

CONCLUSION

380. The evidence presented by this petition is overwhelming. The failure to protect children in the family courts is not a new phenomenon but has existed since at least the 1960s. This failure is not limited to one court or one district or one state but is a national problem. The problem continues in spite of law suits and legislation, education and political activism. The root cause is based on the presumed inferiority of women and the patriarchal theories of ownership of both women and children. The result is rampant discrimination against women and children and violation of their most basic human rights.

THE NAME OF THE VICTIM AND OF ANY PUBLIC AUTHORITY WHO HAS TAKEN COGNIZANCE OF THE FACT OR SITUATION ALLEGED.

381. Named Victims: Claudine Dombrowski and child, K.A. and children, J.H., Wendy Titelman and children, Yevgenia Shockome and children, Susan Navratil and child, Frankie Bradshaw and child, Esther Horton and child, California Protective Parents Association, Kourts for Kids Inc., StopViolence.org, Petitioners A, B, and C, Parenting Project, Illinois Coalition for Family Court Reform, Child Abuse Forensic Institute, National Coalition Against Domestic Violence and Justice for Children.
382. Public Authority who has taken cognizance

Congress of the United States, state courts in Arizona, California, Georgia, New York, Kansas, Mississippi, Nevada, New Jersey and Wisconsin. Federal courts in California, Mississippi, District of Columbia, New York, California, and the United States Supreme Court. Child protective service agencies in Arizona, California, Georgia, New York, Kansas, Mississippi, Nevada, New Jersey and Wisconsin. Law enforcement agencies in Phoenix, AZ; Sacramento, CA; Queens Special Unit, Queens, New York; Topeka, Kansas; San Mateo County, CA; Cobb County, GA; Dutchess County, New York; El Dorado County, CA; Douglas County, Nevada; New Jersey and Amador County, California plus the Town council of Fairfax, CA.

THE STATE THE PETITIONERS CONSIDER RESPONSIBLE, BY ACT OR OMISSION, FOR THE VIOLATION OF ANY OF THE HUMAN RIGHTS RECOGNIZED IN APPLICABLE INSTRUMENTS.

383. The petitioners consider that the United States of America is the responsible party. While the U.S. has signed the American Convention on Human Rights on 6 January 1977 indicating its intention to adhere to its provisions, it has never ratified it. However, the fifth paragraph of the preamble states that the Convention has incorporated into the Charter broader standards with respect to economic, social and educational rights. 1 Therefore, though the U.S. has not ratified it, by incorporation

1 Considering that the Third Special Inter-American Conference (Buenos Aires, 1967) approved the incorporation into the Charter of the Organization itself of broader standards with respect to economic, social, and educational rights and resolved that an inter-American convention on human rights should determine the structure, competence, and procedure of the organs responsible for these matters,...

into the Charter which the U.S. is bound to, the broader rights of the Convention apply.

384. Further, the Commission has held that:

Development in the corpus of international human rights law relevant to interpreting and applying the American Declaration on the Rights and Duties of Man may in turn be drawn from the provisions of other prevailing international and regional human rights instruments. This includes in particular the American Convention on Human Rights which, in many instances, may be considered to represent an authoritative expression of the fundamental principles set forth in the American Declaration.”²

385. Though the United States continues to contest it, the Commission has found repeatedly that the American Declaration constitutes a source of international legal obligation for all member states of the Organization of American States. The Commission can, under Articles 20 of the Statute and 49 and 50 of the Rules of Procedure, receive and examine petitions for violations of human rights set forth in the American Declaration though the OAS member State is not party to the American Convention.³ Further the Declaration is not to be interpreted or applied in a vacuum but in context of developments in international human rights laws (¶86) and in context of developments regionally and globally including the American Convention and The United Nations Convention on the Rights of the Child which is pertinent in this case. (¶87)

386. According to Article 20 of the Commission Statute, the Commission has powers to pay particular attention to those human rights referred to in the American Declaration of the Rights and Duties of Man.⁴ According to Article 24, the Commission establishes the procedures for such cases as outlined above. The Commission must pay attention to the other relevant norms of international law and the evolution of international human rights including the American Convention.⁵

² REPORT N° 99/99 CASE 11.140 MARY AND CARRIE DANN UNITED STATES, December 20, 2002, ¶ 97.

³ REPORT N° 40/04, CASE 12.053, MERITS, MAYA INDIGENOUS COMMUNITIES OF THE TOLEDO DISTRICT, BELIZE, October 12, 2004, (¶ 85).

⁴ Article 20 In relation to those member states of the Organization that are not parties to the American Convention on Human Rights, the Commission shall have the following powers, in addition to those designated in Article 18: a. to pay particular attention to the observance of the human rights referred to in Articles I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man;

⁵ REPORT N° 67/06, CASE 12.476, PUBLICATION, OSCAR ELÍAS BISCET *ET AL.*, CUBA, October 21st, 2006, (¶ 41).

387. Whether or not the U.S. is signatory to the American Convention, the obligation of respecting human rights is an obligation *erga omnes* as direct beneficiaries of the human rights recognized by the American Declaration of the Rights and Duties of Man. “In this regard, the Inter-American Court of Human Rights has indicated that for the states “the American Declaration is a source of international obligations. The fact that the Declaration is not a treaty should not lead one to conclude that it has no legal effect...”.”⁶

The Bahamas is also not a party to the American Convention. However, the Commission said that when interpreting the Declaration, the broader context of international and Inter-American human rights systems must be considered along with the evolution of human rights over time including in other human rights documents.⁷ The Commission held that Article XVIII regarding due process must be given effect in the Bahamas. (¶202) In addition, the Commission has held that Article XVIII when considered in light of other obligations means that a right protected by Convention, the state parties Constitution or the domestic laws of the State concerned means that a party must have the ability to obtain a judicial investigation conducted by a competent, impartial and independent tribunal. (¶204)

Under Commission rules, procedures and case law, the U.S. can be held responsible.

⁶ REPORT N° 86/99 CASE 11.589 ARMANDO ALEJANDRE JR., CARLOS COSTA, MARIO DE LA PEÑA, AND PABLO MORALES CUBA September 29, 1999, (¶39).

⁷ Bahamas 12_067a - Merits-edwards2.htm, (¶ 107, 108).