

**CASE NOS.
12.496, 12.497, & 12.498**

Before the
**INTER-AMERICAN COURT
OF HUMAN RIGHTS**

**CAMPO ALGODONERO: CLAUDIA IVETTE GONZÁLEZ (12.496);
ESMERALDA HERRERA MONREAL (12.497);
AND LAURA BERENICE RAMOS MONÁRREZ (12.498),**

v.

THE UNITED MEXICAN STATES

**AMENDED *AMICI CURIAE* BRIEF
IN SUPPORT OF PETITIONERS**

PRESENTED BY

AMNESTY INTERNATIONAL; PROFESSOR THOMAS ANTKOWIAK; PROFESSOR TAMAR BIRCKHEAD; MARY BOYCE; BREAK THE CYCLE; PROFESSOR ARTURO CARRILLO; CENTER FOR CONSTITUTIONAL RIGHTS; CENTER FOR GENDER & REFUGEE STUDIES; CENTER FOR JUSTICE & ACCOUNTABILITY; CENTRO DE DERECHOS HUMANOS UNIVERSIDAD DIEGO PORTALES - CHILE (THE CENTER OF HUMAN RIGHTS OF DIEGO PORTALES UNIVERSITY); COLUMBIA LAW SCHOOL HUMAN RIGHTS CLINIC; CORNELL LAW SCHOOL INTERNATIONAL HUMAN RIGHTS CLINIC; PROFESSOR BRIDGET J. CRAWFORD; THE DOMESTIC VIOLENCE AND CIVIL PROTECTION ORDER CLINIC OF THE UNIVERSITY OF CINCINNATI; PROFESSOR MARGARET DREW; PROFESSOR MARTIN GEER; HUMAN RIGHTS AND GENOCIDE CLINIC, BENJAMIN N. CARDOZO SCHOOL OF LAW; HUMAN RIGHTS ADVOCATES; PROFESSOR DEENA HURWITZ; IMMIGRATION CLINIC AT THE UNIVERSITY OF MARYLAND SCHOOL OF LAW; THE IMMIGRATION JUSTICE CLINIC; IMPACT PERSONAL SAFETY; THE INTERNATIONAL HUMAN RIGHTS CLINIC AT WILLAMETTE UNIVERSITY COLLEGE OF LAW; INTERNATIONAL MENTAL DISABILITY LAW REFORM PROJECT OF NEW YORK LAW SCHOOL; THE INTERNATIONAL WOMEN'S HUMAN RIGHTS CLINIC AT GEORGETOWN LAW; LATINOJUSTICE PRLDEF; LEGAL SERVICES CLINIC AT WESTERN NEW ENGLAND COLLEGE SCHOOL OF LAW; LEITNER CENTER FOR INTERNATIONAL LAW AND JUSTICE AT FORDHAM LAW SCHOOL; PROFESSOR BERT B. LOCKWOOD; ALLARD K. LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC, YALE LAW SCHOOL; PROFESSOR BETH LYON; PROFESSOR THOMAS M. McDONNELL; THE NATIONAL ASSOCIATION OF WOMEN LAWYERS; LOS ANGELES CHAPTER OF THE NATIONAL LAWYERS GUILD; THE NATIONAL ORGANIZATION FOR WOMEN; PROFESSOR NOAH NOVOGRODSKY; JAMIE O'CONNELL; PROFESSOR SARAH PAOLETTI; PROFESSOR JO M. PASQUALUCCI; PROFESSOR NAOMI ROHT-ARRIAZA; PROFESSOR DARREN ROSENBLUM; PROFESSOR SUSAN DELLER ROSS; SETON HALL UNIVERSITY SCHOOL OF LAW CENTER FOR SOCIAL JUSTICE; PROFESSOR GYWNNE SKINNER; PROFESSOR KATHLEEN STAUDT, PH.D.; PROFESSOR JEFFREY STEMPEL; PROFESSOR MAUREEN A. SWEENEY; PROFESSOR JONATHAN TODRES; THE URBAN MORGAN INSTITUTE FOR HUMAN RIGHTS; U.S. HUMAN RIGHTS NETWORK; PROFESSOR PENNY M. VENETIS; PROFESSOR DEBORAH WEISSMAN; PROFESSOR RICHARD J. WILSON; THE WOMEN'S LAW PROJECT; WOMEN LAWYERS ASSOCIATION OF LOS ANGELES; WORLD ORGANIZATION FOR HUMAN RIGHTS USA

HORVITZ & LEVY LLP
DAVID S. ETTINGER
MARY-CHRISTINE SUNGAILA
15760 VENTURA BOULEVARD, 18TH FLOOR
ENCINO, CALIFORNIA USA 91436-3000
(818) 995-0800 • FAX: (818) 995-3157
DETTINGER@HORVITZLEVY.COM
MSUNGAILA@HORVITZLEVY.COM

ATTORNEYS FOR *AMICI CURIAE*

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	vi
INTEREST OF <i>AMICI</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT.....	3
STATEMENT OF THE CASE	6
ARGUMENT	9
I. THIS COURT SHOULD TAKE THE ECONOMIC AND SOCIAL CONTEXT OF GENDER-BASED VIOLENCE IN CIUDAD JUÁREZ INTO ACCOUNT IN ITS CONSIDERATION OF THIS CASE.....	9
II. UNDER INTERNATIONAL HUMAN RIGHTS LAW, NATION STATES HAVE A DUTY TO EXERCISE DUE DILIGENCE IN RESPONDING TO GENDER- BASED VIOLENCE.....	13
A. In this hemisphere, the American Convention on Human Rights and the Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention Belém do Pará) require States to “prevent, punish, and eradicate” gender-based violence.	13
B. Treaties and other authoritative documents beyond the Inter-American System demonstrate an international consensus recognizing States’ affirmative obligations to prevent, investigate, and punish gender-based violence and to protect and provide effective remedies for its victims.	22
1. Broad human rights documents.....	22
2. Documents specifically relating to women’s and children’s rights.	28
3. Regional documents.....	34

C.	Other international human rights bodies have held nations to be in violation of treaty obligations by failing to protect women from gender-based violence.....	38
III.	THE COURT SHOULD PROVIDE A BROAD RANGE OF REMEDIES IN THIS CASE TO ADDRESS THE SOCIAL, ECONOMIC, AND POLITICAL FORCES INVOLVED IN PERPETUATING THE VIOLENCE. IN CRAFTING THESE REMEDIES, THE COURT SHOULD TAKE INTO ACCOUNT THE OBLIGATIONS CONTAINED IN ARTICLES 7, 8, AND 9 OF CONVENTION BELÉM DO PARÁ.	44
A.	This Court has broad remedial powers under the American Convention, which it has repeatedly invoked to provide a wide variety of reparations.....	44
B.	Likewise, Articles 7, 8, and 9 of Convention Belém do Pará outline a comprehensive set of State obligations and immediate and progressive remedies to eradicate and protect women from all forms of gender-based violence.	49
C.	This Court should provide broad remedial measures to combat the economic and social underpinnings of the violence.	53
	CONCLUSION.....	59

APPENDIX

INTEREST OF AMICI CURIAE.....	A-1
AMNESTY INTERNATIONAL	A-1
PROFESSOR THOMAS ANTKOWIAK	A-1
PROFESSOR TAMAR BIRCKHEAD.....	A-1
MARY BOYCE	A-2

BREAK THE CYCLE	A-2
PROFESSOR ARTURO CARRILLO	A-3
CENTER FOR CONSTITUTIONAL RIGHTS	A-4
CENTER FOR GENDER & REFUGEE STUDIES	A-4
CENTER FOR JUSTICE & ACCOUNTABILITY	A-5
CENTRO DE DERECHOS HUMANOS UNIVERSIDAD DIEGO PORTALES (THE CENTER OF HUMAN RIGHTS OF DIEGO PORTALES UNIVERSITY)	A-6
COLUMBIA LAW SCHOOL HUMAN RIGHTS CLINIC	A-7
CORNELL LAW SCHOOL INTERNATIONAL HUMAN RIGHTS CLINIC	A-7
PROFESSOR BRIDGET J. CRAWFORD	A-8
THE DOMESTIC VIOLENCE AND CIVIL PROTECTION ORDER CLINIC OF THE UNIVERSITY OF CINCINNATI	A-9
PROFESSOR MARGARET DREW	A-9
PROFESSOR MARTIN GEER.....	A-10
HUMAN RIGHTS AND GENOCIDE CLINIC, BENJAMIN N. CARDOZO SCHOOL OF LAW	A-10
HUMAN RIGHTS ADVOCATES.....	A-11
PROFESSOR DEENA HURWITZ.....	A-11
THE IMMIGRATION JUSTICE CLINIC	A-12
IMPACT PERSONAL SAFETY	A-13
INTERNATIONAL MENTAL DISABILITY LAW REFORM PROJECT OF NEW YORK LAW SCHOOL	A-13
THE INTERNATIONAL WOMEN’S HUMAN RIGHTS CLINIC AT GEORGETOWN LAW	A-14

LATINOJUSTICE PRLDEF	A-15
LEGAL SERVICES CLINIC AT WESTERN NEW ENGLAND COLLEGE SCHOOL OF LAW	A-16
LEITNER CENTER FOR INTERNATIONAL LAW AND JUSTICE AT FORDHAM LAW SCHOOL.....	A-16
PROFESSOR BERT B. LOCKWOOD	A-17
ALLARD K. LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC, YALE LAW SCHOOL.....	A-17
PROFESSOR BETH LYON	A-18
PROFESSOR THOMAS M. MCDONNELL.....	A-19
THE NATIONAL ASSOCIATION OF WOMEN LAWYERS...	A-19
LOS ANGELES CHAPTER OF THE NATIONAL LAWYERS GUILD	A-20
THE NATIONAL ORGANIZATION FOR WOMEN	A-20
PROFESSOR NOAH NOVOGRODSKY.....	A-21
JAMIE O'CONNELL	A-21
PROFESSOR SARAH PAOLETTI	A-21
PROFESSOR JO M. PASQUALUCCI.....	A-22
PROFESSOR NAOMI ROHT-ARRIAZA.....	A-22
PROFESSOR DARREN ROSENBLUM	A-23
PROFESSOR SUSAN DELLER ROSS	A-23
SETON HALL UNIVERSITY SCHOOL OF LAW CENTER FOR SOCIAL JUSTICE	A-24
PROFESSOR GYWNNE SKINNER, AND THE INTERNATIONAL HUMAN RIGHTS CLINIC AT WILLAMETTE UNIVERSITY COLLEGE OF LAW.....	A-25

PROFESSOR KATHLEEN STAUDT, Ph.D.	A-25
PROFESSOR JEFFREY STEMPEL	A-27
PROFESSOR MAUREEN A. SWEENEY	A-27
PROFESSOR JONATHAN TODRES	A-28
THE URBAN MORGAN INSTITUTE FOR HUMAN RIGHTS	A-28
U.S. HUMAN RIGHTS NETWORK	A-29
PROFESSOR PENNY M. VENETIS	A-29
PROFESSOR DEBORAH WEISSMAN.....	A-29
PROFESSOR RICHARD J. WILSON.....	A-30
THE WOMEN’S LAW PROJECT	A-30
WOMEN LAWYERS ASSOCIATION OF LOS ANGELES	A-31
WORLD ORGANIZATION FOR HUMAN RIGHTS USA	A-32

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Airey v. Ireland</i> 32 Eur. Ct. H.R. (ser. A) (1976)	41
<i>Baena-Riocard v. Panama</i> 2001 Inter-Am. Ct. H. R. (ser. C) No. 72 (Feb. 2, 2001)	46
<i>Baena-Riocard v. Panama</i> 2003 Inter-Am. Ct. H. R. (ser. C) No. 104 (Nov. 28, 2003)	45
<i>Bamaca-Velasquez v. Guatemala</i> 2002 Inter-Am. Ct. H.R. (ser. C) No. 91 (Feb. 22, 2002)	46
<i>Bevacqua and S. v. Bulgaria</i> 2008-V Eur. Ct. H.R., <i>available at</i> http://cmiskp.echr.coe.int/tkp197/view.asp?action=html &documentId=836635&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DE A398649	41
<i>Case of E. and Others v. United Kingdom</i> , 2002-II Eur. Ct. H.R. 763 (2003)	41
<i>Case of Opuz v. Turkey</i> Application No. 33401/2 (June 9, 2009), <i>available at</i> http://cmiskp.echr.coe.int/tkp197/view.asp?action=html &documentId=851046&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DE A398649	42, 43
<i>Case of the Miguel Castro-Castro Prison v. Peru</i> 2006 Inter-Am. Ct. H.R. (ser. C) No. 160 (Nov. 25, 2006)	18, 48
<i>Garrido v. Argentina</i> 1998 Inter-Am. Ct. H.R. (ser. C) No. 39 (Aug. 27, 1998)	46

<i>Goiburú et al. v. Paraguay</i>	
2006 Inter-Am. Ct. H.R. (ser. C) No. 153 (Sept. 22, 2006)	50
<i>Ivcher Bronstein v. Peru</i>	
2001 Inter-Am. Ct. H.R. (ser. C) No. 74 (Feb. 6, 2001).....	46
<i>Juridical Condition and Rights of the Undocumented Migrants</i>	
Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A)	
No. 18 (Sept. 27, 2003).....	16, 54
<i>Juvenile Reeducation Institute v. Paraguay</i>	
2004 Inter-Am. Ct. H.R. (ser. C) No. 112 (Sept. 2, 2004)	46
<i>Kaya v. Turkey,</i>	
2000-III Eur. Ct. H.R. 149 (2000)	43
<i>Loayzo-Tamayo v. Peru</i>	
1998 Inter-Am. Ct. H.R. (ser. C) No. 42 (Nov. 27, 1998)	46
<i>Mapiripán Massacre v. Colombia</i>	
2005 Inter-Am. Ct. H.R. (ser. C) No. 132 (Sept. 15, 2005)	16
<i>Maria da Penha Maia Fernandes v. Brazil</i>	
Case 12.051, Inter-Am. C.H.R., Report No. 54/01,	
OEA/Ser./L/V/II.111, doc. 20 rev. (2000).....	20
<i>M.C. v. Bulgaria,</i>	
2003-I Eur. Ct. H.R. 646 (2004)	39, 40, 41
<i>Moiwana Cmty. v. Suriname</i>	
2005 Inter-Am. Ct. H.R. (ser. C) No. 124	
(June 15, 2005).....	46, 47
<i>MZ v. Bolivia</i>	
Case 12.350, Inter-Am. C.H.R., OEA/Ser./L/V/II.114,	
doc. 5 rev. (2001)	20
<i>Olmnedo-Bustos v. Chile</i>	
2001 Inter-Am. Ct. H.R. (ser. C) No. 73 (Feb. 5, 2001).....	47
<i>Plan de Sanchez Massacre v. Guatemala</i>	
2004 Inter-Am. Ct. H.R. (ser. C) No. 116	
(Nov. 19, 2004)	47, 48

<i>Pueblo Bello Massacre v. Columbia</i> 2006 Inter-Am. Ct. H.R. (ser. C) No. 140 (Jan. 31, 2006).....	16
<i>R. v. Ewanchuk</i> [1999] 1 S.C.R. 330 (Can.)	39
<i>State v. Baloyi</i> 2000 (2) SA 425 (cc); 2000 (1) BCLR 86 (cc) (S. Afr. 1999)	38
<i>Trujillo Oroza v. Bolivia</i> 2002 Inter-Am. Ct. H.R. (ser. C) No. 92 (Feb. 27, 2002).....	50
<i>Velásquez-Rodríguez v. Honduras</i> 1988 Inter-Am. Ct. H.R. (ser. C) No. 4 (July 29, 1988).....	14, 15, 16
<i>Villagran-Morales v. Guatemala</i> 2001 Inter-Am. Ct. H.R. (ser. C) No. 76 (May 25, 2001).....	47
<i>Vishaka v. State of Rajasthan</i> A.I.R. 1997 S.C. 3011 (India).....	39
<i>Ximenes-Lopes v. Brazil</i> 2006 Inter-Am. Ct. H.R. (ser. C) No. 149 (July 4, 2006).....	16

International Documents

American Declaration on the Rights and Duties of Man, O.A.S. Res. XXX, International Conference of American States, 9th Conference (May 2, 1948).....	16
Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Dec. 16, 2005).....	45
CEDAW, General Recommendation 19: Violence Against Women (11th Sess. 1992) U.N. Doc. A/47/38 (1993), <i>reprinted in</i> Compilation of General Comments and General Recommendations (adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 (2003)).....	31, 32

Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 6), U.N. Doc. A/34/46, <i>entered into force</i> Sept. 3, 1981.....	30, 31
Convention on the Rights of the Child, G.A. Res. 44/25, 44 U.N. GAOR Supp. (No. 49), U.N. Doc. A/44/49 (1989), <i>entered into force</i> Sept. 20, 1990	33, 34
Council of Europe, Comm. of Ministers, <i>Recommendation Rec(2002)5 of the Committee of Ministers to the Member States on the Protection of Women Against Violence</i> (Apr. 30, 2002), <i>available at</i> https://wcd.coe.int/ViewDoc.jsp?id=280915	35
Declaration on the Elimination of Violence Against Women, G.A. Res. 48104, 48 U.N. GAOR Supp. (No. 49), U.N. Doc. A/48/49 (1993)	
art. 1	28
art. 2	28
Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, U.N. GAOR, 53d Sess., U.N. Doc. A/RES/53/144 (Dec. 9, 1999)	36
Discrimination Against Women, <i>View of the Committee on the Elimination of Discrimination against Women under Article 7, Paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women Communication No.: 2/2003, Ms. A.T. v. Hungary</i>	41
Elimination of Domestic Violence Against Women, G.A. Res. 58/147, U.N. GAOR, 58th Sess., U.N. Doc. A/Res/58/147 (Feb. 19, 2004)	32, 33
European Parliament Resolution on Equality Between Men and Women – 2008, Eur. Parl. Doc. 2008/2047 (INI) (Sept. 3, 2008)	35, 36

Discrimination Against Women, <i>View of the Committee on the Elimination of Discrimination against Women under Article 7, Paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women Communication No.: 2/2003, Ms. A.T. v. Hungary</i>	41
Elimination of Domestic Violence Against Women, G.A. Res. 58/147, U.N. GAOR, 58th Sess., U.N. Doc. A/Res/58/147 (Feb. 19, 2004)	32, 33
European Parliament Resolution on Equality Between Men and Women – 2008, Eur. Parl. Doc. 2008/2047 (INI) (Sept. 3, 2008)	35, 36
Fourth World Conference on Women, Sept. 4-15, 1995, Beijing Declaration and Platform for Action, U.N. Doc. A/CONF/177/20 (Sept. 15, 1995) and U.N. Doc. A/CONF. 177/20/Add.1 (Sept. 15, 1995).....	29, 30
International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (1966)	25
OHCHR, Comm'n on Human Rights, <i>Question of Integrating the Rights of Women into the Human Rights Mechanisms of the United Nations and the Elimination of Violence Against Women</i> , U.N. CHR, 50th Sess., 56th mtg., U.N. Doc. E/CN.4/RES/1994/45 (Mar. 4, 1994).....	29

OHCHR, Compilation of General Comments and General Recommendations, Implementation at the National Level, (13th Sess. 1981) (adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 (1994))	
general cmt. 3, art. 2.....	26
general cmt. 4, art. 3.....	26
OHCHR, Human Rights Comm., Equality of Rights Between Men and Women, general cmt. 28, art. 3, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).....	26
OHCHR, Human Rights Comm., Nature of the General Legal Obligation on States Parties to the Covenant, general cmt. 31, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), <i>available at</i> http://www1.umn.edu/humanrts/gencomm/hrcom31.html	27, 28
OHCHR, U.N. ESCOR, 42d plen. mtg., U.N. Doc. E/DEC/1994/254 (July 22, 1994).....	29
Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1136 U.N.T.S. 123, <i>entered into force</i> July 12, 1978	
art. 1(1).....	13, 14
art. 2.....	14
art. 4.....	14
art. 5.....	14
art. 7.....	14
art. 8.....	14
art. 19.....	14
art. 24.....	14
art. 25.....	14, 44

Organization of American States, Inter-Am. C.H.R., <i>Access to Justice for Women Victims of Violence in the Americas</i> , OEA/Ser.L/V/II, doc. 68 (2007)	5, 17
Organization of American States, Inter-Am. C.H.R., <i>Principal Guidelines for a Comprehensive Reparations Policy</i> , OEA/Ser.L/V/II.131, doc. 1 (2008), available at http://www.cidh.oas.org/pdf%20files/Lineamientos%20Reparacion%20Administrativa%2014%20mar%202008%20Ener%20final.pdf	20
Organization of American States, Inter-Am. C.H.R., <i>The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to Be Free from Violence and Discrimination</i> , OEA/Ser.L/V/II.117, doc. 44 (2003).....	3
Organization of American States, Inter-Am. C.H.R., <i>Violence and Discrimination Against Women in the Armed Conflict in Colombia</i> , OEA/Ser.L/V/II, doc. 67, available at http://www.cidh.oas.org/countryrep/ColombiaMujeres06eng/Informe%20Colombia%20Mujeres%20Ing.pdf	17, 19
<i>Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural, Including the Right to Development: Report of Special Rapporteur on Violence Against Women, Its Causes and Consequences, Addendum: The Next Step: Developing Transnational Indicators on Violence Against Women</i> , A/HRC/7/6/Add.5 (Feb. 25, 2008) (prepared by Yakim Ertürk)	57
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2d Ord. Sess. of the Assemb. of the Union, adopted 2003, available at http://www.achpr.org/english/women/protocolwomen.pdf (last visited June 25, 2009)	36
Resolution on Violence Against Women, Eur. Parl. Doc. A2-44/86, 1986 O.J. (C 176).....	35
Responsibility of States for International Wrongful Acts, G.A. Res. 56/83, U.N. GAOR, 56th Sess., Supp. No. 10, U.N. Doc. A/56/49(Vol.I)/Corr.4 (Dec. 12, 2001)	37

Responsibility of States for International Wrongful Acts, G.A. Res. 56/83, U.N. GAOR, 56th Sess., U.N. Doc. A/56/83/Annex (Dec. 12, 2001)	45
Secretary-General, <i>Report of the Secretary-General on Violence Against Women, delivered to the General Assembly</i> , U.N. Doc. A/59/281 (Aug. 20, 2004)	33
U.N. Committee on the Elimination of Discrimination Against Women, <i>View of the Committee on the Elimination of Discrimination against Women under Article 7, Paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women Communication No.: 2/2003, Ms. A.T. v. Hungary</i> , U.N. Doc. A/60/38(Part I)/Annex III (Jan. 26, 2005)	41
U.N. Committee on the Elimination of Discrimination Against Women, <i>Report on Mexico produced by the Committee on the Elimination of Discrimination Against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico</i> , U.N. Doc. CEDAW/C/2005/OP.8/Mexico (Jan. 27, 2005)	57
U.N. CRC, Comm. on the Rights of the Child, General Comment No. 5: General Measures of Implementation on the Convention of the Rights of the Child, U.N. Doc. CRC/GC/2003/5 (Nov. 27, 2003)	34
U.N. General Assembly 2005 World Summit Outcome, Sept. 14-16, 2005, <i>Follow-Up to the Outcome of the Millennium Summit</i> , U.N. Doc. A/60/L. 1 (Sept. 15, 2005)	25
U.N. Secretary-General, <i>Ending Violence Against Women: From Words to Action—Study of the Secretary-General</i> , U.N. Sales No. E.06.IV.8 (2006), <i>available at</i> http://www.un.org/womenwatch/daw/vaw/launch/english /v.a.w-exeE-use.pdf	17, 18

U.N.T.C., Chapter IV, Human Rights, Convention on the Rights of the Child, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg-no=IV-11&Chapter-4&lang=en (last visited June 26, 2009)	33
United Nations High Commissioner for Human Rights, <i>Report on Indicators for Promoting and Monitoring the Implementation of Human Rights, delivered to the seventh inter-committee meeting of the human rights treaty bodies</i> , HRI/MC/2008/3 (June 6, 2008).....	57
Universal Declaration of Human Rights, G.A. Res. 217A (III), 3 U.N. GAOR, 1st plen. mtg., Supp. (No. 13), U.N. Doc. A/810 (1948)	23
World Conference on Human Rights, June 14-25, 1993, Vienna Declaration and Programme of Action, U.N. Doc. A/CONF.157/24 (Part I) (Oct. 13, 1993)	24

Statutes

Le No. 11.340, de 7 agosto de 2006, Col. Leis Rep. Fed. Brasil, __ (34, t__): __ dez. 2007, translated in Maria da Penha Law: Law No. 11.340 of August 7, 2006.....	22
---	----

Other Authorities

Amnesty International, <i>Intolerable Killings: Mexico: Ten years of abductions and murder of women in Ciudad Juárez and Chihuahua</i> , AI Index AMR 41/026/2003, Aug. 11, 2003.....	3
Amnesty International, <i>Making Rights a Reality: The Duty of States to Address Violence Against Women</i> , AI Index Act 77/049/2004, June 3, 2004.....	37
Thomas M. Antkowiak, <i>Remedial Approaches to Human Rights Violations: The Inter-American Court of Human Rights and Beyond</i> , 46 Colum. J. Transnat'l L. 351 (2008)	45, 47, 48, 49

Alma Beltran y Puga, Gender Stereotypes and Structural Violence in Ciudad Juárez: The Case of Campo Algodonero (May 2009) (unpublished J.D. essay, Columbia Law School)	12
Briefing Paper, Anti-Slavery Int'l, Hadijatou Mani Kor[oua] v. Niger at the ECOWAS Court of Justice (2008), http://antislavery.org/includes/documents/cm_docs/2008/n/niger_case_at_ecowas.pdf (last visited June 30, 2009).....	41
<i>CEDAW: Treaty for the Rights of Women</i> , http://www.womenstreaty.org/facts_countries.htm (last visited June 25, 2009)	30, 32, 33
Helen Duffy, <i>Hadijatou Mani Koroua v. Niger</i> , 9 Hum. Rts. L. Rev. 151 (2009)	42
Stephanie Farrior, <i>State Responsibility for Human Rights Abuses by Non-State Actors</i> , 92 Am. Soc'y Int'l L. Proc. 299 (1998)	37
Ona Flores, Guarantees of Non-Repetition and the Inter-American Court of Human Rights: Implications and Challenges (Apr. 23, 2007)(unpublish LL.M. research paper, Columbia Law School).....	50
International Centre for the Legal Protection of Human Rights, Unofficial English Translation of Hadijatou Mani v. Niger [Judgment No. ECW/CCJ/JUD/06/08] (Oct. 27, 2008), <i>available at</i> http://www.interights.org/view-document/index.htm?id=533	42
Cecilia Medina, <i>Derechos Humanos de la Mujer, Donde estamos ahora en las Américas?</i> [Human Rights of Women: Where are we now in the Americas?], <i>in</i> Essays in Honour of Alice Yotopoulos-Marangopolous (Centro Derechos Humanos, Facultad de Derecho, Universidad de Chile trans., 2003), <i>available at</i> http://www.cdh.uchile.cl/libros/18ensayos/medina__Dond eEstamos.pdf	18, 19

Minnesota Advocates for Human Rights, *Domestic Violence in Albania* (Apr. 1996), available at <http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/Albania.pdf> 21

Minnesota Advocates for Human Rights, *Domestic Violence in Armenia* (Dec. 2000), available at http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/Armeniareport_10-11-2002.pdf 21

Minnesota Advocates for Human Rights, *Domestic Violence in Bulgaria* (Apr. 1996), available at <http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/bulgaria.pdf> 21

Minnesota Advocates for Human Rights, *Domestic Violence in Macedonia* (Sept. 1998), available at <http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/macedonia.pdf> 21

Minnesota Advocates for Human Rights, *Domestic Violence in Moldova* (Dec. 2000), available at http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/MoldovaReport_10-11-2002.pdf 21

Minnesota Advocates for Human Rights, *Domestic Violence in Nepal* (Sept. 1998), available at <http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/nepal.pdf> 21

Minnesota Advocates for Human Rights, *Domestic Violence in Poland* (July 2002), available at [http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/Poland_domestic_violence_\(2002\)_10-18-2002_2.pdf](http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/Poland_domestic_violence_(2002)_10-18-2002_2.pdf) 21

Minnesota Advocates for Human Rights, *Domestic Violence in Ukraine* (Dec. 2000), available at <http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/ukrainereport.pdf> 21

Minnesota Advocates for Human Rights, <i>Domestic Violence in Uzbekistan</i> (Dec. 2000), available at http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/uzbekreport.pdf	21
Minnesota Advocates for Human Rights, <i>Lifting the Last Curtain: A Report on Domestic Violence in Romania</i> (Feb. 1995), available at http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/D.V._in_Romania_1995.pdf	21
Minnesota Advocates for Human Rights, <i>Summar of the Beijing Declaration and Platform for Action</i> (Jan. 1996).....	29
Jo M. Pasqualucci, <i>The Practice and Procedure of the Inter-American Court of Human Rights</i> (2003).....	45
Teresa Rodriguez et al., <i>The Daughters of Juárez</i> (2007).....	10, 11
Dinah Shelton, <i>Remedies in International Human Rights Law</i> (2d ed. 2005).....	44
William Paul Simmons, <i>Remedies for the Women of Ciudad Juárez through the Inter-American Court of Human Rights</i> , 4 Nw. U. J. Int'l Hum. Rts. 493 (2006).....	<i>passim</i>
Louis B. Sohn, <i>The New International Law: Protection of the Rights of Individuals Rather than States</i> , 32 Am. U. L. Rev. 1 (1982).....	23
Kathleen Staudt, <i>Violence and Activism at the Border</i> (2008).....	12
UNICEF, <i>Convention on the Rights of the Child (CRC)</i> , available at http://www.unicef.org/crc/index_30197.html (last visited June 25, 2009).....	33, 34

United Nations Development Fund for Women [UNIFEM], <i>Bringing Equality Home: Implementing the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Part II, The Courts</i> (Ilana Landsberg-Lewis ed. 1998), available at <a href="http://www.unifem.org/attachments/products/BringingE
qualityHome_eng.pdf">http://www.unifem.org/attachments/products/BringingE qualityHome_eng.pdf	39
United Nations Population Fund (UNFPA), <i>Violence Against Women and Girls: A Public Health Priority</i> (1999)	22
Diana Washington Valdez, <i>The Killing Fields: Harvest of Women</i> (2006).....	12
Deborah M. Weissman, <i>The Political Economy of Violence: Toward an Understanding of the Gender-Based Murders of Ciudad Juárez</i> , 30 N.C.J. Int'l L. & Com. Reg. 795 (2005)	10, 13
World Health Organization, <i>World Report on Violence and Health</i> (Etienne G. Krug et al. eds., 2002)	38

**BEFORE THE
INTER-AMERICAN COURT
OF HUMAN RIGHTS**

**CAMPO ALGODONERO:
CLAUDIA IVETTE GONZÁLEZ (12.496);
ESMERALDA HERRERA MONREAL (12.497);
AND LAURA BERENICE RAMOS MONÁRREZ (12.498),**

v.

THE UNITED MEXICAN STATES,

**AMENDED *AMICI CURIAE* BRIEF
IN SUPPORT OF PETITIONERS**

INTEREST OF *AMICI*

Amici curiae are local, national, and international women's and human rights organizations, law school clinical programs, and law and social science professors,¹ all of whom recognize the world

¹ Descriptions of the individual *amici* are set forth in the attached appendix. *Amici* thank the following, who contributed to the research and preparation of this brief: Carrie Bettinger-Lopez, Deputy Director, Lecturer in Law and Clinical Staff Attorney at Columbia Law School Human Rights Clinic; John Marshall law students Mary Greib, Emily Seymore, and Laura Contreras; Columbia Law School student and recent graduate Alma Beltran y Puga; Horvitz & Levy law clerks Silvia Esparza, Daniel Dowling, and Christina Bialek; Horvitz & Levy law librarian Alexis Diton.

consensus (reflected in treaties and customary international law) that gender-based violence violates the basic human rights of women and children and that nation states must provide effective protection from such violence. *Amici* urge the Court to determine that the longstanding failure to investigate, prosecute, or prevent the crimes at issue in the present case (three among hundreds of unsolved and poorly investigated disappearances, rapes, and murders of young women and girls in Ciudad Juárez over the last fifteen years) violated Mexico's obligations under the American Convention on Human Rights ("American Convention"), the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women ("Convention Belém do Pará"), and other international treaties and instruments. *Amici* also recognize the importance of this Court's jurisprudence in shaping human rights norms and practices in the Americas and worldwide.

This gender-based violence and the authorities' indifferent and ineffective responses to it are longstanding and multidimensional. Therefore, *amici* further urge the Court to provide the full range of remedies for these violations contemplated by the American Convention and Convention Belém do Pará, including: restitution, satisfaction, cessation, rehabilitation, public recognition of wrongdoing, legislative and policy reform, training and education programs for state officials, information gathering, consolidation and analysis, and the compiling of human rights indicators.

INTRODUCTION AND SUMMARY OF ARGUMENT

In 2003, the Rapporteurship on the Rights of Women of the Inter-American Commission reported that authorities in Ciudad Juárez, Mexico, estimated 268 women and girls had been murdered in the past decade, that only 20 percent of these crimes had led to trials and convictions, and that reported disappearances of an additional 250 women and girls also remained unsolved.²

In its Application to the Court in this case, the Commission elaborated:

² *González v. Mexico*, Case Nos. 12.496, 12.497, 12.498, Inter-Am. C.H.R., Application, at ¶¶ 69, 70-72 (Nov. 4, 2004) [hereinafter Application]; Org. of American States, Inter-Am. C.H.R., *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to Be Free from Violence and Discrimination*, ¶ 3 OEA/Ser. L/V/II.117, doc. 44 (2003) [hereinafter *Right to Be Free*], available at <http://www.cidh.org/annualrep/2002eng/Chap.vi.juarez.htm> (denouncing the Mexican government's indifference to widespread gender-based violence in Ciudad Juárez as a violation of Mexico's international human rights obligations); William Paul Simmons, *Remedies for the Women of Ciudad Juárez through the Inter-American Court of Human Rights*, 4 Nw. U. J. Int'l Hum. Rts. 493, 493 (2006) ("Though several suspects have been arrested, and various theories have been proposed regarding the crimes, the murders have continued with impunity."); see generally Amnesty Int'l, *Intolerable Killings: Mexico: Ten years of abductions and murder of women in Ciudad Juárez and Chihuahua*, AI Index AMR 41/026/2003, Aug. 11, 2003 (chronicling police and prosecutor indifference to repeated rapes, murders, and violence against young women and girls in the U.S.- Mexican border state and explaining how the state's failure to protect women in the region violates Mexico's international human rights obligations).

[b]oth the State and non-state sectors reported a significant number of killings characterized as multiple or “serial” in nature — fitting a pattern with respect to the circumstances. The victims of these crimes have preponderantly been young women, between 15 and 25 years of age. Some were students, and many were maquila workers or employed in local shops or businesses. A number were relative newcomers to Ciudad Juárez who had migrated from other areas of Mexico. The victims were generally reported missing by their families, with their bodies found days or months later abandoned in vacant lots or outlying areas. In most of these cases there were signs of sexual violence, abuse, torture, or in some cases, mutilation.³

In 2006, when the United Nations Special Rapporteur on Violence Against Women visited the region, she emphasized the brazenness and impunity associated with the crimes: “the majority of cases remain unsolved and the perpetrators continue to enjoy impunity [. . .] The failure to convict and curb the murders has been to a large part the result of extremely poor, indifferent and

³ Application, *supra* note 2, ¶ 69. *See also* Simmons, *supra*, note 2 at 494 (listing various theories about the causes of the murders: drug trafficking, prostitution, domestic violence, murder of the women for organs, use of the girls by drug rings or groups of young men from wealthy families as part of macabre rituals, sporting contests, or celebrations of successful drug deals; observing that no matter the specific perpetrators, “these murders [may be seen as] rooted in a larger national problem in Mexico – the widespread discrimination and abuse of women.”)

negligent investigations by the authorities of the State of Chihuahua, who have jurisdiction over these cases [. . . .]”⁴

The failure of States to respond effectively to gender-based violence continues to varying degrees throughout the Americas. In order to effectively address this problem, a holistic response to gender-based violence that includes both criminal justice and economic, social, and cultural dimensions is necessary. Indeed, States’ international obligations to eradicate violence against women and gender-based violence include not only having laws and policies on the books, but also effectively enforcing those laws and policies. The police failure to meaningfully investigate the crimes in this case, together with Mexico’s failure to prosecute these crimes or provide a remedy for this indifferent and/or negligent investigation, violate Mexico’s obligations under the American Convention, Convention Belém do Pará, and other international human rights treaties and standards, under which States are required to respect, protect, and fulfill the rights of women and girls to be free from gender-based violence. To address these violations,

⁴ Application, *supra* note 2, ¶ 76 (summarizing Special Rapporteurship report). *See also* Org. of American States, Inter-Am. C.H.R., *Access to Justice for Women Victims of Violence in the Americas*, ¶ 14, OEA/Ser.L/V/II, doc. 68 (2007), *available at* <http://www.cidh.org/women/Access07/Report%20Access%20to%20Justice%20Report%20English%20020507.pdf> [hereinafter *Access to Justice*] (“The IACHR has found that in many countries in the region, a pattern of systematic impunity persists with respect to the judicial prosecution of cases involving violence against women. The vast majority of such cases are never formally investigated, prosecuted and punished by the administration of justice systems in this hemisphere.”).

this Court should issue broad remedies to address the economic, political, and social underpinnings of the violence and impunity. Such remedies should reflect the principles contained in Articles 1(1), 2, 4, 5, 7, 8, 19, 24, and 25 of the American Convention and Articles 7, 8, and 9 of the Convention Belém do Pará.

STATEMENT OF THE CASE

Amici incorporate by reference the factual and procedural background set forth in the petition and the Inter-American Commission on Human Rights' November 4, 2007 application to this court. Below, *amici* briefly highlight a few of these facts, which illustrate Mexican authorities' repeated indifference to the young girls' disappearances and murders.

Claudia Ivette González was 20 years old when she disappeared on her way to work at a *maquiladora*⁵ the afternoon of October 10, 2001.⁶ One month after Claudia's disappearance, police handed over to her mother a bag of bones which they claimed to be Claudia's remains.⁷ Authorities at first altogether refused to investigate or prosecute suspects in the disappearance.⁸

⁵ A *maquiladora* is a large foreign-owned assembly plant. Simmons, *supra* note 2, at 494.

⁶ Application, *supra* note 2, ¶ 81.

⁷ *Id.* ¶ 86.

⁸ *See id.* ¶¶ 92, 97.

Esmeralda Herrera Monreal, 15 years old, disappeared en route from her home to a house where she worked as a maid.⁹ Her mother reported her missing to the police one day later, on October 30, 2001, but there is no record that the authorities made any effort to search for her before her remains were found on November 6, 2001.¹⁰ In fact, the authorities suggested that the family search for Esmeralda themselves, dismissing her disappearance by saying that she had probably gone off with her boyfriend.¹¹ The authorities engaged in nonexistent or spotty data collection and scientific testing after a body — purportedly Esmeralda’s — was found.¹² The authorities closed Esmeralda’s case after they handed a body (not necessarily Esmeralda’s) over to the family.¹³

Eventually, two suspects were arrested and prosecuted for the murders of Claudia Ivette Gonzalez and Esmeralda Herrera Monreal. Officers told the family of Esmeralda Herrera Monreal, however, that the arrest of these men “was not based on probable cause.”¹⁴ One died in prison and the other was acquitted and freed.¹⁵

⁹ *Id.* ¶ 99.

¹⁰ *Id.* ¶ 100.

¹¹ *Id.*

¹² *Id.* ¶¶ 103-11.

¹³ *Id.* ¶¶ 110, 115, 119.

¹⁴ *Id.* ¶ 114.

¹⁵ *Id.*

Laura Berenice Ramos Monárrez was a 17-year-old fifth semester high school student when she disappeared in Juárez.¹⁶ For one month after her family reported her missing the authorities did not search for her.¹⁷ The family’s efforts to collaborate with and provide leads to the police were ignored.¹⁸ As the Commission observed in its Application, in Laura’s case the “actions by state authorities [were] characterized by irregularities, delays, and omissions from the very beginning, as has been acknowledged by the . . . *Procuradora General de Justicia* [Attorney General] of Chihuahua.”¹⁹ Remains that were reported to be Laura’s were handed over to her family initially without any scientific certainty as to their identity. Forensic genetic tests later conducted by the state indicated these remains were not Laura’s.²⁰

The Special Rapporteurship on the Rights of Women of the Inter-American Commission on Human Rights, Petitioners here, and the Commission in its application to the Court in this case, have observed that the experiences of these three young women and their families are not unique in Ciudad Juárez. As the Commission stated in its application to this Court, “Ciudad Juárez has become a focus of attention of both the national and international communities because of the particularly critical situation of violence

¹⁶ *Id.* ¶ 120.

¹⁷ *Id.* ¶ 121.

¹⁸ *Id.* ¶¶ 122-24.

¹⁹ *Id.* ¶ 125.

²⁰ *Id.* ¶¶ 129, 130.

against women which has prevailed since 1993, and the deficient state response to these crimes.”²¹

Moreover, as the Commission has noted, the State here does not challenge the Petitioners’ allegations “pointing to the existence of serious violence against women in Ciudad Juárez . . . It did not question, either, the existence of irregularities in the investigations of the disappearance and subsequent death of women in this area, at the time of the facts.”²²

In this case, Petitioners allege violations of Articles 1(1), 2, 4, 5, 7, 8, 19, 24, and 25 of the American Convention and Articles 7, 8, and 9 of the Convention Belém do Pará, and seek remedies that include restitution, satisfaction, cessation, rehabilitation, public recognition of wrongdoing, and a commitment to non-repetition.²³

ARGUMENT

I. THIS COURT SHOULD TAKE THE ECONOMIC AND SOCIAL CONTEXT OF GENDER-BASED VIOLENCE IN CIUDAD JUÁREZ INTO ACCOUNT IN ITS CONSIDERATION OF THIS CASE.

Juárez is a border town that is the home of dozens of *maquiladoras* (large foreign-owned assembly plants) that employ

²¹ *Id.* ¶ 68.

²² *Id.*

²³ *Id.* ¶¶ 145-285.

much of the workforce.²⁴ “Nearly one-half of the 1.5 million residents of the city migrated there from local villages and small towns searching for economic prosperity. The city’s infrastructure had been largely unprepared for such a huge migration, forcing many citizens to find residence in the local ‘shantytowns.’ A sprawling city, Juárez also includes many square miles of empty desert . . .”²⁵

“By 1991, there were almost seven hundred maquiladoras located in the Mexican border cities, with more than three hundred in Ciudad Juárez.”²⁶ Three years later, “Ciudad Juárez had the largest maquiladora workforce, totaling in excess of two hundred thousand,” primarily teenage girls who migrated to take the jobs for which they “were especially sought after because they didn’t expect much money for their labor and could rapidly perform detailed assembly work.”²⁷ Tens of thousands of workers and their families moved to the city each year; with insufficient infrastructure to

²⁴ Simmons, *supra* note 2, at 494.

²⁵ *Id.* (footnotes omitted); *see also* Teresa Rodriguez et al., *The Daughters of Juárez* 2-8 (2007) (describing population explosion commensurate with increase in U.S. company assembly lines, or *maquiladoras*, in Ciudad Juárez in the 1990s, which flourished in response to relaxed free trade agreements such as NAFTA); Deborah M. Weissman, *The Political Economy of Violence: Toward an Understanding of the Gender-Based Murders of Ciudad Juárez*, 30 N.C.J. Int’l L. & Com. Reg. 795, 824 (2005) (“Until the mid-1990s, Cd. Juárez was considered a reasonably safe place; it is now known as a social disaster and one of the most distressed urban areas in the western hemisphere.”)

²⁶ Rodriguez et al., *supra* note 25, at 7.

²⁷ *Id.* at 4, 8.

accommodate them, new residents set up shacks and makeshift homes in the foothills around the city.²⁸ “To get to work, young girls had to travel alone, often late at night or in the wee hours of the morning, on treacherous unlit terrain to the nearest bus stop miles away. Neighborhoods changed from one block to the next, with sections of paved streets regularly giving way to dirt roads and rough, rocky terrain.”²⁹

The murder rates in Juárez reflect a gender disparity similar to that in the workforce. “While more men than women were killed throughout the 1990s, one study showed that the number of women killed was increasing at twice the rate as for men. Further, the homicide rate for women in Juárez greatly exceeded the Mexican national average and the rates in other border cities. For example, one study showed that the homicide rate for women in Juárez was more than three times as great as that in Tijuana, a border city of comparable size.”³⁰

²⁸ *Id.* at 8.

²⁹ *Id.* at 9.

³⁰ Simmons, *supra* note 2, at 493; *see also* Application, *supra* note 2, ¶ 71 (noting that “the number of homicides of women compared to that of men in Ciudad Juárez is considerably higher than that of cities under similar conditions, and than the national average”).

Juárez is not the only dangerous city for women and girls in the Americas. Similarly brutal gender-based murders remain unchecked and unsolved in other regions of Mexico, as well as in other countries in the Americas. *See* Simmons, *supra* note 2, at 496 (observing that “the unprecedented string of sexual homicides continues” in Juárez and, “[i]n fact, the crimes have apparently spread to Chihuahua City, the provincial capital, approximately 100 miles to the south. Amnesty International reported that in 2003,

(continued...)

Indeed, “[s]ome scholars have linked the murders,” and the increased violence against women, “to the general ‘wasting of women’ associated with the rapid training and turnover of the (predominantly female) workforce in the maquiladoras.”³¹ Professor Kathleen Staudt of the University of Texas, El Paso has observed: “Juárez is the maquiladora capital of Mexico Under the economic model of export-processing industrial production, conditions foment rampant violence against women.”³² Still others

(...continued)

forty-three women were murdered in Juárez with nine of these murders classified as sexual homicides, and another three sexual homicides occurred in Chihuahua City”); Diana Washington Valdez, *The Killing Fields: Harvest of Women* 260-62 (2006) (describing the brutal murders of over 700 women and girls in Guatemala between 2000 and 2004 similar to those in Juárez, which have also been continuing with impunity; over 200 murders of women in El Salvador in 2002 which the Salvadorean government attributes to domestic abuse).

³¹ Simmons, *supra* note 2, at 494; *see also* Alma Beltran y Puga, *Gender Stereotypes and Structural Violence in Ciudad Juárez: The Case of Campo Algodonero* (May 2009) (unpublished J.D. essay, Columbia Law School) (on file with author).

³² Kathleen Staudt, *Violence and Activism at the Border* 144 (2008); *see also* Weissman, *supra* note 25, at 828-29 (“Violence is perpetrated against women whose place in the hierarchy of market values render them as readily interchangeable cogs in the wheel of production. They are vulnerable precisely because they are expendable. They are deprived of human rights; because they are denied their humanity . . . [G]ender discrimination in the workplace influences behavior and contributes to a climate of gender hostility.”).

Violence against women in Mexico occurs extensively behind closed doors as well. “Studies ‘indicate that approximately one-third to one-half of Mexican women living as part of a couple
(continued...)”

have placed the violence in an even broader social and economic context: the breakdown of families and social structures as the result of economic liberalization and free trade policies.³³

II. UNDER INTERNATIONAL HUMAN RIGHTS LAW, NATION STATES HAVE A DUTY TO EXERCISE DUE DILIGENCE IN RESPONDING TO GENDER-BASED VIOLENCE.

A. In this hemisphere, the American Convention on Human Rights and the Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention Belém do Pará) require States to “prevent, punish, and eradicate” gender-based violence.

The American Convention on Human Rights provides that member States will “respect” and “ensure” fundamental human rights “without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.”³⁴ The

(...continued)

suffered some form of abuse (physical, emotional, psychological, economic, or sexual) at the hands of their partner.” Simmons, *supra* note 2, at 494, quoting *Right to Be Free*, *supra* note 2, ¶ 63.

³³ See Weissman, *supra* note 25, 834-41.

³⁴ Organization of American States, American Convention on Human Rights, art. 1(1), Nov. 22, 1969, O.A.S.T.S. No. 36, 1146 (continued...)

Convention also directs States to take “legislative or other measures as may be necessary to give effect to those rights or freedoms.”³⁵ Taken together, these provisions impose affirmative obligations upon States to respect and guarantee fundamental human rights.

The American Convention generally provides that every human being has a right to personal liberty and security as well as a right to have his or her life and physical, mental, and moral integrity respected.³⁶ It provides for the right to due process, judicial protection, and a remedy for rights violations.³⁷ The American Convention also provides that “[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state” and that each person is entitled to equal protection under the law, without discrimination.³⁸

In the landmark case *Velásquez-Rodríguez*, this Court interpreted the State’s duties under the American Convention to include an affirmative obligation to investigate, prosecute, and punish human rights violators through the state’s judicial tribunals.³⁹ Specifically, the Court determined that the State had

(...continued)

U.N.T.S. 123, *entered into force* July 12, 1978 [hereinafter American Convention], ratified by Mexico Mar. 2, 1981.

³⁵ *Id.* at art. 2.

³⁶ *Id.* at arts. 4, 5, 7.

³⁷ *Id.* at arts. 8, 25.

³⁸ *Id.* at arts. 1(1), 19, 24.

³⁹ *Velásquez-Rodríguez v. Honduras*, 1988 Inter-Am. Ct. H.R. (ser. C) No. 4 (July 29, 1988).

an obligation “to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.”⁴⁰ In establishing this principle, the Court set forth a reasonableness standard for the general positive obligations of States to prevent human rights violations.⁴¹

A State’s obligation to take reasonable steps to prevent human rights violations extends not only to the actions of agents of the State, but also, in circumstances such as those present here, to actions perpetrated by private actors. In *Velásquez-Rodríguez*, this Court held that “when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention . . . the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction.”⁴² A State is held responsible for the acts of private actors, this Court said, “not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it”⁴³ Thus, state responsibility for the acts of private persons attaches either when the violation of an individual’s rights “has occurred with the support or acquiescence of the government, or [when] the State has allowed the act to take

⁴⁰ *Id.* ¶ 166.

⁴¹ *Id.* ¶ 174.

⁴² *Id.* ¶ 176.

⁴³ *Id.* ¶ 172

place without taking measures to prevent it or to punish those responsible.”⁴⁴

While the American Convention imposes a general obligation on States to protect rights from violation by the State and private actors, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (“Convention Belém do Pará”) imposes a *specific* obligation on States to take additional measures to affirmatively protect the rights of women — in particular, vulnerable groups of women such as migrant women and young women and girls.⁴⁵ Indeed, as the Inter-American Commission has recognized, an international and regional consensus has developed in human rights law “that gender-

⁴⁴ *Id.* ¶ 173. This Court reaffirmed these principles in three recent cases. *See Ximenes-Lopes v. Brazil*, 2006 Inter-Am. Ct. H.R. (ser. C) No.149, ¶ 85 (July 4, 2006); *Pueblo Bello Massacre v. Colombia*, 2006 Inter-Am. Ct. H.R. (ser. C) No. 140, ¶ 113 (Jan. 31, 2006); *Mapiripán Massacre v. Colombia*, 2005 Inter-Am. Ct. H.R. (ser. C) No. 132, ¶ 111 (Sept. 15, 2005). This Court has also observed that, because the State determines the laws that regulate private employment relations between individuals and because migrant workers must resort to State mechanisms for the protection of their rights, the State may be held responsible if it does not “ensure that human rights are respected in these private relationships between third parties” *Juridical Condition and Rights of the Undocumented Migrants*, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, ¶¶ 140, 147 (Sept. 27, 2003).]

⁴⁵ The principle of providing special protection for vulnerable groups of women and children is also reflected in Article VII of the American Declaration on the Rights and Duties of Man O.A.S. Res. XXX, International Conference of American States, 9th Conference (May 2, 1948) and in the Court’s Advisory Opinion on the *Juridical Condition and Rights of the Undocumented Migrants*, *supra* note 44 ¶ 140.

based violence is an open and widespread problem requiring State action to ensure its prevention, investigation, punishment, and redress.”⁴⁶ The “due diligence” standard embodied in these international documents includes the responsibility to prevent, prosecute, and remedy gender-based violence.⁴⁷

Convention Belém do Pará specifically recognizes that “[e]very woman has the right to be free from violence in both the public and private spheres,” “[t]he right to have the inherent dignity of her person respected and her family protected,” and “[t]he right to simple and prompt recourse to a competent court for protection

⁴⁶ *Access to Justice*, *supra* note 4, ¶ 3; *see also id.* ¶ 67 n.101 (specifically noting that “judicial ineffectiveness also creates a climate that is conducive to domestic 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.”); Org. of American States, Inter-Am. C.H.R., *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, ¶ 6, OEA/Ser.L/V/II, doc. 67 (2006), *available at* <http://www.cidh.oas.org/countryrep/ColombiaMujeres06eng/Informe%20Colombia%20Mujeres%20Ing.pdf> [hereinafter *Armed Conflict in Columbia*].

⁴⁷ *See* U.N. Secretary-General, *Ending Violence Against Women: From Words to Action—Study of the Secretary-General*, at 2, U.N. Sales No. E.06.IV.8 (2006), *available at* <http://www.un.org/womenwatch/daw/vaw/launch/english/v.a.w-exeE-use.pdf> (“States have concrete and clear obligations to address violence against women, whether committed by state agents or by non-state actors. States are accountable to women themselves, to all their citizens and to the international community. States have a duty to prevent acts of violence against women; to investigate such acts when they occur and prosecute and punish perpetrators, and to provide redress and relief to the victims.”).

against acts that violate her rights.”⁴⁸ Moreover, Convention Belém do Pará affirms that “[e]very woman is entitled to the free and full exercise of her civil, political, economic, social and cultural rights,” and that “violence against women prevents and nullifies the exercise of these rights.”⁴⁹ The State parties to the Convention “agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence,” including applying “due diligence to prevent, investigate and impose penalties for violence against women” and adopting “legal measures to

⁴⁸ Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, arts. 3, 4, 33 I.L.M. 1534 (1994), *entered into force* Mar. 5, 1995, [hereinafter Convention Belém do Pará], ratified by Mexico June 19, 1998. This Court may analyze Mexico’s violations of the Convention of Belém do Pará directly, as well as use provisions in Belém do Pará to interpret the American Convention on Human Rights. *See* Application, *supra* note 2, ¶¶ 141-43, 153, 175, 176, 230-33, 236-38 (identifying violations of both the American Convention and Article 7 of Belém do Pará in its referral to this Court); *Case of the Miguel Castro-Castro Prison v. Peru*, Inter-Am. Ct. H.R. 2006 (ser. C) No. 160, ¶¶ 344, 346, 379 (Nov. 25, 2006) (recognizing Court’s ability to use Belém do Pará to interpret obligations and remedies under the American Convention on Human Rights); *id.* ¶ 30, 32(b) (García Ramírez, J., concurring) (Court may also interpret violations of Article 7 of Belém do Pará directly); *id.* ¶ 73-74 (Cancado Trindade, J. concurring) (same); *see also* Cecilia Medina, *Derechos Humanos de la Mujer, Donde estamos ahora en las Américas?* [Human Rights of Women: Where are we now in the Americas?], in *Essays in Honour of Alice Yotopoulos-Marangopolous* 907 (Centro Derechos Humanos, Facultad de Derecho, Universidad de Chile trans., 2003) available at http://www.cdh.uchile.cl/libros/18ensayos/medina_DondeEstamos.pdf (arguing that the Court should have jurisdiction to consider violations of Belém do Pará directly).

⁴⁹ Convention Belém do Pará, *supra*, note 48, art. 5.

require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity.⁵⁰

Convention Belém do Pará further provides that State parties “shall take *special account of the vulnerability of women to violence by reason of* among others, their race or ethnic background or their status as *migrants*, refugees or displaced persons. . . . [or whether they are] subjected to violence while pregnant or . . . because they] are disabled, *of minor age*, elderly, *socio-economically disadvantaged*, affected by armed conflict or deprived of their freedom.”⁵¹

The Convention outlines a broad range of protective, preventive, and other remedies for gender-based violence, including restitution, satisfaction, and cessation measures, apologies, reform of legislation and official policies, training and education for state officials, the gathering of information and data to measure any continuing incidents and progress from protective measures.⁵²

⁵⁰ *Id.* at art. 7.

⁵¹ *Id.* at art. 9 (emphasis added).

⁵² *Id.* at art. 8. Consistent with the American Convention and Convention Belém do Pará, the Commission has stated in a special report that the Inter-American system “recognizes that violence against women and its root, discrimination, is a serious human rights problem with negative repercussions for women and their surrounding community, and constitutes an impediment to the recognition and enjoyment of all their human rights, including the respect of their lives and their physical, mental and moral integrity.” *Armed Conflict in Columbia*, *supra* note 46, ¶ 29. The report concluded that “[t]he State is directly responsible for violence perpetrated by its own agents, as well as that perpetrated by
(continued...)

In *Maria da Penha Maia Fernandes v. Brazil*,⁵³ The Inter-American Commission concluded that Brazil had violated Ms. Fernandes' rights under Belém do Pará, the American Convention and the American Declaration by delaying for more than 15 years the prosecution of her abusive husband for her attempted murder. The Commission concluded that “this violation form[ed] a pattern of discrimination evidenced by the condoning of domestic violence against women in Brazil through ineffective judicial action.”⁵⁴ The Commission therefore recommended “prompt and effective compensation for the victim, and the adoption of measures at the national level to eliminate tolerance by the State of domestic violence against women.”⁵⁵

(...continued)

individual persons. Furthermore, the State's obligation is not limited to eliminating and punishing violence, but also includes the duty of prevention.” *Id.* ¶ 30; *see also* Org. of American States, Inter-Am. C.H.R., *Principal Guidelines for a Comprehensive Reparations Policy*, ¶¶ 13-14, OEA/Ser/L/V/II.131, doc. 1 (2008), *available at* <http://www.cidh.org/pdf%20files/Lineamientos%20Reparacion%20Administrativa%2014%20mar%202008%20Ener%20final.pdf> (noting that the Convention of Belém do Pará “urges the States to establish the judicial and administrative mechanisms necessary to ensure that women victims of violence—physical, psychological, and sexual—have effective access to restitution, reparation of the harm done or other just and effective means of compensation.”).

⁵³ Case 12.051, Inter-Am. C.H.R., Report No. 54/01, OEA/Ser./L/V/II.111, doc. 20 rev. (2000).

⁵⁴ *Id.* ¶ 3.

⁵⁵ *Id.*; *see also* *MZ v. Bolivia*, Case 12.350, Inter-Am. C.H.R., OEA/Ser./L/V/II.114, doc. 5 rev. (2001) (determining that, if the allegations concerning the judicial overturning of a rape conviction
(continued...)

(...continued)

in the face of overwhelming evidence were true, violations of Belém do Pará by Bolivia would be established).

A number of reports from an independent human rights organization have similarly determined that nations' failures to enforce domestic violence laws constitute violations of, inter alia, the Universal Declaration of Human Rights, the Women's Convention, and the International Covenant on Civil and Political Rights. See, e.g., Minnesota Advocates for Human Rights (MAHR), *Domestic Violence in Albania* (Apr. 1996), available at <http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/Albania.pdf>; MAHR, *Domestic Violence in Armenia* (Dec. 2000), available at http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/Armeniareport_10-11-2002.pdf; MAHR, *Domestic Violence in Bulgaria* (Apr. 1996), available at <http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/bulgaria.pdf>; MAHR, *Domestic Violence in Poland* (July 2002), available at [http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/Poland_domestic_violence_\(2002\)_10-18-2002_2.pdf](http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/Poland_domestic_violence_(2002)_10-18-2002_2.pdf); MAHR, *Domestic Violence in Macedonia* (Sept. 1998), available at <http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/macedonia.pdf>; MAHR, *Domestic Violence in Moldova* (Dec. 2000), available at http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/MoldovaReport_10-11-2002.pdf; MAHR, *Domestic Violence in Nepal* (Sept. 1998), available at <http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/nepal.pdf>; MAHR, *Lifting the Last Curtain: A Report on Domestic Violence in Romania* (Feb. 1995), available at http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/D.V._in_Romania_1995.pdf; MAHR, *Domestic Violence in Ukraine* (Dec. 2000), available at <http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/ukrainereport.pdf>; MAHR, *Domestic Violence in Uzbekistan* (Dec. 2000), available at <http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/uzbekreport.pdf>.

In response to the *Maria da Penha* decision, Brazil enacted the Maria da Penha law to provide protection from and remedies for domestic violence at the national level.⁵⁶

B. Treaties and other authoritative documents beyond the Inter-American System demonstrate an international consensus recognizing States' affirmative obligations to prevent, investigate, and punish gender-based violence and to protect and provide effective remedies for its victims.

1. Broad human rights documents.

The consensus reached in the Americas reflects a broader international view concerning States' responsibility to affirmatively respond to gender-based violence.⁵⁷ The United Nations Charter, to which Mexico and most other nations of the world are bound, was the first to affirm among its core principles and objectives "the equal rights of men and women," "the dignity and worth of the human

⁵⁶ Le No. 11.340, de 7 de agosto de 2006, Col. Leis Rep. Fed. Brasil, __ (34, t__): __, dez. 2007, translated in *Maria da Penha Law: Law No. 11.340 of August 7, 2006*.

⁵⁷ Gender-based violence is common throughout the world. "In every country where reliable, large-scale studies on gender violence are available, upwards from 20 per cent of women have been abused by the men they live with." United Nations Population Fund (UNFPA), *Violence Against Women and Girls: A Public Health Priority* 10 (1999).

person,” and the realization of fundamental human rights.⁵⁸ The Universal Declaration of Human Rights, the authoritative bill of rights adopted by the United Nations General Assembly in 1948, likewise states that “[e]veryone has the right to life, liberty and security of person,” “[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law,” and “[e]veryone has the right to an effective [domestic] remedy . . . for acts violating the fundamental rights granted [] by the constitution or by law.”⁵⁹

In the 1990s, the United Nations specifically made clear that the international human rights recognized in the Charter and Universal Declaration encompass the right of women and girls to be free from violence, including domestic violence, and that nations have an affirmative obligation to protect that right.

⁵⁸ See Universal Declaration of Human Rights, G.A. Res. 217A (III), at 71, 3 U.N. GAOR, 1st plen. mtg., Supp. (No. 13), U.N. Doc. A/810 (1948).

⁵⁹ *Id.* at arts. 3, 7, 8. The Universal Declaration of Human Rights is an authoritative statement of the international community. See Louis B. Sohn, *The New International Law: Protection of the Rights of Individuals Rather than States*, 32 Am. U. L. Rev. 1, 16-17 (1982) (“The [Universal] Declaration . . . is now considered to be an authoritative interpretation of the U.N. Charter, spelling out in considerable detail the meaning of the phrase ‘human rights and fundamental freedoms,’ which Member States agreed in the Charter to promote and observe. The Universal Declaration has joined the Charter . . . as part of the constitutional structure of the world community. The Declaration, as an authoritative listing of human rights, has become a basic component of international customary law, binding on all states, not only on members of the United Nations.”).

For example, the 1993 Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights announced that “[t]he human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights” and that “[g]ender-based violence . . . [is] incompatible with the dignity and [the] worth of the human person, and must be eliminated.”⁶⁰ The Vienna Declaration “stresse[d] the importance of working towards the elimination of violence against women in public and private life” and urged that “the full and equal enjoyment by women of all human rights” should “be a priority for Governments and for the United Nations.”⁶¹

Moreover, Mexico, along with 150 other state parties, has ratified the International Covenant on Civil and Political Rights (“ICCPR”), which, as part of the International Bill of Rights, is a cornerstone human rights document designed to give effect to the principles in the Universal Declaration of Human Rights. Under the ICCPR, Mexico has obligated itself to “ensure the equal right of men and women to the enjoyment of all civil and political rights” in the Covenant, including the rights to life, to be free of torture or inhuman or degrading treatment, to liberty and security of the person, to “equal protection of the law . . . [including] equal and effective protection against discrimination on [the basis of] . . . sex,” to equality “of rights and responsibilities of spouses . . . during

⁶⁰ World Conference on Human Rights, June 14-25, 1993, Vienna Declaration and Programme of Action, ¶ 18, U.N. Doc. A/CONF.157/24 (Part I) (Oct. 13, 1993).

⁶¹ *Id.* ¶¶ 36, 38.

marriage,” and to the rights of children “to such measures of protection as are required by [the child’s] status as a minor”⁶²

As a party to the ICCPR, Mexico must “respect and [] ensure to all individuals within its territory . . . the rights recognized in the present Covenant,” “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy,” including judicial remedies, for such violations, and

⁶² International Covenant on Civil and Political Rights, arts. 3, 6, 9, 23, 24, 26, G.A. Res. 2200A (XXI), at 52, 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (1966), *entered into force* Mar. 23, 1976 [hereinafter ICCPR], ratified by Mexico June 23, 1981. Although the ICCPR does not specify that gender-based violence constitutes gender discrimination, read together with the Women’s Convention [CEDAW] and other U.N. documents which specifically identify violence against women as a form of gender discrimination, it also can be understood to include protection against this type of violence.

The affirmative duty to protect women from violence is also consistent with the 2005 World Summit Outcome adopted by the United Nations General Assembly. That document imposed on individual States a broad responsibility to protect its “populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.” U.N. General Assembly 2005 World Summit Outcome, Sept. 14-16, 2005, *Follow-Up to the Outcome of the Millennium Summit*, ¶ 138, U.N. Doc. A/60/L. 1 (Sept. 15, 2005). In addition to recognizing this historic “responsibility to protect,” the 2005 World Summit Outcome also “recognize[d] the need to pay special attention to the human rights of women and children and undertake to advance them in every possible way,” and called upon “States to continue their efforts to eradicate policies and practices that discriminate against women and to adopt laws and promote practices that protect the rights of women and promote gender equality.” *Id.* ¶¶ 119, 122, 128, 134.

“ensure that the competent authorities shall enforce such remedies.”⁶³

The Human Rights Committee, which is charged with interpreting and administering the ICCPR, has made clear that the ICCPR allows each state party to “choose their method of implementation” of the ICCPR within its territory.⁶⁴ However, state parties must take affirmative action—whatever the form—to promote enjoyment of the rights guaranteed under it.⁶⁵ As the Human Rights Committee has explained:

The Covenant cannot be viewed as a substitute for domestic[,] criminal or civil law. However the

⁶³ *Id.* at art. 2.

⁶⁴ OHCHR, Compilation of General Comments and General Recommendations, Implementation at the National Level, general cmt. 3, art. 2 (13th Sess. 1981) (adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 4 (1994)).

⁶⁵ *See, e.g.*, OHCHR, Compilation of General Comments and General Recommendations, general cmt. 4, art. 3 (13th Sess. 1981) (adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 4 (1994)). (Those articles which “primarily deal with the prevention of discrimination on a number of grounds, among which sex is one, require[] not only measures of protection but also affirmative action designed to ensure the positive enjoyment of [those] rights. This cannot be done simply by enacting laws.”); OHCHR, Human Rights Comm., Equality of Rights Between Men and Women, general cmt. 28, art. 3, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000) (stating Articles 2 and 3 of the ICCPR “require[] that State parties take all necessary steps to enable every person to enjoy those rights. . . . The State party must not only adopt measures of protection but also positive measures in all areas so as to achieve the effective and equal empowerment of women.”).

positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of State Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.⁶⁶

This case presents one of the “circumstances in which a failure to ensure covenant rights . . . give[s] rise to [a] violation[] by [a] state[] part[y] of those rights.” Mexico has not taken any meaningful or effective steps to prevent or to investigate and prosecute the crimes against women and girls in Ciudad Juárez. Mexico therefore has failed to fulfill its obligations under the ICCPR.

⁶⁶ OHCHR, Human Rights Comm., Nature of the General Legal Obligation on States Parties to the Covenant, general cmt. 31, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), *available at* <http://www1.umn.edu/humanrts/gencomm/hrcom31.html>.

2. Documents specifically relating to women's and children's rights.

In addition to human rights documents that have been interpreted to encompass a state duty to protect women from gender-based violence, in the last twenty years a number of international instruments have specifically articulated a duty to protect women and girls from violence.

The Declaration on the Elimination of Violence Against Women, adopted by the United Nations General Assembly in 1993, went beyond simply recognizing a general right to be free from violence. It called on nation states to “pursue by all appropriate means and without delay a policy of eliminating violence against women,” including “*exercis[ing] due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.*”⁶⁷

In 1994, the United Nations High Commission on Human Rights appointed the first U.N. Special Rapporteur on Violence

⁶⁷ Declaration on the Elimination of Violence Against Women, arts. 1, 2, G.A. Res. 48/104, at 217, 48 U.N. GAOR Supp. (No. 49), U.N. Doc. A/48/49 (1993) [hereinafter DEVAW]; *id.* at art. 4 (further urging states to “[d]evelop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions”).

Against Women, entrusting her with the task of analyzing and documenting the phenomenon, and holding governments accountable for violations against women.⁶⁸

The Fourth World Conference on Women in Beijing in 1995 also included elimination of all forms of violence against women as one of its twelve strategic objectives.⁶⁹ The Beijing Declaration reflected the commitment of the 180 participating governments (including Mexico) to “[e]nsure the full implementation of the human rights of women and of the girl child as an inalienable, integral and indivisible part of all human rights and fundamental freedoms” and to “prevent and eliminate all forms of violence against women and girls.”⁷⁰

⁶⁸ See OHCHR, U.N. ESCOR, 42d plen. mtg., U.N. Doc. E/DEC/1994/254 (July 22, 1994). In so doing, the Commission called for “Governments . . . to take appropriate and effective action concerning acts of violence against women, whether those acts are perpetrated by the State or by private persons, and to provide access to just and effective remedies and specialized assistance to victims.” OHCHR, Comm’n on Human Rights, *Question of Integrating the Rights of Women into the Human Rights Mechanisms of the United Nations and the Elimination of Violence Against Women*, U.N. CHR, 50th Sess., 56th mtg., at 3, U.N. Doc. E/CN.4/RES/1994/45 (Mar. 4, 1994).

⁶⁹ See generally Minn. Advocates for Human Rights, *Summary of the Beijing Declaration and Platform for Action 2* (Jan. 1996) (noting that the Beijing Declaration and Platform for Action reflect the views of over 180 countries and therefore constitute “consensus document[s]”).

⁷⁰ Fourth World Conference on Women, Sept. 4-15, 1995, ¶¶ 9, 29, Beijing Declaration and Platform for Action, U.N. Doc. A/CONF. 177/20 (Sept. 15, 1995) and U.N. Doc. A/CONF. 177/20/Add.1 (Sept. 15, 1995).

Again, importantly, the nations stressed their own affirmative obligations to ensure the right of women to be free from violence. The Conference’s Platform for Action called for governments to “exercise due diligence to prevent, investigate and . . . punish acts of violence against women,” “[e]nact and/or reinforce penal, civil, labour, and administrative sanctions in domestic legislation to punish and redress the wrongs done to women and girls who are subjected to any form of violence, whether in the home, the workplace, the community or society,” and “[p]rovide women who are subjected to violence with access to the mechanisms of justice and . . . to just and effective remedies for the harm they have suffered.”⁷¹

The first treaty to focus exclusively on the rights of women was the Convention on the Elimination of All Forms of Discrimination Against Women (“Women’s Convention” or “CEDAW”), which was adopted by the United Nations General Assembly and opened for signature in 1979.⁷² The State Parties to the Women’s Convention condemned “discrimination against women in all its forms” and agreed to “take all appropriate measures to eliminate discrimination against women by any person,

⁷¹ *Id.* ¶¶ 125(b), (c), (h).

⁷² Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 6), at 193, U.N. Doc. A/34/46 *entered into force* Sept. 3, 1981 [hereinafter CEDAW], ratified by Mexico Sept. 3, 1981. The treaty has been ratified by 185 countries, including Mexico. *See CEDAW: Treaty for the Rights of Women*, [http:// www.womenstreaty.org /facts_countries.htm](http://www.womenstreaty.org/facts_countries.htm) (last visited June 25, 2009).

organization or enterprise,” and to “establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.”⁷³

In 1992, the U.N. Committee charged with interpreting the Women’s Convention made clear that the Convention specifically obligated States to protect women and girls from family violence and abuse. In General Recommendation 19, the Committee on the Elimination of Discrimination against Women declared that:

[g]ender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men. . . . These forms of violence put women’s health at risk and impair their ability to participate in family life and public life on a basis of equality.⁷⁴

The Committee reminded State parties that “article 2 (e) [of] the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise” and that “[u]nder general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to

⁷³ CEDAW, *supra* note 72, at art. 2.

⁷⁴ CEDAW, General Recommendation 19: Violence Against Women, ¶¶ 1, 23, (11th Sess. 1992) U.N. Doc. A/47/38 at 1 (1993), *reprinted in* Compilation of General Comments and General Recommendations (adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev. 6 at 243 (2003)).

prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”⁷⁵

Most recently, the General Assembly recognized nations’ obligations to act against a particular form of private gender-based violence when it adopted a Resolution concerning the Elimination of Domestic Violence Against Women which “requires States to take serious action to protect victims and prevent domestic violence.”⁷⁶ The Resolution stressed “that States have an obligation to exercise due diligence to prevent, investigate and punish the perpetrators of domestic violence against women and to provide protection to the victims.”⁷⁷ The U.N. General Assembly called upon states to “establish[] adequate legal protection against domestic violence,” “ensure greater protection for women, inter alia, by means of, where appropriate, orders restraining violent spouses from entering the family home,” “establish and/or strengthen police response protocols and procedures to ensure that all appropriate actions are taken to protect victims of domestic violence and to prevent further acts of domestic violence,” and “take measures to ensure the protection of women subjected to violence, access to just and effective remedies,

⁷⁵ *Id.* ¶ 9.

⁷⁶ Elimination of Domestic Violence Against Women, G.A. Res. 58/147, ¶ 1(d), U.N. GAOR, 58th Sess., U.N. Doc. A/Res/58/147 (Feb. 19, 2004).

⁷⁷ *Id.* ¶ 5.

inter alia, through compensation and indemnification and healing of victims.”⁷⁸

The Convention on the Rights of the Child (“CRC”),⁷⁹ which enjoys near-universal acceptance by the community of nations,⁸⁰ offers further protection from gender-based violence against girls.

Article 19 of the CRC provides that “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse . . . while in the care of [the] parent(s), legal guardian(s) or any other person who has the care of the

⁷⁸ *Id.* ¶¶ 7(a), (e), (i), (j). A report of the U.N. Secretary-General echoes this call to action: “Women victims of violence, or women who are at risk of repeated acts of violence in the home, should have immediate means of redress and protection, including protection or restraining orders, access to legal aid, and shelters staffed with personnel who are sensitive to victims’ needs. Priority attention must be given to ensuring that implementation of legislation and of policies and programmes is adequately funded throughout the territory of a State.” The Secretary-General, *Report of the Secretary-General on Violence Against Women*, ¶ 65, delivered to the General Assembly, U.N. Doc. A/59/281 (Aug. 20, 2004).

⁷⁹ Convention on the Rights of the Child, G.A. Res. 44/25, 44 U.N. GAOR. supp (No. 49), U.N. Doc. A/44/49 (1989) *entered into force* Sept. 20, 1990 [hereinafter CRC], ratified by Mexico Oct. 21, 1990.

⁸⁰ See UNICEF, *Convention on the Rights of the Child (CRC)*, available at http://www.unicef.org/crc/index_30197.html (last visited June 25, 2009) (only the United States and Somalia have signed but not ratified it). With 193 countries ratifying it, the CRC is the most widely accepted human rights instrument in history. U.N.T.C., Chapter IV, Human Rights, Convention on the Rights of the Child, <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg-no=IV-11&Chapter-4&lang=en> (last visited June 26, 2009).

child.”⁸¹ Under Article 2, State parties are required to “respect and ensure the rights set forth” in the CRC “without discrimination of any kind, irrespective of the child’s . . . sex”⁸² The Committee on the Rights of the Child has said that State parties must “ensur[e] that all domestic legislation is fully compatible with the Convention and that the Convention’s principles and provisions can be directly applied and appropriately enforced.”⁸³

3. Regional documents.

Finally, like the American Convention on Human Rights and Convention Belém do Pará in this hemisphere and the United Nations documents described above (*see supra*, pp. 13-33), other regional documents similarly place gender-based violence squarely within nations’ international human rights responsibilities.

The Council of Europe’s Committee of Ministers has issued a Recommendation to member States which reaffirms the Council’s “determination to combat violence against women” and “[r]ecognises[s] that states have an obligation to exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons,

⁸¹ CRC, *supra* note 79, at art. 19.

⁸² *Id.* at art. 2.

⁸³ U.N. CRC, Comm. on the Rights of the Child, General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child, arts. 4, 42, 44, para. 6, ¶ 1, U.N. Doc. CRC/GC/2003/5 (Nov. 27, 2003).

and provide protection to victims.”⁸⁴ The Committee of Ministers further recommends that member States should “ensure that, in cases where the facts of violence have been established, victims receive appropriate compensation for any pecuniary, physical, psychological, moral and social damage suffered.”⁸⁵

The European Parliament recently issued a resolution stating that “violence against women is a major hindrance to equality between women and men and is one of the most widespread human rights violations, knowing no geographical, economic, or social limits [and that] the number of women who are victims of violence is alarming.”⁸⁶ The resolution stresses “the importance of combating violence against women to achieving equality between women and men; calls on the Member States and the Commission . . . to undertake concerted action in the field; [and] urges the

⁸⁴ Council of Eur., Comm. of Ministers, *Recommendation Rec(2002)5 of the Committee of Ministers to Member States on the Protection of Women Against Violence* (Apr. 30, 2002), available at <https://wcd.coe.int/ViewDoc.jsp?id=280915>.

⁸⁵ *Id.* ¶ 36; see also Resolution on Violence Against Women, Eur. Parl. Doc. A2-44/86, 1986 O.J. (C 176) ¶ 13 (calling on national authorities “to ensure improvements in training of police officers dealing with . . . reports of sexual violence,” including requiring the police “to respond actively when requests of help are received”).

⁸⁶ Eur. Parl. Res. on Equality Between Women and Men - 2008, ¶ B, Eur. Parl. Doc. 2008/2047 (INI) (Sept. 3, 2008). The resolution provides that “the term ‘violence against women’ is to be understood as any act of gender-based violence which results in, or is likely to result in, physical, sexual or psychological harm to or suffering of women, including threats of such acts, coercion, or the arbitrary deprivation of liberty, whether occurring in public or private life.” *Id.* ¶ C.

Commission to consider the possibility of new measures on combating violence against women.”⁸⁷

In 2003, a Protocol on the Rights of Women in Africa was added to the African Charter on Human and Peoples’ Rights. The Protocol requires State parties to “enact and enforce laws to prohibit all forms of violence against women” and “ensure . . . effective access by women to judicial and legal services” to remedy the violence.⁸⁸

Taken together, these international and regional treaties and documents establish that gender-based violence is recognized as a violation of human rights throughout the world. More importantly for this case, they establish that, under international human rights law, States have a responsibility to prevent, investigate, and punish violations of those rights and to provide remedies and compensation to those whose rights have been violated.⁸⁹

⁸⁷ *Id.* ¶ 2.

⁸⁸ Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2d Ord. Sess. of the Assemb. of the Union, arts. 4, 8, adopted 2003, *available at* <http://www.achpr.org/english/women/protocolwomen.pdf> (last visited June 25, 2009).

⁸⁹ *See also* Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Annex & art. 9, G.A. Res. 53/144, U.N. GAOR, 53d Sess., U.N. Doc. A/RES/53/144 (Dec. 9, 1999) (stressing that “the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State” and “everyone has the right . . . to benefit from an effective remedy and to be protected in the event of the violation of those rights”); Responsibility of States for International Wrongful Acts, arts. 12-15, G.A. Res. 56/83, U.N. (continued...)

Here, consistent with Mexico's international obligations, the state of Chihuahua (and subsequently the federal authorities) purported to provide a mechanism for preventing violence on their citizens, including women and girls, and for prosecuting those who perpetrate that violence. However, criminal investigations and prosecutions were delayed, deferred, negligently conducted, or outright ignored.⁹⁰ Without effective criminal investigations or an

(...continued)

GAOR, 56th Sess., Supp. No. 10, U.N. Doc. A/56/49(Vol.I)/Corr.4 (Dec. 12, 2001) (adopting the International Law Commission Articles on the responsibility of States for internationally wrongful acts as the summary and codification of international law, which provide in part that a state may breach an international obligation "through a series of actions or omissions" or by failing "to prevent a given act" which it is obligated to prevent under international law); Stephanie Farris, *State Responsibility for Human Rights Abuses by Non-State Actors*, 92 Am. Soc'y Int'l L. Proc. 299, 301 (1998) ("Virtually all the main human rights instruments contain language creating positive obligations to control certain activities of private individuals so as to protect against human rights abuses."); *id.* at 302 ("Over the course of the last century, states have been found responsible under a due diligence standard for inaction or inadequate action in a range of situations, including failure to provide police protection to prevent private violence A finding of state responsibility has been accompanied by a requirement that the state provide compensation."); Amnesty Int'l, *Making Rights a Reality: The Duty of States to Address Violence Against Women*, AI Index Act 77/049/2004, June 3, 2004 (explaining and elaborating on state responsibility to protect women from violence by non-state actors).

⁹⁰ This breakdown of legal protections from gender-based violence at the police level is not unique to the state of Chihuahua or Mexico. For example, in the domestic violence arena, the World Health Organization reports that, internationally, "[a]fter support services for victims, efforts to reform police practice are the next most (continued...)

effective remedy for this lack of enforcement, much less any effort to invoke social, economic, civil, or other measures, the protection promised became illusory.

C. Other international human rights bodies have held nations to be in violation of treaty obligations by failing to protect women from gender-based violence.

Outside the Inter-American system, international human rights courts and commissions charged with interpreting and administering human rights treaties also have found treaty violations by nations failing to provide or enforce protections against gender-based violence.⁹¹

(...continued)

common form of intervention against domestic violence. Early on, the focus was on training the police, but when training alone proved largely ineffective in changing police behaviour, efforts shifted to seeking laws requiring mandatory arrest for domestic violence and policies that forced police officers to take a more active stand.” World Health Org., *World Report on Violence and Health* 105 (Etienne G. Krug et al. eds., 2002).

⁹¹ In grappling with constitutional issues of state protection of women and children from, and remedies for, gender-based violence and discrimination, high courts of numerous countries also have considered and accorded substantial weight to the human rights obligations set forth in various international human rights instruments. *See, e.g., State v. Baloyi*, 2000 (2) SA 425 (cc); 2000 (1) BCLR 86 (cc) (S. Afr. 1999) at 14, 16-18, 31-40 (upholding a statutory interdict (restraining order), mandatory arrest, and subsequent criminal conviction and sentencing procedure for violations of the interdict, noting “South Africa’s international obligations requir[e] effective measures to deal with the gross denial
(continued...)

In *M.C. v. Bulgaria*,⁹² the European Court of Human Rights held Bulgaria to be in violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms by failing to fully and effectively investigate the alleged rape of a 14-year-old girl. The prosecutor had refused to proceed with a criminal investigation because he had determined that, absent physical

(...continued)

of human rights resulting from pervasive domestic violence” and reasoning that giving full effect to the interdict procedure ensures South Africa’s compliance with its obligations under the Universal Declaration of Human Rights, DEVAW, CEDAW, and the African Charter to protect women from domestic violence); *see also R. v. Ewanchuk* [1999] 1 S.C.R. 330 (Can.) (interpreting Canadian sexual assault laws and the Canadian Charter of Rights and Freedoms in light of the guarantees under CEDAW—to which Canada is a party—as well as international norms concerning violence against women, and determining that there is no defense of “implied consent” to a sexual assault charge); *Vishaka v. State of Rajasthan*, A.I.R. 1997 S.C. 3011, ¶¶ 5-10 (India) (determining that the Indian Constitution’s guarantee of equality for women should be interpreted in light of “global acceptance” of the principle that “[g]ender equality includes protection from sexual harassment,” as reflected in both CEDAW and the Beijing Declaration and Platform; finding that the complete absence of a sexual harassment law and damages remedy violated these norms and constitutional guarantees; and deciding to prepare interim sexual harassment law with the Indian government); *see generally* United Nations Development Fund for Women [UNIFEM], *Bringing Equality Home: Implementing the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Part II, The Courts* (Ilana Landsberg-Lewis ed. 1998), available at http://www.unifem.org/attachments/products/BringingEqualityHome_eng.pdf (summarizing these and other domestic court decisions that have relied on international women’s rights instruments to analyze and apply domestic protection for violence against women).

⁹² 2003-I Eur. Ct. H.R. 646 (2004).

evidence of force or threats, it would be too difficult to establish that she in fact had not consented to have sex.⁹³

The court concluded that Bulgaria had violated the girl's rights under the Convention to be free from "inhuman or degrading treatment" and her right to respect for her private life, reasoning that the effectiveness of "the investigation of the applicant's case and, in particular, the approach taken by the investigator and the prosecutors in the case fell short of the requirements inherent in the States' positive obligations—viewed in the light of the relevant modern standards in comparative and international law—to establish and apply effectively a criminal-law system punishing all forms of rape and sexual abuse."⁹⁴ The court further stated that, "[w]hile the choice of the means to secure compliance with [international human rights law] . . . is in principle within the State's margin of appreciation, effective deterrence against grave acts such as rape, where fundamental values and essential aspects of private life are at stake, requires efficient criminal-law provisions. Children and other vulnerable individuals, in particular, are entitled to effective protection."⁹⁵ Having found a violation of the Convention, the court awarded the girl damages against Bulgaria to compensate her for her "distress and psychological trauma," which resulted "at least partly from the

⁹³ See *id.* ¶¶ 61, 64, 65, 179, 180.

⁹⁴ *Id.* ¶¶ 110, 185; see *id.* ¶¶ 109, 182, 187.

⁹⁵ *Id.* ¶ 150.

shortcomings in the authorities' approach" to the criminal investigation.⁹⁶

⁹⁶ *Id.* ¶ 194. See also *Airey v. Ireland*, 32 Eur. Ct. H.R. (ser. A) ¶¶ 9, 24, 28 (1979) (holding that Ireland violated Ms. Airey's right to access to the courts for purposes of petitioning for a decree of separation from her abusive and alcoholic husband by failing to provide her with legal aid to do so); *Case of E. and Others v. United Kingdom*, 2002-II Eur. Ct. H.R. 763 ¶¶ 88, 92, 96, 100, 101 (2003) (holding the United Kingdom liable in damages for its failure to intervene on behalf of a family of children who had suffered severe cases of physical and sexual child abuse, in light of social services' specific knowledge of past abuse by the same individual); *Bevacqua and S. v. Bulgaria*, 2008-V Eur. Ct. H.R., available at <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=836635&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> (holding that Bulgaria violated the European Convention on Human Rights and Fundamental Freedoms, and awarding damages, because of a failure to promptly adopt interim child custody measures in a divorce proceeding against a violent husband); U.N. Comm. on the Elimination of Discrimination Against Women, *View of the Committee on the Elimination of Discrimination against Women under Article 7, Paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women Communication No.: 2/2003, Ms. A.T. v. Hungary*, ¶ 9.6, U.N. Doc. A/60/38(Part I)/Annex III (Jan. 26, 2005) (determination by CEDAW that the lack of specific legislation to combat and provide immediate protection from domestic violence constituted a violation of human rights; concluding that, to conform with international norms, Hungary was required to (a) introduce legislation prohibiting domestic violence against women and specifically providing for protection and exclusion orders, and (b) ensure that the individual complainant A.T. and her children be given a safe home and "reparation proportionate to the physical and mental harm undergone and to the gravity of the violations of her rights"); Briefing Paper, Anti-Slavery Int'l, Hadijatou Mani Kor[oua] v. Niger at the ECOWAS Court of Justice (2008), http://antislavery.org/includes/documents/cm_docs/2008/n/niger_case_at (continued...)

Just last month, in *Case of Opuz v. Turkey*, the European Court of Human Rights found Turkey liable for failing to protect a woman and her mother from the woman's violent and abusive spouse.⁹⁷ The court determined that the court had a positive obligation because, given the woman's consistent reporting of domestic violence incidents to authorities, "the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party, and that they failed to take measures within the scope of their powers which, judged

(...continued)

_ecowas.pdf (last visited June 30, 2009) (former Nigerian sexual slave, who was imprisoned for leaving her master and marrying another, brought action against Niger for violations of the treaty of ECOWAS, African Charter, ICCPR, and CEDAW to require that Niger prevent, prohibit, and punish all acts of slavery and sexual violence and amend legislation to ensure effective protection against discrimination); Helen Duffy, *Hadijatou Mani Koroua v. Niger*, 9 Hum. Rts. L. Rev. 151 (2009) (reporting and analyzing ECOWAS Community Court of Justice decision: the court found Niger violated Article 5 of the African Charter's prohibition against slavery by failing to bring a criminal prosecution or otherwise intervene in the slavery situation, which violated its own laws against the practice); Int'l Ctr. for the Legal Protection of Human Rights, Unofficial English Translation of *Hadijatou Mani v. Niger* [Judgment No. ECW/CCJ/JUD/06/08](Oct. 27, 2008), available at <http://www.interights.org/view-document/index.htm?id=533>.

⁹⁷ *Case of Opuz v. Turkey*, Application No. 33401/2 (June 9, 2009), available at [http://cmiskp.echr.coe.int / tkp197/ view.asp?action=html&documentId=851046&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649](http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=851046&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649).

reasonably, might have been expected to avoid that risk.”⁹⁸ The court found that authorities’ reluctance to become involved in this woman’s case reflected a “general and discriminatory judicial passivity in Turkey, [which] albeit unintentional, mainly affected women” and, in light of “the overall unresponsiveness of the judicial system and impunity enjoyed by the aggressors,” the court also found the State’s indifference to the violence constituted gender discrimination.⁹⁹

⁹⁸ *Id.* ¶ 130; *see also id.* ¶¶ 134, 135, 149. *Kaya v. Turkey*, 2000-III Eur. Ct. H.R. 149 (2000), the court held the government responsible for the death of a doctor who had provided aid to wounded members of the PKK (Worker’s Party of Kurdistan), where the State had knowledge that counter-insurgency forces were generally targeting sympathizers of the PKK. Even though there were no specific threats against this doctor, the court determined that the government should have known that he was “at particular risk of falling victim to an unlawful attack.” *Id.* ¶ 89.

⁹⁹ *Id.* ¶ 200.

III. THE COURT SHOULD PROVIDE A BROAD RANGE OF REMEDIES IN THIS CASE TO ADDRESS THE SOCIAL, ECONOMIC, AND POLITICAL FORCES INVOLVED IN PERPETUATING THE VIOLENCE. IN CRAFTING THESE REMEDIES, THE COURT SHOULD TAKE INTO ACCOUNT THE OBLIGATIONS CONTAINED IN ARTICLES 7, 8, AND 9 OF CONVENTION BELÉM DO PARÁ.

A. This Court has broad remedial powers under the American Convention, which it has repeatedly invoked to provide a wide variety of reparations.

State parties that have violated the human rights of individuals within their jurisdiction must provide those individuals with an appropriate and “effective” remedy.¹⁰⁰ Article 63(1) of the American Convention provides: “If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.”

¹⁰⁰ American Convention, *supra* note 34, at art. 25; *see also* Dinah Shelton, *Remedies in International Human Rights Law* 465 (2d ed. 2005) (arguing that the right to a remedy has attained the status of customary international law).

This provision reflects the intent of the framers to grant this Court broad powers in constructing reparations.¹⁰¹

This Court has repeatedly interpreted Article 63(1) to provide expansive remedies, ranging from the victim-centered to those directed at repairing particular communities and society as a whole.¹⁰² For example, the Court has ordered complex restitutionary measures to compensate for disappearances, torture and detention; rehabilitation measures including scholarships, education, and vocational assistance programs; public recognitions of wrongdoing; memorials and commemorations; legislative and policy reform; training and educational programs for state officials;

¹⁰¹ See, e.g., *Baena-Ricardo v. Panama*, 2003 Inter-Am. Ct. H.R. (ser. C) No. 104, ¶ 89 (Nov. 28, 2003) (discussion of the *travaux préparatoires* of the American Convention); Jo M. Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights* 233-35 (2003). The American Convention's holistic approach to remedies is consistent with basic international principles and guidelines. See *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Dec. 16, 2005); *Responsibility of States for Internationally Wrongful Acts*, G.A. Res. 56/83, Annex, arts. 30, 31, 34, U.N. Doc. A/Res/56/83/Annex (Dec. 12, 2001); Thomas M. Antkowiak, *Remedial Approaches to Human Rights Violations: The Inter-American Court of Human Rights and Beyond*, 46 *Colum. J. Transnat'l L.* 351, 362 (2008).

¹⁰² Professor Thomas Antkowiak has eloquently synthesized the Court's decisions on remedies in this way. See generally Antkowiak, *supra* note 101.

and information gathering and analysis to further monitor and effect change.¹⁰³

¹⁰³ See, e.g., *Baena-Ricardo v. Panama*, 2001 Inter-Am. Ct. H.R. (ser. C) No. 72, ¶ 88 (Feb. 2, 2001) (complex restitutionary measures directed for 270 state employees who had been arbitrarily dismissed from their jobs: state ordered to reinstate workers or, alternatively, provide commensurate employment, pay indemnity corresponding to termination of employment in conformity with internal labor law, and provide pension or retirement retribution to the beneficiaries of victims who had since died); *Ivcher Bronstein v. Peru*, 2001 Inter-Am. Ct. H.R. (ser. C) No. 74, ¶ 181 (Feb. 6, 2001) (ordering state to return the use and enjoyment of petitioner's rights as a majority shareholder of his media company, after such rights were suspended by Peruvian authorities); *Bamaca-Velasquez v. Guatemala*, 2002 Inter-Am. Ct. H.R. (ser. C) No. 91, ¶ 82 (Feb. 22, 2002) (disappearance case: exhumation of body of victim ordered); *Juvenile Reeducation Institute v. Paraguay*, 2004 Inter-Am. Ct. H.R. (ser. C) No. 112, ¶ 322 (Sep. 2, 2004) (burial at location determined by next of kin to be paid by state); *Garrido v. Argentina*, 1998 Inter-Am. Ct. H.R. (ser. C) No. 39, ¶ 74 (Aug. 27, 1998) (restitutionary measures and medical rehabilitation considered as potential means for redress for two disappearances; ordering Argentina to "investigate the facts leading to the disappearance[s] . . . and to bring to trial and punish the authors, accomplices, accessories after the fact, and all those who may have played some role in the events that transpired"); *Loayza-Tamayo v. Peru*, 1998 Inter-Am. Ct. H.R. (ser. C) No. 42, ¶¶ 151, 171, 192 (Nov. 27, 1998) (recognizing that petitioner's "options for personal fulfillment" had been gravely compromised by her detention; ordering her pension reinstated, her flawed conviction to be determined null and void, the State to provide her with teaching position at public institution, and requiring Peru to "investigate the facts . . . identify those responsible, to punish them, and to adopt the internal legal measures necessary to ensure compliance with this obligation"); *Moiwana Cmty. v. Suriname*, 2005 Inter-Am. Ct. H.R. (ser. C) No. 124, ¶ 216 (June 15, 2005) (in order to provide "a measure of satisfaction to the victims and in attempt to guarantee the non-repetition of the serious human rights violations that have occurred, (continued...)

The breadth and depth of remedies this Court has awarded is highlighted by the 2004 judgment in *Plan de Sanchez v. Guatemala*, in which the Court ordered redress for a Mayan indigenous community devastated by the mass murder of over 250 people.¹⁰⁴ The remedies included monetary compensation, establishment of a village housing program, implementation of educational and cultural programs, a public acceptance of responsibility, investigation, prosecution and punishment of responsible parties, and translation of the judgment into the appropriate Mayan

(...continued)

the State shall publicly recognize its international responsibility for the facts of the instant case and issue an apology to the Moiwana community members. This public ceremony shall be performed with the participation of the *Gaanman*, the leader of the N'dujka people, as well as high-ranking State authorities, and shall be publicized through the national media"); *id.* ¶ 214 (ordering developmental programs directed at health, housing, and education and establishing a \$1.2 million fund and implementing committee, with victim and state representatives, to determine how to use the fund); *Villagran-Morales v. Guatemala*, 2001 Inter-Am. Ct. H.R. (ser. C) No. 76, ¶ 103 (May 25, 2001) (ordering Guatemala to name a school in memory of five adolescents killed by state security forces); *Olmnedo-Bustos v. Chile*, 2001 Inter-Am. Ct. H.R. (ser. C) No. 73, ¶ 103 (Feb. 5, 2001) (ordering Chile to amend national constitution in order to prohibit censorship and, ultimately, to allow the exhibition of the film *The Last Temptation of Christ*); *see also* Antkowiak, *supra* note 101, at 371-77 (detailing additional cases and remedies provided, including education and scholarships, reform of domestic laws, and training of state officials including police).

¹⁰⁴ *Plan de Sanchez Massacre v. Guatemala*, 2004 Inter-Am. Ct. H.R. (ser. C) No. 116 (Nov. 19, 2004).

language.¹⁰⁵ The Court also provided progressive remedies for gender-based violence, including free medical and psychological treatment for rape victims.¹⁰⁶

In *Castro-Castro v. Peru*, this Court considered the State's obligations under both the American Convention and the Convention Belém do Pará, and granted reparations that acknowledged the gender-based nature of the violations against female inmates. The remedies included financial compensation to women who were raped and subjected to sexual violence, including compensation to those victims who became pregnant.¹⁰⁷ The Court also required the State to (1) investigate the facts and identify, prosecute, and punish those responsible, (2) offer psychological and physical treatment to the victims and their next of kin, and (3) implement human rights education programs on international norms and obligations for the Peruvian police force.¹⁰⁸

The Court's decision in this case should be informed by its past decisions granting extensive reparations for human rights violations, especially those that reflect a broader pattern of violations.

¹⁰⁵ *Id.* ¶¶ 89, 94-105, 109-10.

¹⁰⁶ *Id.* ¶ 107; *see id.* ¶ 49(19).

¹⁰⁷ *Case of the Miguel Castro-Castro Prison v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 160, ¶ 433(c) viii-x (Nov. 25, 2006).

¹⁰⁸ *Id.* ¶¶ 436-42, 448-50.

B. Likewise, Articles 7, 8, and 9 of Convention Belém do Pará outline a comprehensive set of State obligations and immediate and progressive remedies to eradicate and protect women from all forms of gender-based violence.¹⁰⁹

As Petitioners in this case have argued, States are obligated under Articles 1(1) and 2 of the American Convention and 7, 8, and 9 of the Convention Belém do Pará to adopt the necessary means to respect and guarantee the rights of women and girls to be free from gender-based violence. Articles 7, 8, and 9 of Belém do Pará, taken

¹⁰⁹ Petitioners and other amici have thoroughly articulated state violations of the American Convention in their briefings in this case. *See, e.g.*, Application, *supra* note 2, ¶¶ 145-206; Brief for Organización Mundial Contra Tortura & TRIAL—Track Impunity Always as Amici Curiae Supporting Petitioners, *González v. Mexico*, Case Nos. 12.496, 12.497, 12.498, Inter-Am. C.H.R. (2007), *available at* http://www.omct.org/pdf/omct/2009/amicus_campo_algodonero_09.pdf; Brief for the International Reproductive and Sexual Health Law Programme at the University of Toronto, Faculty of Law & The Center for Justice and International Law as Amici Curiae Supporting Petitioners, *González v. Mexico*, Case Nos. 12.496, 12.497, 12.498, Inter-Am. C.H.R. (2007), *available at* <http://www.law.utoronto.ca/documents/reprohealth/Brief Mexico Ciudad Juarez2008English.pdf>; Brief for Programa de Justicia Global y Derechos Humanos, Universidad de los Andes, Bogotá, Colombia as Amici Curiae Supporting Petitioners, at 11-12, *González v. Mexico*, Case Nos. 12.496, 12.497, 12.498, Inter-Am. C.H.R. (2007). Thus, amici, in this section of the brief, focus on the obligations contained in Articles 7, 8, and 9 of the Convention Belém do Pará. In particular, amici focus on articles 8 and 9, which are relatively under-developed in both academic literature and prior briefing before this Court.

together, outline a comprehensive set of state obligations to prevent, punish, and eradicate all forms of violence against women and to protect victims of such violence. These three provisions reinforce and provide interpretive guidance for one another.¹¹⁰

Article 7 requires states to “condemn all forms of violence against women and agree to pursue, by all appropriate measures, and without delay, policies to prevent, punish and eradicate such violence” through legal, legislative, administrative, and policy

¹¹⁰ It is within this court’s purview to either analyze Articles 7, 8, and 9 directly under Belém do Pará or to treat them as interpretive guides for considering alleged violations of the American Convention. Regardless of whether the Court has jurisdiction *rationae materiae* over Belém do Pará claims, as discussed, the provisions of Articles 7, 8, and 9 are applicable to the consideration of the claims in the present case under the American Convention. *See supra* section II (A).

Indeed, this Court, in crafting remedies, often looks even to sources of law from outside the Inter-American system, or sources of law from within the Inter-American system that are not binding upon the State at issue. *See, e.g., Goiburú et al. v. Paraguay*, 2006 Inter-Am. Ct. H.R. (ser. C) No. 153, ¶ 179 (Sept. 22, 2006) (ordering the State to incorporate into its criminal code the definition of torture and forced disappearance from international human rights law); *Trujillo Oroza v. Bolivia*, 2002 Inter-Am. Ct. H.R. (ser. C) No. 92, ¶¶ 94-98 (Feb. 27, 2002) (ordering Bolivia to incorporate into its domestic legislation the international human rights concept of forced disappearance of persons); *see generally* Ona Flores, Guarantees of Non-Repetition and the Inter-American Court of Human Rights: Implications and Challenges (Apr. 23, 2007) (unpublished LL.M. research paper, Columbia Law School) (on file with author). If the Court can incorporate these international legal obligations—which may or may not be directly binding upon the State at issue—into its orders on remedies, it can certainly incorporate Belém do Pará’s legal obligations into the remedies it orders here, in a case involving a state party to Belém do Pará.

initiatives.¹¹¹ More specifically, States are required to “include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary”¹¹²; to adopt “all appropriate measures, . . . to modify legal or customary practices which sustain the persistence and tolerance of violence against women”¹¹³; and to “adopt such legislative or other measures as may be necessary to give effect to this Convention.”¹¹⁴ The provisions contained in Article 7 are not just statements of aspirational ideals, but are designed to be implemented with some urgency.

Article 8 of Convention Belém do Pará makes clear that States also have a duty to “undertake progressively specific measures” to eradicate violence against women, including social public educational initiatives,¹¹⁵ institutional education,¹¹⁶

¹¹¹ Convention Belém do Pará, *supra* note 48, at art. 7.

¹¹² *Id.* at art. 7(c).

¹¹³ *Id.* at art. 7(e).

¹¹⁴ *Id.* at art. 7(h).

¹¹⁵ Such public educational initiatives include: (a) “to promote awareness and observance of the right of women to be free from violence, and . . . to have their human rights respected and protected;” (b) “to modify social and cultural patterns of conduct of men and women [through educational programs] . . . to counteract prejudices, customs and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on the stereotyped roles for men and women”; (e) “to promote and support governmental and private sector education designed to raise the awareness of the public with respect to the problems of and remedies for violence against women”; (g) “to encourage the
(continued...)

measures and programs supportive of victims (including social services readjustment, and training programs for affected persons),¹¹⁷ data collection,¹¹⁸ and international exchange.¹¹⁹ The programs outlined in Article 8 give definition and specificity to the legal, legislative, policy, and administrative “measures” for eradicating violence against women specified in Articles 7(c), (e), and (h).

(...continued)

communications media to develop appropriate media guidelines in order to contribute to the eradication of violence against women . . . , and to enhance respect for the dignity of women.” *Id.* at art. 8.

¹¹⁶ Institutional education measures include: (c) “to promote the education and training of all those involved in the administration of justice, police and other law enforcement officers as well as other personnel responsible for implementing policies [concerning] . . . violence against women.” *Id.*

¹¹⁷ Measures and programs supportive of victims and survivors include: (d) “to provide appropriate specialized services for women who have been subjected to violence, . . . including shelters, counseling services . . . , and care and custody of the affected children;” (f) “to provide women who are subjected to violence access to effective readjustment and training programs to enable them to fully participate in public, private and social life.” *Id.*

¹¹⁸ Data collection measures include: (h) “to ensure research and the gathering of statistics and other relevant information relating to the causes, consequences and frequency of violence against women, in order to assess the effectiveness of measures to prevent, punish and eradicate violence against women and to formulate and implement the necessary changes.” *Id.*

¹¹⁹ International exchange measures include: (i) “to foster international cooperation for the exchange of ideas and experiences and the execution of programs aimed at protecting women who are subjected to violence.” *Id.*

Article 9 of Convention Belém do Pará provides that in considering state obligations under Articles 8 and 9, States must take “special account” of vulnerable groups of women who may experience gender-based violence on account of their multiply marginalized (“intersectional”) status (i.e., age, race, ethnicity, class, disability, etc.)¹²⁰ The legal, legislative, administrative, policy, and other measures articulated in Article 7, and the progressive specific measures outlined in Article 8, therefore must be tailored to take “special account” of vulnerable groups of women, such as the young migrant women in this case.

Thus, in this hemisphere, Convention Belém do Pará places a high priority on providing women and girls safe communities in which they can realize their potential and exercise their social, legal, and human rights. In order to craft appropriate remedies, in this case, this Court should look to the larger social, economic, and political context of Ciudad Juárez discussed *supra*, section I, at pages 9-13, and in the submissions by Petitioners and the Commission.

C. This Court should provide broad remedial measures to combat the economic and social underpinnings of the violence.

Petitioners in this case have sought broad remedies to provide cessation, satisfaction, restitution, compensation, rehabilitation,

¹²⁰ Convention Belém do Pará, *supra* note 48, at art. 9.

and non-repetition of harm.¹²¹ *Amici* agree that to prevent this gender-based violence from recurring, Mexico must be ordered to institute comprehensive measures to ensure quick police response to the disappearances and murders of women, proper investigation and prosecution, as well as steps to economically and socially empower women who are potential victims.¹²² Consistent with Articles 7 through 9 of Belém do Pará, this Court should require Mexico to undertake action which takes special account of the vulnerabilities of the women who are being subjected to violence because of their gender, age, migrant status, and class.¹²³

¹²¹ Campo Algodonero: Claudia Ivette González, Esmeralda Herrera Monreal y Lauara Berenice Ramos Monárrez, Casos No. 12.496, 12.497, 12.498, Pet’r Escrito de Argumentos, Solicitudes y Pruebas 207-85, Feb. 21, 2007.

¹²² *See id.* at 205 (Urging the Court to order Mexico to condemn all forms of violence against women and to adopt, through all appropriate means and without delay, policies at the executive, judicial, and legislative levels oriented to prevent, punish, and eradicate this violence, keeping in mind the principle of due diligence.).

¹²³ This Court has also considered the particular challenges and discrimination that migrant women workers, such as many of the women who work in *maquiladoras* in Ciudad Juárez, face. In its advisory opinion on the rights of migrant workers, the Court discusses special protections for female migrant workers: “In the case of migrant workers, there are certain rights that assume a fundamental importance and yet are frequently violated, such as: . . . special care for women workers.” *Juridical Condition and Rights of the Undocumented Migrants*, *supra* note 44, ¶ 157; *see also Inter-American Program for the Promotion and Protection of the Human Rights of Migrants, including Migrant Workers and their Families*, AG/RES. 2141 XXXV-O/05 of the General Assembly of the Organization of American States, 4th plen. sess., June 7, 2005.

Petitioners have requested that the Court order the Mexican state to take the following steps to guarantee non-repetition of the harm at issue in this case:¹²⁴

- Evaluation and redesign of search and locate operations for missing women in Chihuahua
- Creation of a national database that reconciles unidentified bodies with missing persons
- Creation of a search and locate program for missing persons at the national level
- Incorporation of international norms on disappearances and homicides of women, for the distinct types of violence against women
- Implementation of a specific, long term program for the Juárez community that provides the facts about cases of disappearances and murders of women, as well as strategies to guarantee a life free from violence against women.¹²⁵

¹²⁴ In this section, *Amici* highlight potential remedies focused on non-repetition and the importance of remedies that implicate not only civil and political rights, but also social, economic, and cultural rights. As Professor Rhonda Copelon stated in her expert testimony, the measures outlined in Articles 7 and 8 of the Convention Belém do Pará reflect socio-economic, educational, and cultural, as well as legislative, judicial, and administrative measures “to undo discrimination, societal acceptance of gender violence and . . . impunity” reflected in this case. Expert Test. Rhona Copelon, Apr. 28, 2009, at 12-13.

¹²⁵ Pet’r Escrito de Argumentos, Solicitudes y Pruebas 283-84.

These remedies, which are grounded in the realities and context of Juárez (highlighted *supra*, Section I, pp. 9-13), encompass both a criminal justice and socio-economic justice perspective, and demand a sensitivity to the particular risks and challenges that young migrant women workers in Juárez face.¹²⁶

¹²⁶ Many of these remedies echo themes that are reflected in Articles 7, 8, and 9 of the Convention Belém do Pará, as well as considerations by international bodies about applying a due diligence framework to combating violence against women and girls. For example, the United Nations General Assembly adopted a resolution in January 2009 on “Intensification of efforts to eliminate all forms of violence against women” in which it urged states “to develop their national strategy and a more systematic, comprehensive, multisectoral and sustained approach aimed at eliminating all forms of violence against women, including by achieving gender equality and the empowerment of women, and by using best practices to end impunity and a culture of tolerance towards violence against women, inter alia, in the fields of legislation, prevention, law enforcement, victim assistance and rehabilitation.” G.A. Res. 63/155, ¶ 16, U.N. Doc. A/RES/63/155 (Dec. 18, 2008). Many of the measures outlined in the resolution mirror the programs specified in Article 8 and Article 9 of Belém do Pará, including: (a) establishing a “comprehensive integrated national plan dedicated to combating violence against women in all its aspects”; “(e) [e]nsuring the systematic collection and analysis of data”; “(i) [a]dopting all appropriate measures, especially in the field of education, to modify [] social and cultural patterns of conduct . . . and to eliminate prejudices”; “(j) [e]mpowering women, in particular women living in poverty, through . . . social and economic policies”; “(o) [d]eveloping . . . specialized training programmes . . . for police officers, the judiciary, health workers, law enforcement personnel, and other relevant public authorities”; “(p) [s]trengthening national health and social infrastructure . . . to promote women’s equal access to public health”; “(q) [e]stablishing integrated centres through which shelter, legal, health, psychological, counselling and other services are provided to victims” *Id.*; see also *Promotion* (continued...)

Articles 7, 8 and 9 of Belém do Pará, which are binding obligations upon Mexico, should be used by this Court as an interpretive guide for crafting the remedies for gender-based violence in this case. In particular, Articles 8 and 9, which have a broad remedial character that extends beyond the realm of criminal justice, should be considered in enumerating measures of non-repetition. The programs outlined in Article 8 have particular relevance to this case, where Mexico has acknowledged the gravity of the situation in Juárez and has unsuccessfully taken measures to respond to the problem.¹²⁷ The state's response has only served to

(...continued)

and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural, Including the Right to Development: Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Addendum: The Next Step: Developing Transnational Indicators on Violence Against Women, ¶¶ 243-314, A/HRC/7/6/Add.5 (Feb. 25, 2008) (prepared by Yakin Ertürk); see generally United Nations High Commissioner for Human Rights, *Report on Indicators for Promoting and Monitoring the Implementation of Human Rights, delivered to the seventh inter-committee meeting of the human rights treaty bodies*, HRI/MC/2008/3 (June 6, 2008). These reports from the United Nations suggest that States should adopt measures and programs of the same type as those outlined in Articles 7, 8 and 9 of Belém do Pará. *Amici* urge the Court to look to these United Nations reports in constructing remedies in this case.

¹²⁷ Four years ago, Mexico acknowledged the severity of violence against women in Ciudad Juárez and asserted that, while the process would take time because of the entrenched gender-biased attitudes underlying it, Mexico had nonetheless begun to respond to the situation. See U.N. Comm. on the Elimination of Discrimination against Women, *Report on Mexico produced by the Committee on the Elimination of Discrimination Against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government* (continued...)

encourage and promote the impunity of perpetrators. Through its negligent actions and omissions, Mexico has perpetuated the violence against women. Accordingly, this Court should order an accelerated timetable for adopting measures to eradicate violence against women in Juárez and require the State to adopt broader and more aggressive measures, such as those contained in Article 8.

In a series of hearings before the Commission, “[t]he Government of Mexico recognize[d] the problem in Ciudad Juárez [and] identifie[d] it as a situation emerging from a society undergoing profound change, in which conflicts related to violence, particularly violence against women, become more acute. The

(...continued)

of Mexico, at 93, U.N. Doc. CEDAW/C/2005/OP.8/Mexico (Jan. 27, 2005) (“[T]he murders of the Ciudad Juárez women constitute a breach of women’s human rights, the origin of which lies in entrenched cultural patterns and discrimination. The problem was exacerbated by the authorities’ lack of human and financial resources for addressing it in a timely and effective manner. However, it must be recognized that these deficiencies are being made good and that for some years now there has been better follow-up of investigations, substantial resources have been invested, and public-policy measures are being taken in order to boost the construction of a culture of equity.”) Similarly, in this case, Mexico points to various general public safety campaigns and the creation of a series of government bodies and agencies to study the crimes. *Respuesta de Los Estados Unidos Mexicanos a la Demanda Interpuesta por la Comisión Interamericana de Derechos Humanos y al Escrito de los Peticionarios* at 195-97, 208-18. None of these efforts reflects a sustained and active (rather than just a verbal) commitment to eradicating violence against women. Nor have these efforts resulted in effective investigation and prosecution of a significant number of these crimes. These measures do not provide the effective remedies required by international law.

phenomenon of the homicides cannot be observed merely as a deficiency in the pursuit of justice, but as the convergence of different causes which require solution through comprehensive strategies covering all aspects.”¹²⁸ *Amici* urge the Court to consider this context in ordering remedial measures in this case, including those requested by Petitioners and suggested by experts Rhonda Copelon and Carlos Castrasena in their testimony before the Court.

CONCLUSION

A favorable ruling in this case would send a powerful message that, to comply with international human rights obligations, States must exercise due diligence when investigating and responding to gender-based violence and ensure that local counterparts are doing the same. By providing a broad range of remedies for these violations that reflect state obligations contained in the American Convention as well as in Articles 7, 8, and 9 of the Convention Belém do Pará, the Court would also make clear that the due diligence obligation extends beyond the criminal justice context to

¹²⁸ Application, *supra* note 2, ¶ 78.

encompass economic and social measures as well, particularly where, as here, large-scale violence against women has repeatedly occurred unchecked.

July 17, 2009

Respectfully submitted,

HORVITZ & LEVY LLP
DAVID S. ETTINGER
MARY-CHRISTINE SUNGAILA

By: 
Mary-Christine Sungaila

Attorneys for Amici Curiae

15760 Ventura Boulevard, 18th Floor
Encino, California USA 91436-3000
(818) 995-0800 • FAX: (818) 995-3157

APPENDIX

INTEREST OF AMICI CURIAE

AMNESTY INTERNATIONAL

Amnesty International is a worldwide movement of people who campaign for internationally recognized human rights to be respected and protected for everyone. Amnesty International has researched the killings of women in Ciudad Juárez and Chihuahua since 2003.

PROFESSOR THOMAS ANTKOWIAK

Professor Antkowiak is an Assistant Professor of Law at Seattle University School of Law, where he teaches international human rights law and the international human rights clinic. He is a former senior attorney of the Inter-American Court of Human Rights.

PROFESSOR TAMAR BIRCKHEAD

Tamar Birckhead is an Assistant Professor of Law at the University of North Carolina at Chapel Hill where she teaches the Juvenile Justice Clinic and the Criminal Lawyering Process. Her research interests focus on issues related to juvenile justice policy and reform, criminal law and procedure, and indigent criminal defense.

Professor Birckhead's 2008 article on raising the age of juvenile court jurisdiction from sixteen to eighteen in North Carolina has received significant attention at both the state and national levels. She is Vice President of the Board for the North Carolina Center on Actual Innocence and has been appointed to the Executive Council of the Juvenile Justice and Children's Rights Section of the North Carolina Bar Association. She is also a member of the Advisory Board for the North Carolina Juvenile Defender as well as a member of the Criminal Defense Section and the Juvenile Defender Section of the North Carolina Academy of Trial Lawyers.

MARY BOYCE

Mary Boyce is a Barrister and Solicitor in Ontario, Canada practicing in the areas of refugee, immigration and criminal law. She has represented and continues to represent Mexican refugee claimants who are victims of domestic violence. In her experience, the murders and lack of investigation in Ciudad Juárez seem to be symptomatic of, and have an influence on, the attitude and conduct of the authorities elsewhere in Mexico.

BREAK THE CYCLE

Break the Cycle is an innovative national nonprofit organization whose mission is to engage, educate, and empower youth to build lives and communities free from domestic and dating violence. Break the Cycle achieves this mission through national

efforts to affect public policy, legal systems and support systems through training, technical assistance and advocacy. Further, Break the Cycle works directly with young people, ages twelve to twenty-four, providing them with preventive education, free legal services, advocacy and support. Break the Cycle envisions a world in which young people are empowered with the rights, knowledge and tools to achieve healthy, nonviolent relationships and homes. It is only through partnership with governmental agencies who work to protect the public that individuals can exercise their rights to live free from violence.

Break the Cycle's early intervention legal services offer sensitive, confidential and free legal advice, counsel and representation to young people who are experiencing abuse in their relationships or homes in protective order cases and related family law matters. Our ten years of experience providing legal support to young victims of domestic abuse guide our support of this brief.

PROFESSOR ARTURO CARRILLO

Arturo Carrillo is Professor of Clinical Law and Director of the International Human Rights Clinic at The George Washington University Law School ("GW IHRC"). The GW IHRC is dedicated primarily to litigating human rights cases in U.S. and international fora, especially the Inter-American Human Rights System. It seeks to promote the progressive integration of international human rights standards into U.S. domestic legal practice, as well as to train a new generation of lawyers capable of using human rights to

achieve increased levels of social justice in the United States and abroad. Advancing the progressive development of Inter-American jurisprudence through strategic litigation is another overarching goal of the GW IHRC. Professor Carrillo is involved in several cases pending before the Inter-American Commission and has appeared before the Inter-American Court.

CENTER FOR CONSTITUTIONAL RIGHTS

The Center for Constitutional Rights (“CCR”) is dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. Founded in 1996 by attorneys who represented civil rights movements in the South, CCR is a non-profit legal and educational organization committed to the creative use of law as a positive force for social change.

CENTER FOR GENDER & REFUGEE STUDIES

Center for Gender & Refugee Studies (“CGRS”) at the University of California, Hastings College of the Law has a direct interest in the worldwide protection of women and girls from human rights violations such as domestic violence, female genital cutting, forced marriage, rape, and trafficking. CGRS was founded in 1999 by Professor Karen Musalo, who has litigated several of the most significant gender asylum cases of the last fifteen years, including *Matter of Kasinga*, 21 I. & N. Dec. 357 (B.I.A. 1996), and *Matter of*

R-A-, 22 I. & N. Dec. 629 (A.G. 2008). Through its scholarship, expert consultations, and litigation, amicus has played a central role in the development of U.S. law and policy related to gender persecution. CGRS also focuses on issues of impunity for violence against women, which is one of the root causes of women's refugee flows. CGRS has addressed the phenomenon of femicides in Latin America, and has published critical reports and raised awareness about the brutal gender-motivated killings in Guatemala. As recognized experts on issues regarding gender persecution, CGRS has an interest in the protection of women and girls both in the United States and abroad, in accordance with international refugee and human rights law.

CENTER FOR JUSTICE & ACCOUNTABILITY

The Center for Justice & Accountability (“CJA”) is an international human rights organization dedicated to deterring torture and other severe human rights abuses, including abuses based on gender based violence, by helping survivors hold their perpetrators accountable. CJA represents survivors and their families in actions for redress that call for the application of human rights standards under international law.

**CENTRO DE DERECHOS HUMANOS UNIVERSIDAD
DIEGO PORTALES (THE CENTER OF HUMAN RIGHTS
OF DIEGO PORTALES UNIVERSITY)**

The Center for Human Rights of the Diego Portales University in Chile promotes study in human rights and holds a clinic specializing in public interest litigation. Since its inception, the Center has focused on making visible the violations of fundamental rights and promoted the study and analysis of institutional answers to these violations.

The Center prepares technical reports and studies on human rights and seeks to contribute to the design of legal and judicial initiatives to address the lack of protection of fundamental rights.

Through its work, the Center seeks to strengthen the role of the legal community, academia and civil society in human rights monitoring and to make the State accountable for the protection of human rights. The Center also seeks to strengthen public policy and increase transparency and effectiveness in human rights policies.

Since 1998, the Center, through its Public Interest Law Clinic, has litigated cases on, inter alia, non-discrimination, social rights, and freedom of expression in domestic and international courts. The clinic also promotes the study and enhancement of human rights in Chile, Latin America, and other regions.

COLUMBIA LAW SCHOOL HUMAN RIGHTS CLINIC

The Columbia Law School Human Rights Clinic bridges theory and practice by providing students with hands-on experience working on active human rights cases and projects. Working in partnership with experienced attorneys and institutions engaged in human rights activism, both in the United States and abroad, students contribute to effecting positive change locally and globally. In recent years, the Human Rights Clinic has worked on several matters concerning human rights issues in the United States and Latin America, including *Jessica Gonzales v. United States*, Petition No. P-1490-05, Inter-Am. Ct. H.R., Report No. 52/07, OEA/Ser.L/V/II.128, doc. 19 (2007).

CORNELL LAW SCHOOL INTERNATIONAL HUMAN RIGHTS CLINIC

The Cornell Law School International Human Rights Clinic gives students an opportunity to apply international human rights law and theory through the practice of human rights advocacy in active human rights cases and projects. Under the supervision of experienced human rights attorneys and in collaboration with human rights advocacy groups, students work on projects involving impact litigation, legal assistance, counseling, and legislative advocacy. Recently, Clinic projects in Latin America, Europe and Asia have included in-country fact-finding, thematic reports and testimony before treaty monitoring bodies, amicus and other briefs

for United Nations officials and national courts, and judicial bench books.

PROFESSOR BRIDGET J. CRAWFORD

Bridget J. Crawford is a Professor of Law and the Associate Dean for Research and Faculty Development at Pace Law School in White Plains, New York. She teaches Federal Income Taxation; Estate and Gift Taxation; Wills, Trusts and Estates; and Feminist Legal Theory. She joined the Pace faculty in 2003, after more than six years of law practice at Milbank Tweed Hadley & McCloy LLP in New York. Her practice was concerned with income, estate and gift tax planning for individuals, as well as tax and other advice to closely-held corporations and exempt organizations. Professor Crawford is a former Lecturer in Law and Visiting Associate Professor at the University of Pennsylvania Law School. Her current scholarship focuses on issues of gender and tax policy, as well as women's rights more generally. She is a co-editor, with Professor Ann Bartow (South Carolina), of the Feminist Law Professors blog. Professor Crawford is a member of the American Law Institute and the American College of Trust and Estate Counsel.

THE DOMESTIC VIOLENCE AND CIVIL PROTECTION ORDER CLINIC OF THE UNIVERSITY OF CINCINNATI

The Domestic Violence and Civil Protection Order Clinic of the University of Cincinnati was established in 2005. Through its licensed students and attorneys, the clinic provides legal services to victims of sexual assault, stalking and domestic violence. Services include representation in the trial and appellate courts of Hamilton County, Ohio. The Clinic is dedicated to the eradication of violence against women. Recognizing that violence against women is of global concern, the Clinic advocates for safety for all women through whatever means that local, national and global law and law enforcement can provide it.

PROFESSOR MARGARET DREW

Margaret Drew is Associate Professor of Clinical Law at the University of Cincinnati College of Law. She has devoted her legal career to assisting victims of violence. She has represented those who have experienced violence in trial and appellate proceedings. Professor Drew is a past chair of the American Bar Association's Commission on Domestic Violence. Professor Drew now writes on issues affecting those who have survived gender violence and in teaching law students to represent victims of violence with both excellent legal skills and with compassion.

PROFESSOR MARTIN GEER

Martin Geer is a professor at the University of Las Vegas Boyd School of Law. He has published numerous law review articles in the areas of civil rights and international human rights. In 2004 he taught as a Fulbright Senior Lecturer in Pune, India and was appointed Senior Fulbright Specialist in 2007. He has engaged in judicial and clinical law teacher training in Russia, India, Brazil, and Argentina. He was an ABA-CEELI Legal Education Consultant, Tbilisi State University, Federation of Georgia, Summer 2006. Professor Geer directs the Boyd School of Law externship program, teaches Civil Rights Litigation and Criminal Procedure, and coaches the Jessup International Moot Court Team.

HUMAN RIGHTS AND GENOCIDE CLINIC, BENJAMIN N. CARDOZO SCHOOL OF LAW

The Human Rights and Genocide Clinic at the Benjamin N. Cardozo School of Law provides students with the opportunity to design and implement creative solutions to improve the lives of victims of human rights abuses throughout the world. Working with nongovernmental organizations and United Nations offices, both in the United States and abroad, students work to effect positive change with a focus on the prevention of human rights violations. The Clinic has a specific focus on promoting equality globally and has worked on several cases concerning nondiscrimination against minorities and other protected groups.

HUMAN RIGHTS ADVOCATES

Human Rights Advocates, a California nonprofit corporation, founded in 1978, with national and international membership, endeavors to advance the cause of human rights to ensure that the most basic rights are afforded to everyone. Human Rights Advocates has Special Consultative Status in the United Nations and has participated in meetings of its human rights bodies for 25 years. Human Rights Advocates has participated as amicus curiae in cases involving individual and group rights where international standards offer assistance in interpreting both state and federal law. Cases that it has participated in include: *Roper v. Simmons*, 543 U.S. 551 (2005); *Grutter v. Bollinger*, 539 U.S. 306 (2003); and *California Federal Savings & Loan Ass'n v. Guerra*, 479 U.S. 272 (1987). Human Rights Advocates has also participated in petitions before the Inter-American Commission on Human Rights.

PROFESSOR DEENA HURWITZ

Deena Hurwitz is Associate Professor of Law at the University of Virginia School of Law. She is the founding director of the Law School's Human Rights Program and International Human Rights Law Clinic. She and her students have worked on cases and issues before the Inter-American Court and Commission on Human Rights, as well as on issues of violence against women in general. She is the co-editor of *International Human Rights Advocacy Law Stories* (Foundation Press, 2009).

THE IMMIGRATION JUSTICE CLINIC

The Immigration Justice Clinic (“IJC”) prepares law graduates to fulfill the ever-growing need for lawyers who can fully serve the immigrant community and understand the complete range of immigration-related rights and remedies. IJC student attorneys assist noncitizens whose legitimate claims to status and meritorious defenses to removal would never be explored or raised absent free representation. The IJC handles asylum cases, VAWA (Violence Against Women Act) cases, family-, employment-, and religion-based petitions, Special Immigrant Juvenile applications, HIV waivers, TPS (Temporary Protected Status) and U-visa (crime victim) applications, and removal defense and reopening of final removal orders. IJC student attorneys appear before Immigration Court, the US Citizenship and Immigration Services, the Board of Immigration Appeals, and the Second, Third, Ninth, and Eleventh Circuit Courts of Appeal. The IJC is especially known for its representation of Haitian-Americans seeking relief under the International Convention Against Torture and its advocacy of TPS status for Haiti, for which a Pace IJC student attorney this year received the Champion of Human Rights Award from a leading Haitian-American organization.

Becoming an effective, responsible immigration lawyer requires not only the rigorous intellectual challenges of individual client representation, but developing the skills necessary for community education and legislative advocacy through knowledgeable participation in the larger immigrant community.

IJC student attorneys actively collaborate with organizations that protect workplace rights, that monitor and ameliorate conditions for immigrant detainees, and that enlist professional and governmental authorities to sanction and eliminate *notarios* and other fraudulent practitioners who victimize immigrant clients.

IMPACT PERSONAL SAFETY

IMPACT Personal Safety is a non-profit providing self-defense training for women, children and men. Our mission embodies women and men working together to end the cycle of violence against women. Our training in both verbal and physical defense skills models successful communication and support between the genders. IMPACT exists because one in three women will be assaulted in her lifetime. Until that statistic is drastically reduced, IMPACT will support any action that sheds light on the global problem of violence against women, the negative effect it has on society as a whole, and the positive future that is possible when we work together to empower women.

INTERNATIONAL MENTAL DISABILITY LAW REFORM PROJECT OF NEW YORK LAW SCHOOL

The International Mental Disability Law Reform Project of New York Law School promotes a wide range of advocacy initiatives in Europe, South America, Asia, and Africa. It is involved in legislative reform, lawyer and law student training, pro bono legal

assistance, and the full range of law reform projects that relate to the practice of mental disability law in other nations. It recognizes the close connection between gender violence and disability and seeks to raise public awareness as to this connection, an awareness that has become all the more urgent since the ratification of the U.N. Convention on the Rights of Persons with Disabilities.

THE INTERNATIONAL WOMEN'S HUMAN RIGHTS CLINIC AT GEORGETOWN LAW

Advancing women's human rights around the globe is the core mission of the International Women's Human Rights Clinic ("IWHRC"), a ten-credit clinical course at Georgetown Law taught by Professor Susan Deller Ross, the Clinic's Founder and Director. The IWHRC seeks to promote women's human rights throughout the world. In the IWHRC clinical program, J.D. students work with United Nations organizations and nongovernmental organizations in Africa, Latin America and the Middle East on research for United Nations reports, test cases advancing women's rights, and proposed national legislation to further those rights. Faculty and students in the IWHRC also promote women's human rights through a research and scholarship program and an education program, both of which seek to raise understanding of women's human rights in the public forum.

Since its inception in 1999, Clinic faculty and students have addressed issues of violence against women, including "honor" crimes, domestic violence, marital rape, and female genital

mutilation in more than twenty countries on four continents. All projects seek effective legal remedies for victims of violence against women, as required by binding international and regional human rights treaties.

LATINOJUSTICE PRLDEF

LatinoJustice PRLDEF (formerly known as the Puerto Rican Legal Defense and Education Fund) was founded in New York City in 1972. LatinoJustice PRLDEF is a not-for-profit, nongovernmental civil rights organization which has advocated for and defended the constitutional rights and the equal protection of all Latinos under law. Our continuing mission is to promote the civic participation of the pan-Latino community, to cultivate Latino community leaders, and to bring impact litigation addressing basic civil and human rights, including, but not limited to, voting rights, employment opportunity, fair housing, language rights, educational access, immigrants' and migrants' rights. During its thirty-seven-year history, LatinoJustice PRLDEF has litigated numerous cases on behalf of the Latino community against multiple forms of discrimination. The right of women to be free of discrimination and violence is an interest LatinoJustice PRLDEF supports.

**LEGAL SERVICES CLINIC AT WESTERN NEW ENGLAND
COLLEGE SCHOOL OF LAW**

The Legal Services Clinic at Western New England College School of Law places students in the offices of Western Mass Legal Services, an organization dedicated to expanding access to justice by representing low income individuals in a range of civil cases. The Clinic is committed to advancing social justice broadly, and recognizes that human rights are interrelated on a global level. Accordingly, the Legal Services Clinic supports transnational collaborations, noting that exclusively localized approaches to social and economic justice are weakened by their failure to recognize the realities of global interconnectedness. The Clinic strongly believes that organizations working for justice cannot be complacent in the face of egregious human rights violations that occur across national borders.

**LEITNER CENTER FOR INTERNATIONAL LAW AND
JUSTICE AT FORDHAM LAW SCHOOL**

The Leitner Center for International Law and Justice at Fordham Law School seeks to promote social justice around the world by encouraging knowledge of and respect for international law and international human rights standards in particular. The Center furthers this goal by sponsoring education, scholarship, and human rights advocacy, and facilitating collaboration among law students, scholars, and human rights defenders in the United

States and abroad. The Center has undertaken numerous human rights missions and issued related reports on a range of issues in countries such as Turkey, China, Mexico, Bolivia, Romania, Malaysia, Kenya, Ghana, Malawi, New Zealand, Sierra Leone, Liberia, India, and Northern Ireland. Each year the Center hosts numerous panels, film screenings, conferences, offers a range of courses and seminars in international human rights, and oversees more than two dozen funded student internships overseas and in the U.S. The Leitner Center is a registered human rights NGO at the United Nations.

PROFESSOR BERT B. LOCKWOOD

Bert Lockwood is the Distinguished Service Professor and Director of the Urban Morgan Institute for Human Rights at University of Cincinnati College of Law. Professor Lockwood is in his twenty-eighth year as Editor of *Human Rights Quarterly* (The Johns Hopkins University Press) and twentieth year as Series Editor of *Pennsylvania Studies in Human Rights* (a book series published by The University of Pennsylvania Press – sixty-two titles published to date).

ALLARD K. LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC, YALE LAW SCHOOL

The Allard K. Lowenstein International Human Rights Clinic (the Clinic) is a Yale Law School course that gives students first-

hand experience in human rights advocacy under the supervision of international human rights lawyers. The Clinic undertakes litigation and research projects on behalf of human rights organizations and individual victims of human rights abuses. The Clinic has prepared briefs and other submissions for the Inter-American Commission on Human Rights, the African Commission on Human and Peoples' Rights, and various bodies of the United Nations, as well as for national courts, including courts in the United States and in other countries in the Americas. The Clinic has a longstanding commitment to protecting the human rights of women.

PROFESSOR BETH LYON

Beth Lyon is an Associate Professor of Law at Villanova University and founding Director of the Villanova Law School Farmworker Legal Aid Clinic (affiliation provided for identification purposes only). She and her students provide free legal services to indigent immigrants. Her clinic represents women and men who are experiencing ongoing domestic violence, and who are fleeing domestic violence in their home countries, including Mexico. Her clinic also represents abandoned, neglected and abused children, and children affected by domestic violence, including Mexican children.

PROFESSOR THOMAS M. MCDONNELL

Thomas McDonnell is a Professor at Pace University School of Law. He has written scholarly articles on public international law and international human rights law. He also was the principal author on an amicus curiae brief to the New York Court of Appeals on a right to counsel issue. Professor McDonnell teaches Criminal Law Analysis and Writing, Advanced Appellate Advocacy, and International Human Rights Law and coaches the Jessup Moot Court Team.

THE NATIONAL ASSOCIATION OF WOMEN LAWYERS

The National Association of Women Lawyers (“NAWL”), founded in 1899, is the oldest women’s bar association in the country. NAWL is a national voluntary organization with members in all fifty states, devoted to the interests of women lawyers, as well as all women. Through its members, committees and the Women’s Law Journal, it provides a collective voice in the bar, courts, Congress and the workplace. Through its amicus work, NAWL has been a strong and clear voice for an end to gender violence and has an interest in ensuring the safety of women and protection of their legal rights globally, as well in the United States.

LOS ANGELES CHAPTER OF THE NATIONAL LAWYERS GUILD

The Los Angeles Chapter of the National Lawyers Guild is a human rights bar association in the State of California and a division of the National Lawyers Guild, a national human rights bar association. Since its inception in 1937, the National Lawyers Guild has labored to advance the human and civil rights of all, to the end that human and civil rights shall be regarded as more sacred than property interests. On behalf of that mission it regularly addresses issues of the fair administration of criminal and civil justice systems in the United States. In particular, it seeks to improve policing practices to the end that police departments discharge their duties in a fair, impartial, non-discriminatory and efficient manner. In this last regard, it has long sought to advance the rights of women and children, including the right of women and children to be safe in their persons.

THE NATIONAL ORGANIZATION FOR WOMEN

The National Organization for Women (“NOW”) is the United States’ largest feminist activist organization, with over 500,000 contributing members and over 400 state and local affiliates throughout the country. Since NOW’s founding in 1966, the organization has been dedicated to achieving full equal and human rights for women in the United States and around the world, and to that end have joined in countless amicus curiae briefs advocating

that violence against women be taken seriously and prosecuted fully. NOW has particularly engaged in advocacy and public education regarding the murders of women in Ciudad Juárez and the need for full investigation and prosecution.

PROFESSOR NOAH NOVOGRODSKY

Professor Novogrodsky teaches international human rights law at University of Wyoming College of Law and authored an amicus brief on the rights of children to live free of violence in *Prosecutor v. Norman* before the Special Court for Sierra Leone.

JAMIE O'CONNELL

Jamie O'Connell is Program Officer in the International Human Rights Law Clinic and Lecturer in Residence at the University of California, Berkeley, School of Law, where he specializes in transitional justice and political and legal development.

PROFESSOR SARAH PAOLETTI

Professor Sarah Paoletti is a Clinical Supervisor and Lecturer at the University of Pennsylvania School of Law, where she directs the Transnational Legal Clinic. Her area of expertise is in the rights of migrants (both internal and transnational migrants), and she recently participated in a seminar before the Organization for

Security and Cooperation in Europe as they prepared their Guide on Gender-Sensitive Labor Migration Policies, to which she contributed. Her interest in ensuring that all workers are guaranteed fundamental rights without discrimination extends to ensuring States take affirmative measures to protect women and girls from gender-based violence in the workplace and in the communities in which they live. Prior to joining the law faculty at Penn to launch their human rights clinic, Professor Paoletti taught as a Practitioner-in-Residence in the International Human Rights Law Clinic at American University Washington College of Law.

PROFESSOR JO M. PASQUALUCCI

Jo M. Pasqualucci is a Professor of International Law at the University of South Dakota. Her S.J.D. in International and Comparative Law is from The George Washington University Law School. She is the author of *The Practice and Procedure of the Inter-American Court of Human Rights* (Cambridge, 2003) and of several articles on the Inter-American Human Rights system.

PROFESSOR NAOMI ROHT-ARRIAZA

Professor Roht-Arriaza teaches at the University of California Hastings College of Law in the areas of international human rights, torts, and domestic and global environmental law and policy. She is the author of *The Pinochet Effect: Transnational Justice in the Age of Human Rights* (2005) and *Impunity and Human Rights in*

International Law and Practice (1995). She is an associate editor of the Yearbook on International Environmental Law. In the summer and fall of 1995, she was a European Community Fulbright Scholar in Spain. In 2001-02 she received research grants from the United States Institute of Peace and the MacArthur Foundation.

PROFESSOR DARREN ROSENBLUM

Darren Rosenblum has been a professor at Pace Law School since 2004, where he teaches in the areas of sexuality and gender law, in domestic, foreign, and international contexts. He is the author of many prominent law review articles on gender equality issues and efforts to remedy gender inequality. In his International and Comparative Equality class, Professor Rosenblum has taught gender violence issues with a focus on comparing U.S. and Mexican legal structures related to gender inequality.

PROFESSOR SUSAN DELLER ROSS

Professor Ross Georgetown Law, is an expert on international, regional, and comparative human rights law concerning discrimination and violence against women. Her book, *Women's Human Rights: The International And Comparative Law Casebook* (U. Penn. Press 2008), contains chapters on domestic violence and female genital mutilation (FGM); the companion documentary supplement, RossRights.com, provides access to international instruments and cases on domestic violence, FGM,

trafficking, and war crimes. She co-authored *Sex Discrimination And The Law: History, Practice And Theory* (2d ed. 1996), which discusses domestic violence law in the United States. In 1996, she co-authored *Domestic Violence in India: Recommendations of the Women's Rights Team, Report to USAID/India*, after serving as the legal expert on a trip to India sponsored by the United States Agency for International Development and designed to investigate the current law on the subject and how it might be improved with USAID support. From 1985 to 1996, she taught a six-credit clinical course at the Law School for which students represented victims of domestic violence seeking relief in local courts.

SETON HALL UNIVERSITY SCHOOL OF LAW
CENTER FOR SOCIAL JUSTICE

The Seton Hall University School of Law Center for Social Justice provides students and practitioners with an opportunity to represent individual clients in human rights cases and to pursue the enforcement of international and regional human rights instruments. Since its inception in 1991, the Center has worked to defend the human rights of women and children. The Center focuses on protecting the rights of immigrant women in the United States, and also frequently files amicus briefs concerning the application of international human rights norms to disputes in U.S. domestic courts and human rights tribunals. The Center has a longstanding commitment to protecting the human rights of women and children, both domestically and internationally, and has a

strong interest in seeing regional human rights instruments properly applied to protect the rights of women.

**PROFESSOR GWYNNE SKINNER, AND THE
INTERNATIONAL HUMAN RIGHTS CLINIC AT
WILLAMETTE UNIVERSITY COLLEGE OF LAW**

Gwynne Skinner is an assistant professor of clinical law at Willamette University College of Law, in Salem, Oregon, U.S.A., where she teaches the international human rights clinic and refugee law, among other human rights courses. She holds a J.D. from the University of Iowa, High Distinction, and an M.St. in International Human Rights Law (LL.M. equivalent) from Oxford University. Ms. Skinner and the Clinic represent individuals in human rights litigation and hearings before administrative tribunals, U.S. federal courts, and before international human rights tribunals, including the European Court of Human Rights. Ms. Skinner and the Clinic have an interest in advocating for human rights, and have a special focus on the human rights of women.

PROFESSOR KATHLEEN STAUDT, Ph.D.

Kathleen Staudt is a Professor of Political Science at the University of Texas at El Paso, where she has taught since 1977. She is also a part-time Visiting Researcher for El Colegio de la Frontera Norte (COLEF) in Ciudad Juárez. The El Paso-Cd. Juárez area is an interdependent metropolitan area of more than two

million people, divided by an international borderline. She teaches university courses on public policy, border politics, democracy, leadership and civic engagement, and women and politics. She is the author of over eighty academic articles and chapters in books, including *Reforming the Administration of Justice in Mexico* (Notre Dame University Press, 2007), also published in Spanish by El Colegio de Mexico in 2008, coauthored with Irasema Coronado, another political scientist. This book is based on a conference drawing scholars from both the United States and Mexico to the University of California at San Diego in 2003. She is also the author and/or editor of thirteen books, five of which focus on the U.S.-Mexico border region including the latest book *Violence and Activism at the Border: Gender, Fear, and Everyday Life in Ciudad Juárez* (University of Texas Press 2008). The book is based on six years of research, the sources of data for which come from surveys of a representative sample of women, ages fifteen through thirty-nine, in Ciudad Juárez, and from participant observation in the Coalition Against Violence toward Women and Families at the U.S.-Mexico Border.

Professor Staudt also provided expert testimony to both House and Senate border-related committees in the Texas legislature in 2003 and frequently provides pro bono services to the law enforcement community in El Paso, including a large conference in October 2008, organized by the District Attorney's office and a presentation to county judges in February 2009.

Her interest in the border region continues with a forthcoming edited book that addresses gender-based violence at the

border, *Human Rights along the U.S.-Mexico Border: Gendered Violence and Insecurity* (University of Arizona Press 2009 forthcoming) and a forthcoming manuscript in *Citizenship and Cities at the U.S.-Mexico Border: The Paso del Norte Metropolitan Region* (Palgrave USA 2010).

In her thirty years of teaching at the University of Texas at El Paso, where approximately ten to fifteen percent of students are from northern Mexico, she has encountered students and colleagues whose relatives have been murdered—crimes without response, investigation, and/or prosecution in Mexico’s shockingly flawed law enforcement institutions.

PROFESSOR JEFFREY STEMPEL

Jeffrey Stempel is a Doris S. and Theodore B. Lee Professor of Law at University of Nevada Las Vegas Boyd School of Law. He is a 1981 graduate of Yale Law School, where he was an editor of the Yale Law Journal and co-founder of the Yale Law and Policy Review. Professor Stempel has numerous publications to his credit, including books, treatise chapters and supplements, and law review articles.

PROFESSOR MAUREEN A. SWEENEY

Maureen Sweeney has directed the Immigration Clinic at the University of Maryland School of Law since 2004. She is a Visiting Assistant Law School Professor and teaches the Immigration Clinic,

in which students represent individuals fleeing harm and persecution in other countries. In the course of this work, the clinic has represented a number of individuals in cases related to gender-based violence, including domestic violence, sexual assault and female genital mutilation in Mexico, Central America and various countries in Africa.

PROFESSOR JONATHAN TODRES

Jonathan Todres is an Associate Professor of Law at Georgia State University College of Law in Atlanta, U.S.A. Professor Todres' research interests focus on human rights law and, in particular, children's rights issues. Professor Todres has conducted research on children's rights issues in a number of countries and has authored numerous publications on domestic interpretations and implementation of the U.N. Convention on the Rights of the Child and other international law relevant to children's rights. His research also centers on issues of violence against children, in particular trafficking and commercial sexual exploitation of children. Professor Todres has testified before the U.N. Committee on the Rights of the Child and in U.S. Congressional briefings on trafficking and commercial sexual exploitation of children.

THE URBAN MORGAN INSTITUTE FOR HUMAN RIGHTS

The Urban Morgan Institute for Human Rights of the University of Cincinnati is the oldest of the international human

rights institutes at a law school. It submitted amicus briefs in the first three advisory opinions of the Inter-American Court of Human Rights.

U.S. HUMAN RIGHTS NETWORK

U.S. Human Rights Network, is a coalition of more than 250 human rights and social justice organizations.

PROFESSOR PENNY M. VENETIS

At Rutgers-Newark, Professor Venetis is the Co-Director of the Constitutional Litigation Clinic. She specializes in civil rights and international human rights impact litigation. Among other things, she has worked on cutting edge issues concerning the human rights of political asylum seekers and immigrants detained in the aftermath of 9/11. Her work focuses on the interplay between international human rights law and U.S. constitutional law. Professor Venetis earned a B.A. and M.A. from Columbia University and a J.D. cum laude from Boston College Law School.

PROFESSOR DEBORAH WEISSMAN

Deborah Weissman has been the director of clinical programs at the University of North Carolina (“UNC”) since 2000. She teaches in the UNC Immigration/Human Rights Policy clinic and also teaches courses on domestic violence law. She is the author of

several articles and book chapters that address gender-based violence in Cd. Juárez, including *The Political Economy of Violence: Toward an Understanding of the Gender-based Murders of Ciudad Juárez*, 30 N.C. J. Intl L. & Com. Reg. 795 (2005). The Immigration/Human Rights Policy Clinic has developed particular expertise with regard to the murders of women in Cd. Juárez. Clinic law students in partnership with the Washington Office of Latin America have contributed to efforts to obtain reparations and other forms of justice for the families of murdered women and have produced policy guidance about criminal justice systems to address gender-based violence in Mexico and Guatemala.

PROFESSOR RICHARD J. WILSON

Richard J. Wilson has been Director of the International Human Rights Law Clinic at American University for almost twenty years. The Clinic has appeared in over 20 cases at the Inter-American Commission on Human Rights, and in three cases before this Court, as well as in litigation on behalf of human rights victims, both within the United States and around the world

THE WOMEN'S LAW PROJECT

The Women's Law Project ("WLP") is a public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania that is dedicated to improving the legal and economic status of women and their families. Guided by principles of equality and justice for

all women, the Law Project engages in high-impact litigation, public policy advocacy, public education, and individual counseling. Founded in Philadelphia in 1974, the WLP has a long and dedicated history of advocacy and action and is recognized as a national leader in the field of women's rights, as well as a unique resource for women in Philadelphia, Pittsburgh, and other parts of Pennsylvania. Our areas of expertise include equality for women and girls in athletics, education, employment and public accommodations; reproductive justice; violence against women; family law and family court reform; economic justice and health care reform; and lesbian and gay rights. The Law Project is committed to ending violence against women and to improving the response of the legal system to women and children who experience domestic and sexual abuse.

WOMEN LAWYERS ASSOCIATION OF LOS ANGELES

The Women Lawyers Association of Los Angeles ("WLALA") is a nonprofit organization comprised primarily of attorneys and judges in Los Angeles County, California. It is the largest local women's bar association in the State of California. Founded in 1919, WLALA is dedicated to promoting the full participation of women lawyers and judges in the legal profession, maintaining the integrity of our legal system by advocating principles of fairness and equality, and improving the status of women in our society. To further these goals, WLALA has joined *amicus curiae* briefs in appellate cases having a significant impact on women's rights,

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	vi
INTEREST OF <i>AMICI</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT.....	3
STATEMENT OF THE CASE	6
ARGUMENT	9
I. THIS COURT SHOULD TAKE THE ECONOMIC AND SOCIAL CONTEXT OF GENDER-BASED VIOLENCE IN CIUDAD JUÁREZ INTO ACCOUNT IN ITS CONSIDERATION OF THIS CASE.....	9
II. UNDER INTERNATIONAL HUMAN RIGHTS LAW, NATION STATES HAVE A DUTY TO EXERCISE DUE DILIGENCE IN RESPONDING TO GENDER- BASED VIOLENCE.....	13
A. In this hemisphere, the American Convention on Human Rights and the Convention on the Prevention, Punishment, And Eradication Of Violence Against Women (Convention Belém do Pará) require States to “prevent, punish, and eradicate” gender-based violence.	13
B. Treaties and other authoritative documents beyond the Inter-American System demonstrate an international consensus recognizing States’ affirmative obligations to prevent, investigate, and punish gender-based violence and to protect and provide effective remedies for its victims.	22
1. Broad human rights documents.....	22
2. Documents specifically relating to women’s and children’s rights.	28
3. Regional documents.....	34

C.	Other international human rights bodies have held nations to be in violation of treaty obligations by failing to protect women from gender-based violence.....	38
III.	THE COURT SHOULD PROVIDE A BROAD RANGE OF REMEDIES IN THIS CASE TO ADDRESS THE SOCIAL, ECONOMIC, AND POLITICAL FORCES INVOLVED IN PERPETUATING THE VIOLENCE. IN CRAFTING THESE REMEDIES, THE COURT SHOULD TAKE INTO ACCOUNT THE OBLIGATIONS CONTAINED IN ARTICLES 7, 8, AND 9 OF CONVENTION BELÉM DO PARÁ.	44
A.	This Court has broad remedial powers under the American Convention, which it has repeatedly invoked to provide a wide variety of reparations.....	44
B.	Likewise, Articles 7, 8, and 9 of Convention Belém do Pará outline a comprehensive set of State obligations and immediate and progressive remedies to eradicate and protect women from all forms of gender-based violence.	49
C.	This Court should provide broad remedial measures to combat the economic and social underpinnings of the violence.	53
	CONCLUSION.....	59
	INTEREST OF AMICI CURIAE.....	1
	AMNESTY INTERNATIONAL	1
	PROFESSOR THOMAS ANTKOWIAK	1
	PROFESSOR TAMAR BIRCKHEAD	1
	MARY BOYCE	2
	BREAK THE CYCLE	2
	PROFESSOR ARTURO CARRILLO	3

CENTER FOR CONSTITUTIONAL RIGHTS.....	4
CENTER FOR GENDER & REFUGEE STUDIES	4
CENTER FOR JUSTICE & ACCOUNTABILITY	5
CENTRO DE DERECHOS HUMANOS UNIVERSIDAD DIEGO PORTALES (THE CENTER OF HUMAN RIGHTS OF DIEGO PORTALES UNIVERSITY)	6
COLUMBIA LAW SCHOOL HUMAN RIGHTS CLINIC	7
CORNELL LAW SCHOOL INTERNATIONAL HUMAN RIGHTS CLINIC	7
PROFESSOR BRIDGET J. CRAWFORD	8
THE DOMESTIC VIOLENCE AND CIVIL PROTECTION ORDER CLINIC OF THE UNIVERSITY OF CINCINNATI	9
PROFESSOR MARGARET DREW	9
PROFESSOR MARTIN GEER.....	10
HUMAN RIGHTS AND GENOCIDE CLINIC, BENJAMIN N. CARDOZO SCHOOL OF LAW	10
HUMAN RIGHTS ADVOCATES.....	11
PROFESSOR DEENA HURWITZ.....	11
THE IMMIGRATION JUSTICE CLINIC	12
IMPACT PERSONAL SAFETY	13
INTERNATIONAL MENTAL DISABILITY LAW REFORM PROJECT OF NEW YORK LAW SCHOOL	13
THE INTERNATIONAL WOMEN’S HUMAN RIGHTS CLINIC AT GEORGETOWN LAW	14
LATINOJUSTICE PRLDEF	15

LEGAL SERVICES CLINIC AT WESTERN NEW ENGLAND COLLEGE SCHOOL OF LAW	16
LEITNER CENTER FOR INTERNATIONAL LAW AND JUSTICE AT FORDHAM LAW SCHOOL.....	16
PROFESSOR BERT B. LOCKWOOD	17
ALLARD K. LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC, YALE LAW SCHOOL.....	17
PROFESSOR BETH LYON	18
PROFESSOR THOMAS M. MCDONNELL.....	19
THE NATIONAL ASSOCIATION OF WOMEN LAWYERS	19
LOS ANGELES CHAPTER OF THE NATIONAL LAWYERS GUILD	20
THE NATIONAL ORGANIZATION FOR WOMEN	20
PROFESSOR NOAH NOVOGRODSKY.....	21
JAMIE O'CONNELL	21
PROFESSOR SARAH PAOLETTI	21
PROFESSOR JO M. PASQUALUCCI.....	22
PROFESSOR NAOMI ROHT-ARRIAZA.....	22
PROFESSOR DARREN ROSENBLUM	23
PROFESSOR SUSAN DELLER ROSS	23
SETON HALL UNIVERSITY SCHOOL OF LAW CENTER FOR SOCIAL JUSTICE	24
PROFESSOR GYWNNE SKINNER, AND THE INTERNATIONAL HUMAN RIGHTS CLINIC AT WILLAMETTE UNIVERSITY COLLEGE OF LAW	25
PROFESSOR KATHLEEN STAUDT, Ph.D.	25

PROFESSOR JEFFREY STEMPEL	27
PROFESSOR MAUREEN A. SWEENEY	27
PROFESSOR JONATHAN TODRES	28
THE URBAN MORGAN INSTITUTE FOR HUMAN RIGHTS .	28
U.S. HUMAN RIGHTS NETWORK	29
PROFESSOR PENNY M. VENETIS	29
PROFESSOR DEBORAH WEISSMAN.....	29
PROFESSOR RICHARD J. WILSON.....	30
THE WOMEN'S LAW PROJECT	30
WOMEN LAWYERS ASSOCIATION OF LOS ANGELES	31
WORLD ORGANIZATION FOR HUMAN RIGHTS USA	1

ncluding *Jessica Gonzales v. United States*, Petition No. P-1490-05, Inter-Am. C.H.R., Report No. 52/07, OEA/Ser.L/V/II.128, doc. 19 (2007).

WORLD ORGANIZATION FOR HUMAN RIGHTS USA

World Organization for Human Rights USA (“Human Rights USA”) is a member of the World Organization Against Torture network, and is one of the only international human rights groups in the United States focusing on U.S. human rights compliance concerns. Human Rights USA reports regularly to the United Nations Committee on Torture and the Human Rights Committee regarding U.S. compliance with the Convention Against Torture and the International Covenant on Civil and Political Rights.

Human Rights USA also regularly provides guidance to U.S. courts on the applicability of international human rights norms to U.S. law. Human Rights USA submitted amicus curiae briefs to the Supreme Court in the three most recent juvenile death penalty cases before that Court, including *Roper v. Simmons*, 543 U.S. 551 (2005), and to the Court of Appeals for the District of Columbia Circuit in *Al Odah v. United States*, 542 U.S. 466 (2004), demonstrating that certain provisions of the Detainee Treatment Act and the Military Commissions Act violated the Geneva Conventions and other international legal standards. Human Rights USA was counsel of record in *Nwaokolo v. Ashcroft*, 314 F.3d 303 (7th Cir. 2002), which clarified that female genital mutilation is a form of torture prohibited under the Convention Against Torture

and that immigration relief should be available to women trying to protect their daughters from genital mutilation. Human Rights USA presently represents a number of refugee women fleeing forced marriage and sex trafficking in their countries of origin.