



Quenby Wilcox
Founder - Global Expats
www.global-xpats.com
cell. (202) 213-4911

Patrick F. Kennedy
Under Secretary of State for Management
US State Department
2201 C Street NW
Washington, DC 20520

March 16, 2013

RE: American Living Abroad in Cases of Domestic Abuse and the US State Department's Obligation to Assist under American and International Law

Dear Mr. Under Secretary Kennedy,

The US State Department estimates that 5.25 million Americans reside abroad, with 650,000 women and children at risk of becoming victims of domestic abuse and violence.¹ In 2012 the American Overseas Domestic Violence Crisis Center (AODVC – www.866uswomen.org) handled 3005 crisis calls, emails & live chats directly from, or on behalf of 547 victims (544 females, 3 males) in 57 countries (UK, Canada, Costa Rica, Turkey, Russia, UAE, Germany, Pakistan, Switzerland, Croatia, being the most frequent.) Ninety-nine of these cases were affected by the Hague Convention on International Child Abduction, which represents 29% of incoming Hague abduction cases handled by the Office of Child's Issues of the US State Department in 2012. At year-end of 2012 AODVC was handling 124 on-going cases.

As reported by the Hague Convention Domestic Violence Project (www.haguedv.org/reports), 70% of women involved in international child abduction cases under the Hague Convention are fleeing domestic abuse and the failure of judicial systems to protect them and their children. *Abbott vs. Abbott* (2010) (www.supremecourt.gov/opinions/09pdf/08-645.pdf) brought these issues to the attention of the US Supreme Court.

Between 2010-2012 the Office of Child's Issues, Consular Division of the US State Department handled 890 incoming Hague Convention on international child abduction cases, with up to 70%, or 623 cases,² potentially involving a protective parent fleeing domestic abuse and a Receiving State's failure to protect. While I have been unable to obtain figures from the US State Department on the

¹ Extrapolated from estimates in *Women and Health: Today's Evidence Tomorrow's Agenda*, World Health Organization 2009, p. 56.

² The Office of Child's Issues does not compile or retain gender statistics in its reporting of incoming or outgoing cases. Therefore, I have used the common and repeatedly reported rate of 70% for "State failure to protect" (Amnesty International, American State Bar Associations, inter alia)

annual budget for the Office of Child's Issues, the 2012 budget for "Strengthening Consular and Management Capabilities" was \$3.75 billion.³ Effectively, millions of dollars per year of the Consular Affairs Division's budget are used in supporting the on-going abuse of thousands of Americans,⁴ while none of their resources are being used to assist the victims. (Please see enclosed my most recent correspondence to Ms. Joyce Namde, European Division Chief, Office of American Citizens Services and Crisis Management, as well as all other previous correspondence with US State Department officials and representatives.)

Abusers are well aware of the criminal implications, the stringent sanctions, and incarceration of those who resort to international child abduction, and are freely and frequently using the Hague Convention as a tool to intimidate and abuse their victims. They do so knowing full well that victims will not be assisted by Receiving State's judicial and law enforcement systems, nor will they be assisted by Sending State's Consulates, consular affairs division in Sending State's headquarters, or Sending State's judicial system, which are plagued by the same "failure to protect" due to the same "lack of diligence" as in the Receiving State.

Even though there is a clear obligation to protect under human rights law (*Gonzales vs. USA*, 2011 Inter-American Commission on Human Rights, inter alia), US State Department personnel in Washington, DC and Consulates abroad continually contend that no such obligation or duty exists, with their refusal having been clearly documented and demonstrated in *Gonzalez de Alcala vs. Wilcox* during the past 6 years⁵.

The *U.S. Department of State Foreign Affairs Manual Volume 7 – Consular Affairs 1921*, establishes the US State Department's obligation and duty to assist Americans living abroad, in the following:

**7 FAM 1920 CONSULAR OFFICER'S AUTHORITY
AND RESPONSIBILITY TO VICTIMS OF SERIOUS CRIMES**

(CT:CON-407; 06-29-2012) (Office of Origin: CA/OCS/L)

7 FAM 1921 AUTHORITIES

(CT:CON-98; 12-13-2004)

a. State and Federal governments have enacted laws that specify the rights of crime victims and many states have amended their State constitutions to accord rights to victims.

b. Foreign governments have also recognized the unique problems experienced by victims of crime. See the non-binding U.N. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by General Assembly resolution 40/34 of November 29, 1985.

c. " Consular authority to provide assistance to U.S. citizen victims of crime abroad and their families in the United States is derived from:

(1) Article 5 of the Vienna Convention on Consular Relations;

(2) 22 U.S.C. 1731 Protection of Naturalized Citizens Abroad;

(3) 22 U.S.C. 2715 Procedures Regarding Major Disasters and Incidents Abroad Affecting United States Citizens;

³ Consolidating Schedule of Net Costs, US Department of State Fiscal Year 2012 Agency Financial Report, p. 116

⁴ Each year the Office of Child's Issues deals with an average of 300 incoming cases with abused children, which are then condemned to living with the abusive parent for 10-16 years +. (My own children are 19 and 21, but until they are financially self-sufficient, or until I am financially solvent, they cannot defy their father's order to have no contact with me.)

⁵ Correspondence with US State Department official 2007 – present <http://worldpulse.com/node/64031>

- (4) 22 U.S.C. 2715a Provision of Information on Certain Violent Crimes Abroad to Victims and Victims' Families;
- (5) 22 U.S.C. 3904(1) Functions of Service;
- (6) 22 CFR 71.1 Protection of Americans Abroad; and
- (7) 22 CFR 71.6 Services for Distressed Americans.

The U.S. Department of State Foreign Affairs Manual Volume 7 – Consular Affairs also provides clear and specific guidelines and instructions with which employees of the US State Department may fulfill the obligation of the US government under international law. I cite the following:

- 7 FAM, 1922-1925 (Authority and Responsibility to Victims of Serious Crimes)
- 7 FAM, 1930-1932 (General Guidelines for Assisting Victims of Crimes/Domestic Violence)
- 7 FAM, 1910-1912 (Crime Victims Assistance)
- 7 FAM, 1920-1929 (Child Abuse or Neglect)
- 7 FAM, 1721-1723 (Child Abuse and Neglect Resources)
- 7 FAM, 1700-1719 (Safety and Protection of Minors/International Parental Child Abduction/ Hague Child Abduction Convention)
- 7 FAM, 900-913 (International Judicial Assistance)
- 7 FAM, 450-456 (Trials, Appeals, Sentences, Post Sentencing)⁶

In your statement before the Senate Judiciary Committee regarding the proposed Consular Notification Compliance Act, 2011 you stated that *“the protection of U.S. citizens abroad ranks among the Secretary’s and the Department’s absolute highest priorities...Without guaranteed consular assistance, Americans cannot travel the world freely, safely, and with peace of mind, whether for tourism, business, education, family matters, military service, or countless other activities...We find these services especially critical in countries that do not respect due process of law and fundamental rights ...*

Ensuring compliance with our legal obligations is essential to our foreign relations and close bilateral relationships. Our treaties are critical to protecting U.S. sovereign interests...[and] facilitate our businesses’ international economic relationships.

Chief Justice Roberts’ opinion for the Court recognized that judgment as a binding international legal obligation, and agreed that the United States’ interests in observance of the Vienna Convention, in protecting relations with foreign governments, and in demonstrating commitment to the international rule of law through compliance with that judgment were —plainly compelling.”

The Convention of Consular Relations is an essential and vital document and treaty, which provides governments with the authority and tools with which to protect the interests and rights of Americans living abroad. The fact that the US State Department and Obama administration support this Act, and encouraged Congress to pass it in 2011, is recognition of their commitment to assist Americans living abroad, particularly those involved with foreign judicial systems, and “detained in any manner”⁷ in a foreign country.

In addition to the “detained in any manner” provision in art. 36, art. 5 of the Convention clearly and categorically provides the US State Department with the **power and authority** vis-à-vis a Receiving

⁶ FAM 7 - US Department of State Foreign Affairs Manual, Vol. 7 - Consular Affairs - Victims of Crimes & Domestic Abuse -

http://worldpulse.com/files/upload/2759/us_department_of_of_state_foreign_affairs_manual_v.pdf

⁷ Art. 36 of the Convention on Consular Relations

State's legal framework to assist American victims of domestic abuse and violence residing in said country, while international law provides the **obligation** to assist and protect. I quote:

Power and Authority to Protect

Art. 5 - Consular functions consist in:

*(a) **protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;***

*(h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the **interests of minors** and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;*

*(i) subject to the practices and procedures obtaining in the receiving State, representing or **arranging appropriate representation for nationals** of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence **or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;***

(j) transmitting judicial and extrajudicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;

(m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State."

Obligation to Protect

*Inter-American Commission on Human Rights, **Gonzales vs. USA and Velasquez vs. Honduras,**
& the European Courts of Human Rights in **A vs. UK***

Under international law, a State may be responsible for acts of violence against women committed by non-state actors if it fails with due diligence to prevent, stop and investigate acts of violence, punish perpetrators and provide compensation to the victims, as specified in General Recommendation 19 (1992) of the Committee on the Elimination of Discrimination against Women. The legal concept of due diligence clarifies the responsibility of States to make women's rights a reality. This responsibility is enshrined within the established requirement of exercising due diligence to respect, protect, fulfill and promote human rights. Exercising due diligence includes actions with respect to prevention, investigation of violations of human rights that have occurred and prosecution of perpetrators through fair proceedings. It also requires that adequate reparations be made to victims, including compensation, justice and 'rehabilitation'.⁸

Decreasing the prevalence of violence against women requires challenging its acceptance, especially the many ways in which victims/survivors are blamed and perpetrators excused, transforming the diverse cultures of complicity and impunity across the globe.

⁸ "Good Practices in Combating and Eliminating Violence Against Women" Expert Group Meeting Organized by: United Nations Division for the Advancement of Women in collaboration with United Nations Office on Drugs and Crime 17 to 20 May 2005 Vienna, Austria, p.4.

*The failure of justice systems across the globe to effectively charge, investigate and prosecute human rights violations against women and girls has resulted in a system of global impunity for perpetrators, which must be urgently addressed.*⁹

*The right not to be abused must be absolute. States have the responsibility to address all violations of women's human rights that take place on their territory and/or are committed by [or against] their citizens in extra-territorial contexts.*¹⁰

In speeches and promises, US State Department officials are continually espousing their commitment to protecting and defending the interests of Americans living abroad. However, when victims of domestic abuse and violence solicit this assistance from Consulates abroad, reclaiming their rights, US State Department personnel refuse assistance under the contention that these cases are “private matters” and “civil disputes,” and that they are unable to intervene due to “sovereignty” issues. Under the principle of “contingent sovereignty”¹¹ and the “obligation to protect under the principle of due diligence,”¹² inter alia a judicial system does not enjoy, nor can they or anyone else claim, the rights of sovereignty in relation to the violation of a woman's or child's rights by State and non-State actors in judicial proceedings.

As stated by Stewart Patrick¹³ *“One of the striking developments of the past decade has been an erosion of this non-intervention norm and the rise of a nascent doctrine of “contingent sovereignty.” This school of thought holds that sovereign rights and immunities are not absolute. They depend on the observance of fundamental state obligations. These include the responsibility to protect the citizens of the state. When a regime ... cannot prevent atrocities against [its people], it risks forfeiting its claim to non-intervention. In such circumstances, the responsibility to protect may devolve to the international community.”*

In order to effectively protect and promote the interests of Americans living abroad, and fulfill the US government's obligation to protect under international law, it is imperative that American Embassies and Consulates abroad comply with the guidelines in U.S. Department of State Foreign Affairs Manual Volume 7 - Consular Affairs (FAM), and utilize their prerogatives provided for in art. 5, 36, 37 & 38 of the Convention of Consular Affairs, and other international treaties, in assuring due process and respect for the rights of American citizens in foreign jurisdictions.

I hope by bringing these issues to your attention the US State Department will reassess their policy of non-compliance with FAM, the Convention on Consular Affairs, and other international treaties

⁹ "Good Practices in Combating and Eliminating Violence Against Women" Expert Group Meeting Organized by: United Nations Division for the Advancement of Women in collaboration with United Nations Office on Drugs and Crime 17 to 20 May 2005 Vienna, Austria, p 12.

¹⁰ "Good Practices in Combating and Eliminating Violence Against Women" Expert Group Meeting Organized by: United Nations Division for the Advancement of Women in collaboration with United Nations Office on Drugs and Crime 17 to 20 May 2005 Vienna, Austria, p.3.

¹¹ See correspondence with US State Department 2007-2013 posted on <http://worldpulse.com/node/64031>

¹² Gonzales vs. USA (2011) Inter-American Commission on Human Rights, inter alia

¹³ **The Role of the U.S. Government in Humanitarian Intervention**, Stewart Patrick, Policy former Policy Planning Staff of the US Department of State, (and presently Senior Fellow and Director of the International Institutions and Global Governance Program) *Remarks to the 43rd Annual International Affairs Symposium, The Suffering of Strangers: Global Humanitarian Intervention in a Turbulent World*, Lewis and Clark College, Portland, Oregon, April 5, 2004 <http://web.archive.org/web/20070614080910/http://www.state.gov/s/p/rem/31299.htm>

which provide them with the power and authority to promote and defend the interests and rights of Americans living abroad.

I thank you in advance for your time and consideration. Please feel free to contact me at Quenby@global-xpats.com or (202) 213-4911 with any questions or requests for additional information.

Sincerely,



Quenby Wilcox
Founder – Global Expats
www.global-xpats.com
quenby@global-xpats.com

cc¹⁴: Assistant Secretary, Consular Affairs Janice L. Jacobs, US State Department
Joyce Namde, European Division Director, Office of American Citizen Services and Crisis Management
Joanne Hunter, Office of American Citizen Services and Crisis Management
Ambassador Alan D. Solomont, Embassy of the United States Spain

¹⁴ Posted on <http://worldpulse.com/node/64031>