazilian city, 29%.

Canada
24. In 2000, according to UNICEF, 29% of Canadian women reported being physically assaulted by a current or former partner since the age of 16. *Family Violence in Canada: A Statistical Profile*, 2006 states that 48% of violent crimes reported against women in 2004 were committed by a family member or boyfriend. According to the 2004 *General Social Survey*, only 36% of female victims of spousal violence turned to police for help.

Chile
25. In Chile, UNICEF reports that in Santiago, 26% of women surveyed in 2000 had experienced at least one episode of violence by a partner. According to the United Nations Development Programme (“UNDP”), the number of reports by women of intrafamily violence went up by more than 14,000 over four years, from 25,335 in 1995 to 39,394 in 1998. During these years, the number of individuals apprehended for intrafamily violence against women stayed roughly the same: 4,762 in 1995 and 4,965 in 1997. Recently, Chile has reported to the Commission that in 2004, of reported cases of intrafamily violence, only 5.9% were formally investigated and 92% were closed after the first hearing. *Access to Justice*, Inter-Amer. C.H.R. ¶ 15.

Colombia
26. According to information provided by the Centro de Referencia Nacional sobre Violencia del Instituto de Medicina Legal y Ciencias Forenses, between January and October 2004, sixty-three women died in a homicide in which the aggressor was their husband, permanent partner, boyfriend, or ex-partner. In 2005, at least 161 people were killed by their partner or ex-partner. Of these, 121 were women, representing 75% of the victims. Thus, without taking into consideration under-reporting, in Colombia in 2004 every six days a woman was killed by her partner or former partner and in 2005 a woman was killed by her partner or former partner every three days.

---

2 WHO multi-country study on women’s health and domestic violence against women: summary report of initial results on prevalence, health outcomes and women’s responses, Geneva, World Health Organization, 2005, Figure 2. The WHO Study is a groundbreaking study of physical and sexual violence by current or former intimate partners. This study involved data collected from over 24,000 women by teams of interviewers in ten countries, including two OAS Member States, Brazil and Peru.


Dominican Republic
27. In the Dominican Republic, according to the Encuesta Demográfica y de Salud, 24% of women interviewed in 2002 had been a victim of physical violence and 63% of these reported that their aggressors were a husband or ex-husband. The Dominican Republic recently reported to the Commission that very few such incidents lead to convictions. In 2003, out of 2,345 recorded complaints of intrafamily violence, only 246 convictions for violations of the domestic violence law resulted. Similarly, in 2004, only 108 convictions were delivered, out of 1,056 filed complaints. Meanwhile, 2,083 reports of domestic violence were received by the Unidad de Atención y Prevención de la Violencia during the month of September 2006 alone.

Guatemala
28. In Guatemala, according to a 2005 United Nations report, at least 36% of all women who live with a male partner are victims of domestic violence. More than two-thirds of the reported violence against women in Guatemala takes place within the private sphere. Of the 2,625 cases of violence reported to the Office of the Human Rights Ombudsman in 2003, 2,027 cases – 77% – were reports of violence within the private sphere. Guatemala has also experienced a wave of femicide, resulting in the murders of more than 1,500 women since 2001, and as many as a third of these are believed to have resulted from situations of domestic violence.

Jamaica
29. In Jamaica, government reports indicate that more than half of all violence against women occurs in the home and almost a third of murders between 1997 and 2002 were attributed to domestic violence. Nevertheless, the United Nations has estimated that only 10% of battered women report the abuse.

Mexico
30. In Mexico, a 2003 government survey found that 9.3% percent of Mexican women over the age of fifteen has experienced physical violence in their home during the previous year, and 7.8% had experienced sexual violence. Another 2003 Mexican government survey found that 9.8% of women and girls suffered physical violence committed by their current husband or boyfriend. The National Survey on Insecurity found that 97% of sexual crimes were committed against women, and that 70.5% of those sexual crimes were committed in the home of the victim.

---

8 Coalición de ONGs por una Legislación Moderna y Consuada, Derechos Humanos de las Mujeres en el Anteproyecto de Ley que crea el Nuevo Código Penal de la República Dominicana, October 23, 2006.
Nicaragua
31. In Nicaragua, a 1999 report indicated that 25% of women were victims of domestic violence. Another indicated that 52% of women who were married or in long-term domestic relationships (unión de hecho) were the victims of at least one episode of violence by their intimate partners (50% reported at least one episode of physical abuse during their marriage and 25% reported at least one episode of violence each year). Of these, 70% of women reported severe violence.\textsuperscript{15}

Paraguay
32. In Paraguay, a government survey reported that between January and August of 2003, one woman was killed by a family member or other acquaintance every 12 days. During the same period, the Secretariat of Women's Affairs registered 533 cases of violence against women, a 25% increase over the same period in 2000.\textsuperscript{16}

Venezuela
33. In Venezuela, a 1995 study by the Instituto Universitario de Policia Científica reported that of the 539 reports of rape in the Caracas metropolitan area, 64% of the assailants were relatives, friends, neighbors or a person known to the victim and 45% of the rapes occurred in the victim's home. In 2004, the Center for Women's Studies reported that 3,900 cases of domestic violence were reported, and that one woman died in Caracas every ten days due to domestic violence.\textsuperscript{17}

34. These statistics offer only a partial and incomplete assessment of the extent of domestic violence within OAS Member States, but they nonetheless clearly indicate the pervasive and severe nature of domestic violence as a human rights violation of grave significance throughout the Americas. An issue of this gravity necessitates that the Commission recognize OAS Member States' affirmative duty to exercise due diligence in protecting victims.

2. OAS MEMBER STATES HAVE AN AFFIRMATIVE DUTY UNDER THE AMERICAN DECLARATION, THE AMERICAN CONVENTION, AND THE CONVENTION OF BELÉM DO PARÁ TO EXERCISE DUE DILIGENCE IN THE PROTECTION OF VICTIMS OF DOMESTIC VIOLENCE

35. The United States has argued in the instant case that the American Declaration is "a non-binding instrument," the provisions of which are merely "aspirational," and that the Declaration does not impose affirmative obligations on OAS Member States to protect the rights of persons under their jurisdiction.

\textsuperscript{13} Informe Nacional Nicaragua sobre la situación de la violencia de género contra las mujeres, PNUD, March, 1999; Confites en el infierno, Ellisberg et al., Managua, 1996, cited in Informe Nacional de Nicaragua sobre Violence Doméstica, Audiencia Regional ante la Comisión Interamericana de Derechos Humanos, Guatemala, Julio 2006, Red de Mujeres contra la Violencia, Nicaragua.
36. As is demonstrated in Jessica Gonzales’ Petition to the Commission dated December 23, 2005, and in the Observations Concerning the September 22, 2006 Response of the United States Government submitted on December 11, 2006, these assertions contradict the well-established norms of the Inter-American System and of the international community.

37. This brief joins fully in the arguments asserted by the Petitioner before the Commission and will only summarize here the general principles, as asserted by Petitioner, that Amici request the Commission to recognize.

38. Domestic violence is internationally recognized as a human rights violation.\textsuperscript{18} In the Inter-American system, States have a responsibility, whether under the American Declaration, the American Convention, or the Convention of Belém do Pará, to act affirmatively to prevent human rights violations and, therefore, must be held accountable for their inaction if they fail to take reasonable measures to prevent domestic violence and protect victims and their children.

39. Both the Charter of the OAS and the American Declaration uphold individual liberty, social justice and the “essential rights of man.” All signatories to the American Declaration and members of the OAS have a duty to protect these basic human rights, and must take positive steps to do so. An interpretation of the American Declaration that does not compel signatories to take action in order to ensure that all peoples within their jurisdiction can freely enjoy basic human rights would render these rights meaningless.

40. This interpretation of States’ duties is already present in Inter-American jurisprudence. The Commission has previously found that Member States have an obligation to ensure the basic human rights espoused in the American Convention, whether or not they are signatories to the Convention, because these fundamental rights are also protected by the American Declaration. See, e.g., Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, Inter-Am. C.H.R., OEA/Ser.L/V/II.106, Doc. 40 rev. ¶ 29 (Feb. 28, 2000). The Commission has thus confirmed that the Declaration obliges governments to take effective steps to safeguard and guarantee human rights.

41. The Commission has also found that, because the State is responsible for taking reasonable steps to prevent human rights violations, it has a duty to take reasonable measures to prevent them, even when the primary violations are committed by private, non-State actors. See, e.g., Maya Indigenous Communities of the Toledo District v. Belize, Case 12.053, Inter-Am. C.H.R., Report No. 40/04, OAE/Ser.L/V/II.122, doc. 5 rev. 1, ¶¶ 193-96 (2004).

42. The State’s affirmative duty to exercise due diligence to protect victims of non-State violence is also congruent with the concept of special protection in Article VII of the Declaration, which entitles women and children to the State’s protection as persons especially vulnerable to domestic violence.

43. The Commission has recognized that a State’s affirmative duty to protect the rights of domestic violence victims must not be in word only, but must be implemented in practice. See, e.g., The Situation of the Rights of Women in Ciudad Juárez, OEA/Ser.L/V/II.117, Doc. 44 (Mar. 7, 2003), ¶ 155.

44. The Commission’s recent report on women’s access to justice confirms the applicability of each of these principles to violence against women. The instant case therefore provides the Commission with an important opportunity to elaborate in the context of domestic violence its interpretation of the preventative measures and remedies for violations required by the due diligence standard whether these obligations are considered in the context of the Declaration, the American Convention, or the Convention of Belém do Pará. The Commission will thereby further demonstrate the compatibility and integration of these Inter-American instruments in the application of that standard, as previously demonstrated with regard to the prosecution and punishment of domestic violence offenders in the case of Maria da Penha. Maria da Penha Fernandes v. Brazil, Case 12.051, Inter-Am. C.H.R., Report No. 54/01, OEA/Ser.L/V/II.111 Doc. 20 (2001) (hereinafter “Maria da Penha”) (discussed below).

3. LEGISLATIVE REFORMS ALONE ARE NOT SUFFICIENT TO SATISFY THE STATE’S DUTY TO EXERCISE DUE DILIGENCE

45. In its response to the Petition in the instant case, the United States government describes legislative reforms that have been enacted in the United States regarding domestic violence. Although statutory reforms constitute a necessary and important part of a State’s efforts to fulfill its duties to protect victims of domestic violence, legislation alone is not sufficient to satisfy a State’s duty to exercise due diligence to protect victims of domestic violence, as Petitioner’s December 11, 2006 Observations confirm. In order to fulfill States’ international obligations, the laws in place must be diligently enforced in all localities in such a way that provides victims protection in practice.

46. In the Americas, the United States has not been alone in the pursuit of legislative reforms regarding domestic violence. Many OAS Member States have created new governmental programs and enacted legislation aimed at protecting victims of domestic violence. Many of these reforms were motivated by the adoption of international instruments such as the Convention of Belém do Pará and the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”) and many were vigorously advocated for by national and local women’s organizations. Access to Justice, Inter-Am. C.H.R. ¶ 240.

47. As laudable and innovative as some of these national plans and legislative reforms have been, the protection of victims of domestic violence depends upon the ongoing implementation and enforcement of these reforms. The following brief descriptions of some notable trends and recent developments in national legislation regarding domestic violence in the Americas illustrate the fruits of important efforts to address this severe and pervasive human rights violation, but also highlight the reality that none of these reforms can serve their purpose of protecting victims unless States diligently implement and enforce the laws at every level of government.

48. In Mexico, the federal government has instituted reforms in policy and legislation aimed at complying with international human rights standards regarding sex equality and the prevention and punishment of violence against women. In 2001, the federal government instituted a national program for the promotion of gender equality, which gives priority to the prevention of violence against women. Programa nacional para la igualdad de oportunidades y no discriminación contra las mujeres (Proequidad) [National Program for
Equality of Opportunities and Nondiscrimination against Women], specific objective 7. In 2002, a National Agreement was signed requiring all state and national government agencies to implement the program. Acuerdo Nacional por la Equidad entre Hombres y Mujeres [National Agreement for Equality Between Men and Women]. Under this agreement, the government designed a five-year plan crafted specifically to focus on violence against women. Programa nacional por una vida sin violencia [National Program for a Life Without Violence], Mexico City: INMUJERES, 2002. In 2006, the General Law for Equality between Women and Men was enacted, which guarantees the equal treatment of men and women at the federal, state and local level, and proposes the creation of a national program for equality between women and men under the national leadership of the National Institute of Women (INMUJERES). On February 1st of this year, the General Law on Access to a Life Free of Violence (Ley General de Acceso a Una Vida Libre de Violencia) was passed, which has been praised for its innovative approach to many issues, including regulation and coordination of domestic violence shelters, mandatory reeducation for offenders, and a Gender Violence Alert System modeled after natural-disaster alert mechanisms, which would be capable of responding to emergency situations such as the femicides in Ciudad Juárez. *The Situation of the Rights of Women in Ciudad Juárez*, OEA/Ser.L/V/II.117, Doc. 44 (Mar. 7, 2003). It also specifies authorities’ duties to issue “emergency protection orders” to take protective measures such as removing offenders from the home or suspending their visits with children. E. Eduardo Castillo, *Mexican President Hails Gender Violence Law: Federal Measure Aims to Protect Women* (Associated Press: February 2, 2007). Despite all these important advances, advocates for women’s rights in Mexico still face the challenge of a disparity among municipal and state laws and penal and civil codes, as well as the disparities in their judicial interpretation. *See* Violenca contra las mujeres: Apuntes de colaboración para el informe de amicus para la petición de Jessica Gonzales, compiled by Andrea De La Barrera Montpellier, Comité de América Latina y del Caribe para la Defensa de los Derechos de las Mujeres, Enlace México: May 17, 2007, p. 2.

49. In April of this year, in a step toward complying with the States’ obligations under the Convention of Belém do Pará and CEDAW, and in response to years of intensive lobbying by women’s organizations, legislators in Costa Rica passed a law increasing penalties for violence against women. *The Ley de penalización de la violencia contra las mujeres*, among other things, punishes femicide — defined as causing the death of a woman with whom the offender maintains an intimate relationship, whether marital or not — with 20-35 years in prison and includes punishment for non-physical violence. *Organización resalta ley que penaliza violencia contra la mujer* (Adital: April 19, 2007).

50. Along with such legislative reforms, many States have instituted structural changes to their enforcement mechanisms in an effort to address domestic violence more effectively. As the Commission has noted, in some States, specialized units have been established to respond to domestic violence complaints. In Bolivia, Family Protection Brigades have been established to provide basic on-site assistance to victims of domestic violence who have reported an imminent threat. *Access to Justice*, Inter-Am. C.H.R. ¶ 186. In Chile, a Mobile Police Station for Family Affairs was created in Santiago and other cities to handle domestic violence cases and sexual offenses against women and children. United Nations Commission on Human Rights, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women*, January 6, 2003. Similar specialized programs within the police have been instituted in Belize, Costa Rica, and Panama specifically to address victims of domestic violence. *Access to Justice*, Inter-Am. C.H.R. ¶ 245-46.
51. Many States have established, or are in the process of establishing, specialized courts to handle domestic violence cases, including Belize, Bolivia, Chile, Costa Rica, El Salvador, Guatemala, Peru, and Uruguay. Some States, like Antigua, Argentina, Barbuda, and Saint Lucia, have set up programs within the court to aid in the processing of domestic violence cases and to improve the treatment of victims. Access to Justice, Inter-Amer. C.H.R. ¶ 244, 247. States are increasingly instituting training programs for staff and officials in the courts, prosecutors offices, and police aimed at raising awareness of women’s rights and sensitivity toward victims of domestic violence. Access to Justice, Inter-Amer. C.H.R. ¶ 248-253.

52. The Commission has identified a notable example of the potential for the use of these strategies in concert with an organized effort to increase the effectiveness of enforcement in Ecuador, where domestic violence legislation has been accompanied by the promulgation of detailed regulations regarding enforcement and the production of procedural manuals to provide guidance on the application of the law for the specialized police stations as well as the National Police Commissions. Access to Justice, Inter-Amer. C.H.R. ¶ 266.

53. In Brazil, the State of Sao Paulo has long been active in adopting legislation to protect women. Specialized women’s police stations (Delegacia de Mulher) staffed with female police officers were established in Sao Paulo as early as 1983, and in 1999, laws were enacted to provide a framework for information and counseling services for victims of violence. In 1996, a national human rights program was launched with gender-based violence as one of its targets, which set up an emergency telephone hotline and conducted a campaign entitled “Without women, rights are not human.” United Nations Commission on Human Rights, Integration of the Human Rights of Women the Gender Perspective: Violence Against Women, January 6, 2003.

54. As the Maria da Penha case tragically illustrated, however, the failure effectively to prosecute and punish perpetrators of domestic violence in Brazil continued in violation of regional human rights standards. Maria da Penha Fernandes v. Brazil, Case 12.051, Inter-Am. C.H.R., Report No. 54/01, OEA/Ser.L/N/II.111, Doc. 20 (2001).

55. In response to the Commission’s recommendations in Maria da Penha, several legislative reforms have been enacted in Brazil, including the Maria da Penha law (Lei 11.340) enacted on August 7, 2006, which creates mechanisms to prevent domestic violence and provides assistance and protection to women in violent situations. Among the many innovative aspects of this law are its recognition of domestic violence as a human rights violation, its provisions for specialized gender-sensitive courts and police, and the redefinition of the concept of family to encompass non-traditional families. See Flávia Piovesan, Legal Strategies and Feminist Change: The Case of Violence Against Women in Brazil (Duke University Press: forthcoming).

56. However, as the Maria da Penha case and the instant case of Jessica Gonzales illustrate, these necessary and important legislative and policy reforms will only prove effective if they are diligently enforced, both in the prosecution of offenders and in the enforcement of protective measures.

57. States that have instituted systems for the provision of preventative measures such as the restraining order at issue in this case often fail to exercise due diligence in enforcing these measures. States frequently place the responsibility for monitoring domestic violence perpetrators on the victims themselves when police fail to act. This has led to tragic results
similar to those at issue in this case, such as two cases of murdered women who had restraining orders on their person at the time they were killed in Guatemala. *Access to Justice*, Inter-Amer. C.H.R. ¶ 170. Other problems have included “delays on the part of those operating the justice system or a lack of coordination between police and the public prosecutor’s office.” *Access to Justice*, Inter-Amer. C.H.R. ¶ 171.

58. States’ failure to enforce restraining orders, therefore, like the failure to enforce court-ordered preventative measures generally, often ends in injustice. Indeed the Inter-American system’s own experience with States’ failure effectively to enforce court-ordered precautionary and provisional measures has led to tragic consequences which resemble those which befell Petitioner, such as the case of Digna Ochoa, who was murdered in her office in Mexico City despite the measures issued by the Commission and the Court. *IACHR Condemns the Murder of Digna Ochoa in Mexico*, Press Release No. 27/01 (October 22, 2001).

59. The continued prevalence and severity of domestic violence within countries where legislative and programmatic reforms have taken place (see Section I above) makes it clear that the mere presence of progressive legislation does not protect victims of domestic violence if it is not enforced at every level of government. Lax or ineffective implementation of legal standards leaves victims helpless, regardless of the laws on the books. The Commission has recognized that, where gender-based violence is concerned, “there is a significant gap between the formal availability of certain remedies and their effective application.” *Access to Justice*, Inter-Amer. C.H.R., ¶ 6.

60. In the context of violence against women, the Commission has repeatedly affirmed the well-established principle that “States have an obligation to act with due diligence to prevent, punish and redress these acts. The States’ duty to provide effective judicial recourse is not served merely by their formal existence; that recourse must also be adequate and effective in remedying the human rights violations denounced.” *Access to Justice*, Inter-Amer. C.H.R., ¶ 4.

61. Vigilant enforcement therefore must be practiced in conjunction with legislative reform if such reform is to provide meaningful protection to victims of domestic violence and to satisfy the State’s affirmative obligations under international law. Legislative reforms, while important, only create a statutory framework for victims’ protection and it is in the enforcement of the law – by local police, courts, and other branches of state and federal governments – that a State satisfies its obligations to protect victims of domestic violence.

62. The instant case thus provides an important context for the Commission’s elaboration of OAS Member States’ duty to exercise due diligence in the protection of victims of domestic violence – a duty that requires not only legislative and policy reform but also diligent enforcement at every level of government.
4. **THE ARTICULATION OF THE DUE DILIGENCE STANDARD BY THE COMMISSION WILL BENEFIT VICTIMS OF DOMESTIC VIOLENCE AND THEIR ADVOCATES THROUGHOUT THE AMERICAS**

63. By confirming the affirmative duties of States to protect domestic violence victims, the recognition of the due diligence standard by the Commission will benefit victims of domestic violence as well as advocates of victims’ rights, such as the undersigned.

64. First and foremost, the Commission’s recognition that States have an affirmative duty to exercise due diligence to protect victims of domestic violence offers important intangible as well as tangible benefits to victims.

65. By confirming that a State’s failure to exercise due diligence in responding to domestic violence is a human rights violation prohibited under international law, the Commission will send to victims the message that they have an international right to demand protection by the State and specifically the right to demand diligent enforcement of legal protections.

66. The articulation of the due diligence standard will also further the ongoing, worldwide effort to dispel the myth that domestic violence is a private, family matter. Clearly, international jurisprudence alone cannot change traditional attitudes, but by confirming the international community’s commitment to the definition of domestic violence as a human rights violation, the Commission can aid in the struggle against ideologies that condemn victims to private suffering and shame.

67. Along with these intangible benefits, the Commission’s recognition of a regional standard of due diligence will provide the undersigned advocates for domestic violence victims with a clear standard with which they can lobby their State governments to enact the necessary legislation, enforcement practices, and social services with respect to domestic violence.

68. Additionally, it is well-established under international law that violence against women is a form of discrimination against women and a violation of human rights, and that states are responsible, under international law, for human rights violations or for failing to prevent human rights violations by non-state actors. This includes a standard of due diligence, articulated in General Recommendation No. 19 of the UN Committee on the Elimination of Discrimination against Women. By confirming that States’ duties within the Inter-American system are aligned with these international norms, the Commission will aid non-governmental actors throughout the Americas in their efforts to bring States’ laws and enforcement practices into compliance with international human rights standards.

69. By confirming the alignment of the Inter-American standard with international legal developments, the Commission will allow advocates to draw upon examples and experiences throughout the international community to encourage innovations and reform by States.

70. In short, the case of Ms. Gonzales presents an opportunity for the Commission to take “the next step on the ladder towards advancing the rights of women [which] is to move beyond the realm of formal recognition into the sphere of creating guarantees for its real and effective practice.” *Access to Justice*, Inter-Amer. C.H.R. ¶ 294.
71. Specifically, the Commission should take this opportunity to recognize the rights of victims of domestic violence under the Declaration in a manner consistent with the norms of both the Inter-American System and the international community, thereby confirming States' affirmative duty to exercise due diligence in the protection of women and children from domestic violence. Velásquez Rodríguez Case, 1988 Inter-Am. Ct. H.R. (Ser. C) No. 4 (July 29, 1988) (articulating the due diligence standard).

72. Moreover, this case presents an opportunity to articulate clearly the application of the due diligence standard to States' obligations to victims of domestic violence under the American Declaration, the American Convention, and the Convention of Belém do Pará, thus building upon the groundwork laid in Maria da Penha in reference to prosecution and punishment, but further elaborating the due diligence standard in the context of prevention, protection, and remediation.

73. In concert with these jurisprudential developments, the Commission has demonstrated in the context of Maria da Penha that concrete recommendations can be made to States as to how to comply with their obligation to exercise due diligence in the protection of victims. In Maria da Penha, these recommendations were based on the principles that “steps must be taken to educate officials in the judiciary and the specialized police so that they understand the importance of not condoning violence against women; education programs for the general public are also needed; criminal justice proceedings must be simplified so that they can be expedited, but never at the expense of the rights and guarantees of due process; and the number of special institutions to which women victims of violence can turn to file complaints must be increased.” Access to Justice, Inter-Am. C.H.R., ¶ 37 (citing Maria Da Penha, para. 61).

74. Similarly, in its report on the situation of the rights of women in Ciudad Juárez, the Commission set forth recommendations to improve the application of due diligence to investigate, prosecute and punish violence against women in the context of the crisis created by the brutal murders of hundreds of women and the grave deficiencies in the governmental response. The Situation of the Rights of Women in Ciudad Juárez, OEA/Ser.L/V/II.117, Doc. 44 (Mar. 7, 2003).

75. Although the applicability of any particular set of concrete recommendations will necessarily vary to some extent in differing national contexts, the Maria da Penha case and the Ciudad Juárez report illustrate the feasibility of a formulation of a set of recommended concrete measures that can be pursued to comply with the due diligence standard in the context of domestic violence. Indeed, the Commission has recently taken a laudable step toward developing such concrete recommendations in publishing its recent study. Access to Justice, Inter-Am. C.H.R.

76. In this context, amici urge the Commission to consider the recommendations set forth by Petitioner at the hearing before the Commission on March 2, 2007 in the instant case, many of which would be useful for States throughout the Americas.

77. Amici therefore exhort the Commission, in the context of the instant case, to set forth and elaborate the due diligence standard and its application to the affirmative duties of each State to prevent, investigate, punish, and remedy domestic violence. Such an elaboration will reflect regional and customary international law by applying important principles already developed in the context of the Maria da Penha case, and in the Ciudad Juárez and Access to
Justice reports, and can further contribute to the development of concrete recommendations to States regarding compliance with the due diligence standard in the context of domestic violence.

CONCLUSION

78. The United States, like all OAS Member States, has an obligation to protect victims of domestic violence. The Commission should therefore recognize the affirmative duties of States, pursuant to the American Declaration, to exercise due diligence to prevent, investigate, punish, and remedy domestic violence, and to protect victims and their children. The Commission should evaluate the United States’ compliance with its international obligations in light of this affirmative duty of due diligence.

79. We urge the Commission to render its recommendations in accordance with the above principles in declaring that the United States, through failing to exercise due diligence in the case of Jessica Gonzales, has violated its obligations under the American Declaration.

Dated: July 6, 2007

ALLEN & OVERY LLP

By: Andrew Rhys Davies
Katherine L. Caldwell
Allen & Overy LLP
1221 Avenue of the Americas
New York, NY 10020 U.S.A.
+1.212.756.1194

Attorneys for Amici Curiae