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RE: Domestic Abuse as a Human Rights Violation under the Duty to Protect and Principle of Due Diligence – Case Ms. Schlesinger and Minor Children (British Nationals) in Austrian Family Courts (www.helpbeth.org)

Dear Mr. Bochenek,

I am contacting you regarding the violation of the rights of Ms. Schlesinger and her minor children in judicial proceedings and the Austrian and British government's duty to protect under the principle of due diligence. I hope your organization might contact the British Embassy in Austria encouraging their assurance that Ms. Schlesinger rights will be protected and respected in future judicial procedures, as provided for under international law and the Vienna Convention of Consular Relations. (Please find attached a Press Release regarding her case, and letter sent to British Ambassador le Jeune d'Allegeershecque.)

The rampant violation of human and civil rights of women and children in family courts across the globe, as well as the discrimination against women, is well documented in reports by the United Nations, Amnesty International, Save the Children, inter alia. Please find enclosed *Family Courts in Crisis* newsletters (Nov. 2013 – Jan. 2014)¹ which define these rights, the acts and omissions of acts by judicial actors which violate these rights, and the implications for governments under international law.

As stated in the UN's report *Toward a World Free from Violence: Global Survey on Violence Against Children*,
"Every year, between 500 million and 1.5 billion children worldwide endure some form of violence. Even by the most conservative of these estimates, a vast number of children suffer its physical, mental and emotional effects, and millions more are at risk. Violence knows no boundaries. It takes place in all settings, including those where children expect to be safe – in schools, in justice and care institutions, and also in the home. It is absorbed and at times perpetuated by those exposed to it. Children raised in a violent home gain little experience of negotiating social relations, and are more likely to use violence themselves at home and elsewhere, including at school and in the community.

Freedom from fear and violence, and respect for the dignity and inalienable rights of all members of the human family... These values are the very foundation of cohesive and prosperous societies. Our efforts to end violence, whether state-sponsored or embedded in deep-rooted conventions or harmful practices, must start with the protection of our youngest citizens. Every child has the right to freedom from all forms of violence. This is not just common sense and basic morality; it is also an international legal obligation, as defined in the Convention on the Rights of the Child, the world's most widely ratified human rights treaty.

Toward a World Free from Violence: Global Survey on Violence Against Children
by the UN Special Representative of the Secretary-General on Violence against Children

¹ Nov. 2013 edition, [Save the Children - Spanish Justice System Faced with Child Sexual Abuse within the Family](#); Dec. 2013 edition, [United Nations Report - Violence Against Women as a Human Right Violation](#), Jan. 2014, [Amnesty International - What Specialized Justice?](#) – May 2013-Jan. 2014 editions of *Family Courts in Crisis* are posted <http://worldpulse.com/node/71182>

As Ms. Michelle Bachelet, United Nations Under-Secretary-General and Executive Director of UN Women, stated in the closing statement of the 57th Session of the *Commission on the Status of Women*, **“Words now need to be matched with deeds, with action. Now is the time for implementation and accountability.”**

Globally, **100’s of millions of children, and 1.4 billion women are victims of domestic violence** during their lifetime, and according to the UN:

- *“half of all women who die from homicide each year are killed by their current or former husbands or partners” (33,000 women each year – half of the 66,000 women killed each yr.)*² (ie. widespread attack directed against any civilian population⁶)
- *“The roots of violence against women [and children] lie in historically unequal power relations between men and women and pervasive discrimination against women in both the public and private spheres... (ie. systematic attack directed against any civilian population⁶)*
- *States worldwide are failing to implement in full the international standards on violence against women [and children]³....”* (ie. with knowledge of the attack⁶)

Domestic violence⁴ fulfills the criteria of crimes against humanity⁶. (Noting that annual death rates⁷ in countries currently being investigated for crimes against humanity and war crimes were an average of 4,000/yr. in Sudan/Darfur; 2958/yr. in Colombia; 2336/yr. in the Congo; and that total death under Pinochet were 3,197 (1974-90); and under Franco were 114,000⁸ (1936-52).

It should be noted that the estimated 33,000 women killed each year by intimate partners only reflect recorded deaths, but does not include rape, torture, ill-treatment, emotional abuse or disappearances, nor does it account for the estimated \$30 billion usd/year⁹ in health care and lost productivity costs in western societies caused by domestic violence. And, it does not include male children who are sexually abuse, mistreated, and/or killed each year at the hands of an abusing parent. **The gravity and enormity of the problem cannot be stressed enough.**

However, even though the issues and problems, as well as the consequences under international law is well documented, western judicial systems are not applying these standards in family law and as a consequence are knowingly sanctioning, encouraging and supporting the rape, torture and ill-treatment of victims of domestic violence under their jurisdiction, recalling that this represents a population of the over 415 million women and 100’s of millions of child victims and potential victims in western countries alone.

Reminding that lesser developed countries (with nearly 1 billion victims and potential victims) are often following initiatives, programs, and trends developed in western countries. Meaning that if western societies continue to send

² Estimaciones por el reporte *Global Burden of Armed Conflict* by the Geneva Declaration
http://www.genevadeclaration.org/fileadmin/docs/GBAV2/GBAV2011_CH4.pdf

³ [In-depth study on all forms of violence against women](#) - Report of the Secretary-General, United Nations

⁴ Declaration on the Elimination of Violence Against Women *“violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life... Violence against women shall be understood to encompass, but not be limited to, the following: (a) Physical, sexual and psychological violence occurring in the family.”*

⁵ Convention on the Rights of the Child *“the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community, Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding”*

⁶ the Rome Statute of the International Criminal Court defines **“crime against humanity” as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:** (a) Murder; (c) Enslavement; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

⁷ [Geneva Declaration, Global Burden of Armed Conflict Report](#) (total deaths (2004-2007) for; Sudan 12,719; Colombia 11,832; Congo (DRC) 9,346; Sri Lanka 9,065; India 8,433; Somalia 8,424; Nepal 7,286; Pakistan 6,581)

⁸ in October 2008 a Spanish judge, [Baltasar Garzón](#), of the [National Court of Spain](#) authorized, for the first time, an investigation into the disappearance and assassination of 114,000 victims of the dictatorship between 1936 and 1952.^[232] (Wikipedia-[http://en.wikipedia.org/wiki/White_Terror_\(Spain\)](http://en.wikipedia.org/wiki/White_Terror_(Spain))) (with total deaths of during the White and Red Terror of Franco’s regime 1936-1975 are estimated to be 150,000-400,000).

⁹ Based on an estimate \$8.3 billion in the USA, and extrapolated - http://www.caepv.org/getinfo/facts_stats.php?factsec=2

a message of impunity to abusers and judicial actors for their complicity in said impunity, then developing countries (Africa, Eurasia and Latin America) will follow suit. But, if they address these issues by developing systems of transparency and accountability of family courts and judicial actors, these other countries will follow suit. Also, noting that those involved in war crimes, mass-torture, genocides, and their conspirators, were all victims of/witnessed extreme domestic violence as children.

Taking the case-study of Spain presented in the attached documents¹⁰, the legal counsels of victims, presiding judges, and court-psychologists are systematically and knowingly covering-up and suppressing evidence of domestic violence, **even declaring that acts of abuse are “patria-filial” rights**¹¹ of the husband and/or father. Furthermore when presented with complaints, regulatory agencies (Defensor del Pueblo, Consejo General del Poder Judicial¹², Instituto de la Mujer¹³, and Colegio de Abogados¹⁴, inter alia) are refusing to fulfill their obligation to duly investigate allegations of victims.

Judicial actors are utilizing the same tactics to silence and intimidate victims as abusers are using (economic sanctions, threats, intimidation, manipulation of court-proceedings, and refusal to present/examine evidence), thereby re-victimizing victims. And, the refusal of regulatory agencies to investigate the actions (and omission of actions) of judicial actors is creating a “culture of impunity” for these actors as well as for abusers, thereby encouraging future abuses of victims as well as widespread corruption within judicial systems.

In the case of the Colegio de Abogados de Madrid (Madrid Bar Association) they have even declared¹⁵ that the *“decisions by lawyers [that violate the rights of their clients and/or fail to defend & protect clients interests] fall under their independence, prerogative that assist in the execution of their function as provided for under article 542.2 of the Ley Orgánica del Poder Judicial, 33 of the Estatuto General de la Abogacía and 2 of the Código Deontológico de la Abogacía Española, [and] that immunizes them from all interference and is the exclusive territory of the defense, without any possibility of a deontological revision”*. Further declaring that the violation of the rights of a victim of domestic violence and discrimination against women *“exclusively affect fundamental rights recognized in the Spanish Constitution (CE) and norms in international agreements, and not in any way norms under ordinary laws”* and thereby protects lawyers from any wrong-doing (see attached Press Release – 9/13).

One of the key and necessary actors in defending the rights of women and children are the lawyers of victims. These professionals have a legal and moral obligation to be familiar with and utilize the constitution, civil and penal codes, progressive laws (gender equality and domestic violence), jurisprudence, expert testimony, and innovative, well-developed argumentation to defend their clients and promote their interests. However, as women rights organizations have avowed, it is almost impossible to find lawyers (in N. America, Europe, Australia, and New Zealand) who will effectively defend victims of domestic abuse.

In order to understand how and why lawyers (and other judicial actors) are failing to defend their clients one must examine the following “social” factors from an intersectional perspective:

1. Widespread discriminatory beliefs amongst judicial actors that women lie about domestic abuse in order to obtain preferential treatment during divorce (an illogical argument since women who file complaints for abuse (perpetrated against them or their children) receive reprisals and detrimental treatment during divorce proceedings).
2. The still prevalent belief that women are hysterical, stupid, don’t understand complex concepts ‘litigation/legal principles’ etc. *“weak, lacked strength, their brains [are] too small. So those who could,*

¹⁰ Calling attention to Amnesty International’s (Spain) report *¿Que Justicia Especializada?* And Save the Children’s (Spain) report *La Justicia Española Frente al Abuso Sexual en el Entorno Familiar* - see attached *Family Courts in Crisis* Nov. & Jan. newsletters for a summary of reports in English).

¹¹ See case of Sylvina Bassani <http://worldpulse.com/node/18196>

¹² <http://worldpulse.com/node/52011>

¹³ <http://worldpulse.com/node/50602>

¹⁴ <http://worldpulse.com/node/80536>

¹⁵ In decision on the Colegio de Abogados in regards to complaint filed by Quenby Wilcox in July 2013, *Preliminar 859-13*, posted on <http://worldpulse.com/node/80671>

*stayed home and looked after the children accepting the role of homemaker and mother (Coltrane 1998).¹⁶ (ie. case-study Spain, the *cállate tonta* mentality)*

3. The common belief that homemakers “don’t do anything” and live-off the hard-work of their husbands. This is the main reason that lawyers are failing to adequately reclaim common property assets during divorce, and judges are refusing to award alimony to women commensurate with contribution to home and family. As a consequence homemakers are left destitute by courts and denied access to common property assets during the entire process, effectively hampering their ability to defend themselves within the courts.

(In examining the case-study of Spain (see Nov. '13 & Jan. '14 [Family Courts in Crisis](#) newsletters) – judges award alimony in 11.4% of divorces with reported sums at €500/month (below poverty level) after an average of 15 years of matrimony with the average age of women, 42 years old. Many of these women who have not developed careers and dedicated themselves to raising children & assisting husbands in developing their careers (and elevated salary levels) are left penniless, and thrown into labor-markets where gender & age discrimination is rampant (with unemployment rates of 26.7%) condemning them to a life of extreme poverty. Basically, the courts are relegating the status of the homemaker to one of servitude with no recognition of her contribution to the family or society, & ‘workers’ rights (“safe conditions,” compensation, or pension, etc.) – in violation of Convention of Civil & Political Rights, & Intl. Covenant on Economic, Social & Cultural Rights).

Financial dependence of women is the strongest and most effective form of control a man has over his victim, and the court re-enforces this power and control – all the while classifying women who seek common property assets & alimony as “gold-diggers”¹⁷

4. Historically victims of domestic violence have been “silenced” by the community in order to protect the “honor” of the abuser (using tactics such as making victims feel “ashamed” and “responsible”, talking about abuse is not considered “polite” conversation, social ostracisation, restricting access to assets & funds, etc.) and lawyers are utilizing these same tactics in silencing victims (their clients)
5. Up to two-thirds of populations suffer from “abusive personality” disorders, with abusers more likely to seek jobs which put them in positions of authority and facilitate their access to victims.¹⁸ Lawyers, judges and court-psychologist are in positions where they can easily and readily abuse their powers over women. This is the reason that accountability of judicial actors by regulatory agencies is of the utmost importance in government fulfilling their obligation to protect.
6. There exists a false assumption that women lawyers, judges, etc. will defend the rights of victims, when in fact these women are as likely, if not more likely, to discriminate against victims or cover-up abuse. As stated in the UN report *In-depth study on all forms of violence against women*, “Women also commit acts of violence. While women commit a small proportion of intimate partner violence, they are involved to a greater degree in the perpetration of harmful traditional practices”
7. There exists a high level of nepotism, “old-school” networks, and antiquated “code of honor” traditions amongst lawyers (and other judicial actors) which encourage (if not obligate) the covering-up for “indiscretions” (negligence, malpractice, etc.) of colleagues
8. Since there is no effective over-sight on family courts, with gag orders common in cases where victims attempt to attract media attention, judicial corruption has become common (noting there is a high correlation between abusers and criminal activity/organized & white collar crime.) –

*Judicial civil servants can manipulate the dates of hearings in order to favor one party over another... Judge can make inexact summary decision or distort the testimonies of witnesses before handing down a sentence... Judges can refuse the introduction of evidence or testimonies in order to favor one party over another... Civil servants can —lose a document... Prosecutors can block avenue of legal reparation... **Corruption is more likely in judicial procedure where journalist do not have free access to all fact or lack of activist groups who push for reform.** (This is a synopsis of problems in family courts)*

About Judicial Corruption 2007 by Transparency International

¹⁶ Adaptation of the Trailing Spouse: Does Gender Matter? by Anne Braseby

¹⁷ During my divorce I was told that I should be ashamed of myself for not “worked” for all of those years – not considering that I made 8 international moves in 17 years of marriage and it was impossible for me to maintain a career, pursue higher education/degrees, and my enormous contribution to my husband’s career – well document in global mobility industry reports & stats.

¹⁸ *Social Intelligence* by Daniel Goleman

“White-collar criminals exert more pressure on the judiciary, as they have easier access to social networks that facilitate corruption... organised crime uses social, professional and political networks to influence the judiciary... Certain type of companies, such as law firms..are in high demand by organised crime as middlemen... Attorneys have a significant competitive advantage over all other intermediaries – they can provide services through the whole institutional chain, starting with police and going all the way to prosecutors and even judges... Collusion‘ is often a more appropriate way of describing professionals‘ corrupt behaviour, including that of lawyers...

*Examining the Links Between Organized Crime and Corruption
by the Center for The Study of Democracy*

9. Divorce courts are a huge money-making industry, with little incentive for lawyers to develop arguments and jurisprudence advancing the rights of women within the family or marriage. Yet, jurisprudence (supreme/constitutional court decisions) in the past few decades regarding domestic abuse and family law, has made many inroads in advancing father’s rights and ‘abusers rights’, with little opposition/argumentation from family law lawyers. (This is an area which needs serious examination from a trans-national pool of legal experts in family law, in conjunction with human, civil and women’s rights lawyers.)
10. Women’s rights movements have concentrated almost exclusively on women’s rights within the work-force and reproductive rights in the past – not the home or marriage. This has left a “vacuum” as women simply have not ‘gained’ any rights in the home and marriage in the past 100 years, because no one is “requesting/demanding/arguing for” those rights in the courts. – Feminists and women’s rights activists have traditionally considered homemaker’s role (house-keeping, child-raising, supporting husband’s career, even marriage itself) as ‘shackles of oppression’ with little incentive or desire to develop a political platform or promote legal rights of the homemaker.

In order to advance and defend the rights of victims of domestic abuse it is imperative that human, civil, and women’s rights organizations and legal clinics around the world take a proactive approach to the defense of victims. This entails assisting individual victims compile and file complaints against judicial actors for actions (and omission of actions) which have failed to defend their rights and interests in the courts, including but not limited to the suppression of evidence. And, after all domestic remedies have been thoroughly exhausted, compiling and filing cases within the appropriate international courts against governments who are failing to exercise due diligence in fulfilling their obligation to protect.

Additionally, women’s rights organizations and activists must promote and develop argumentation for the rights of the homemaker and recognition of her contributions to her family and society. Additionally, they must actively lobby and work with lawyers at national levels in developing protocol and ‘good practices’, which comprehensively build legal principles and jurisprudence which defends women’s rights within the courts, as well as a global, political platform and plan of action (see #9 above).

The mission of my organization, Global Expats, is to assist the expatriated (unemployed) homemaker and families (see Global Expats’ report [Profile of the Trailing Spouse and Expat Family](#)). In my blogs on the [Huffington Post](#) and [Memoirs of a Trailing Spouse](#), I have started to establish and develop arguments promoting the rights of the homemaker (and related social issues) and which might assist women’s rights organizations, activists, and lawyers in promoting these rights.

I would be happy to speak with any organizations, activists, advocates, etc. about my on-going research & work (see [Family Courts in Crisis](#) & [World Pulse Journal](#)), and concretely what can be done at present. I can be reached at my email: quenby@global-xpats.com, skype: quenby.wilcox2, and cel.: 00.1.202-213-4911.

Sincerely,



Quenby Wilcox
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