



Spain

More rights but the obstacles remain

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SUMMARY

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Spain: More rights, but the obstacles remain

“I regret having filed a complaint, because my family would not have found out and I am still in the same position I was then: alone, without any help, working like a Trojan so that my children and I can get by”.

Testimony of Laura (an assumed name), interviewed by AI in April 2006

BACKGROUND

Since 2002, Amnesty International has produced a series of reports seeking to encourage the Spanish government to address the issue of gender-based violence from a human rights perspective and to bring its legislation and policies into line with United Nations recommendations. The organization has taken a keen interest in the drafting and progress of the Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence (*Ley Orgánica de Medidas de Protección Integral contra la Violencia de Género*¹) (hereinafter referred to as the “Law Against Gender-based Violence” or ‘the Law’) and made recommendations in relation to it during its passage through parliament.

When the Law Against Gender-based Violence was passed, Amnesty International highlighted its shortcomings, such as the limited statutory protection afforded in cases of gender-based violence within intimate relationships, the failure to make provision for a right for victims to obtain redress, the failure to review fast-track trials (*juicios rápidos*) as a type of proceeding that could foster impunity, and the failure to make any express provision for the victim’s right not to be

¹ Basic Law 1/2004 of 28 December (BOE No. 313 of 29 December 2004).

present at police or court premises at the same time as their assailants. However, despite these shortcomings, the organization welcomed the step taken by the Spanish government to adopt a law designed to protect the rights of women facing gender-based violence. However, the organization would like to remind the Spanish government that the responsibility of States to exercise “due diligence” in defending women’s rights does not stop at the legislative stage, but continues until such rights become a reality.

On the first anniversary of the full entry into force of the Law Against Gender-based Violence², Amnesty International assessed the progress of its implementation to monitor the effectiveness of the measures introduced. Within this first year, some of the measures provided for have been adopted. These include:

- The creation of the Special Government Office dealing with Violence against Women (*Delegación Especial del Gobierno contra la Violencia sobre la Mujer*),
- The establishment of specialized courts dedicated to hearing cases of violence against women (*Juzgados sobre violencia contra la Mujer*),
- The creation of the National Observatory on Violence against Women (*Observatorio Estatal de Violencia sobre la Mujer*)
- The appointment of a Public Prosecutor to deal with cases involving Violence against Women (*Fiscalía contra la Violencia sobre la Mujer*).

METHODOLOGY

Amnesty International used the testimony of women who are victims of gender-based violence, professionals in the field and representatives of organizations working with these women in eight autonomous communities³, to analyze how the State’s response to gender-based violence has changed since this law came into force. This year has seen the highest number of women (32) die at the hands of their partner or ex-partner since 1999.

ASSESSMENT

In the full report, Amnesty International identifies at least 24 specific obstacles that women who are victims of gender-based violence face in defending their rights. In brief, there is a lack of territorial uniformity in the institutional response to gender-based violence and certain vital requirements for access to justice are not enshrined in the new law. E.g.:

- Early detection of violence
- Health services for victims
- Assured quality and availability of victim support
- Assessment units to serve the administration of justice.

Continuing Inadequacies

Resources

The lack of material and human resources is an enduring factor in every link of the chain of agencies responsible for assistance, protection and justice in the face of gender-based violence.

² This law partially came into force on 29 January 2005, with the sections relating to Criminal Protection and Judicial Protection (*Tutela penal y judicial*) coming into force on 29 June 2005

³ The 17 Spanish ‘autonomous communities’ are self-governing regions.

Amnesty International is calling for a sufficient and appropriate budgetary allocation to enable the measures set out in the Law Against Gender-based Violence to be put into practice.

The resources available for a comprehensive programme of assistance for victims of gender-based violence continue to be inadequate and unevenly distributed. This is evident in the patchy provision of victim support through specialized support centres in the autonomous communities. Boarding houses and hostels are still being used to accommodate women in emergencies. Women who are irregular migrants are not entitled to the same assistance as Spanish nationals under the new Law⁴. This situation has been condemned by the Economic and Social Council, which has called for it to be rectified.

Every year an increasing number of women are filing complaints. In 2005, 73,109 complaints were filed, with 47,616 obtaining a “protection order”. However, in 22.7 per cent of the cases, a protective order was refused, sometimes without stating the grounds for its refusal. Amnesty International is concerned that, with the Law Against Gender-based Violence and the way in which it has developed, the “protection order” has become a requirement for access to basic resources such as financial aid, housing aid, and, depending on the territory concerned, psychological aid contravening the recommendations of the Council of Europe.

Training

One major shortcoming identified in every field subjected to analysis in this report concerns compulsory, adequate training, sensitive to gender issues and which probes deep into the roots of violence, designed for all professionals working with victims of gender-based violence. Currently, fewer than 10 per cent of health professionals, both men and women, benefit from any training.

This is an area of vital importance in dealing with physical and psychological consequences in victims of gender-based violence and the early detection of this kind of violence. In spite of the commitments made in the Law Against Gender-based Violence, violence against women does not appear to be a priority in the health sector; it is not included in the health indicators for the population or in the current draft Mental Health Strategy.

Policing

With regard to policing, Amnesty International welcomes the increase in numbers of specialist units in the national security forces, but points out that the number of such units is still insufficient. Amnesty International stresses the need for training initiatives not only for members of specialist units, but for police officers in general.

Access to Justice

The road to justice is still barred by obstacles. Although the Law Against Gender-based Violence establishes the right to free access to justice for women, there is presently no lawyers’ association (including those in Madrid and Vitoria and throughout Andalusia) providing legal representation for victims at police stations, resulting in a lack of legal assistance available for women when they file a complaint. On the other hand, the filing of a complaint can be a risky procedure for women who are irregular migrants in the country as they risk expulsion if their attempt to obtain a protection order is unsuccessful⁵. This has a dissuasive effect on these women who wish to file a complaint.

Amnesty International believes that a specialized judicial response to gender-based violence is fundamental. However, the courts are not able to guarantee victims their privacy or security, due

⁴ This assistance consists of six monthly payments of 383.38 Euros.

⁵ Instruction 14/2005 issued by the Secretary of State for Security on the *police treatment of foreign women victims of domestic or gender-based violence whose presence in the country is illegal*

to lack of resources, excessive workload, delays in processing the civil cases and most significantly, a lack of staff training.

Amnesty International is concerned that the specialized Courts are only scratching the surface of gender based violence cases. 77.4 per cent of cases are concerned with ‘incidental injuries’ rather than addressing previous episodes of violence. In addition, there are still some provinces, including Álava, Valencia, Ciudad Real and Madrid, where there is no forensic assessment unit to assess victims’ injuries.

Compensation

This is one of the continuing deficiencies of the Law Against Gender-based Violence as victims are currently not being fairly compensated. This needs to be rectified, particularly in cases where the State has not exercised due diligence.

INDICATORS

In its report, Amnesty International addresses a total of 40 recommendations to the Spanish government, the governments of the autonomous communities, the Office of the Public Prosecutor dealing with violence against women and the General Council of the Judiciary (*Consejo del Poder Judicial*). It proposes the following 18 minimum indicators for assessing the extent to which the institutional response to gender-based violence has been successful when the term of the present government comes to an end in 2008:

- An integrated national health programme has been drawn up which establishes minimum standards for first-rate training for all health professionals, designed to guarantee a uniform, quality response across all Autonomous Communities.
- The National Mental Health Strategy includes measures to address the impact of gender-based violence on the mental health of women.
- Public health studies undertaken by the National Health System include indicators relating to gender-based violence.
- The short-term forecasts laid down in the financial element of the Law Against Gender-based Violence have been met, so that there is at least one integrated support centre in each Autonomous Community, and no victim of gender-based violence in need of emergency housing is accommodated in a hostel or boarding house.
- In all Autonomous Communities, women who are drug addicts, have problems with alcohol, mental illness, are working prostitutes, suffer from some disability or have children over 12 years of age have access to specialist gender-based violence resources.
- No reception centre will deny residence to women fleeing violence in another Autonomous Community on the grounds that they have not been referred officially.
- Undocumented or irregular female migrants have access to financial assistance designed to support victims of gender-based violence when they break away from their assailant, so as to place them on an equal footing with other women.
- There is a compulsory training programme on gender-based violence for all members of the national security forces.

- Lawyers' associations in all provinces have a duty shift with sufficient resources to assist women at the time they file a complaint and to continue to defend them throughout the proceedings.
- The Secretariat of State for Security's Instruction 14/2005 has been withdrawn and substituted by clear guidelines for avoiding any discriminatory treatment of undocumented or irregular female migrants when they report gender-based violence.
- All professionals working in courts dealing with violence against women receive compulsory, first-rate training.
- All courts processing protection orders receive compulsory training in gender-based violence.
- All Institutes of Forensic Medicine have a Forensic Assessment Unit with sufficient resources to carry out their work.
- All specialized courts dealing with cases involving gender-based violence have facilities to permit the separation of victims from their assailants and which provide privacy for victims.
- An assessment has been carried out of the extent to which courts dealing with violence against women have met their objectives, involving the participation of victims, personnel assigned to these courts and members of the legal profession.
- Judicial statistics on gender-based violence includes data on acquittal and conviction rates according to type of proceedings, paying special attention to data relating to fast-track trials (*juicios rápidos*) as well as data on acquittal/conviction rates in proceedings brought on the grounds of a breach of judicial measures to protect victims.
- State legislation makes provision for flexible and effective means of guaranteeing that women victims of gender-based violence obtain fair and adequate redress, including adequate compensation and full rehabilitation. Redress is guaranteed, in particular in cases where the State has not exercised due diligence.
- Associations and collectives of victims of gender-based violence are involved in discussions and participate in the process of ascertaining the suitability of the institutional response to this type of violence.

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