

**HUMAN RIGHTS CLINIC**  
MORNINGSIDE HEIGHTS LEGAL SERVICES, INC.  
COLUMBIA UNIVERSITY SCHOOL OF LAW  
435 WEST 116th STREET • NEW YORK, NY 10027

*Caroline Bettinger-López, Esq.*  
TEL: 212-854-8364; EMAIL: [c.lopez@law.columbia.edu](mailto:c.lopez@law.columbia.edu)

*Lecturer-in-Law*  
FAX: 212-854-3554

Dr. Santiago Canton  
Executive Secretary  
Inter-American Commission on Human Rights  
Washington, D.C. 20006

Via U.S. Mail and E-mail: [cidhoea@oas.org](mailto:cidhoea@oas.org)

**RE: Jessica Lenahan (Gonzales) v. United States, Case 12.626**  
**Reply to U.S. Response letter brief**

June 5, 2010

Dear Dr. Canton,

We write on behalf of Petitioner to reply to the response brief, dated April 2, 2010, submitted by the Government of the United States in the above referenced case. In its response, the United States argues that the *Case of González et al. (“Campo Algodonero,” or “Cotton Field”) v. Mexico*<sup>1</sup> and recent developments in U.S. asylum law (*Matter of L.R.*) are immaterial to the Commission’s consideration of *Jessica Lenahan (Gonzales) v. United States*.<sup>2</sup> Petitioners disagree with this assessment, and submit these additional observations in response.

**I. Many of the legal and factual issues presented in *Campo Algodonero* are relevant to the present case.**

The United States contends that the Inter-American Court’s decision in the *Campo Algodonero* case affirming that states must respond with due diligence to acts of private violence against women “was based on very different legal and factual circumstances from those present in the instant case.”<sup>3</sup> First, the government asserts that the facts in

---

<sup>1</sup> *Case of González et al. (“Campo Algodonero,” or “Cotton Field”) v. Mexico*, Case Nos. 12.496, 12.497, 12.498, Judgment, Inter-Am. Ct. H.R. (Ser. C) No. 206 (Nov. 16, 2009).

<sup>2</sup> Petitioners request that the Commission change the caption on this case to *Jessica Lenahan (Gonzales) v. United States*, to reflect Ms. Lenahan’s name change since the U.S. Supreme Court’s 2005 decision.

<sup>3</sup> U.S. Government Response Brief re Jessica Gonzales’s Letter of February 19, 2010, 1 (April 2, 2010). (hereinafter “U.S. Response”).

*Campo Algodonero*, unlike those in the case of *Jessica Lenahan (Gonzales)*, reflect “systematic and consistent failure” of authorities to address widespread violence against women within a “culture of discrimination.”<sup>4</sup> Additionally, the U.S. contrasts the Ciudad Juarez police’s significant delay in conducting a “real and effective search for the victims” in *Campo Algodonero* with the circumstances at issue in this case surrounding the Castle Rock Police Department’s (CRPD) search for Katheryn, Leslie, and Rebecca Gonzales.<sup>5</sup>

The United States is misguided on both points. The factual and legal issues in *Campo Algodonero* are similar in many respects to the issues presented in *Jessica Lenahan (Gonzales) v. U.S.* Petitioner has repeatedly briefed the Commission on these issues.<sup>6</sup> Moreover, the U.S.’s arguments are outdated and do not respond to the facts presented and arguments made in past briefings and hearings in this case. Indeed, the U.S. response brief, which (like the U.S.’s response to Petitioners’ Observations on the Merits and the U.S.’s oral presentation at the Oct. 22, 2008 Hearing on the Merits) only cites to the original December 2005 Petition filed in this case, indicates that the U.S. has not familiarized itself with any factual or legal arguments that Petitioner has developed since filing her original Petition. Rather than rehashing these positions, this brief will highlight the government’s mischaracterizations and refer back to previous submissions for substantiation.

I. A. 1. With respect to the question concerning the nexus between the facts of a case and a larger pattern and practice, the United States argues that “Petitioner here does not allege that the police in the United States display widespread neglect and indifference towards extreme violence and discrimination against women that exists in Ciudad Juarez [*sic*].”<sup>7</sup> While the exact meaning behind the government’s sentence is unclear, Petitioner reminds this Commission that Petitioner, Petitioner’s expert witness, Professor Jeffrey Fagan, and her Amici have **repeatedly contextualized Jessica Gonzales’ case within an epidemic of domestic violence and violence against women in the U.S.** which has been met, both historically and in the present day, with widespread indifference and neglect on the part of police and other government officials nationwide.<sup>8</sup>

---

<sup>4</sup> U.S. Response at 1; *citing Campo Algodonero*, ¶¶ 151-52.

<sup>5</sup> U.S. Response at 2.

<sup>6</sup> *See* Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, with request for investigation and hearing of the merits (Dec. 23, 2005) (hereinafter “Gonzales Petition”); Observations Concerning the Sept. 22, 2006 Response of the United States Government (Dec. 11, 2006) (hereinafter “Dec. 11, 2006 Observations”); Final Observation Regarding the Merits of the Case, Parts II & III (March 24, 2008) (hereinafter “Gonzales Merits Brief”); Observations & Responses Concerning the October 22, 2008 Hearing Before the Commission, Parts II & IV (March 2, 2009) (hereinafter “Gonzales Post-Merits Hearing Brief”).

<sup>7</sup> U.S. Response at 1.

<sup>8</sup> *See, e.g.*, Gonzales Petition at 29-39; Dec. 11, 2006 Observations at Part III; Gonzales Merits Brief, at Part III, IV(G); Gonzales Post- Merits Hearing Brief at Part II, IV; Lenora Lapidus Statement at Merits Hearing (Oct. 22, 2008); Expert Report of Professor Jeffrey Fagan (Oct. 22, 2008) (hereinafter Fagan Expert Report); Brief of Women Empowered Against Violence (WEAVE) As Amicus Curiae in Support of Jessica Gonzales, 14 (Oct. 17, 2008) (hereinafter “WEAVE Amicus Brief”); Amicus Curiae Brief In Support of Petitioner Presented by Legal Momentum et al., 39-42 (Jan. 4, 2008) (hereinafter “Legal Momentum Amicus Brief”).

Indeed, **the United States itself also has recognized the widespread nature of domestic violence and violence against women, as well as the failure of governmental authorities to respond appropriately to the problem.** For instance, in 2003, the U.S. Centers for Disease Control (CDC) reported that violence against women is the leading cause of injury among women, and that 5.3 million cases of intimate partner violence take place each year.<sup>9</sup> Between 1981 and 1998, the CDC has estimated that the number of domestic violence fatalities in the United States exceeded 300,000.<sup>10</sup> Government sources indicate that approximately one-third of women in the United States, compared to 8% of men, experience at least one physical assault at the hands of an intimate partner during the course of adulthood.<sup>11</sup> The 2007 National Crime Victimization Survey (NCVS), administered by the U.S. Census Bureau (under the U.S. Department of Commerce) on behalf of the Bureau of Justice Statistics (under the U.S. Department of Justice), reports that the incidents of domestic violence increased by 42 percent and sexual violence by 25 percent in the past two years, and that women made up the vast majority of these victims.<sup>12</sup> The United States Department of Justice (DOJ) reports that between 1988 and 2002 in the United States, 73% of family violence victims were female, 84% of spousal abuse victims were female and 86% of victims of violence committed by a boyfriend or girlfriend were female.<sup>13</sup> In light of these overwhelming statistics, the DOJ's Attorney General Task Force on Domestic Violence has also expressed concern that domestic violence is often treated as a "low priority crime" by law enforcement.<sup>14</sup>

Public statements by United States officials, courts, and agencies reiterate the egregious levels of domestic violence in the U.S., the heavy toll it inflicts on the country, and the inadequacy of law enforcement's response. In 1992, the United States Supreme Court recognized that a staggering 4 million women in the U.S. suffered severe assaults at the hands of their male partners each year and that between one-fifth and one-third of all women will be the victims of domestic violence in their lifetime.<sup>15</sup> Congressional hearings, testimony, and reports have found that up to 50% of homeless women and children are homeless because they are fleeing domestic violence and that "battering 'is the single largest cause of injury to women in the United States,'" and that "arrest rates

---

<sup>9</sup> See CTRS. FOR DISEASE CONTROL AND PREVENTION (CDC), COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES 18 (2003).

<sup>10</sup> CDC at 18.

<sup>11</sup> SENATOR JOSEPH R. BIDEN, JR., TEN YEARS OF EXTRAORDINARY PROGRESS: THE VIOLENCE AGAINST WOMEN ACT 30 (2004) ; PATRICIA TJADEN & NANCY THOENNES, EXTENT, NATURE, & CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN STUDY 9 (2000).

<sup>12</sup> See U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, NATIONAL CRIME VICTIMIZATION SURVEY, CRIMINAL VICTIMIZATION (2007), available at <http://www.ojp.usdoj.gov/bjs/abstract/cv07.htm>.

<sup>13</sup> PATRICIA TJADEN & NANCY THOENNES, NAT'L INST. OF JUST. & CTRS. FOR DISEASE CONTROL AND PREVENTION, FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN 26 (2000), available at <http://www.ncjrs.gov/pdffiles1/nij/183781.pdf>.

<sup>14</sup> See U.S. DEPARTMENT OF JUSTICE, ATTORNEY'S GENERAL TASK FORCE ON DOMESTIC VIOLENCE: FINAL REPORT, at 18-19 (1984); see also Legal Momentum Amicus Brief, at 37-45.

<sup>15</sup> *Planned Parenthood v. Casey*, 505 U.S. 833, 891 (1992).

<sup>16</sup> S. Rep. No. 101-545, at 37 (1990) (quoting Van Hightower & McManus, *Limits of State Constitutional*

may be as low as 1 for every 100 domestic assaults.”<sup>17</sup> More recently, in 2002, President George W. Bush noted that in 2000 “almost 700,000 incidents of violence between partners were documented in our Nation, and thousands more [went] unreported. And in the past quarter century, almost 57,000 Americans were murdered by a partner.”<sup>18</sup>

In this context, Professor Jeffrey Fagan, citing to statistics indicating that police officers regularly fail to enforce domestic violence protection orders<sup>19</sup> and that police arrest abusers in only 20% to 40% of cases involving an alleged violation of a protection order,<sup>20</sup> wrote the following in his Expert Report to this Commission:

*Jessica Gonzales’ case [...] graphically illustrates the consequences of police failure to respond adequately when an offender violates a protection order. Numerous other tragic examples also show that where police fail to enforce a woman’s protection order, the abuser may seriously injure or kill her or her family members.*<sup>21</sup>

As these facts and statistics illustrate, **Petitioner has, repeatedly alleged that the tragic facts at issue in her case are representative of the larger epidemic of neglect, indifference, and inappropriate response to domestic violence and violence against women by law enforcement and other authorities in the U.S.** Thus, there are striking parallels between several aspects of the legal and factual circumstances presented in *Campo Algodonero* and in *Jessica Gonzales v. United States*, including the representative nature of the specific case in relation to the larger phenomenon.

I. A. 2. Additionally, the U.S. asserts that “when Petitioner does cite figures purporting to show gender discrimination, she makes no claims alleging that such discrimination arose from an official culture of discrimination or stereotyping.”<sup>22</sup> Here too, the U.S. blatantly misrepresents past submissions in this case. **Petitioner, Professor Fagan, and Petitioner’s Amici have repeatedly and in great detail contextualized the gender-based violence, discrimination, and non-enforcement that Jessica Gonzales experienced within a culture of discrimination on the basis of gender, race, nationality, and class.**<sup>23</sup> For example, Petitioner’s Post-Merits Hearing brief, asserted

---

*Guarantees: Lessons from Efforts to Implement Domestic Violence Policies*, 49 PUB. ADMIN. REV. 269 (1989)).

<sup>17</sup> S. Rep. No. 101-545, at 38 (citing D.G. Dutton, *Profiling of Wife Assaulters: Preliminary Evidence for Trimodal Analysis*, 3 VIOLENCE AND VICTIMS 5-30 (1988)).

<sup>18</sup> Proclamation No. 7601, 67 Fed. Reg. 62,169 (Oct. 1, 2002); *see also* Proclamation No. 7717, 68 Fed. Reg. 59,079 (October 8, 2003).

<sup>19</sup> *See e.g.* Lawrence W. Sherman, *Policing Domestic Violence* 241 (1992) (citing a National Institute of Justice survey which found that the most basic problem with enforcement of protection orders is police officers’ failure to make arrests when orders are violated.)

<sup>20</sup> Robert J. Kane, *Police Responses to Restraining Orders in Domestic Violence Incidents: Identifying the Custody-Threshold Thesis*, 27 Crim. Just. & Behav. 561, 562 (2000).

<sup>21</sup> Fagan Expert Report at 10 (*citing* Brenda Sims Blackwell & Michael S. Vaughn, *Police Civil Liability for Inappropriate Response to Domestic Assault Victims*, 31 J. Crim. Just. 129, 132-34, 137-38, 141 (March-April 2003), (discussing numerous cases in U.S. courts concerning inappropriate law enforcement response to domestic violence)).

<sup>22</sup> U.S. Response at 1-2.

<sup>23</sup> *See* Gonzales Petition at IV; Gonzales Merits Brief at IVG; Post-Merits Hearing Brief at IV; WEAVE

that “[u]ltimately, the state’s failure to protect Jessica Gonzales and her children from domestic violence represents one tragic incident in what is a systemic pattern of state-based gender discrimination that persists even in the face of broad efforts to address domestic violence at the local, state, and federal level. And, as the Merits Brief and *amici* in support argue, gender stereotypes and discrimination are a primary cause of these non-enforcement problems.”<sup>24</sup>

Petitioner has also frequently cited to the well-established principles established in the U.N., Inter-American, and European human rights systems (and underscored in *Campo Algodonero*) that violence against women is a form of gender discrimination.<sup>25</sup> For instance, in her Merits Brief, Petitioner noted:

*Because the vast majority of domestic violence victims are women, because domestic violence is a function of the belief . . . that men are superior and that the women they live with are their possessions or chattels that they can treat as they wish . . . , because U.S. authorities’ failure to take action with regard to [gender-motivated] violence and abuse often deprives victims belonging to racial, ethnic and national minorities . . . of their right to access to justice, and because domestic violence serves to deny and destroy women’s power and agency, perpetuate women’s dependence on men, and increase women’s vulnerability to violence, human rights bodies have found the rights to equality, non-discrimination, and special protection for women generally, and women of color specifically, to be implicated in cases involving the State’s failure to adequately respond to domestic violence. Through their response, the [CRPD] engaged in a widespread, systemic, and longstanding practice of treating domestic violence as a less serious crime than other crimes and marginalizing domestic violence victims on the basis of their gender . . . [in violation of] Article II of the [American Declaration on the Rights and Duties of Man].*<sup>26</sup>

Thus, here again the United States mischaracterizes Petitioner’s past submissions in this case and unsuccessfully attempts to dissociate from Jessica Gonzales’ case the legal nexus between gender-based violence and discrimination reaffirmed in *Campo Algodonero*.

---

Amicus Brief; Fagan Expert Report.

<sup>24</sup> See Gonzales Post-Hearing Brief at 30-31; Gonzales Merits Brief at 47-52, 145-46 (describing victim blaming); Fagan Expert Report at 8; Legal Momentum Amicus Brief at 48-49.

<sup>25</sup> Committee on the Elimination of All Forms of Discrimination Against Women, General Recommendation No. 19 ¶ 6, U.N. Doc. CEDAW/C/1992/L.1/Add. 15 (1992) (hereinafter CEDAW Committee); Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women art. 6, 33 I.L.M. 1534 (1994), (*entered into force* March 5, 1995); Inter-Am. Comm’n on Human Rights, Special Report on Violence and Discrimination against Women in the Armed Conflict in Colombia, OEA/Ser.L/V/II. 124/Doc.6 (2006); Inter-Am. Comm’n on Human Rights, Special Report on 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, (2003); Inter-American Commission on Human Rights Access of Justice to Women Victims of Violence in the Americas, OEA/Ser.L/V//II. Doc. 68 ¶ 59 (2007); Maria da Penha Maia Fernandes v. Brazil, Case 12.051, Inter-Am. C.H.R., Report No. 54/01, OEA/Ser.L/V/II.111 doc. 20 rev. at 704 ¶ 54 (2000); María Eugenia Morales de Sierra v. Guatemala, Case 11.625, Report No. 4/00, OEA/Ser. L/V/II.111 Doc. 20 rev. at 929 ¶ 36 (2000).

<sup>26</sup> Gonzales Merits Brief at 145-46 (internal citations omitted).

I. B. In its response brief, the United States contrasts the delayed and inadequate response of the Ciudad Juarez police to the three victims' disappearances in *Campo Algodonero* with the CRPD's response to the disappearances of Katheryn, Rebecca, and Leslie Gonzales. As it has done previously, the U.S. asserts (1) that Jessica Gonzales "did not demonstrate physical concern for the safety" of her missing children,<sup>27</sup> and (2) that "the CRPD officers had no reason to believe that any preventative measures [i.e. a subsequent search for the children after the initial cursory search] were necessary."<sup>28</sup> Petitioner has repeatedly demonstrated that this factual characterization, which cites only to the basic facts alleged in her Petition and the government's own incorrect characterization of evidence presented in its Observations on the Merits, is manifestly wrong. It is remarkable that the U.S. continues to belabor the point.

In response to the government's mischaracterization, Petitioner simply points to the detailed factual assertions and legal analysis contained in previous submissions in this case: Petition and corresponding exhibits; Supplemental Brief (Dec. 11, 2006) and corresponding exhibits; Observations on the Merits and corresponding exhibits; Post-Merits Hearing Brief; Jessica Lenahan's (Gonzales) Declaration; and Jessica Lenahan's (Gonzales) oral statements before this Commission on March 2, 2007 and Oct. 22, 2008.<sup>29</sup>

Moreover, as Petitioner has asserted previously, to the extent that factual discrepancies between the parties exist, Articles 38 and 39 of the Commission's Rules of Procedure direct the Commission to reject the United States' factual allegations, since the United States failed to respond to Petitioner's merits brief in a timely manner.<sup>30</sup> Additionally, even if there are facts in dispute, the government bears the burden of proof of disproving them. Petitioner has already addressed burden-shifting issues in her Observations on the Merits and explained why the government failed to disprove the facts that Petitioner had established. Petitioner has also noted the government's failure to respond meaningfully to open records requests intended to uncover evidence to clarify factual discrepancies in the case.<sup>31</sup>

On the question of burden-shifting, Petitioner wishes to highlight the standard articulated by the Court in *Campo Algodonero*, which further supports Petitioner's previous evidentiary analysis. In *Campo Algodonero*, the Court found that as a tribunal, it "has a margin of discretion to consider that certain types of facts have been established, when weighing them against the rest of the body of evidence."<sup>32</sup> The Court concluded there that the State was responsible for proving the adequacy of an investigation it allegedly

---

<sup>27</sup> U.S. Response at 2.

<sup>28</sup> U.S. Response at 2.

<sup>29</sup> Gonzales Petition at 7-13; Dec. 11, 2006 Observations at Part IIB & C; Gonzales Merits Brief at Part IIA; Gonzales Post-Merits Hearing Brief at 4-6; Declaration of Jessica Ruth Lenahan (Gonzales) (Dec. 6, 2006); Jessica Lenahan's (Gonzales) Statements Before the IACHR (March 2, 2007; Oct. 22, 2008).

<sup>30</sup> See Gonzales Post-Merits Hearing Brief at 4 (internal citations omitted).

<sup>31</sup> Gonzales Merits Brief at 129-140, 153-54, FN 533; See also Gonzales Post-Merits Hearing Brief at 11-19; Expert Report of Peter Diaczuk & Exhibits (July 15, 2009).

<sup>32</sup> *Campo Algodonero*, ¶ 180.

undertook, especially when evidence concerning the investigation was never made available to Petitioners:

*The Court also takes into account that the means of proof are available to the State, so that its defense cannot rest on the impossibility of the plaintiffs providing evidence that cannot be obtained without the State's cooperation. In other words, apart from the formal, routine procedures, the State did not submit any arguments or evidence about measures taken in the said period to mobilize its investigative mechanisms in a real and effective search for the victims. . . . [The Court] therefore concludes that, even though it has not been proved that the authorities told the mothers of the victims that 72 hours had to elapse after their disappearance before the investigations could start, the State has not proved what concrete steps were taken and how it searched for the victims during the said period.*<sup>33</sup>

Again, the parallels between *Campo Algodonero* and this case are striking. In *Gonzales*, the U.S. government has demanded that Petitioner prove the inadequacy of the CRPD's response and subsequent investigation into her children's deaths but refuses to provide Petitioner with important evidence they have requested for many years and that is in the government's possession. In light of this evidentiary gap, Petitioner has sought to prove her case through her own sworn declarations, those from her family members, and through reference to other evidence that she has collected through other channels.

For the aforementioned reasons, **the Commission should reject the U.S.'s factual assertions and call upon the U.S. to respond meaningfully to Petitioner's repeated open records requests to Colorado and federal authorities.** Moreover, the Commission should recognize the similarity in the facts establishing negligent action and inaction on the part of agents of the state highlighted in the *Campo Algodonero* and *Jessica Gonzales* cases.

The United States' attempts to contrast the *Campo Algodonero* and *Jessica Gonzales* cases ultimately depict Mexico as a rogue state that fails to protect women and children, in contrast to the state of affairs in the U.S. Such a characterization is not only inaccurate; it is also a bold display of U.S. exceptionalism and hypocrisy. As discussed in the next section, the U.S. should hold itself accountable to the standards that it imposes upon other States, and it should recognize when the United States fails to live up to those standards at home.

**II. The new U.S. position in asylum law (*Matter of LR*) recognizing State responsibility to protect domestic violence victims mirrors the international legal obligation to exercise due diligence, applicable in the present case.**

Petitioner's letter brief of February 19, 2010, notes a new position adopted by the U.S. Department of Homeland Security (DHS) in an asylum case, *Matter of LR*. In that case,

---

<sup>33</sup> *Campo Algodonero*, ¶¶ 179-81 (internal citations omitted).

the United States recognized that domestic violence victims may qualify for asylum under certain circumstances, such as when a foreign government is unwilling or unable to effectively protect the victim. In her letter brief, Petitioner also noted the connection between that standard and States' affirmative obligations to exercise due diligence to protect domestic violence victims under international law. Despite the United States stated position, in its response, the United States dismisses Petitioner's reference to U.S. immigration law as "nothing more than a shot in the dark . . ."<sup>34</sup> Petitioner respectfully disagrees.

Petitioner referenced the new development in U.S. asylum law to point to what she understood to be the U.S.'s implicit recognition of state responsibility to protect domestic violence victims in certain circumstances, under a test not unlike the "real and immediate risk/reasonable steps" test established by the Inter-American Court in the *Pueblo Bello Massacre Case*.<sup>35</sup> Indeed, **it would be inconsistent as a matter of policy, if not law, for the U.S. to apply a legal standard to foreigners under asylum law that it refuses to apply to its own citizens under constitutional law.** The new U.S. asylum law position, rather than representing a double standard, should indicate a move toward the U.S.'s wholesale domestic incorporation of international legal standards – a move anticipated by Commissioner Dinah Shelton over twenty years ago.<sup>36</sup>

Respectfully Submitted,



Caroline Bettinger-Lopez  
Human Rights Clinic  
Columbia Law School

Steven Watt  
American Civil Liberties Union  
Human Rights Project

Lenora Lapidus  
American Civil Liberties Union  
Women's Rights Project

Counsel for Jessica Ruth Lenahan (Gonzales)

---

<sup>34</sup> U.S. Response Brief at 5.

<sup>35</sup> Pueblo Bello Massacre, 2006 Inter-Am. C.H.R. ¶¶ 123-24 (citing and quoting the European Court of Human Rights' decision in *Kiliç v. Turkey*, Eur. Ct.H.R. Application No. 22492/93); Sawhoyamaya Indigenous Community, Case 0322/2001, Inter-Am. C.H.R. ¶ 155.

<sup>36</sup> See Dinah Shelton, *Private Violence, Public Wrongs, and the Responsibility of States*, 13 Fordham Int'l L. J. 2, 3 (1989-90) (highlighting the affirmative obligations of States to exercise due diligence under the American Convention on Human Rights, and contrasting this standard with the "general lack of government responsibility under the U.S. Constitution for failure to act with respect to violence committed by private actors").