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February 26, 2013

RE: Domestic abuse as a human rights violation, and a State's obligation to protect

Dear Ms. Van Schaack,

I am contacting you regarding an issue that is receiving increasing awareness amongst communities around the world; domestic abuse and violence as a human rights violation and a State's obligation to protect under the principle of due diligence, as established by the Inter-American Commission on Human Rights, *Gonzales vs. USA* and *Velasquez vs. Honduras*, and the European Courts of Human Rights in *A vs. UK* (www.aclu.org/human-rights-womens-rights/jessica-gonzales-v-usa.)

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'.*¹

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.

*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.*²

*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 their citizens in extra-territorial contexts.*³

One out of every three women, or almost 1 billion women around the world, experiences domestic abuse during her life-time, with the following global consequences and health-related issues:

- 40-70% of women murdered each year are killed by intimate partners⁴
- Over 64 million women each year suffer intentional and unintentional injuries⁵
- Over 100 million women each year suffer from neuropsychiatric disorders⁶
- Over 100 million maternal and perinatal conditions and complications occur⁷
- 20 million people are victims of human trafficking⁸
- Widespread sexual harassment and bullying in the work-place, schools, and communities

The enormity of the problem and its detrimental effects on societies around the world are of epic proportions, and can no longer be considered "private matters" or "civil disputes" by law enforcement officials, judicial tribunals, or government and non-government agencies.

As my own case⁹ and research¹⁰ demonstrate, until and unless judicial actors are held accountable for their failure to execute their duties and obligations as provided for under the law, progressive

¹ "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.

² "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.

³ "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.

⁴ *Women and Health : Today's Evidence Tomorrow's Agenda*, World Health Organization 2009, p. 56.

⁵ *WHO Global Burden of Disease 2004 Report*, p. 64 – World Health Organization

⁶ *WHO Global Burden of Disease 2004 Report*, p. 62 – World Health Organization

⁷ *WHO Global Burden of Disease 2004 Report*, p. 60 – World Health Organization

⁸ *Remarks by the President to the Clinton Global Initiative*, September 25, 2012 (www.whitehouse.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative)

⁹ *Wilcox vs. Spain (Wilcox vs. González de Alcalá / González de Alcalá vs. Wilcox)*

laws, government promises, and millions of dollars spent on awareness and action campaigns will be totally ineffective in eradicating domestic abuse and violence.

The US government and US State Department are continually espousing their commitment to combating and ending violence and discrimination against women.¹ However, when it comes to American women living overseas and the US State Department, Consular Affairs Division's day-to-day operations, the rhetoric does not translate into reality.

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.¹¹ 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,¹² 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 annual budget for the Office of Child's Issues, the 2012 budget for "Strengthening Consular and Management Capabilities" was \$3.75 billion.¹³ Effectively, millions of dollars per year of the

¹⁰ Reports (*Domestic Abuse as a Human Rights Violation and the Principle of Due Diligence - Spain a Case Study*, *Abuses of Power in Our Societies and Court Systems*, and *Sexual Abuse of Children and the Failure of Family Courts to Protect* by Quenby Wilcox,) official complaints to Spanish government agencies (*Defensor del Pueblo*, *Consejo General del Poder Judicial*, and *Instituto de Mujer* in regards to *González de Alcalá vs. Wilcox – juzgado de Mostoles* and legal counsel of Quenby Wilcox) with supporting documentation is posted on <http://worldpulse.com/user/2759/journal> and <http://worldpulse.com/user/2759/journal?page=1>

¹¹ Extrapolated from estimates in *Women and Health: Today's Evidence Tomorrow's Agenda*, World Health Organization 2009, p. 56.

¹² 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)

¹³ Consolidating Schedule of Net Costs, US Department of State Fiscal Year 2012 Agency Financial Report, p. 116

Consular Affairs Division's budget are used in supporting the on-going abuse of thousands of Americans,¹⁴ while none of their resources are being used to assist the victims.

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.

The culture of "*laissez faire*" and silencing of victims, apathy of law enforcement and judicial actors towards the plight of victims, failure of judicial regulatory agencies to diligently investigate complaints & sanction infractions of judicial actors, coupled with consular affairs representatives' non-compliance with art. 5, 36, 37 & 38 of the Convention on Consular Relations and FAM guidelines (victims of crimes/domestic abuse), inter alia, provide the motive, opportunity, and means for abusers to utilize judicial systems and government institutions to freely and overtly continue abusing and harassing their victims.¹⁵

Publications such as:

- *Good Practices in Combating and Eliminating Violence Against Women* United Nations Division for the Advancement of Women / United Nations Office on Drugs and Crime
- *Project on a Mechanism to Address Laws that Discriminate Against Women*, 2008, Office of the High Commission for Human Rights: Women's Rights and Gender Unit (Banda, Fared)
- *Guide for Policy Makers On the Implementation of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, United Nations Office for Drug Control and Crime Prevention

provide the guidelines and protocol for challenging and eradicating abuses of power and discriminatory traditions in the courts, while international treaties¹⁶ and democratic structures such as the Spanish Constitution, Spanish civil and penal code, combined with Equality Act 3/2007, provide the tools and an almost utopian structure for eliminating violence and discrimination of women. However, as long as judicial actors are neither trained, nor prepared to utilize these structures and tools, they are totally ineffective in advancing the rights of women.¹⁷

¹⁴ 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.)

¹⁵ The traditions and customs that for centuries have been used to silence dissent against government abuses of power are being used to silence the dissent of women and children who defy and denounce the abuses of power within the home.

¹⁶ Convention on Human Rights, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Declaration on the Elimination of Violence Against Women, Declaration on the Elimination of Discrimination Against Women, International Covenant on Economic, Social and Cultural Rights, Convention of Civil and Political Rights, and Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

¹⁷ See case study *Wilcox vs. Spain (Wilcox vs. González de Alcalá / González de Alcalá vs. Wilcox)*

In the past 50+ years governments and international organizations have concentrated their efforts in creating and promoting:

- Democratic government models and structures
- Human, civil, and economic international treaties
- Human, civil and economics rights NGO's, think-tanks, commissions, tasks-forces, conferences, seminars, awareness campaigns, etc.

However, efforts have concentrated on signature of constitutions, agreements, and laws with all too little attention on application and implementation. Additionally, policy-makers and managers of government and non-government organizations are often failing to understand and appreciate the role customs, traditions and biases play in supporting rigid-hierarchical societies and abuses of power. They are also failing to grasp the elevated necessity of challenging these abuses of power on a case-by-case basis, at a grass-roots level. There is a common held erroneous belief that by according women the right to vote, access to education, and access to equal rights in the work-force, her rights within the home will be advanced by osmosis. The statistics and over-whelming evidence belies this assumption.

In order to effectively challenge the discriminatory traditions and abuses of power which are violating the constitutional, civil and human rights of American living abroad, it is imperative that the US State Department, Consular Affairs Division 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 in assuring due process and respect for the rights of American citizens in foreign courts.

I hope by bringing these issues to your attention, you will encourage the US State Department's Consular Affairs Division to reassess its policy of non-assistance to American women and children living abroad in cases of domestic abuse, divorce, custodial hearings, and who are at risk of violation of their constitutional, civil and human rights.

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,



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cc¹⁸: President Barak Obama, White House
US Secretary of State John Kerry, US State Department

¹⁸ Posted on <http://worldpulse.com/node/64031>

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
Deputy Assistant Secretary, Jim D. Pettit, Overseas Citizens Services, US State Department
Assistant Secretary, Michael H. Posner, Bureau of Democracy, Human Rights and Labor, US State Department
Ambassador-at-Large Stephen J. Rapp, Office of Global Criminal Justice, US State Department
Ambassador Alan D. Solomont, Embassy of the United States Spain
General Consul Peggy Gennatiempo, Embassy of the United States Spain

ⁱ ***US State Department » Under Secretary for Civilian Security, Democracy, and Human Rights »
Bureau of Democracy, Human Rights, and Labor » Human Right
www.state.gov/j/drl/hr/index.htm***

The protection of fundamental human rights was a foundation stone in the establishment of the United States over 200 years ago. Since then, a central goal of U.S. foreign policy has been the promotion of respect for human rights, as embodied in the Universal Declaration of Human Rights. The United States understands that the existence of human rights helps secure the peace, deter aggression, promote the rule of law, combat crime and corruption, strengthen democracies, and prevent humanitarian crises.

Because the promotion of human rights is an important national interest, the United States seeks to:

- ***Hold governments accountable to their obligations under universal human rights norms and international human rights instruments;***
- *Promote greater respect for human rights, including freedom from torture, freedom of expression, press freedom, women's rights, children's rights, and the protection of minorities;*
- ***Promote the rule of law, seek accountability, and change cultures of impunity;***
- *Assist efforts to reform and strengthen the institutional capacity of the Office of the UN High Commissioner for Human Rights and the UN Commission on Human Rights; and*
- *Coordinate human rights activities with important allies, including the EU, and regional organizations.*

The Bureau of Democracy, Human Rights, and Labor (DRL) applies three key principles to its work on human rights:

1. *DRL strives to learn the truth and state the facts in all of its human rights investigations, reports on country conditions, speeches and votes in the UN, and asylum profiles*
2. *DRL takes consistent positions concerning past, present, and future abuses. With regard to past abuses, it actively promotes accountability.*
3. *DRL forges and maintains partnerships with organizations, governments, and multilateral institutions committed to human right.*ⁱ

***U.S. Human Rights Commitments and Pledges
Bureau of Democracy, Human Rights, and Labor
Washington, DC - April 16, 2009
www.state.gov/j/drl/rls/fs/2009/121764.htm***

*We are dedicated to combating both overt and subtle forms of racism and discrimination internationally. The United States is party to the International Covenant on the Elimination of All Forms of Racial Discrimination, and is committed to seeing the goals of this covenant fully realized. Particular emphasis should be placed not only on eliminating any remaining legal barriers to equality, but also on **confronting the reality of continuing discrimination and inequality within institutions and societies.***

**Patrick F. Kennedy, Under Secretary for Management, US State Department,
Statement to the Senate Committee on the Judiciary
Advantages to the USA in complying with the
Convention of Consular Affairs in their assistance to American's living abroad**

- *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*
- *When a U.S. citizen finds him or herself in a foreign government's custody, a consular officer is often the best, and sometimes only, resource that citizen has as he or she navigates a foreign legal system*
- *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... 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*

United States Strategy to Prevent and Respond to Gender-based Violence Globally

"We also know that countries are more likely to prosper when they tap the talents of all their people. And that's why we're investing in the health, education and rights of women, and working to empower the next generation of women entrepreneurs and leaders. Because when mothers and daughters have access to opportunity, that's when economies grow, that's when governance improves." – President Barack Obama, Remarks at the Millennium Development Goals Summit, United Nations Headquarters, New York, New York, September 22, 2010

"Around the globe, violence against women is an epidemic. Violence robs women and girls of their full potential and causes untold human suffering. Violence against women impedes economic development, threatens peace and prosperity, and inhibits full participation in civic life. For every woman who has been beaten in her own home, for the millions of women who have been raped as a weapon of war, for every girl who has been attacked on her way to school, for all of the children—girls and boys—who have witnessed this brutality, we must do better." – Vice President Joe Biden, Statement on the Anniversary of the International Day for the Elimination of Violence Against Women, November 24, 2010

"It is time for all of us to assume our responsibility to go beyond condemning this behavior, to taking concrete steps to end it, to make it socially unacceptable, to recognize it is not cultural; it is criminal." – Secretary of State Hillary Clinton, Remarks on the Adoption of a United Nations Security Council Resolution to Combat Sexual Violence in Armed Conflict, United Nations Headquarters, New York, New York, September 30, 2009

Mechanisms to Prevent and Respond to Gender-based Violence

www.state.gov/documents/organization/196468.pdf

The Department of State will employ various mechanisms to ensure a coordinated process for enhanced intra- and inter-agency coordination on addressing gender-based violence. The mechanisms outlined below mirror the framework detailed in the Secretary's Policy Guidance on Promoting Gender Equality, and will be integrated across existing coordinating bodies on gender issues, both in Washington and within embassies and missions.

Strategic and Budget Planning

Under the Secretary's Policy Guidance, relevant Department of State bureaus and embassies will develop strategies to promote gender equality and advance the status of women and girls across geographic regions and functional bureaus. Bureau and country strategies to address gender issues will be developed as part of the Department of State's ongoing strategic planning and budgeting process. Strategies will be grounded in analysis of existing

inequalities and focused on action items that the Department and embassies can advance in both near-term and longer-term timeframes. To implement the strategy on gender-based violence, the Department of State will: Review relevant functional bureau strategic plans to ensure that gender-based violence is adequately addressed; and

Request that relevant regional bureaus and embassies include specific gender-based violence issues within their strategic plans, as applicable to specific country or regional contexts.

Guided by newly-revised definitions and guidance to bureaus and embassies, current budget processes have been strengthened to more accurately represent budget levels for the following Key Issue areas: gender equality/women's empowerment (both primary and secondary attribution), gender-based violence, and women, peace, and security. The process informs the annual Congressional Budget Justification in these critical areas and serves to advance gender equality through both direct and integrated approaches. United States Strategy to Prevent and Respond to Gender-based Violence Globally 31

Policy and Programming

Embassies and bureaus will strive to ensure that the full range of U.S. policy and assistance programming identifies and addresses existing gender disparities, capitalizes on the unique skills and contributions of women and girls, and is accessible and responsive to ongoing challenges confronted by women and girls. In order to further this agenda on issues specific to gender-based violence, the Department of State will: Establish an intra-agency working group, consisting of representatives from a wide range of bureaus and offices across the Department, to assist in internal coordination and integration of gender-based violence prevention and response in Department programming and policies.

The working group will share information and establish priorities, as well as coordinate existing policies and programs to eliminate gaps and effectively maximize existing resources.

Through existing policy and diplomatic mechanisms and programming, including the Secretary's International Fund for Women and Girls and S/GWI, the Department of State will: Advocate for development and implementation of laws and policies in other countries to monitor, prevent, and respond to gender-based violence. This includes work to strengthen institutions and support partner governments' efforts to develop appropriate legislation, harmonize laws and other provisions in the legal code, develop action plans for implementation, and help train oversight of and advocacy for implementation of the laws; Support capacity-building of and outreach to civil society, including the media, criminal justice sector, and health providers; Support civil society and community-level approaches to change behaviors and attitudes concerning violence and to facilitate discussion among families, community organizations, and religious, traditional, and other community leaders around human rights and gender-based violence, and effective ways to address these issues. Through these community level approaches, the Department will aim to target and engage:

- Men and boys;*
- Female leaders and women's groups;*
- Religious, faith-based, and community leaders; and*
- Youth*

Build off existing platforms (GHI, PEPFAR, etc.) and scale up programs that have been found effective, contingent on resources. This could include programs that integrate screening of and response to gender-based violence into health service delivery programs, as well as psychosocial support where feasible; or programs that require health and life skills programming for adolescent and pre-adolescent girls and boys, for example to address sexual coercion and abuse and promote elements of healthy relationships; Establish multi-sector linkages regarding violence prevention and response programs, with particular attention to the legal/judicial system and the education and economic sectors; and Address the causes, including root causes, of gender-based violence, especially violence against women and girls. This includes reducing barriers between women and men and girls and boys in economic, political, and civic arenas and implementing initiatives that protect human rights and raise societies' respect and value for all women and girls, including inclusive education and economic empowerment opportunities.