

[In Defense of Maria Jose Carrascosa: Rights Are No Rights Unless Protected and Defended](#)

By Quenby Wilcox

August 12, 2015

I first became aware of Maria Jose Carrascosa's illegal detention by the State of New Jersey in 2008, and have closely followed the horrific travesty of justice and mockery of the democratic process by New Jersey for the past 8 years. Unfortunately, the illegal detention and incarceration of victims of domestic abuse (in [psychiatric facilities](#) and penal institutions), is a [growing phenomenon](#), as it is increasingly being used by abusers as a weapon when victims attempt to flee and escape the abuse - as has been the case with Ms. Carrascosa.

The violations of Rights by the State of New Jersey and American government, in this case, as with others like it, are appalling, inadmissible, and inexcusable - as is the silence, and inaction, of the Spanish government.

It is incomprehensible to me that the international legal community has not yet taken a very, very strenuous stand and action in this case — as well as how it pertains to a growing trend in family courts, and [courts in general](#). Any contention that family courts should not be held to the same standards of procedure, evidence, due process, gender-equality, and democratic process as any other court or institutions is, in and of itself, discrimination against women. Instead of absolving the Spanish and American governments of wrong-doing, their continuing omission of action in Ms. Carrascosa's case elevates their tort, legal responsibility, and legal liability to her - and as proof, I quote [Gender Stereotyping: Transnational Legal Perspectives](#) by Rebecca J. Cook and Simon Cusack;

*In determining how a state has enabled the perpetuation of a gender stereotype, it is helpful to ask: has a state, through its laws, policies, or practices, perpetuated a gender stereotype, which, in turn, has created an environment of legitimacy and normalcy of its usage? For example has a state's failure to adequately respond to gender-base violence against women perpetuated the view that such violence is not a serious crime because, according to the sex stereotype, women are inferior and less valuable than men, and therefore crimes against them are lesser crimes that do not warrant the concern or resources of the state? Has the state enabled the perpetuation of a gender stereotype through means other than the law?*

It is the duty of American and Spanish authorities to protect and defend the rights of this woman and her child, not only under international law and democratic principles, but also under principles of common decency and humanity. Their failure to do so render them complicit and accessories to all, and any, crimes committed against Ms. Carrascosa and her child. In reference to this obligation, I call attention to [Gonzalez Lenahan vs. USA](#), [Gonzalez Carreño vs. Spain](#), under their obligation to protect, and [Avena, Mexico vs. USA](#) in their legal ability to protect. Any contention of the Spanish government's that their "non-interference" is not only justified, but warranted under 'private rights' or 'sovereignty rights' argumentations, is completely unfounded and false under human rights law - noting that ignorance of the law (even for public authorities) is no excuse in cases of criminal acts & in terms of criminal liability (Greenwald (2000s) Winston Churchill (1940s), Thomas Jefferson, John Adams, Thomas Paine, Alexander Hamilton, John Dickinson, John Paul Jones, etc. (1770-80s), Thomas Wilcox (1570s) ...)

In [Gonzalez Carreño vs. Spain](#), the Spanish government's defense (a defense rejected by CEDAW) was "inadmissibility under the contention of judicial error and a failure to exhaust domestic remedies within the disciplinary process in Spain." The continual, and continuing delaying tactics of the State of New Jersey in this case clearly constitutes omission of action, and intentional tampering with the proper functioning of the democratic process, and as such constitutes an attack on judicial independence of New

Jersey courts by the State of New Jersey.

The fact that the Spanish government and Embassy have **not** strenuously, officially, and publically objected to an attack on the rights of a Spanish national woman under American jurisdiction is inadmissible - demonstrating their bad faith in effectively combating discrimination against women and children. It also belies the contention of governments that their actions are motivated by a desire and dedication to preserving [judicial independence](#) - **for if that was true, they would have protested to violations of judicial independence by the State of New Jersey and public authorities** in Ms. Carrascosa's case a long time ago, rather than continually turning a blind eye to it.

The reality of the situation here is that these two governments (in keeping with global customs) are subjugating the rights of one of their citizens abroad, at the [expense of politicians and diplomats](#) whose primary concerns are advancement of their personal careers within stratified, bureaucratic, government institutions - which are at present "Owned" by the [Trilogy](#) (Corporate Greed, the Extreme Right, and Male Supremacists). The [conflict of interest](#) of Foreign Service officials and Career Diplomats in these cases is flagrant, incongruous, and defies all sense of democratic process and fair play - particularly when they start 'shouting from the roof-tops' Judicial Independence in defense of their inaction!?!

In regards to the legal obligations of the Spanish government, I refer them to my [letter to the US Congress](#) and the legal responsibility of the American government vis-à-vis their citizens abroad. In Ms. Carrascosa's case the Spanish government has the same legal obligations as enumerated there within - the shoe is just on the other foot, so to speak.

While examples abound of the double-standards and gender-bias against women within the courts, and by the legal profession and community, Ms. Carrascosa's case provides people everywhere the opportunity to examine several examples - along with the apathy of governments and the legal community towards the resulting discrimination.

One example of the necessity to transform [Rhetoric vs. Reality](#), is in relations to the illegal incarceration of Guantanamo detainees (all Men), and the international communities protest over the illegality of their detention. While the human rights community has been very vocal about these illegal detentions, they have remained all too silent and passive in regards to the extensive incarceration of women and children (**who have committed no crimes**) by family courts - illegal incarcerations, which are in the hundreds, perhaps thousands, globally.

**Why is the growing illegal incarceration of women for discriminatory reasons not accorded the same consideration as the illegal incarceration of men for discriminatory reasons by the international human rights community? - Particularly when both examples of discrimination are clearly part of the same Right-wing ideological platform and political agenda that has encroached upon the political status quo for the past 30-40 years, and eroded away the very fabric of democracy in the USA and abroad (Faludi & Greenwald, inter alia)!?!**

**Does this omission of action not constitute discrimination against women by the international human rights community - a community whose very mission is to combat discrimination!?!**

In relation to the historical discrimination against women by the human rights community and how that has affected their response to the illegal incarceration of women by family courts, and specifically their response to Ms. Carrascosa's case, I quote Siddharth Deva's [book review](#) of [Human Rights of Women: National and International Perspectives](#) edited by Rebecca Cook. In his review, Deva provides a perceptive insight into the various forces behind the discriminatory norms in the human rights community

and why they are preventing a human rights response to the crisis in the family courts at present;

*The evolution of categories of rights collective, economic, social and cultural, and civil and political - encompassed what is principally a male view of human rights, which was based on male life experiences. Civil and political rights were listed in the International Bill of Rights, and were given primacy of place by Western countries; these were meant mainly to protect people, a large proportion of whom were men, within public life; and these rights were to be asserted by them against the state. A cursory look at the right to life embodied in Article 6 of the Civil and Political Covenant makes it clear that this right is concerned simply with the arbitrary deprivation of life through public action. It does not consider the ways that women might need protection to be able to enjoy their right to life...*

*Similarly, the Covenant on Economic, Social and Cultural Rights has very little relevance to many women primarily because of its failure to reflect on the economic, social, and cultural contexts within which most women live. Article 7, for example, in which is set out the right to just and favourable conditions of work, is restricted to the public sphere. It ignores the activities which women perform without pay in their households. The so-called 'third generation' of rights - to development and self-determination - that comprise it are moulded in the same flawed fashion, seeming to support male economic dominance and turn a blind eye to the oppression of many women. These three generations of human rights are all chips off the old patriarchal block...*

*Several articles take up this notion and argue that by viewing equality or non-discrimination between the sexes as ensuring that women are viewed and treated in the same way as men, human-rights law offered very little to women. This is not a new complaint: Northern feminists had identified the flaw in the UN conception of non-discrimination in the early 1970s. Rebecca Cook deftly analyses practices and laws which may make no distinctions on the basis of sex, but yet have the effect of impairing women's rights. Cook shows in some detail how the Women's Convention caught, in its voluminous net, a variety of discriminatory practices against women that the prevailing gender-neutral approach had largely ignored.*

*Yet, as another contributor to Human Rights of Women points out, the Women's Convention can be criticised for having a male-oriented notion of equality, in both its focus on the public sphere, and its very limited admission that oppression within the household was a large factor behind women's inequality. It was only in 1992, in a recommendation of the Committee on the Elimination of Discrimination Against Women, that the oppression of women in the private sphere was highlighted, and gender-based violence pronounced to be a form of discrimination against women. Several essays examine the issue of greater state responsibility for violations of those rights that states, by ratifying international conventions, have undertaken to ensure. These point out that states are responsible not only for not engaging in human rights violations themselves, **but also for taking appropriate action that prevents, monitors, and punishes such violations by private persons....***

*...[E]ven when states do not make [] reservations [to the Convention], they interpret international human-rights instruments in ways that let them get away with murder. On how women's rights should be made culturally legitimate, Radhika Coomaraswamy provides a recipe [and] urges NGOs to help to secure the values of human rights in civil society, instead of resorting solely to law and the paternalistic state to enforce them. Hers is a plea that should be heard and acted on.*

*The book's embrace is gigantic. On family law it has much to say; and even though the perspective of women dominates it, a Third World approach to human rights also enriches its*

*analysis. Many of its contributors focus on international law, but without neglecting the problems of dealing with human rights in legal systems, finding solutions in the contexts of cultures and traditions.*

It is perplexing why none of the many authors and contributors to *The Human Rights of Women: National and International Perspectives*, have not taken a stand on the malicious prosecution and illegal incarceration of Ms. Carrascosa by the State of New Jersey. Why have these ‘Human Rights of Women’ defenders chosen to remain silent and passive, rather than take-up ‘Arms’ to combat a discrimination which they themselves have denounced and document in their book *Human Rights of Women*? Is it not time, for not only governments, but the human rights, women’s rights, and international legal communities themselves to transform decades of Rhetoric to Reality?

Regardless to the actions, or rather omission of actions of human and women’s rights defenders in combating discrimination and violence against women in this case, the responsibility of the Spanish government to act in the defense of a Spanish citizen involved in judicial corruption in a foreign country is undeniable. I call attention to [Avena, Mexico vs. USA](#) and the ICJ’s decision regarding Consular notification (as a failure of due process), as well as the fact that the case involved **54 Men, tried and convicted for rape and murder**. What would have been the reaction of all concerned if **54 mexican women had been accused and convicted of viciously, raping and killing 54 American Men**?

Should women and children not be afforded the same consideration in regards to art. 5 and 36 (inter alia) of the Convention of Consular Relations as Men? Is the failure, and refusal, of the Spanish government to invoke their privilege and authority in this case, under the Convention of Consular Relations, not clearly a case of *de facto* discrimination against women? The Spanish government has the power, authority, and even obligation to assist Ms. Carrascosa - what is missing here *son las ganas de hacerlo!*

I take serious objection over the fact that governments (and the human rights community) publically protest to the lack of due process in cases involving Men (convicted of heinous crimes), but refuse to accord women and child (convicted of nothing) the same consideration. The entire legal community should be taking action against the American and Spanish government in Ms. Carrascosa’s case for no other reason than as a matter of protest and ‘Principle’ under Equality under the Law, as well as their own legal and moral obligation to combat discrimination against women.

As another example of discrimination against women by the Spanish government in Ms. Carrascosa’s case, I call attention to [Democracy Now’s coverage of the case of Jose Couso](#) — *Leaked U.S. embassy cables from Madrid reveal the United States pressured the Spanish government to close a court case brought by the family of a Spanish cameraman, José Couso. Couso was killed in Baghdad when a U.S. Army tank fired on the Palestine Hotel, which was filled with journalists, on April 8, 2003.*

It is unconscionable to me that governments who are so emphatically utilizing the ‘defense’ of judicial independence to justify their omission of action in these cases (a defense without legal basis or grounds), would at the same time be engaging in an attack on the judicial independence in Couso’s case - with NO ONE from the human rights community raising protest over these double-standards within their ranks! The *de facto* discrimination against women here is as obvious, as is it is flagrant.

What I am requesting in Ms. Carrascos’a case, as is with all other such cases, is not that governments interfere in the judicial independence and integrity of the court — **to the contrary. Consulates by assuring integrity, accountability, and lack of gender-bias in all judicial and extra-judicial proceedings in Receiving States are promoting and defending judicial independence globally, rather than attacking and destroying it. What I am requesting, and have been for many years, is**

## quite simply application of the Law.

Apart from the obvious humanitarian implications in these cases, the fact that laws are being openly and flagrantly broken and thwarted by public officials, is in and of itself of grave concern for everyone, particularly the People. As Glenn Greenwald points out in [With Liberty and Justice for Some](#);

*Alexander Hamilton did not often see eye to eye with Paine, but on this he heartily agreed. “The instruments by which [government] must act are either the AUTHORITY of the laws or FORCE,” he wrote in 1794. “If the first be destroyed, the last must be substituted; and where this becomes the ordinary instrument of government there is an end to liberty! Like Paine and Hamilton, Adams, in his 1776 Thoughts on Government, put the rule of law at the top of his list of core principles for a free and legitimate government: “The very definition of a republic is ‘an empire of laws, and not of men.’... Good government is an empire of laws.” The last line may at first glance appear simple and even trite, but it contains a critical insight. The supremacy of law is not just one among many instruments of good government; it is good government itself. The converse is equally true: in the absence of the rule of law, good government cannot be said to exist.*

Greenwald goes on to say,

*[t]he fundamental requirement of the rule of law is equality: the uniform application of a set of preexisting rules to everyone, including the rulers. But like the term rule of law, equality under the law has become merely a platitude a phrase recited without much appreciation of its significance. Everyone claims to believe in it, but hardly anyone remembers what it means. And yet the demand that all be treated equally under the law was no secondary concept to the founding of the United States, but its crux, and it is not difficult to understand why... Of course, the law itself also wields tremendous power. The legal system’s reach is unparalleled: it can deprive a person of property, liberty, even life. It may compel people to transfer their material goods to others, block them from engaging in planned actions, destroy their reputations, consign them to cages, or even inject lethal chemicals into their veins. Unequal application of the law is thus not merely unjust in theory but devastating in practice. When the law is wielded only against the powerless, it ceases to be a safeguard against injustice and becomes the primary tool of oppression.*

And, to the feminists and women’s rights orgs, who I have been [lobbying on both sides of the Atlantic for many](#) years on these issues. The attack on women’s private rights from the extreme Right has gone unchecked for the past 30 years - mainly due to a failure, and refusal, of the women’s rights movement to [counter-attack](#) the Male Supremacists [assault on women’s private rights](#) issues - thereby, creating the [Stalled Revolution](#) (and continual back-tracking on the pro-choice/abortion rights issues). Ms. Carrascosa’s case presents a compelling opportunity for the women’s rights community to do what they claim is their objective at present — to Uninstall the Revolution, and as the former Executive Director of UN Women, Michelle Bachelet stated ‘to translate international promises into concrete national action.’”

What perplexes me in this case, is not so much the response of the State of New Jersey, or even the American and Spanish government - we have all come to expect [rampant cover-ups and corruption there](#). What has perplexed me so much in Ms. Carrascosa’s case, as with the situation in general, is the continuing silence from Women’s Rights and Human Rights orgs from around the world. In order to ‘Uninstall’ the Women’s Rights Revolution it is imperative they take a stand, and a firm and loud stand at that. But, while they are very vocal in their rhetoric and argumentation in their books and reports, no one is willing to ‘stand-up and be counted’ when it comes to real, live cases. If the Rhetoric of the past 50+ years is to become Reality - this community must STAND-UP AND BE COUNTED.

In light of the aforementioned, I am calling upon the Spanish and American People and Press to denounce the continuing, and continual, omission of action of the New Jersey, American, and Spanish bureaucrats implicated in this case. It is high time that Maria Jose Carrascosa and her child were afforded the respect, access to due process, and justice that is their inalienable right.

Rights are no Rights unless they are Protected & Defended - this is a Universal Truth that transcends time and space.