

Five International Human Rights Citations to Use
in Your Next New York State Domestic Violence Brief

New York University School of Law Center for Human Rights and Global Justice

Litigating Human Rights Series

"Jessica Gonzales v. United States of America"

January 27, 2009

Christina Brandt-Young

New York Legal Assistance Group

(1) Domestic violence as infringing on the right to liberty

Domestic violence is best understood not as a series of major physical assaults, but as also comprising an “ongoing strategy of intimidation, isolation, and control that extends to all areas of a woman's life, including sexuality; material necessities; relations with family, children, and friends; and work” that is intended to restrict a woman’s liberty. Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973, 976, 986 (1995); Committee on the Elimination of All Forms of Discrimination against Women (interpreting body for the Convention on the Elimination of All Forms of Discrimination against Women, 1249 U.N.T.S. 13, entered into force 3 Sept. 1981), General Recommendation No. 19 ¶ 7(d) (11th Sess., 1992), *available at*

<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> (“Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of [CEDAW]. These rights and freedoms include . . . the right to liberty and security of person.”).

(2) Domestic violence as torture

Violence directed at an intimate partner for such purposes as obtaining information, punishment, intimidation, diminishment of the victim’s faculties, or any similar goal, is not only psychologically repellent, but also, when the police and state fail to intervene, legally constitutes torture under international, United States, and many state laws. Rhonda Copelon, *Recognizing the Egregious in the Everyday: Domestic Violence as Torture*, 25 COLUM. HUM. RTS. L. REV. 291, 329-41 (1994); *see also* Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 23 I.L.M. 1027, as modified, 24 I.L.M. 535 (ratified by the United States Oct. 21, 1994); *State v. White*, 668 N.W.2d 850, 856 (Iowa 2003) (citing Convention against Torture in upholding man’s criminal conviction under state torture statute for holding gun to wife’s head while forcing her to watch a videotape of himself threatening to kill her); Radhika Coomaraswamy, United Nations Special Rapporteur on Domestic Violence, “Report on all forms of violence against women in the family” (U.N. Commission on Human Rights 52nd Sess. 1996), E/CN.4/1996/53, ¶¶ 42-50 *available at* <http://www.unhchr.ch/>.

(3) Removal of children from primary caregiver because of domestic violence; right to family integrity

Removal of the children from Respondent, who has been their primary caregiver for their entire lives, would violate Respondent's and the children's right to "familial integrity, or put more plainly, a right not to be forcibly separated." *Nicholson v. Williams*, 203 F. Supp. 2d 153, 234-35 (E.D.N.Y. 2002) (citing, *inter alia*, *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978); Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (1948), and Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, reprinted in 28 I.L.M. 1448, 1456)); *cf. Wilson v. Hacker*, 200 Misc. 124, 101 N.Y.S.2d 461 (Sup. Ct. Erie County 1950) (also citing Universal Declaration of Human Rights in interpreting New York equal protection law).

(4) Failure to make interim custody order; right to respect for family life

The court's failure to make an interim custody order will only delay ultimate resolution of this case, which has deleterious effects on Petitioner and her children, and violates their right to the protection of this Court. *See In re George T.*, 99 N.Y.2d 307, 313, 786 N.E.2d 2, 756 N.Y.S.2d 103 (2002) (condemning "piecemeal" taking of testimony in Family Court which delays resolution of disputes); *see also In re Dutchess County Dep't of Soc. Servs. ex rel. Cody M.*, 196 A.D.2d 196, 200, 202, 608 N.Y.S.2d 493 (2d Dep't 1994) (same, in child protective and in custody and visitation proceedings); *Walash v. Walash*, 183 A.D.2d 1, 3, 589 N.Y.S.2d 51 (2d Dep't 1992) (court's 13-month delay in making custody decision after close of hearing inexcusable in case of five-year-old child); *cf. Case of Bevacqua and S. v. Bulgaria*, Application No. 71127/01, (European Court of Human Rights, 12 June 2008), *available at* <http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/> (failure of trial court to make an interim custody order in a domestic violence case until after 8 months after mother's petition filed was a violation of the child's right to respect for his private and family life).

(5) Universal failure of police to respond to domestic violence

It is globally acknowledged that police often respond to domestic violence inadequately, and "often try to mediate or counsel the couple rather than to treat the incident like a criminal matter." Radhika Coomaraswamy, United Nations Special Rapporteur on Domestic Violence, "Report on all forms of violence against women in the family" (U.N. Commission on Human Rights 52nd Sess. 1996), E/CN.4/1996/53, ¶ 135 *available at* <http://www.unhchr.ch/>; *cf. Graham v. City of New York*, 14 Misc. 3d 1234(A), 836 N.Y.S.2d 499 (Table), 2007 WL 580624 at *6 (Sup. Ct. Kings County Feb. 26, 2007) ("When she saw her harasser's truck parked near her apartment, she locked all her windows and doors, but did not call the police, because, based upon previous contacts, she believed that no action would have been taken"); *Fatma Yildirim v. Austria*, Communication No. 6/2005, Committee on the Elimination of All Forms of Discrimination against Women (interpreting body for the Convention on the Elimination of All Forms of Discrimination against Women, 1249 U.N.T.S. 13, entered into force 3 Sept. 1981), CEDAW/C/39/D/6/2005 (39th Sess. 2007) (inadequate police response to reports of domestic violence found to be violation of CEDAW), *available at* <http://www.un.org/womenwatch/daw/cedaw/protocol/dec-views.htm>; *Şahide Goekce v. Austria*, Communication No. 5/2005, Committee on the Elimination of All Forms of Discrimination against Women (interpreting body for the Convention on the Elimination of All Forms of

Discrimination against Women, 1249 U.N.T.S. 13, entered into force 3 Sept. 1981),
CEDAW/C/39/D/5/2005 (39th Sess. 2007) (inadequate police response to reports of domestic
violence found to be violation of CEDAW), *available at*
<http://www.un.org/womenwatch/daw/cedaw/protocol/dec-views.htm>.