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Samantha Power
The White House
Special Assistant to the President
Senior Director for Multilateral Affairs and Human Rights at the National Security Council
1600 Pennsylvania Ave., NW
Washington, DC 20520

March 19, 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 Ms. Power,

With the 57th session of the *Commission on the Status of Women* convening this month, and the elimination and prevention of violence against women at its fore-front, I would like to take the opportunity to bring several issues to the attention of the *Multilateral Affairs and Human Rights at the National Security Council*.

Efforts of organizations and individuals across the globe in the past 40 years have done much to bring awareness to gender-based violence and discrimination against women in societies around the world, with initiatives focused on:

- Passage of national legislation and international treaties
- Creation of government and non-government organizations whose mission is to advance the rights of women and assist victims of domestic violence
- Publically funded, awareness and publicity campaigns
- Access to higher-education and work opportunities for women outside of the home
- Access to reproductive health-care and contraceptives

However, what these initiatives fail to recognize or address are to what extent the deeply rooted and entrenched customs and traditions in a society sustain and encourage violence and abuses of power (visible and invisible) in the community.

These initiatives work under the assumption that individuals in a society will voluntarily and automatically change their actions, opinions, biases and/or the basic tenants under which they live. The continual lack of analysis and re-evaluation of the effectiveness, and results these initiatives produce in a society, from an intersectional perspective, is sorely lacking in government based studies, reports, and political rhetoric.

For example, a widespread government initiative in response to domestic violence has been the criminalization of these acts. But, a common response in countries around the world has been court biases that silence victims. Women who denounce the abuse and their abusers are labeled liars, “mentally-deranged,” and/or “gold-diggers,” seeking to gain an advantage in financial settlements and custodial decisions during divorce. Statistics show that judges do not even consider domestic abuse in their deliberations, and are awarding custody to fathers at a rate of 94%, dropping to 70% in cases of physical and sexual abuse of children.

Another frequent problem society’s are encountering, as domestic violence becomes socially unacceptable, is that physical violence from one generation is replaced by heightened psychological abuse in the next generation. Unfortunately, awareness campaigns and social perceptions of abuse focus only on extreme physical and sexual violence. The damage psychological abuse does to its victims is not even considered significant or relevant, even though all victims attest (and studies show) that psychological scars are the most profound, damaging, and lasting.

Even government initiatives such as the *Hague Convention on International Child Abduction* and its coverage in the press are exposing biases towards fathers in our societies. Statistics are reflecting failure rates in family courts to be 70-90% globally, with almost 70% of the women involved in international child abduction fleeing domestic abuse and the failure of judicial systems to protect¹. However, this phenomenon is receiving no coverage in the press, while the plight of “left behind fathers” is getting extensive exposure. Additionally, Congressional support of the *Hague Convention on International Child Abduction*, coupled with extensive assistance offered by the *Office of Children’s Issues/US State Department* to petitioning parents, demonstrate a bias by the US government of abusers’ rights over victims’ rights, and *de facto* discrimination against women.

In my own personal dealing with the *US State Department, Consular Affairs Division*, I have repeatedly been told that American victims of domestic abuse living abroad, experiencing problems with judicial systems (and their failure to protect,) are “private matters” and “civil disputes.” The US State Department’s policy of non-assistance² to American expatriated victims of abuse is clearly in violation of international law.³ Under this situation, in accordance with

¹ US Supreme Court case *Abbott vs. Abbott* and Hague Convention Domestic Violence Project (www.haguedv.org.)

² as provided for under the Convention of Consular Relations

³ as established in *Gonzales vs. USA*, 2011, Inter-American Commission on Human Rights, *inter alia*

international law, the US government potentially becomes responsible for human rights violations even when those violations occur in a foreign jurisdiction.

In your capacity as Special Assistant to the President and Senior Director for Multilateral Affairs and Human Rights at the National Security Council I request that you encourage the *Consular Affairs Division* of the US State Department to:

- Thoroughly review recent reports and statistics regarding the elevated rate of “taking persons” (apx. 70%) involved in international child abduction under the Hague Convention, who are fleeing domestic abuse and the failure to protect of Receiving States. (For your convenience please find a list of informative resources after the closure of this letter.)
- Rescind their policy of non-assistance to American expatriated citizens in cases of domestic abuse, divorce and/or custodial procedures, and under this policy their non-compliance with the US Department of State Foreign Affairs Manual Vol. 7 - Consular Affairs (FAM 7,) ⁴ and Convention of Consular Relations (calling attention to art. 5⁵ and 36⁶ - see “*detained in any*

⁴ 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) posted on http://worldpulse.com/files/upload/2759/us_department_of_of_state_foreign_affairs_manual_v.pdf

⁵ 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.”

⁶ Article 36 - Communication and contact with nationals of the sending State

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

manner” which applies to these cases due to the inability of minor children to leave a Receiving States in cases of a court *ne exeat* order⁷, and/or any provision of domestic law requiring dual parental permission of “exit,” as well as cases involving the retention of assets, by the courts, a spouse, any trustee, and/or negligence of legal counsel thereby preventing said person’s ability to travel.)

- Examine and take positive action to reverse the *de facto* discrimination against women, produced by the Consular Affairs Division’s policy of substantial assistance to “applicants”⁸, but refusal of assistance to American victims of domestic abuse residing outside of the United States, whereas the failure of Receiving State’s judicial system to “protect,” and/or respect and uphold the rights of victims is documented at rates of 70+%.

I hope by bringing these issues to the attention of the *Multilateral Affairs and Human Rights at the National Security Council* at the Department of State, the US government and its agencies will be encouraged to assist organizations across the globe who are developing programs, initiatives and protocol which promote good practices, transparency, and accountability within judicial systems and family courts. In this way not only can the promotion of democratic principles and practices be advanced worldwide, but violence and discrimination against women may be effectively and comprehensively eradicated.

Global Expats whole-heartedly supports the participation of both spouses in child-rearing and the growing phenomenon of male-homemaker/female bread-winner (or same sex) households. We recognize that promoting equality of the sexes in any society means a changing role for both men and women in socio-economic structures. We are also well aware of the complications and challenges that globalization presents to the family, and how those stressors may serve as a catalyst for separations, divorce and/or domestic abuse.

Our mission is to assure that expatriated families are provided will all of the tools necessary for a successful expatriation, building strong family ties and healthy, productive relationships. Our goal is to prevent dynamics that produce ruptures or abusive relationships within the home, with a focus on early detection and proper prevention, rather than crisis management. However, we are firm in the conviction that the interests of children, meaning their safety, security, and well-being is of primary and utmost concern, and is an obligation and duty of all parties concerned.

I thank you in advance for your time and consideration, and remain entirely at the disposition of you or your staff for any questions or clarifications.

Sincerely,



Quenby Wilcox

2.The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended.

⁷ US Supreme Court Case Abbott vs. Abbott

⁸ Hague Convention on International Child Abduction

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LIST OF RESOURCES:

- 1. Hague Convention Domestic Violence Project - www.haguedv.org**
- 2. DV Leap – George Washington University Legal Clinic - www.dvleap.org**
- 3. The Leadership Council - www.leadershipcouncil.org**
- 4. Submission to the United Nations Commission on the Status of Women - <http://worldpulse.com/node/55730> (with extensive reports by Amnesty International and United Nations Commissions included in research material.)**
- 5. National Safe Child Coalition - www.nationalsafechildcoalition.com**

Enclosure⁹: President Barak Obama, the White House
US Secretary of State John Kerry, US State Department
US State Department - Patrick F Kennedy - Under Secretary Management
Ambassador Alan D. Solomont, Embassy of the United States Spain
US State Department - Joyce Namde - European Division Director – Office of American Citizen Services and Crisis Management
Complaint against the Spanish judicial system and family courts, Commission on the Status of Women, United Nation

⁹ With all referenced documents within posted on <http://worldpulse.com/node/64031>