

**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 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,

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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 Martinez-Olguin, 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.

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 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>

<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.

<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 Coalition Against Domestic Violence; Pace Women's Justice Center;

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.

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

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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 Berkeley 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 (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.

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 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,

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<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.

<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.

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 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:

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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."

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>

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

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<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.

<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.

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>

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 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*

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<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.

<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.



*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 Lenahan, 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 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

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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.

<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.

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 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

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<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: Decision of District Court, County of Douglas, State of Colorado making temporary restraining order permanent on June 4, 1999.

“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 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

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<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.

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 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

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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.

<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.

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 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

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<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.

<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.

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 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>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.

<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 Edmuson, 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 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

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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.

<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.

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-extraditable warrant for Mr. Gonzales' arrest had also been issued in Larimer County by June 23, 1999.<sup>77</sup>

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<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.

<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

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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 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>

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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.

<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.

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 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

<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.

<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.

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. 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

<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.

<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.

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 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

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<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.

<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.

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 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

<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.

<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  
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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 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

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(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.

<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.

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 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

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<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.

<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.

Lenahan had 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 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

<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.

<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.



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 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>

<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.

<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.

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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 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

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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).

<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. Hoctor, 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

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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 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

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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.

<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.

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>

## **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.

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<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*, 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.

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 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

<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./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.

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-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

<sup>175</sup> IACHR, Report N° 67/06, Case 12.476, *Oscar Elías Bicet 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).

<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.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.

<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.

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, 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.

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<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. 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. L/V/II. doc.68, January 20, 2007, paras. 195-197; IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/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.L/V/II, Doc. 64, March 10, 2009, para. 90.

**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 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.

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<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.



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>

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

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<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 Bicer 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.

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 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>

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<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.

<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. 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.

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>

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

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<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.L/V/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.LV/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.

<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.

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>

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

<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.L/V/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.L/V/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.L/V/II, Doc. 68 (January 20, 2007), para. 272; CEDAW Committee, General Recommendation 25, on *Temporary Special Measures*, U.N. Doc./CEDAW/C/2004/II/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.

<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).

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 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

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<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.

<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.

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>

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."

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<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.

<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.

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...

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.

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<sup>239</sup> See Petitioners' petition dated December 27, 2005, Exhibit A: Temporary Restraining Order dated May 21, 1999.

<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.

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.

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 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

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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.

<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.

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 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

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<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.

<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.

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.

### 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-

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<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.

<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.

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.

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

<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.

<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.

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 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>

<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).

<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 wiggled 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.

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 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.

<sup>270</sup> IACHR, Report N° 54/01, Case 12.051, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, para. 56.

<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 Armendatriz, 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.L/V/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. L/V/II.117. Doc. 44 (March 7, 2003), para. 51.

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 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>

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<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.

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>

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

<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.

<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.L/V/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.L/V/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.L/V/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 Stalin Bolaños*, Ecuador, Annual Report of the IACHR 1995, OEA/Ser.L/V/II.91, Doc. 7, rev. 3, April 3, 1996, paras. 32-34.



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 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 Investigations and

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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, 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.

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 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.

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...continuation

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").

<sup>298</sup> Expert Report by Peter Diaczuk, para. 54.

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 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

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<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.

<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.

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 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

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<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.

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

<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.L/V/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.

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**

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.