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## **REPORT Nº 52/07**

PETITION 1490-05

ADMISSIBILITY

JESSICA GONZALES AND OTHERS

UNITED STATES ([\\*](#))

July 24, 2007

### **I. SUMMARY**

1. On December 27, 2005 the Inter-American Commission on Human Rights (hereinafter the "Commission" or "IACHR") received a petition submitted by Caroline Bettinger-Lopez, Emily J. Martin, Lenora Lapidus, Steven Macpherson Watt, and Ann Beeson, attorneys-at-law with the American Civil Liberties Union (hereinafter the "Petitioners") against the Government of the United States (hereinafter the "State" or "U.S."). The petition was presented on behalf of Ms. Jessica Gonzales (Lenahan), a U.S. national who claims that the police failed to respond to her repeated and urgent calls over several hours informing that her estranged husband had taken their three minor daughters (ages 7, 8 and 10) in violation of a restraining order issued against him, which resulted in their death. The United States Supreme Court allegedly validated the law enforcement officials' conduct, by holding that Ms. Gonzales was not entitled under the United States Constitution to have the restraining order enforced by the police.

2. The petition alleges that the preventable deaths of Ms. Gonzales' children and the harm she suffered violated their rights to life and personal security under Article I, their right to protection of private and family life under Article V, their right to protection of the family under Article VI, their right to special protection for mothers and children under Article VII, and their right to the inviolability of the home under Article IX of the American Declaration on the Rights and Duties of Man (hereinafter "the American Declaration"). Petitioners further allege that the United States' failure to investigate Ms Gonzales' complaint and provide her with a remedy violated her right to resort to the courts under Article XVIII, and her right to obtain a prompt decision from the authorities under Article XXIV. Finally, the petition claims that the United States' failure to ensure the substantive rights under the above articles violated Ms. Gonzales' right to equality under Article II. In response to the petition, the State argues that the Petitioners' claims are inadmissible because the alleged victim has failed to exhaust domestic remedies.

3. As set forth in this Report, having examined the contentions of the parties on the question of admissibility, and without prejudging the merits of the matter, the Commission decided to declare the Petitioners' claims admissible with respect to Articles I, II, V, VI, VII, XVIII and XXIV of the American Declaration, to continue with the analysis of the merits of the case, to transmit the report to the parties, and to publish the report and include it in its Annual Report to the General Assembly of the Organization of American States.

## **II. PROCEEDINGS BEFORE THE COMMISSION**

4. Following the lodging of the Petitioners' complaint, dated December 27, 2005, received by the Executive Secretariat on December 27, 2005, and a revision thereof with formatting corrections received on January 13, 2006, on April 17, 2006, the Commission transmitted the pertinent parts of the complaint to the State and requested information within two months as established by the Commission's Rules of Procedure.

5. In a communication dated June 21, 2006, the State requested an extension of thirty days to prepare its response. On June 26, 2006, the Commission granted the State's request for an extension. In a communication dated September 18, 2006 and received by the Commission on September 20, 2006, the State delivered its observations on the Petitioners' complaint. By note dated September 22, 2006, the Commission transmitted the State's response to the Petitioners and requested any additional information on the State's response within one month.

6. In a communication dated November 27, 2006, the Petitioners provided information in connection with the complaint and requested the Secretariat's assistance with obtaining all non-privileged documents relating to this matter that are in possession, custody, or control of the United States government. Subsequently, in a note dated November 27, 2006, the Commission requested the State to deliver to the Commission within one month copies of any documentation referred to in its response to the petition in this matter that have not previously been provided to the Commission together with any other documentation or other information that the State may consider relevant to the admissibility stage of the this proceeding before the Commission.

7. In a note dated December 11, 2006, and another one dated December 12, 2006, received by the Commission on December 12, 2006, the Petitioners delivered their reply to the response of the State dated September 18, 2006. The Commission transmitted the pertinent parts of the Petitioner's reply to the State on January 3, 2007, with any observations requested within one month. In a note dated March 5, 2007, the State acknowledged receipt of the Commission's note of January 3, 2007 and September 22, 2006. As a response to the latter, the State informed that, regarding the Petitioner's request for additional documentation, there are no provisions in the rules of the Commission providing for requests of this kind and recommended that the Petitioners seek such documentation through appropriate state and federal procedures.

8. A hearing before the Inter-American Commission on Human Rights to address matters related to this case was convened on Friday, March 2, 2007, during the Commission's 127<sup>th</sup> ordinary period of sessions. In a communication dated May 14, 2007, the Petitioners provided observations concerning the March 2, 2007 hearing of the case. By note dated May 17, 2007, the Commission transmitted the Petitioners' observations to the State and requested a State's response within one month.

9. In a communication dated July 6, 2007, Katherine Caldwell and Andrew Rhys

Davies, attorneys of the firm Allen & Overy LLP, submitted an *Amici Curiae* brief in favor of the allegations of the petitioners in this case. The *Amici Curiae* brief was also submitted on behalf of 29 organizations, entities and international and national networks dedicated to the protection of the rights of women and children. By note dated July 20, 2007, the Commission transmitted a copy of this brief to the parties, for their information.

### **III. POSITIONS OF THE PARTIES**

#### **A. Position of the Petitioners**

10. The Petitioners allege that Ms. Gonzales and her husband lived in Castle Rock, Colorado and had married in 1990. In 1996, her husband began adopting abusive behavior towards her and her three minor daughters (ages 7, 8 and 10). In 1999, after he attempted to commit suicide, Ms. Gonzales filed for divorce and started living separately from him. In May of that year, she requested the issuance of a restraining order from the State of Colorado to protect her and her daughters. The order was granted in May (temporary) and in June 1999 (permanent). The order granted Ms. Gonzales the sole physical custody of her three minor daughters and allowed Mr. Gonzales occasional visitation or "parenting time." The order provided that family visits could only occur once a week and during dinner time - "mid-week dinner visit" - and they had to be previously arranged between Simon and Jessica Gonzales.

11. The Petitioners claim that on June 22, 1999, Mr. Gonzales took the children with him in violation of the restraining order, as time for visitation had not been previously arranged. At approximately 5:50 p.m. on that same day, Ms. Gonzales called the Castle Rock Police Department to report the alleged abduction. In her call to the police department, the Petitioners allege that she informed them of the existence of the restraining order and that there had been no pre-arranged visitation with the children planned for that day. The Petitioners state that later that day she called the police again (7:30 p.m.) and approximately at 8:00 p.m. two officers arrived at her house. After showing them a copy of the restraining order, the Petitioners allege that the police officers informed Ms. Gonzales that there was nothing they could do to enforce it since her ex-husband was entitled to some "parenting time". They also told her to wait until 10:00 p.m. to call the police again.

12. The Petitioners allege that Ms. Gonzales reported to the police a call she received from her husband around 8:30 p.m., who, upon her refusal to "rekindle" their relationship, communicated that he "[knew] what he needed to do." They also allege that Ms. Gonzales reported an alarming call received that evening from Mr. Gonzales' girlfriend, Rosemary Young, who expressed concern about whether Mr. Gonzales might harm himself or his children. She allegedly told Ms. Gonzales that her ex-husband had threatened to drive off a cliff earlier that day.

13. According to the Petitioners, the police dismissed all of Ms Gonzales's calls. The latter 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. According to the Petitioners, inaction and indifference persisted in the response even after Ms. Gonzales went to the Castle Rock police department and filed an incident report.

14. At approximately 3:30 a.m. the Petitioners allege that Mr. Gonzales appeared at the police station and opened fire at the police officers, who shot him dead on the scene. Subsequently the police found the bodies of the three murdered girls in the back of Mr. Gonzales' truck.

15. The allegations indicate that after hearing about the shooting, Ms. Gonzales drove to the police station. As she attempted to approach Mr. Gonzales' truck, she was stopped by the police and taken to the local sheriff's office. The petitioners allege that the officers refused to offer Ms. Gonzales any information on whether the girls were alive or not, and ignored her pleas to see the girls and identify them. She allegedly was detained in a room for 12 hours and interrogated, without any outside contact. The allegations indicate that she felt revictimized and was traumatized by the experience. Around 8:00 a.m. she was informed by state officials that Mr. Gonzales had murdered their daughters before he arrived at the police station. Allegedly, she was not permitted by the authorities to identify her daughters' bodies until six days later, in their caskets at the moment of the burial. She also alleges that the authorities never allowed her to approach Mr. Gonzales' truck and allegedly disposed of the truck three weeks after the death of her daughters.

16. The petitioners finally claim that Ms. Gonzales 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. She allegedly has requested this information from the Castle Rock police and it has been denied. Overall, Ms. Gonzales alleges she was denied a factual investigation of the events surrounding the death of her daughters.

17. The Petitioners stress that at no time did the police appear concerned over the safety of her children, and that her repeated calls were met with disinterest. On one instance, a police officer allegedly dismissed her pleas, telling her that he "didn't see what the big deal was." The Petitioners also allege that the police did not respond to any emergencies that evening that would have prevented them from allocating resources towards the enforcement of Ms. Gonzales restraining order. Finally they claim that Ms. Gonzales trusted the police would take action, and had she known the police would not do anything to locate her daughters, she would have undertaken proactive steps to find them herself and avoid the tragedy.

18. The Petitioners indicate that Ms. Gonzales filed suit in the United States District Court for the District of Colorado, a court of federal level, 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. In the sphere of substantive due process, Ms. Gonzales claimed that she and her daughters had a right to police protection against harm from her husband. In the realm of procedural due process, she alleged that she possessed a protected property interest in the enforcement of her restraining order and that the Castle Rock police officers' arbitrary denial of that entitlement without due process violated her rights. The District Court dismissed her case, which a panel of judges of the Third Circuit Court of Appeals affirmed in part and reversed in part. This finding was then affirmed in a rehearing before all the judges of the court ("*en banc*" review).

19. Ms. Gonzales' case reached the Supreme Court, the highest judicial and appellate court in the United States. According to the Petitioners, on June 27, 2005, the Supreme Court rejected all of the claims presented by Ms. Gonzales, 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, Ms.

Gonzales had no personal entitlement to police enforcement of the order.

20. The Petitioners highlight that domestic violence is a widespread and tolerated phenomenon in the United States that has a disproportionate impact on women and has negative repercussions on their children. The petitioners also stress that even though the prevalence, persistence and gravity of the issue are recognized at the state and federal levels and legislative measures have been adopted to confront the problem, the response of police officers is to treat it as a family and private matter of low priority, as compared to other crimes. This perception influences negatively the response of the police in the implementation of protection orders.

21. Regarding the right to equality before the law, the Petitioners allege that the lack of State response to Ms. Gonzales' reports was based on negative stereotypes embraced by some police officers and a facially neutral police department policy of assigning lower priority to reports of domestic violence incidents, a policy that affects women disproportionately. According to the Petitioners, this attitude from state authorities has a particularly alarming effect on women pertaining to different racial, ethnic, and lower-income groups.

22. Furthermore, the Petitioners allege that the doctrine of sovereign immunity severely limits the ability of victims of domestic violence to sue police departments for torts such as negligence when they fail to comply with their legal duties. The Petitioners argue that the Colorado Governmental Immunity Act ("hereinafter CGIA") barred Ms. Gonzales from bringing suit against the Town of Castle Rock. The Petitioners argue that under Colorado state law, government actors such as police officers are immune from liability unless a plaintiff can demonstrate that the officers' acts were "wanton and willful". Such a showing, the Petitioners remark, will be impossible to make in most circumstances, and especially in domestic violence cases, because the injury typically results from a third party and non-State actor. Moreover, the Petitioners state that the highest state court in Colorado has interpreted this provision in an extremely restrictive manner, holding that the term "willful and wanton" for purposes of CGIA implies showing "that the officer purposefully acted or failed to act with conscious belief that this would probably harm" the victim.

23. Finally, the Petitioners stress that Supreme Court interpretation of the Constitution prevents victims of domestic violence from obtaining legal remedies, and from holding the police legally accountable for failure to protect victims from acts of domestic violence. Therefore, negative stereotypes affecting women are perpetuated, and structures sustaining domestic violence are strengthened. The petition indicates that in 2000, the Supreme Court struck down a federal law which had created a cause of action to sue perpetrators of domestic violence by holding that Congress at the federal level did not have the constitutional authority to adopt such law. The Supreme Court also allegedly held in another decision that the government is under no substantive obligation to protect an individual from violence committed by a non-State actor. The Petitioners finally allege that the Supreme Court again denied legal remedy to victims of domestic violence in the case involving Ms. Gonzales, stating that an individual was not constitutionally entitled to the enforcement of a restraining order.

24. Regarding the admissibility of the petition, the petitioners allege that Ms. Gonzales' petition complies with all the Rules of Procedure of the Commission. They contend that Ms. Gonzales properly exhausted domestic remedies in accordance with Article 31 of the Rules of Procedure, that her petition has been filed within the six-month deadline established under article 32(1) of the Rules of Procedure, and that the American Declaration

on the Rights and Duties of Man is binding on the United States.

25. On the merits, the petitioners ask that the Commission declare the United States of America to be in violation of Articles I, II, V, VI, VII, IX, XVIII, and XXIV of the American Declaration, and recommend such remedies as the Commission considers adequate and effective for the violations Ms. Gonzales suffered.

## **B. Position of the State**

26. The State alleges that the events which occurred prior to the murders of Ms. Gonzales' three daughters, on June 23, 1999, confirm that she had agreed that Mr. Gonzales could see their three daughters that evening for a mid-week dinner visit and that the visit was consistent with the restraining order. Therefore, the State alleges that the information available at the time revealed no indication that Mr. Gonzales was likely to commit that tragic crime against his own daughters.

27. The State alleges that the evidentiary records show that throughout the evening of June 22, 1999, and the early hours of June 23, 1999, the police responded professionally to the information Ms. Gonzales provided. The State argues that although the restraining order granted Ms. Gonzales "temporary sole physical custody" of the children, it granted Mr. 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". It also granted Mr. Gonzales a "mid-week dinner visit" to be "arranged by the parties." Therefore, the State argues that since Ms. Gonzales consented to the mid-week dinner visit, Mr. Gonzales did not violate the restraining order by taking his daughters for the evening.

28. The State argues that members of the Castle Rock Police Department were responsive to her numerous requests for assistance and took her concerns seriously. In response to her initial call, allegedly two officers were dispatched to Ms. Gonzales' house, one went directly to her house and the other one went to Mr. Gonzales' house, and later joined the first officer at Ms. Gonzales' house. The State also alleges that at no point did Ms. Gonzales show the officers a restraining order.

29. At approximately 8:43 p.m., Ms. Gonzales called the police and informed the dispatcher that she had received a telephone call from her husband and that he was with the children at Elitch's amusement park in Denver. In that occasion, the State alleges that Ms. Gonzales did not mention any conversation with Rosemary Young (Mr. Gonzales' girlfriend) nor did she mention any concern about Mr. Gonzales mental state or the safety of her children, nor did she request that an officer should be dispatched to locate Mr. Gonzales at the amusement park.

30. At 9:57 p.m., the State alleges that Ms. Gonzales called again and expressed frustration that her daughters had not arrived home. She did not mention that she was concerned about the safety of any of the children. Nor did she request that the Castle Rock police put out an "APB" (all points bulletin to other police departments). According to the State, Ms. Gonzales implicitly acknowledged that there was no restraining order violation when she explained to the police dispatcher in her first call to the Castle Rock police and in her subsequent conversations with an officer that she had agreed to the visit.

31. At approximately 12:30 a.m., on Wednesday, June 22<sup>nd</sup>, Ms. Gonzales showed up at the police department in tears. The State alleges that at this point she expressed concern about Mr. Gonzales' mental state saying that he had "lost it" and that he might be

"suicidal". The State claims that the police ordered to locate Mr. Gonzales and his vehicle through an "Attempt to Locate BOLO" (an acronym for "Be On The Look Out" which is directed to other jurisdictions so that they may notify the requesting police department if they locate the individual in question). According to the investigation, the State informs that Mr. Gonzales reached the police station at 3:25 a.m. and fired shots through the window. After an exchange of gunfire with the officers, Mr. Gonzales died. When the officers approached Mr. Gonzales's truck, they discovered the bodies of the three young girls.

32. The State argues that the petition is inadmissible for failure to state a breach of a duty by the United States under the American Declaration. The State alleges that no provision of the Declaration imposes an affirmative duty on States to actually prevent the commission of the crimes perpetrated by Mr. Gonzales. Furthermore, the State also alleges that no other provision of the Declaration contains language that even addresses implementation of the enumerated rights as the American Convention. The American Convention, on the other hand, includes a provision that describes the actual obligations of State Parties regarding implementation of the rights enumerated in the Convention.

33. Furthermore, the State alleges that Ms. Gonzales did not exhaust all available remedies to report the events suffered. Particularly, the State alleges that the actual facts of the case were not addressed in the domestic litigation. At the district court level, the Town of Castle Rock filed a motion to dismiss the claim. The District Court found that as a matter of law, Ms. Gonzales had failed to state a claim upon which relief could be granted. Accordingly, the actual facts were not addressed in the litigation because the appeals process dealt with whether the federal law invoked by Ms. Gonzales, was available based on the allegations set forth in her complaint. The State claims 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 Ms. Gonzales. The Supreme Court determined that the Fourteenth Amendment's Due Process Clause, granted police officers discretion in enforcing restraining orders, and determined that Ms. Gonzales did not have federal entitlement to enforcement of the restraining order.

34. The State alleges that Ms. Gonzales 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 the Castle Rock Police Department or the Town of Castle Rock. In addition, although Ms. Gonzales 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.

35. The State claims that the fact that Ms. Gonzales did not obtain positive results at the federal judicial level through the decision of the U.S. Supreme Court in this specific case, does not mean that domestic violence victims do not have resources available to them at the state or local level or that protection orders do not effectively protect their beneficiaries.

36. The State also describes a series of additional remedies and protections for victims of domestic violence at the national and state levels, such as billions of dollars devoted to implement programs related to domestic violence, as well as a diversity of laws that have been designed to improve the investigation of domestic violence cases.

#### **IV. ANALYSIS**

##### **A. Competence of the Commission *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci***

37. Upon considering the record before it, the Commission considers that it is competent to examine the present petition. Article 23 of the Commission's Rules of Procedure authorizes petitioners to submit a complaint alleging violations of rights recognized in the American Declaration on the Rights and Duties of Man. The alleged victims, Ms. Gonzales, and her three daughters Leslie, Katheryn and Rebecca Gonzales, are under the jurisdiction of the United States and their rights are protected under the American Declaration, the provisions of which the State is bound to respect in conformity with article 17 of the OAS Charter, article 20 of the Statute of the Commission, and article 29 of the Rules of Procedure of the Commission. The United States has been subject to the jurisdiction of the Commission since it deposited its instrument of ratification of the OAS Charter on June 19, 1951. Thus the Commission is competent *ratione personae* with respect to Ms. Gonzales.

38. Inasmuch as the Petitioners allege violations of articles I, II, V, VI, VII, IX, XVIII, and XXIV of the American Declaration on the Rights and Duties of Man, the Commission is competent *ratione materiae* to examine the petition.

39. The Commission is competent *ratione temporis* to examine the complaints because the petition alleges facts that occurred on or after the date on which the United States' obligations under the American Declaration took effect.

40. Finally, the Commission is competent *ratione loci*, in so far as the petition alleges facts which have occurred while Ms. Gonzales was under the jurisdiction of the United States.

##### **B. Admissibility of the Petition**

###### **1. Exhaustion of domestic remedies**

41. Article 31(1) of the Commission's Rules of Procedure specifies that, in order to decide on the admissibility of a matter, the Commission must verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with generally recognized principles of international law. Article 31(2) of the Commission's Rules of Procedure, however, specifies that this requirement does not apply if the domestic legislation of the state concerned does not afford due process of law for protection of the right allegedly violated, if the party alleging the violation has been denied access to domestic remedies or prevented from exhausting them, or if there has been an unwarranted delay in reaching a final judgment under the domestic remedies. As indicated by Article 31(3) of the Commission's Rules, when a petitioner alleges one of these exceptions, it then falls to the State to demonstrate that domestic remedies have not been exhausted, unless that is clearly evident from the record.

42. The requirement of prior exhaustion applies when domestic remedies are available in practice within the national system, and would be adequate and effective in providing a remedy for the alleged violation. The Inter American Court of Human Rights has observed that domestic remedies, in accordance with generally recognized principles of international law, must be both adequate, in the sense that they must be suitable to



address an infringement of a legal right, and effective, in that they must be capable of producing the result for which they were designed. While a number of remedies exist in the legal system of every country, the exhaustion rule does not require the invocation of remedies which are inadequate, ineffective and offer no possibility of success. For purposes of admissibility, the standard of analysis used for the *prima facie* assessment of the adequacy and effectiveness of the remedies under domestic law is not as high as the one required to determine whether a violation of Convention-protected rights has been committed.

43. In the case at hand, the parties are in dispute regarding compliance with the domestic remedy exhaustion requirement, and consequently, it falls to the Inter-American Commission to rule on the matter. The Petitioners allege that Ms. Gonzales has properly exhausted domestic remedies available to her in respect to the claims raised before the Commission. In particular, they claim that Ms. Gonzales presented her Constitutional due process claims to the domestic federal courts, that on June 27, 2005, the United States Supreme Court rejected those claims, and that all appeals have been exhausted.

44. The State in response argues that the present petition should be considered inadmissible because Ms. Gonzales failed to pursue a range of legal and administrative remedies that were available to her. The State claims that the holding of the U.S. Supreme Court in *Town of Castle Rock, Colorado v. Gonzales*, was limited to the particular claims raised by Ms. Gonzales regarding the particular Colorado statutory regime concerning the enforcement of protective orders and should not be construed to mean that there are no remedies available to victims of domestic violence in the United States or that restraining orders in such cases offer no protection to their beneficiaries. The State argues that there were a number of potential avenues that were not exhausted by Ms. Gonzales including: a) the filing of an administrative complaint with the Castle Rock Police Department or with the Town of Castle Rock which would have prompted an investigation of her complaint by the same entities; b) the pursuit of a civil suit in state court against the police officers under states tort law, which would have been permitted by the Colorado Governmental Immunity Statute; and c) the filing of an equal protection claim before federal courts.

45. The State also describes a series of additional remedies and protections for victims of domestic violence at the national and state levels such as billions of dollars allocated to the implementation of programs related to domestic violence, as well as a diversity of laws that have been designed to improve the investigation of domestic violence cases. Furthermore, the State claims 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 Ms. Gonzales.

46. The Petitioners in response argue that none of the state and federal judicial remedies identified by the State were "viable legal avenues" for Ms. Gonzales and that no administrative channels were available to Ms. Gonzales in 1999 that would have afforded her an adequate and effective redress. They claim that the only remedy that was "available, adequate and effective" in 1999 that she could exhaust was a due process claim at the federal level. In regards to the other remedies mentioned by the State, the Petitioners argue that the presentation of a claim under the Equal Protection Clause of the United States Constitution would have been futile based on established Supreme Court precedent. Furthermore, they claim that the Colorado Governmental Immunity Act barred Ms. Gonzales from bringing a civil tort suit against the Town of Castle Rock and the individual police officers. The Petitioners also allege that the State does not provide any information concerning the administrative complaint mechanisms it identifies in its response, and that the Petitioner was never informed of these mechanisms when the facts

allegedly occurred. The petitioners finally claim that since Simon Gonzales did not survive, any remedies identified by the State in this regard were not in fact available to Ms. Gonzales and that these remedies would have been inappropriate to remedy the human rights violations alleged.

47. In considering the positions of the parties on the question of exhaustion, the Commission notes that Ms. Gonzales' claims before the Commission focus on allegations she already raised before federal courts and reached the U.S. Supreme Court, the highest judicial instance and appellate court in the United States. Ms. Gonzales sued the Castle Rock Police Department and certain individual officers under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, raising both substantive and procedural challenges, which were ultimately rejected by the U.S. Supreme Court. The U.S. does not dispute this allegation. Furthermore, the Commission observes that the U.S. Supreme Court, in its decision, did not indicate that Ms. Gonzales had pursued the wrong remedies to raise her claims.

48. The Commission therefore concludes that the State in this case has not indicated how the alternative legal and administrative remedies it mentions could have provided Ms. Gonzales with a different outcome for her claims or how these could have been adequate and effective in remedying the violations alleged. Furthermore, both parties highlight precedent that limits the likelihood of success of any of these remedies, including the Supreme Court ruling in the *Town of Castle Rock, Colorado v. Gonzales* case, the Supreme Court cases establishing that the government has no obligation to protect an individual from acts committed by non-State actors, and existing immunity laws protecting state officials from liability.

49. In previous cases, this Commission has shared the view of the European Court of Human Rights that a petitioner may be excused from exhausting domestic remedies with respect to a claim where it is apparent from the record before it that any proceedings instituted on that claim would have no reasonable prospect of success in light of prevailing jurisprudence of the state's highest courts. In these circumstances, the Commission has considered that proceedings in which claims of this nature are raised would not be considered "effective" in accordance with general principles of international law. In these circumstances, the Commission finds that any proceedings raising these claims before state courts would appear to have no reasonable prospect of success, and therefore would not be effective in accordance with general principles of international law.

50. Based on the above factors, the Commission concludes that the Petitioners properly exhausted all domestic remedies available within the United States legal system and, therefore, that their claims before the Commission are not barred from consideration by the requirement of exhaustion of domestic remedies under Article 31(1) of its Rules of Procedure.

## **2. Duplication**

51. In their petition, the Petitioners have stated that Ms. Gonzales' claims are not pending before any other international forum. The State has not contested the issue of duplication of procedures. The Commission therefore finds no bar to the admissibility of the Petitioners' claims under Article 33 of the Commission's Rules of Procedure.

## **3. Timeliness of the petition**

52. The record in the present complaint indicates that the Petitioners lodged their

petition with the Commission on December 27, 2005 and therefore within six (6) months of the June 27, 2005 decision of the U.S. Supreme Court affirming Ms. Gonzales failure to establish a violation of the 14<sup>th</sup> Amendment of the U.S. Constitution. The State has not contested the issue of timeliness. As such, the Commission finds that the petition was not lodged beyond the time period prescribed under Article 32 of the Commission's rules of Procedure.

#### **4. Colorable Claim**

53. For the purposes of admissibility, Article 34(a) of the Commission's Rules of Procedure provides that petitions lodged with the Commission must state facts that tend to establish a violation of the rights referred to in Article 27 of the Rules of Procedure or whether the petitions must be dismissed as "manifestly groundless" or "obviously out of order" under Article 34(b) of the Commission's rules of Procedure. In so doing, the Commission undertakes only a *prima facie* evaluation of the alleged facts with respect to the admissibility and does not consider or judge the merits of any claim.

54. In their allegations, the Petitioners raise three main claims of violations of Ms. Gonzales' rights under the American Declaration:

a. The preventable death of Ms. Gonzales' daughters and the harms she suffered violated their rights to life and personal security under Article I, their rights to special protection under Article VII, and their rights to protection of family and home under Articles V, VI, and IX of the American Declaration;

b. The United States' failure to investigate Ms. Gonzales' complaints, the failure to provide her an effective remedy, and the lack of access to information regarding the circumstances of the death of her daughters violated her rights to resort to courts under Article XVIII and to petition the government and receive a prompt decision under Article XXIV;

c. The United States' failure to guarantee Ms. Gonzales' substantive rights outlined above violated her right to equality under Article II.

55. The State opposes these claims on the ground that the Petitioners have not cited any provision of the American Declaration that imposes an affirmative duty on States to actually prevent the commission of individual crimes by private parties such as the tragic criminal murders by Mr. Simon Gonzales of his three daughters. The State claims that no other provision of the Declaration contains language that even addresses implementation of the enumerated rights, let alone imposes an affirmative duty to prevent crimes such as those at issue in this case.

56. In this regard, according to the well-established and long-standing jurisprudence and practice of the inter-American system, the American Declaration is recognized as constituting a source of legal obligation for OAS member states, including in particular those states that are not parties to the American Convention on Human Rights. These obligations are considered to flow from the human rights obligations of member states under the OAS Charter, which member states have agreed are contained in and defined by the American Declaration, as well as from the customary legal status of the rights protected under many of the Declaration's core provisions. As a source of legal obligation, therefore, the State must implement the principles of the American Declaration in practice within its jurisdiction and it is appropriate for the Commission to consider and,

where substantiated, find violations of that instrument attributable to a member state of the OAS, including the United States. Therefore, the Commission concludes that the scope of this obligation in the present case can and will be reviewed in light of the circumstances of the facts alleged, the jurisprudence of the Inter-American system of human rights and its application to countries which have not ratified the American Convention. The allegations of the parties in this case do not indicate the petition is manifestly groundless or out of order, thus, the Commission can declare this petition admissible.

57. With regard to the Petitioners' claims, after carefully reviewing the information and arguments provided by the Petitioners and the State outlined by the Commission in Part III of this Report, the Commission considers that the facts alleged by the Petitioners in respect to these claims could tend to establish violations of Articles I, V, VI, VII, XVIII and XXIV of the rights of Ms. Gonzales and her daughters under the American Declaration and warrant an analysis on the merits of the complaint.

58. Furthermore, it considers that the alleged facts would constitute possible violations to Article II of the American Declaration. The IACHR observes that the Petitioners allege that the police authorities engage in a systematic and widespread practice of treating domestic violence as a low-priority crime, belonging to the private sphere, as a result of discriminatory stereotypes about the victims. These stereotypes influence negatively the police response to the implementation of restraining orders. The failures in the police response affect women disproportionately since they constitute the majority of victims of domestic violence. The deficiencies in the state response allegedly have a particularly alarming effect on women that pertain to racial and ethnic minorities, and lower-income groups.

59. It is the opinion of the IACHR that the facts alleged in the petition do not provide sufficient grounds to constitute a violation of the right to inviolability of the home, protected by Article IX of the American Declaration.

## **V. CONCLUSIONS**

60. The Commission concludes that it has the competence to examine the Petitioners' allegations, and that the petition is admissible for the alleged violations of Articles I, II, V, VI, VII, XVIII and XXIV of the American Declaration and in accordance with the Commission's Rules of Procedure.

61. On the basis of the findings of fact and law set forth above, and without prejudging the merits of the matter,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,**

#### **DECIDES:**

1. To declare the claims in the petition to be admissible in respect to Articles I, II, V, VI, VII, XVIII and XXIV of the American Declaration.
2. To declare this petition inadmissible regarding the alleged violation of the right provided for by Article IX of the American Declaration.
3. To continue with the analysis of the merits of the case.

4. To transmit this report to the parties.

5. To publish this report and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 24<sup>th</sup> day of the month of July, 2007. (Signed): Florentín Meléndez, President; Víctor E. Abramovich, Second Vice-President; Sir Clare Roberts, Evelio Fernández Arévalos, and Freddy Gutiérrez Trejo Commissioners.

\* Commission Member Professor Paolo Carozza did not take part in the discussion and voting on this case, pursuant to Article 17(2) of the Commission's Rules of Procedure.

By note dated October 26, 2006, the Human Rights Clinic of Columbia University Law School was accredited as a joint petitioner.

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 Dominicano - Haitiana* (MUDHA), Dominican Republic; *Núcleo de Apoyo a la Mujer* (NAM), Dominican Republic; Jacqueline Sealy-Burke, Director, Legal Aid and Counseling Clinic (LACC), Grenada; *Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, A.C.* (CMDPDH), México; *Organización Popular Independiente, A.C.*, Cd. Juárez, México; *Organización Red de Mujeres Contra la Violencia*, Nicaragua; *Centro de la Mujer Panameña* (CEMP), Panamá; *Asociación Pro Derechos Humanos* (APRODEH), Lima, Perú; *Red Nacional De Casas De Refugio Para Mujeres y Niñas Víctimas De Violencia Familiar y Sexual*, Perú.

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.

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.

Petitioners' petition dated December 27, 2005, p. 37.

Petitioners' observations to the State's communication, dated December 12, 2006, p. 92.

The petition refers to the case of *United States v. Morrison*, 529 U.S. 598 (2000), according to which issues such as violent crime and family relationships belong to the local rather than the national sphere. Therefore, Congress at the federal level has no power to create a remedy for victims of gender-based violence.

The petition refers to the case of *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989).

The petition refers to the Supreme Court decision in the case of *Castle Rock v. Gonzales*, 125 S.Ct. 2796 (2005).

*Gonzales v. City of Castle Rock*, No. 00-1285 (D.Co. filed Jan. 23, 2001).

State's observations dated September 18, 2006, p. 21.

State's observations dated September 18, 2006, p. 22.

Article 20 of the Statute of the IACHR provides that, in respect to those OAS member states that are not parties to the American Convention on Human Rights, the Commission may examine communications submitted to it and any other available information, to address the government of such states for information deemed pertinent by the Commission, and to make recommendations to such states, when it finds this appropriate in order to bring about more effective observance of fundamental human rights. See also Charter of the Organization of American States, Arts. 3, 16, 51, 112, 150; Regulations of the Inter-American Commission on Human Rights, Arts. 26, 51-54; I/A. Court H.R., Advisory Opinion OC-10/8 "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 No 10 (1989), paras. 35-35; I/A Comm. H. R., James Terry Roach and Jay Pinkerton v. United States, Case 9647, Res. 3/87, 22 September 1987, Annual Report 1986-87, paras. 46-49.

I/A Court H.R., Velásquez Rodríguez Case, Merits, Judgment of July 29, 1988, Ser. C. No 4, (1988), paras. 64-66.

I/A Court H.R., Velásquez Rodríguez Case, Merits, Judgment of July 29, 1988, Ser. C. No 4, (1988), para. 64.

I/A Court H.R., Velásquez Rodríguez Case, Merits, Judgment of July 29, 1988, Ser. C. No 4, (1988), para. 66.

I/A Court H.R., Velásquez Rodríguez Case, Merits, Judgment of July 29, 1988, Ser. C. No 4, (1988), para. 68.

Report No 08/05, Petition 12.238, Miriam Larrea Pintado, Ecuador, February 23, 2005, para. 31.

State's Observations dated September 18, 2006, p. 22.

Petitioners' Observations dated May 14, 2007.

State's Observations dated September 18, 2006, p. 22.

In regards to substantive due process, Ms. Gonzales argued that she and her daughters had a right to police protection against harm from her husband. In regards to procedural due process, Ms. Gonzales argued that she possessed a protected property interest in the enforcement of the terms of her restraining order and that the Castle Rock's police officers arbitrary denial of that entitlement without due process violated her rights.

See, e.g., Case 11.193, Report 51/00, Gary Graham v. United States (Admissibility), Annual Report of the IACHR 2000, para. 60, citing Eur. Court H.R., *De Wilde, Oomas and Versyp Cases*, 10 June 1971, Publ. E.C.H.R. Ser. A, Vol.12, p. 34, paras. 37, 62; Eur. Court H.R., *Avan Oosterwijck v. Belgium*, Judgment (Preliminary Objections), November 6, 1980, Case N° 7654/76, para. 37. See also Case 11.753, Report 108/00, Ramón Martínez Villareal v. United States (Admissibility), Annual Report of the IACHR 2000, para. 70.

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. For examples of decisions in which the Commission has found violations of the American Declaration in respect of OAS member states that are not parties to the American Convention on Human Rights, see Case 1742 (Cuba), May 1975, Annual Report of the IACHR 1975; *Maclean v. Suriname*, Case 10.116, Resolution N° 18/89, Annual Report of the IACHR 1988-1989; *Michael Edwards et al. v. The Bahamas*, Case 12.067, Report N° 48/01, Annual Report of the IACHR 2000; *Garza v. United States*, Case 12.243, Report N° 52/01, Annual Report of the IACHR 2000.

Charter of the Organization of American States, Arts. 3, 16, 51, 112, 150.

See e.g. OAS General Assembly Resolution 314, AG/RES. 314 (VII-O/77), June 22, 1977 (charging 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 "promoting 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).

Case 12.379, Report N° 19/02, *Lares-Reyes et al.* (United States), February 27, 2002, para. 46.

I/A Court H.R., *Case of the Mapiripán Massacre*. Judgment of September 15, 2005. Series C No. 134, para. 111; I/A Court H. R., *Case of the Massacre of Pueblo Bello*. Judgment of January 31, 2006. Series C No. 140, para 123.