



Quenby Wilcox
Founder
Global Expats
10 Southway, Unit P
Greenbelt, MD 20770
quenby@global-xpats.com
www.global-xpats.com

Congressional Victims' Rights Caucus

February 16, 2013

RE: Request for an Oversight Hearing

Dear Congresswomen/Congresswoman,

I am contacting you as member of the *Congressional Victims' Rights Caucus*, based on its interest in protecting American victims of violent crimes. I am asking that you initiate a request for an Oversight Hearing on the US State Department's (Consular Affairs) non-compliance with art. 2, 5, 36, 37 & 38 of the Convention on Consular Relations¹ in cases of American's living abroad involved in divorce, custodial hearings, and/or victims of domestic abuse.

The American Overseas Domestic Violence Crisis Center (AODVC – www.866uswomen.org) services 5.25 million American living abroad with up to 650,000 women and children at risk of becoming victims of domestic abuse. In 2012 AODVC 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.

These Americans are faced with many difficulties,¹ and are open to discrimination and violation of their rights within foreign judicial systems. My complaint to the *United Nations Entity for Gender Equality and the Empowerment of Women – Commission on the Status of Women* against the Spanish government (posted on www.worldpulse.com/node/55730) enumerates and details the various violations of State and non-State actors in my own particular case, demonstrating how and why courts are failing to assure due process, and their obligation to protect under human rights law.

¹ <http://866uswomen.org/Cultural-Sensitivie-Services.aspx>

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. Cases like *Abbott vs. Abbott* (2010) (www.supremecourt.gov/opinions/09pdf/08-645.pdf) brought these issues to the attention of the US Supreme Court.

Additionally, important to note in understanding the complexity of the issues involved are the growing number of international tribunals that are recognizing domestic abuse and violence as a human rights violations with a government's obligation to protect. The most recent case, *Gonzales vs. USA* (Inter-American Courts on Human Rights – 2011,) found the United States government guilty of human rights violations under their obligation to protect and the principle of due diligence.

At the root of all of these cases and issues (and where governments must focus their attention) is to assure that integrity, transparency, and due process are rigorously upheld within judicial systems around the world. **Governments and their agencies must examine trends and aggregate data of *de jure* and *de facto* discrimination, as well as, any and, all evidence of a lack of due process within their courts. They must also diligently investigate individual cases and complaints, assuring the prosecution of all State and non-State actors guilty of any, and all, infractions under the law, with stringent deterrents to avoid future violations.**

Not only is this common sense in developing “good practices” and proper protocol, but such diligence is detailed in United Nation’s publications such as *Good Practices in Combating and Eliminating Violence against Women*² and *Project on a Mechanism to Address Laws that Discriminate against Women*.³

The US government and US State Department repeatedly declare a commitment to the eradication of gender-based violence.⁴ However, the non-compliance with art. 2, 5, 36, 37 & 38 of the Convention on Consular Relations by American Consulates abroad and US State Department representatives in Washington, DC in their dealings with cases involving American women and children living abroad, victims of domestic abuse, belies this commitment. **The necessity for compliance with the Convention on Consular Relations by American Consulates abroad is of utmost importance in assuring that the rights of Americans are respected in judicial proceedings, as well as in their dealings with the Receiving State’s government and non-government agencies.**

² [Good practices in combating and eliminating violence against](#) by United Nations Division for the Advancement of Women – 2005 and United Nations Office on Drugs and Crime 17 to 20 May 2005 (also available on <http://worldpulse.com/node/55730> .)

³ [Laws that discriminate against women - Office of the High ...](#) commissioned by The Office of the High Commissioner for Human Rights – Women’s Rights and Gender Unit - Dr. Fareda Banda (also available on <http://worldpulse.com/node/55730> .)

⁴ *US Strategy to Prevent and Respond to Gender-Based Violence Globally* US State Department and USAID http://pdf.usaid.gov/pdf_docs/PDACT888.pdf ; *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; *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

Global Expats Domestic Abuse Prevention Division⁵ will provide comprehensive assistance to victims of abuse, with the objective of preventing cases from reaching crisis proportions (ie. cases of international child abduction caused by efforts to protect children from abuse.) However, in order to be effective, we will require the assistance of American Consulates (as provided for in the Convention of Consular Relations) in assuring due process in foreign courts, as well as demanding accountability of State and non-State actors who violate the rights of American citizens.

I hope that as a member of the *Congressional Victims' Rights Caucus* you will initiate a request for an Oversight Hearing, contesting the US State Departments policy of non-compliance with art. 2, 5, 36, 37 & 38 of the Convention on Consular Relations in regards to the following:

- The right to protection from a Receiving State for Americans living abroad in cases of domestic abuse, as established by the Inter-American Commission on Human Rights (*Gonzales vs. US* and *Velazquez vs. Honduras*) and the European Human Rights Courts (*A vs. UK*)
- The right to due process for Americans living abroad within judicial proceedings and tribunals in Receiving States
- Respect for the constitutional and civil rights⁶ of Americans living or travelling abroad by State and non-State actors of Receiving States, as provided for under national and international law
- That allegations of any and all violation of rights and/or crimes committed against Americans living or travelling abroad will be accorded full investigation and prosecution by authorities of the Receiving State, under national and international law

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 partners⁷
- Over 64 million women each year suffer intentional and unintentional injuries⁸
- Over 100 million women each year suffer from neuropsychiatric disorders⁹
- Over 100 million maternal and perinatal conditions and complications occur¹⁰
- 20 million people are victims of human trafficking¹¹
- Widespread sexual harassment and bullying in the work-place, schools, and communities

The enormity of the problem and its 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.

⁵ See p. 14 of *Concept and Structure of Global Expat* www.global-xpats.com/al/documents

⁶ Under the receiving State's Constitution and civil code

⁷ *Women and Health : Today's Evidence Tomorrow's Agenda*, World Health Organization 2009, p. 56.

⁸ *WHO Global Burden of Disease 2004 Report*, p. 64 – World Health Organization

⁹ *WHO Global Burden of Disease 2004 Report*, p. 62 – World Health Organization

¹⁰ *WHO Global Burden of Disease 2004 Report*, p. 60 – World Health Organization

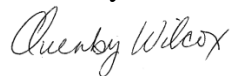
¹¹ *Remarks by the President to the Clinton Global Initiative*, September 25, 2012 (www.whitehouse.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative)

As my own case and research¹² demonstrates, until and unless judicial actors are held accountable for their failure to execute their duties and obligations as provided for under the law, progressive 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 State Department, by defending the interests and rights of their citizens (as provided for in the Convention of Consular Relations) can help implement good practices and appropriate protocol into judicial proceedings in Receiving States. In doing so they may also thereby effectively fulfill their promises and pledges to eradicate domestic abuse and violence around the world, while at the same time respect their own obligation to protect (as established in *Gonzales vs. USA.*)

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
quenby@global-xpats.com
www.global-xpats.com

ⁱ **The Convention of Consular Relations – 1963**

(as quoted from document)

“Article 2 Establishment of consular relations

- 1. The establishment of consular relations between States takes place by mutual consent.*
- 2. The consent given to the establishment of diplomatic relations between two States implies, unless otherwise stated, consent to the establishment of consular relations.*
- 3. The severance of diplomatic relations shall not ipso facto involve the severance of consular relations.*

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;*

¹² 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>

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- (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.”*

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.*
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.*

Article 37- Information in cases of deaths, guardianship or trustees ship, wrecks and air accident.

If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty:

- (a) *in the case of the death of a national of the sending State, to inform without delay the consular post in whose district the death occurred;*
- (b) *to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments;*
- (c) *if a vessel, having the nationality of the sending State, is wrecked or runs aground in the territorial sea or internal waters of the receiving State, or if an aircraft registered in the sending State suffers an accident on the territory of the receiving State, to inform without delay the consular post nearest to the scene of the occurrence.*

Article 38 - Communication with the authorities of the receiving State

In the exercise of their functions, consular officers may address:

- (a) the competent local authorities of their consular district;*
- (b) the competent central authorities of the receiving State if and to the extent that this is allowed by the laws, regulations and usages of the receiving State or by the relevant international agreements.”*