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Failures of U.S. Courts Forces Mothers to Turn to International Law

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Ten mothers, one victimized child now an adult, and six organizations working in the field of child abuse and family law filed a petition on April 10, 2007, at the InterAmerican Commission on Human Rights in Washington, D.C., against the United States for the pattern and practice of courts awarding custody or unsupervised visitation to child abusers and molesters. The petitioners come from Kansas, Georgia, California, New York, Arizona, New Jersey, Ohio, Rhode Island, Illinois and Nevada.

Ten years earlier, on Mother's Day, May 11, 1997, a group of mothers who lost custody of their children gathered on the steps of the U. S. Capitol in Washington, D. C. Entitled "Give Us Back Our Children," the event was held to represent the increasing numbers of women who are losing custody of their children to batterers and child abusers. This event, co-sponsored by the National Coalition Against Domestic Violence, the Family Violence Prevention Fund, the House of Ruth, My Sister's Place, Rep. Diana DeGette (D-CO), Rep. Connie Morella (R-MD), and Rep. Lucille Roybal-Allard (D-CA), brought attention to the plight of women and children unfairly victimized by the legal system, and to dispel the myth that women always win custody of their children. That was 13 years ago. The situation today is even worse. The stories of these petitioners are not unique. They are the tip of the proverbial iceberg indicating a grave and growing injury to human rights.

Wendy Titelman is one of the petitioners. Her attorney, Richard Ducote, who has represented battered women for years, said:

After twenty years in family law courtrooms throughout the country, I confidently say that no woman, despite very abundant evidence that her child has been sexually molested by her ex-husband or that she has been repeatedly pummeled by the violent father of her child, can safely walk into any family court in the country and not face a grave risk of losing custody to the abuser for the sole reason that she dared to present the evidence to the judge and ask that the child be protected.

Sol Gothard, Judge of the Court of Appeals in Louisiana said:

There are very few times in law when you can state anything categorically, but I can certainly say that beyond any doubt whatsoever, the problem expressed by Wendy Titelman in this book is epidemic and widespread, and it has been this way for the forty-four years that I have been involved with the legal system.

Karen Anderson has been fighting for her children for 17 years. Her son Jeff Hoverson, now of age, has joined in the petition. He recounts that the day he was taken from his mother at 10 years of age was traumatizing:

So now I had no brothers, no pets, I was 3-4 hours from my home, and again... no mom. This is when I was damaged so severely emotionally... No one told me anything about my mom or why I was at my dad's or why we were in San Francisco on a sidewalk. I asked but received no answers. I felt that if I wasn't told anything that I was worthless to everyone. I was made into a possession rather than a child.

The facts of the individual cases are a catalog of proven domestic violence and child sexual molestation ignored by the courts. The mothers are labeled as mentally ill or having Parental Alienation Syndrome, though PAS has absolutely no scientific validity and is used in a very discriminatory way to remove children from mothers who try to protect the children and themselves from violence and abuse. Yet in these petitioners' cases it is used over and over to punish the protective parent.

This problem has been brought to the attention of family court systems, states and the national government all to no avail. In 1990, Congress passed a resolution recommending the prohibition of giving joint or sole custody to abusers. 20 years later, it continues unabated. Legislation has been passed. Judges have been educated. Still it continues. Thus petitioners are turning to international courts to protect their human rights and the rights and safety of their children.

While state courts are responsible for custody cases, the federal government is responsible to ensure that their judicial systems operate in accordance with the Organization of American States Declaration of the Rights and Responsibilities of Man. The specific articles the petitioners claim to have been violated are:

Article I. Every human being has the right to life, liberty and the security of his person. The courts place the children directly in danger without regard to their right to life, liberty or security of person. In addition, often the arrangements made for visitation are unsafe to the mother as well.

Article II. All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.

The gender discrimination both in the courts in general and in custody cases in particular has been known, studied and proven for years. The gender bias studies in the 1980's showed bias that has never been corrected. The studies of custody have shown that it is a complete myth that women get custody over men or that men are disfavored in family court. It is such a pervasive myth that years of litigation and proof has not shaken it -- to the harm of the victims of violence.

Article IV. Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.

Litigants, especially mothers, who report child abuse are punished with jail or the loss of custody of their children. The protective parents are in a Catch-22 situation. If they do not protect their children,

they are charged with failure to protect and the child protection agencies take their children. If they do act to protect, the courts put the children directly into the arms of the abuser.

Article V. Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life.

Often the protective parents who report abuse are labeled mentally ill or diagnosed with such imaginative syndromes as parental alienation or munchhausen's by proxy. Often they are ordered into counseling or in the case of one petitioner, taken to the mental hospital.

Article VI. Every person has the right to establish a family, the basic element of society, and to receive protection therefor.

By separating the protective parents from their children for no valid reason, the parent is denied the right to establish a family. Some of these petitioners have not seen their children for years. Every single petitioner was denied contact with their child for some period of time though none was ever proven to have harmed them.

Article VII. All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.

Often battering begins during pregnancy, yet special protection is not afforded the mothers, even when they have an order of protection. Much research has proven that children of abusers are likely to be abused themselves and have a higher rate of sexual molest. Yet courts continue to refuse to protect the children. The U.S. Supreme Court decided in the DeSheney case that the state does not owe any right of protection to children even when they know of the abuse and have in fact placed that child in that home with the father. This is in plain violation of the Declaration.

Article XVIII. Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

The lack of due process in family court is legion. Ex parte hearings and communications, decisions without hearings, refusal to admit the mother, refusal to admit evidence of violence is rampant in the cases and violates the most basic principles of due process. Little attention or time is given to these decisions that shape a child's life forever.

Article XXIV. Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon.

The gender bias studies of the 1980's showed that courts are not competent when dealing with women. Unfortunately, things have not improved. In spite of training, legislation and lobbying, judges continue to ignore statutes that mandate no custody to abusers. The petitioners have tried to hold the judges accountable by appeal or disciplinary procedures, all to no avail.

Article XXV. No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law.

The many children who are put directly into harms way by being placed with an abuser or molester are deprived of their liberty. When courts ignore evidence of violence, they are not following pre-existing law. It is commonplace for judges to completely ignore state statutes that mandate that custody will not go to a perpetrator thereby violating state law as well as putting children in danger.

Article XXX. It is the duty of every person to aid, support, educate and protect his minor children, and it is the duty of children to honor their parents always and to aid, support and protect them when they need it.

These petitioners have tried to protect their children. It is the courts that have prohibited them. The cost to both child and parent is overwhelming and devastating.

The Gonzales case, also filed at the InterAmerican Commission, illustrated in their hearing the failure of the American justice system to protect battered women and children. That case dealt with the failure of the police department. This case deals with legal abuse -- the failure of the legal system, the courts, the guardians ad litem, the attorneys for the children, the state protective agencies to both follow the law and to protect the helpless children who face the horror of violence daily.

Unfortunately, the IACHR has not moved on the case. After more than three years, they have not even examined it or forwarded it to the U.S. government. How many children have to suffer before justice is done?