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More than Words

Making protection and justice a reality for women victims of gender based violence in the home



Introduction

Teresa¹, aged 59, now separated from her husband after 38 years of insults, beatings and enforced sex, is convinced that filing charges against him would worsen her situation and that if he wanted to kill her he could, because she does not trust the public authorities to protect her. When she was interviewed by Amnesty International, she had been hiding in her house for nine months, with the blinds lowered to make her husband think she had left town. Not even the lawyer handling her separation managed to convince her to denounce the violence and go to the authorities for help in dealing with the very dangerous situation she faced. Since she has no expectations that the authorities will provide her with effective protection, she remains in hiding, determined to pursue her precarious strategy and imprisoned by the fear that her husband will carry out his death threats. Teresa's story is far from rare. Lack of confidence in the authorities is a constant theme in the testimonies of survivors of gender-based violence in the home in Spain.

A survey carried out in March 2004 by the Centre for Sociological Research (*Centro de Investigaciones Sociológicas* - CIS), under the auspices of the Ministry for the Presidency, included the question: "How much confidence do you think women who report ill-

treatment by their partner might have in the authorities (police stations, courts, etc.)? A lot, quite a lot, little or none?"

Almost 60 per cent of the respondents said "little" or "none".²

The reality underlying such perceptions is the motivation for this report. In recent years, in the wake of successive announcements of measures to curb domestic violence, many women have sought protection and justice from the authorities. In their dealings with public institutions, they have often been left extremely frustrated after coming up against barriers and discouraging responses, including the traditional types of messages used to stop them doing anything. For many women in Spain, the absence of rights has not been confined to the abuse to which they have been subjected within the family and in their closest relationships. This experience, while devastating in itself, has traditionally been compounded by the lack of protection and the discriminatory and inappropriate treatment which they have received from law enforcement officials and other officials responsible for helping them when they do report the abuse and ask for help.

In December 2004, after a long campaign by women's organizations in Spain calling for a law to address gender-based violence in a comprehensive way, the *Ley Orgánica de Medidas de Protección Integral contra la Violencia de Género* (Basic Law on Comprehensive Protection Measures to Tackle

¹ An assumed name. Interview with Amnesty International in Vitoria, the Basque Country, October 2004.

² 47.4 per cent of those surveyed said "little" and 11.9 per cent said "none", in a survey entitled: March Barometer (Barómetro de marzo), Survey No 2,558, Centre for Sociological Research (CIS), March 2004, p.8.

Gender-Based Violence)³ was passed. Amnesty International has welcomed this initiative by the Spanish Government to improve protection of women's rights under the law. However, the organization believes that it will be a greater challenge to make those rights a reality because that means removing all the obstacles that in practice may continue to undermine the effectiveness and usefulness of the legislation.

At this time, which will be decisive in ensuring that the new law is properly and effectively implemented, Amnesty International wishes to contribute this report to the process so that human rights protection for women can be enhanced. The organization's work has always focused on defending specific individuals and it is therefore their experiences that motivate our actions. By bringing their voices and stories to the attention of the public, we are calling for what is happening to them in reality not to be overlooked during the decision-making process.

In this report, Amnesty International examines the extent to which the Spanish State complies with its duty to protect women's human rights and, in particular, the authorities' obligation to exercise due diligence with regard to gender-based violence in the home. Although the organization recognizes the progress made as a result of the recent new legislation, it remains concerned about the existence of approaches, prejudice, mechanisms and discriminatory practices that may continue to have a bearing on the work of civil servants and officials to the detriment of women's human rights.

In basing research for the report on specific cases, the aim was to track the journey or path that survivors of gender-based violence in Spain have to take in order to be safe and escape from the abuse inflicted on them by their partners or former partners. Given the nature of the abuse suffered, many of the women whose cases are included in this report have asked for their real names not to be used and this has been respected. As far as the conduct of the authorities is concerned, the survivors' stories reveal a

worrying picture of discriminatory treatment, action and failings amounting to a secondary form of victimization that is just as abusive in that it inflicts additional suffering and exposes them to further ill-treatment and serious risk, including death.

According to official figures, since 2001 there has been a continuous increase in the number of women killed at the hands of their partners or former partners as a result of gender-based violence.⁴ In the first 48 days of 2005, there have already been ten deaths, suggesting that there has been no turnaround in the trend. Of the women murdered in the last few years, it is officially recognized that several had reported the violence to which they were being subjected by their partner or former partner to the authorities. Some of them had even been afforded some form of legal protection.

According to the testimonies of the survivors of gender-based violence in the home with whom we spoke, many of those who decided to report the violence were treated with callousness and indifference by the authorities or were accused of lying or inventing or exaggerating their stories. Amnesty International received testimonies from women who, without legal representation or even in the presence of their legal representatives, were subjected to discriminatory and indiscreet questioning which discouraged them from continuing. The risks and devastating effects of the abuse were not taken into account by those who had it within their power to protect and help the survivors, investigate and prosecute the offences in question, punish the person responsible and determine the level of reparation. The testimonies of the survivors interviewed by Amnesty International frequently refer to actions, and even court rulings, that were motivated by prejudice.

The concepts and approaches used by most civil servants and officials in their work and the services they provide have been influenced by ideas based on gender stereotypes and views that shift responsibility for their situation to the women

³ Adopted on 28 December 2004 and published in Spain's *Boletín Oficial del Estado (BOE)* (Official State Gazette) No. 313, dated 29 December 2004, the law entered into force on 29 January 2005, except for the provisions relating to criminal and judicial protection (*tutela penal y judicial*) which will come into force six months after the date the law was passed. Regulations and measures governing its application must also be drawn up within that time.

⁴ Table entitled "Women who have died as a result of gender-based violence at the hands of their partner or former partner, according to their relationship with the perpetrator", 1999-2005 (updated on 17 February 2005), available in Spanish at <http://www.mtas.es/mujer/MCIFRAS/W805b.XLS>, official website of the *Instituto de la Mujer* (Institute for Women's Issues), which is attached to the Ministry for Employment and Social Affairs.

themselves. Women are also excluded from accessing such services through the use of criteria that discriminate against them because of their administrative status, race or place of origin or the fact they suffer from mental or physical disabilities or have other health problems, among others.

In addition to the fact that the availability of services to help survivors of gender-based violence in the home is very patchy across the country, survivors face other burdens and requirements. Essential services such as shelters are provided according to a predefined user profile that makes it difficult for significant groups of survivors to access them. Furthermore, there have been complaints from organizations and from the users themselves that residents are subjected to regulations and disciplinary action.

In Spain, such resources have been provided as a social service and it has been forgotten that they stem from the State's obligation to guarantee all survivors of human rights abuses an effective remedy to enable them to fully recover from the harm suffered and to be protected from further abuse.

In general, the design and management of services has not been undertaken within a human rights framework. Understanding violence against women in the home primarily as a violation of human rights founded on discrimination is only just beginning to take root as a result of the arguments put forward by certain groups in the course of approving the Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence.



In March 2004, Amnesty International launched the “Stop Violence against Women” campaign. In the picture, activists are participating in one of the public events. © AI

In 2004 the very attempt to define and establish the scope of a law for protecting women's rights resulted in interventions and statements from senior members of the judiciary, including a report from the *Consejo General del Poder Judicial* (General Council of the Judiciary), claiming that passing a law to exclusively protect women would be unconstitutional. The depth of ignorance that there is about the fact that the Spanish State has an obligation to eliminate discrimination against women, which means adopting all necessary legal or other measures to tackle the known risks women face as a result of their gender, has been extremely revealing and disturbing.

Since 2001, in its concern for the human rights of women in Spain, Amnesty International has closely followed developments in public policy and legislation concerning violence against women in the home. In this regard, the organization has issued a number of reports, participated in debates and mobilized public opinion to demand that legislation and administrative practices comply with international human rights standards and the commitments entered into by the Spanish State.

This report has sought to update the organization's concerns in this regard, by taking account of the views of women's organizations and information supplied by them, gathering information and statements from civil servants and officials and using the testimonies and voices of those who rarely attend the debates: women who have suffered abuse from their partners and former partners. The research was carried out during 2004 and includes the cases of women who are still at risk and/or who describe incidents in their contact with civil servants or officials that have occurred over the past four years. We have also included the cases of women who were murdered during this period, which we have sourced from documents and witness accounts. We have sought to compile information from five different autonomous communities in order to highlight the common obstacles and challenges that exist, as well as those that are specific to a particular area.⁵

⁵ The five autonomous communities in which interviews with victims, women's organizations, civil servants and/or officials were conducted were Andalucía, Castilla León, Cataluña, Madrid and the Basque country. The report also includes information taken from documentary sources relating to the Communities of Valencia and Castilla La Mancha. This countrywide sample has enabled us to reach a number of general conclusions, since the five

Amnesty International wishes to express its thanks to all the individuals and institutions who agreed to our requests for interviews and information. Our gratitude and recognition also go to all the women's organizations that have supported us and spearheaded the defence of survivors of gender-based violence in Spain for all these years. In particular, we have immense respect for the women who told us their stories and whose strength of will in defying the abuse and violence is a remarkable testimony to their dignity. The time has come for the Spanish State to remove all the obstacles faced by them and guarantee protection and justice for all women.

communities mentioned above, which comprise more than 50 per cent of the Spanish population, account for 58.3 per cent of all complaints of gender-based violence in the home, more than 60 per cent of all protection orders requested and almost 60 per cent of all women killed by their partners or former partners, according to figures in the Report on the Work of the Courts on Domestic Violence – First half of 2004 (*Informe sobre la actividad de los órganos judiciales sobre violencia doméstica – Primer Semestre 2004*) by the Inspection Service of the *Consejo General del Poder Judicial*, Madrid, 2004 and the report entitled Data on Protection Orders issued between 1 January and 31 March 2004 (*Datos de órdenes de protección desde el 1 de enero al 31 de marzo de 2004*), also by the *Consejo General del Poder Judicial*, Madrid, 2004.

1. A challenging reality

Durango: "A woman was murdered by her partner on Saturday night in the town of Durango, Vizcaya. She was allegedly stabbed fatally in the stomach by her partner, whose whereabouts is unknown, according to the Basque Government's Department of the Interior. The woman, aged 32 and born in Guatemala, was seriously injured and went to a nearby bar to seek help but died a few hours later at the Galdakao hospital, to which she had been taken. The alleged murderer had been ordered to keep away from the victim as a result of previous complaints of abuse and had been arrested in the past for mistreating his partner, with whom he had two young children." (Agencia EFE, 20 January 2005).

Córdoba: "Alfonsa Mohedano, aged 35, died this morning as a result of the serious injuries inflicted upon her last night by her ex-husband, Pedro Cantillo, aged 39, who, in defiance of the legal order which banned him from going within 300 metres of the victim, hit her on the head with a stick and ran away, leaving her unconscious. This latest case of domestic violence took place in the town of La Victoria (Córdoba), where the Civil Guard arrested the alleged murderer at 19.30 hours." (El País, 8 October 2004).

Barcelona: "The man who hammered his ex-wife to death in the doorway of their home last Tuesday had been reported by the victim 54 times over the past 10 years. A total of 15 courts in Barcelona had processed these complaints, some of which had ended in convictions. The latest complaint came just two weeks ago, when the man was sentenced to pay a fine of 720 euros for defying a restraining order imposed by a judge and another two fines of 30 euros each for threatening and slandering her." (El País, 12 June 2003)

In Spain, waking up to the news that yet another woman was murdered by her partner or former partner the day before has become chillingly commonplace. Although many of the survivors had suffered abuse for years without seeking help from the authorities, a significant number of those now dead had sought help. What is behind this reality? How could the message left by the deaths of the women who did dare to speak out have been ignored?

It is worth noting that in Spain a very small minority of the very many women who suffer this kind of abuse file a complaint and that therefore those who filed complaints and subsequently were murdered are over-represented among them. Over and above the gravity of the cases of those who had sought protection and justice, the Spanish State also cannot disregard its own responsibility in failing to address the obstacles that discourage or prevent women from exercising their rights and obtaining an institutional response that halts the chain of abuse. Behind the statistics on the number of women murdered year after year, there are countless stories depicting the discrimination that women in fact encounter when seeking to have their most basic rights protected in the face of gender-based violence.

1.1. Figures and trends

In July 2004, upon examining the Fifth Periodic Report presented by Spain⁶, the United Nations Committee on the Elimination of Discrimination against Women (subsequently referred to as the CEDAW Committee) expressed its concern at "*the prevalence of violence against women, particularly the alarming number of reported murders of women by current and former spouses or partners*".⁷

Calculations based on official figures suggest that in Spain around two million women are subjected to gender-based violence by their partner or former partner. A macrosurvey commissioned by Spain's *Instituto de la Mujer* (Institute for Women's Issues) in 2002, in which a broad sample of women over 18 were interviewed, revealed that 4 per cent were aware they had been ill-treated during the previous year, and 11.1 per cent, although they did not admit to it, recognized that they had endured behaviour from their partner that was deemed by experts to indicate a certain level of violence.

In Spain only a small proportion of cases of violence against women at the hands of partners or former partners are reported. Most abuse suffered by women in the home remains hidden. The number of

⁶ Fifth Periodic Report by Spain, UN document CEDAW/C/ESP/5, 15 April 2003, presented orally by the Spanish Government to the CEDAW Committee at its session on 7 July 2004.

⁷ Report by the CEDAW Committee to the UN General Assembly, 31st session, UN document A/59/38, para. 334.

cases reported accounts for less than 5 per cent of the total.⁸

In 2003, 76,267 complaints of domestic violence were filed in first instance and magistrates' courts (*juzgados de primera instancia e instrucción*) or magistrates' courts (*juzgados de instrucción*) throughout Spain and 66,188 were processed, at a rate of 1.6 cases for every 1,000 inhabitants. In the first half of 2004, the number of such complaints filed in the Spanish courts totalled 47,320.⁹

Although the number of complaints filed each year is on the increase, the number of deaths is also increasing. According to figures from the Interior Ministry for 2003, 65 women died at the hands of their husband, former husband or a person with whom they had or had had a similar relationship.¹⁰ According to information compiled by the Consejo General del Poder Judicial, violent deaths of women at the hands of their partner or former partner in Spain increased by almost 59 per cent between 2002 and 2003.¹¹

According to figures for 2004 provided by the *Instituto de la Mujer*, 72 women died at the hands of their husband, former husband or a person with whom they had or had had a similar type of relationship.¹² They were aged between 15 and 82, lived in several different regions, came from a wide range of social backgrounds and were even of different nationalities, although most were Spanish as were their abusers. According to official sources, in

the case of seven of these women, the courts had granted protection measures, meaning that, at the time of their deaths, the abuser was banned from going near them.

According to official figures, 70 per cent of women who suffer violence have been doing so for over five years.¹³ At the same time, a report by the Spanish Ombudsman entitled *Violencia Doméstica contra las Mujeres* (Domestic Violence against Women) estimated that on average women go on living in a situation of abuse with the perpetrator for 7.5 years, "there being many reasons for this, including lack of understanding or help from society, lack of economic independence, children, etc".¹⁴

1.2 Behind the figures

The harm done to survivors of gender-based violence goes very deep and involves physical and psychological damage that has an enduring effect on what they are able to do, their work, their relationships and the exercise of all their rights.

*"I have scars all over, but the biggest are right here and right here [she points to her head and her heart]; these are the ones which never heal. Well, I went on and on, putting up with it, but I already knew that it couldn't go on and that, as soon as my children were grown up, I would leave. And so I did, that's why I put up with so much."*¹⁵

For large sectors of Spanish society, traditions based on gender stereotypes continue to weigh heavily on daily life, an issue that was raised by the CEDAW Committee in its comments on Spain in 2004. Although in the last thirty years Spain has undergone rapid change at the social and economic level, the ideas which shaped relationships between men and women in terms of the latter's subordination and subjection to the former have persisted and it is within the family where there is the greatest likelihood of abuse taking place. The Spanish State has not effectively faced up to this reality. Certain influential groups within society and the authorities have put the family as an institution in a

⁸ Estimate based on figures from the 2002 macrosurvey mentioned above and the latest complete yearly court statistics provided in the *Actividad judicial sobre violencia doméstica 2003* (2003 Report on the Work of the Courts on Domestic Violence), *Consejo General del Poder Judicial*, Madrid, 2004.

⁹ *Informe de la actividad de los órganos judiciales sobre violencia doméstica – Primer Semestre de 2004* (Report on the Work of the Courts on Domestic Violence, First Half of 2004), *Servicio de Inspección* (Inspection Service), *Consejo General del Poder Judicial*, November 2004, Table 2.

¹⁰ *Anuario Estadístico 2003* (Statistical Yearbook 2003), Spanish Interior Ministry, p. 295.

¹¹ *Informe sobre muertes violentas en el ámbito de la violencia doméstica en el año 2003*, (Report on Violent Deaths in the Context of Domestic Violence in 2003), *Servicio de Inspección*, *Consejo General del Poder Judicial*, *Grupo de Trabajo de Violencia Doméstica* (Domestic Violence Working Group), Madrid, 2004, p. 36.

¹² *Instituto de la Mujer*, *La Mujer en cifras 2005* (Women in Figures 2005), at

<http://www.mtas.es/mujer/mcifras/principa.htm>

¹³ 2002 Macrosurvey, *Instituto de la Mujer*, Ministry for Employment and Social Affairs, at <http://www.mtas.es/mujer/mcifras/principa.htm>

¹⁴ *La violencia doméstica contra las mujeres* (Domestic Violence against Women), Ombudsman, Madrid, 1998, p. 116.

¹⁵ *Name withheld*. Interview with Amnesty International in Vitoria, Basque country, October 2004.

position where it seems to be protected at the expense of the human rights of its members.

The testimony of Marta¹⁶ shows how cultural and religious conditioning continues to affect the reactions of family members to cases of gender-based violence: *“A friend of mine rang my mother. Because my mother, by the way, is super-religious. It is the marriage that God wanted and you have to put up with it because that is God’s will. (...) At the time, I had to put up with it because he was my husband and he was having a bad time but I was very wild and always answered back. So of course I was left there defenceless, until a friend of mine rang my mother and said to her: look, you stick to your church, but one day we’re going to take your daughter out of her house in a coffin, because he is threatening to kill her (...). So my mother rang me and said that if things were that bad then I should leave and go to her house.”*

In a social context in which such violence has been tolerated and even encouraged, women’s autonomy and the decisions they make are often seen by their partners as intolerable actions which they have to sort out, even if it means using aggression.

In Spain, when those who suffer abuse at the hands of their husbands decide to seek a separation, their decision still tends to be met with a lack of understanding, lack of support and even rejection by their families and the community at large. Family and social pressure on survivors often leads them to tolerate years of abuse and serious risk. When they finally decide to end a violent relationship, they are often left to their own devices and get no help or support from their nearest and dearest.

Amalia¹⁷ told of her family’s reaction to her situation: *“My husband tried to kill me twice (...). My family still didn’t get it. They said things like: ‘Well, deep down he’s a good person, you need to learn to put up with it...’. Also, he drank, so it was: ‘when he drinks, you must learn not to provoke him. Because you are strong-headed...’ and, I carried on because he wouldn’t let me work either (...).”* When Amalia decided to end the relationship with her abuser, she found no support from her family who thought that what she was doing was not right: *“The next day I talked to my family. I told them it was final, that I wasn’t going back to him, that I didn’t know what I was going to do but I wasn’t going back. My parents told me that, well, they understood but they wouldn’t help me. That if that was how I saw it, I should wise up, that this wasn’t the way to go*

¹⁶ An assumed name. Interview with Amnesty International in Madrid, October 2004.

¹⁷ An assumed name. Interview with Amnesty International in Barcelona province, October 2004.

about things. So I called a social services number I found in the phone book”.

Ana¹⁸ told Amnesty International a similar story. A restraining order had been issued against both her husband and his mother: *“There he was, with our daughters in front of him and, well, he began to insult me, not just him, his mother too, they began insulting me and, well, my daughters became hysterical, crying, me too, it was a horrible situation”.*

Not going to the authorities to report abuse in the home and in relationships is seen in some circles as a virtue on the part of women who have taken “discretion” to the point where it in fact acts as a gag.

The women interviewed by Amnesty International make noticeable references to the need to conceal the violence and to the social stigma that survivors face. The case of Gloria¹⁹, who lives in a small town outside Madrid, is a case in point:

“I had already been separated for over a year, the right way, without any hassle, you know what I mean? To cover up for him more than I had already done, but he didn’t want to (...). The Civil Guard took me (to the health centre) and, then, since the doctor was on an urgent visit..., that’s how things are in small towns..., I felt really ashamed and I told the Civil Guard, ‘Take me home.’ And I came home. And of course it was... ‘What’s the matter, Gloria?’ Typical small town stuff... ‘Gloria, what happened to you?’ Of course, when you go off to see the Civil Guard, well you know how it is, ‘Has something happened to you, dear?’ (...) Apart from that, when the Civil Guard took him the restraining order, it was, ‘Don’t go talking about this, madame, because no one is interested’.”

Spanish society has not succeeded in addressing gender-based violence in the home as a human rights violation. Despite the public visibility and the increasing horror produced by the violent deaths of many women at the hands of their current or former partners, the idea that violence in a couple’s relationship is a private matter that needs to be sorted out without public intervention remains deeply entrenched.

¹⁸ An assumed name. Interview with Amnesty International in Madrid, October 2004

¹⁹ An assumed name. Interview with Amnesty International in a small town near Madrid, October 2004.

1.3 Public policy and legislative reform

In recent years in Spain there has been a great deal of political and legislative activity in response to the problem of violence against women in the home. Amnesty International has responded to the various government and parliamentary proposals by publishing a series of reports. The organization's recommendations have sought to ensure that, when measures are adopted, the institutional response complies with international human rights standards and that the recommendations made to the Spanish Government by the CEDAW Committee²⁰ are addressed.

Since 1998, the Spanish Government has approved two national action plans to stop violence against women: the Plan de Acción contra la Violencia Doméstica (1998-200) (Action Plan to Stop Domestic Violence, 1998-2000) and the II Plan Integral contra la Violencia Doméstica (2001-2004) (Second Comprehensive Plan to Stop Domestic Violence, 2001-2004).²¹

Within the framework of these action plans, between 1999 and 2004 the government pushed through a series of legislative initiatives which resulted in changes to the Código Penal (Penal Code), extending its coverage and toughening punishments, as well as to the Ley de Enjuiciamiento Criminal (Code of Criminal Procedure), in which the situations in which precautionary measures can be adopted were extended.²²

²⁰ This is one of the recommendations contained in a report entitled *ESPAÑA: Un compromiso necesario. Recomendaciones de AI para un plan de acción de derechos humanos* (Spain: A necessary commitment. AI recommendations for a human rights action plan.), Amnesty International Spanish Section, June 2004.

²¹ Adopted by the Council of Ministers on 30 April 1998 and 11 May 2001, respectively.

²² Basic Law 14/1999 of 9 June, amending the 1995 Penal Code in relation to the protection of victims of ill-treatment and the Code of Criminal Procedure (*BOE*, 10 June 1999); Law 38/2002 of 24 October, partially reforming the Code of Criminal Procedure in relation to the swift and immediate prosecution of certain offences and misdemeanours and amendments to the fast-track procedure (*BOE*, 28 October 2002); Basic Law 15/2003 of 25 November, amending Basic Law 10/1995 of 23 November concerning the Penal Code (*BOE*, 26 November 2003); Basic Law 11/2003 of 29 September, on specific measures relating to public safety, domestic violence and the social inclusion of foreigners (*BOE*, 30 September 2003).

When these legislative reforms were being put through, Amnesty International expressed concern at the piecemeal approach being taken to the amendments and doubts about the effectiveness of the measures being proposed.²³ The organization insisted that making repeated changes in the area of punishment, with penalties being constantly being toughened, would not be effective if they were not accompanied by measures to improve the workings of the police and the courts during investigations. It also called attention to the situation of survivors once proceedings come to an end, both in terms of protection and their right to receive reparation.²⁴

With regard to the type of proceedings used to prosecute this type of offence, an important development was the amendment made to the Code of Criminal Procedure to introduce so-called “juicios rápidos” (“fast-track trials”).²⁵ Among the legislative and procedural measures contained in the Second Comprehensive Plan to Stop Domestic violence (2001-2004) was the goal of “establishing a legal framework which allows possible victims to be protected from violent acts and those committing such acts to be punished”. In this connection, one of the actions to be undertaken was: “4. Within the framework of a new Code of Criminal Procedure, to analyze the following issues: (...) simplification and acceleration of legal proceedings in cases of both offences (delitos) and misdemeanours (faltas) through the use of fast-track trials”.²⁶

Criticism of these kinds of proceedings has come from a number of different sectors, including law professionals, especially those who provide legal assistance to survivors, forensic experts and even the Consejo General del Poder Judicial itself. The main point they make is that using fast-track trials in highly complex legal matters such as violence against

²³ *Protección efectiva ¡ya! Análisis de las reformas legislativas propuestas por el Gobierno Español sobre violencia contra las mujeres* (Effective Protection Now! Analysis of the legislative reforms proposed by the Spanish Government with regard to violence against women), Amnesty International, Spanish Section, March 2003.

²⁴ *Ibidem*, pp. 6 and 7.

²⁵ Law 38/2002 of 24 October 2002, partially amending the Code of Criminal Procedure in relation to the swift and immediate prosecution of certain offences and misdemeanours and amendments to the fast-track procedure. (*BOE*, 28 October 2002).

²⁶ Second Comprehensive Plan to Stop Domestic Violence, 2001-2004, approved on 11 May 2001 by the Council of Ministers.

women in the home has reduced the possibility of assembling adequate evidence which in turn fosters impunity. However, this criticism has not led to a review of such proceedings.

In 2002, at the request of women's organizations, all parties with parliamentary representation, except for the then governing party which had a parliamentary majority, supported the passing of a bill²⁷ that would comprehensively address all manifestations of gender-based violence. This bill was rejected by parliament. Instead it was agreed to set up a parliamentary sub-committee to come back with a proposal that was acceptable to all sides.

On 1 August 2003, the *Ley reguladora de la orden de protección de las víctimas de violencia doméstica* (Law regulating protection orders for victims of domestic violence)²⁸ came into force. It was seen as a "bottom line" proposal by the majority of groups who had backed the earlier bill.

Having a "protection order" for victims of domestic violence meant concentrating in the person of the juez de instrucción de guardia, duty examining magistrate, the power to adopt, within 72 hours at most (after hearing the victim and the abuser separately), any procedural measures deemed necessary to protect the victim, any measures established for dealing with any offence committed (restraining orders, arrest warrants and imprisonment) and any temporary civil measures deemed necessary (who should have use of the home and custody of any children, maintenance payments), as well as authorize welfare payments to survivors without economic means, which meant that the judge could order the relevant institutions to pay out the amount of benefit established for that purpose.

However, the feasibility of the measures proposed in the law was called into question, since the resources to put them into practice had not been guaranteed. The Consejo General de la Abogacía Española (General Council of Spanish Lawyers),

²⁷ On 10 September 2002, the Socialist Party Group in the Spanish Lower House tabled a draft *Ley integral contra la violencia de género* (Comprehensive Law on Gender-Based Violence), which was rejected outright by the parliamentary group of the Popular Party which was then in government. *Boletín Oficial de las Cortes Generales – BOCG* (Official Parliament Gazette), No. B-183-1, 21 December 2001, p. 1 and BOCG No. B-183-2, 16 September 2002, p. 23.

²⁸ Law 27/2003 of 31 July 2003, BOE No. 183, 1 August 2003.

when considering the matter, said that "Most of the problems arose because approval of the law was not accompanied by the relevant Financial Statement showing how, once contracted, the resources required for properly implementing it would be effectively funded".²⁹ Consequently, the onus was shifted on to the Autonomous Communities, thereby contributing to uneven implementation of the measures in question depending on location.

Following the general election of 14 March 2004, the new governing party once again took up the issue of establishing a *Ley Integral contra la violencia de género* (Comprehensive Law on Gender-Based Violence) and pushed for a bill which would bring together in a single instrument measures to prevent, assist and protect survivors as well as measures to prosecute, investigate and punish any offence committed. During debate of the bill, disagreements arose about what the law should be called, triggering discussion of whether the law was discriminatory and unconstitutional in that the proposed measures solely benefited female victims of violence in the home.

The Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence was eventually passed in December 2004. It establishes the need to strengthen the resources available for the care of survivors so that they meet the minimum legal requirements, as well as the need to set up a more efficient system for coordinating municipal and regional services. It also provides for verification of the effectiveness of the measures agreed and their suitability to survivors' needs, which will be the main job of a newly-created body called the Observatorio Nacional de Violencia sobre la Mujer (National Observatory on Violence against Women).

It is worth highlighting that, as a result of this law, it has been recognized for the first time that "all women who suffer gender-based violence, regardless of their origin, religion or any other personal or social condition or circumstance, are guaranteed the rights established in this law".³⁰ Similarly, for the first time it recognizes that there are certain groups of women who are "at greater risk of

²⁹ *Consejo General de la Abogacía Española, Memoria 2003*, p. 130.

³⁰ Article 17, Basic Law on Comprehensive Protection Measures to Tackle Gender Based Violence.

suffering gender-based violence or who have more difficulties in gaining access to services”.³¹

Amnesty International worked hard to have these issues taken up and has expressed its satisfaction at the fact that they were included. However, the organization believes that there are still issues to be addressed.³² They include, among others, protection measures for survivors and witnesses during legal proceedings, measures concerning the gathering of evidence and investigation of offences, and measures to ensure that survivors have the right to seek reparation through the courts.

The Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence came into force on 29 January 2005, except for the provisions under headings IV (Tutela Penal, Criminal Protection) and V (Tutela Judicial, Judicial Protection), which are due to enter into force six months later, namely, on 29 June 2005. Within that same six-month period, the following measures also have to be taken: a) the issuing of any regulations required in all spheres of work; b) adoption by the Ministry of Justice of the measures required to establish Juzgados de Violencia sobre la Mujer, courts that will specialize in cases of violence against women; c) adoption of measures to bring the structure of the Public Prosecutor’s Office in line with the provisions of the Basic Law; and d) the drawing up by the Consejo General del Poder Judicial of the necessary regulations for scheduling cases, ensuring that the duty rotas are adjusted to take account of the existence of the new courts dealing with violence against women, and ensuring coordination between the Judicial Police and those courts.

In recent years, some Autonomous Communities, including Castilla La Mancha,³³ Cantabria,³⁴ Navarra³⁵ and the Canary Islands

(Canarias),³⁶ have used the powers available to them to adopt autonomous legislation to provide a comprehensive response to violence against women. In Andalucía, an autonomous law of this type is in the pipeline. The law passed by the Autonomous Parliament of the Canary Islands is noteworthy for including definitions contained in international human rights standards. For example, violence is defined as including violence inflicted within both the public and private spheres and violence inflicted by State officials and private individuals.

³¹ Article 30, Basic Law on Comprehensive Protection Measures to Tackle Gender Based Violence.

³² Amnesty International, Spanish Section, press release, 4 November 2004, at www.es.amnesty.org.

³³ Law 5/2001 of 17 May, on the prevention of ill-treatment and care for women who have been ill-treated (*Ley de prevención malos trato y atención a mujeres maltratadas*), BOE, 21 June 2001.

³⁴ Law 1/2004 of 1 April, Comprehensive Law to Prevent Violence against Women and Protect the Victims of it (*Ley Integral para la Prevención de la Violencia Contra las Mujeres y la Protección a sus Víctimas*), BOE, 26 April 2004.

³⁵ Autonomous Law 22/2002 of 2 July, on the Adoption of Comprehensive Measures to Stop Sexist Violence (*Ley*

Foral para la adopción de medidas integrales contra la violencia sexista), BOE, 22 August 2002.

³⁶ Law 16/2003 of 8 April, on the Comprehensive Prevention and Protection of Women against Gender-Based violence (*Ley de prevención y protección integral de las mujeres contra la violencia de género*), Official Gazette, 8 July 2003.

2. The State's responsibility to tackle gender-based violence

The UN Convention on the Elimination of all forms of Discrimination Against Women, which has been signed and ratified by the Spanish State, obliges States to condemn discrimination against women in all its forms, and to adopt, “without delay” and “by all appropriate means”³⁷, policies that seek to eliminate discrimination against women. Discrimination is defined as including gender-based violence which is in turn defined as violence inflicted on women by reason of their sex or violence that affects women in a disproportionate manner.

In 1992, General Recommendation 19 of the CEDAW Committee established that “[g]ender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men”.³⁸

The obligation to exercise due diligence

In its General Recommendation 19 on violence against women, the CEDAW Committee asserts that “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”.³⁹

In 1993, the UN Declaration on the Elimination of Violence against Women urged States to “[e]xercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons”.⁴⁰

“Due diligence” means the efforts the State must make to comply with its duty to protect all persons against human rights abuse. This basic principle of international law is crucial for explaining the extent of the responsibility that is incumbent on

the State, not only in relation to violent acts committed by State officials but also human rights abuses committed by private individuals.

The obligation on the State to respect and protect international human rights standards and to ensure that they are respected and protected by others includes, among others, the duty to⁴¹:

a) *Take appropriate legislative and administrative and other appropriate measures to prevent violations;*

b) *Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against the alleged perpetrator in accordance with domestic and international law;*

c) *Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and*

d) *Afford effective, prompt and appropriate procedural and substantive remedies to victims, including providing and facilitating reparation to victims, as defined below.*

General Recommendation 19 of the CEDAW Committee also states that States must make sure that the measures put in place to combat violence are appropriate and effective.⁴² In this regard, the Committee recommended, as far back as 1999, that Spain should periodically check the effectiveness of any measures taken.⁴³

³⁷ Article 2 of the Convention on the Elimination of all Forms of Discrimination Against Women, adopted and open for signature, ratification and accession as a result of UN General Assembly Resolution 34/180, 18 December 1979.

³⁸ General Recommendation 19, 11th session (1992), UN document A/47/38, 29 January 1992, item 1.

³⁹ General Recommendation 19, 11th session (1992), UN document A/47/38, 29 January 1992, item 9.

⁴⁰ UN General Assembly, Resolution 48/104, 20 December 2003, UN document 48/49 (1993).

⁴¹ *The right to a remedy and reparation for victims of violations of international human rights law and humanitarian law*, UN document E/CN.4/2004/57, 10 November 2003.

⁴² General Recommendation 19, 11th session (1992), UN document A/47/38, 29 January 1992, items 24 (c), (s) and (v).

⁴³ *Concluding Observations of the Committee on the Elimination of Discrimination against Women, Spain, 1999*, UN General Assembly, 21st session, UN document A/54/38, para. 264.

3. Observations and concerns with regard to the State's response

3.1. Overview of the Spanish State's response

When formulating and putting into practice measures to make human rights a reality for all survivors of gender-based violence, States should take as the starting point for their response the need to recognize the existence of gender inequalities and correctly identify the needs of women, including the specific needs of certain groups that face additional disadvantages. Looking at experiences throughout the world, disregard of gender issues and other factors that cut across them has meant that, on the one hand, insufficient attention has been paid to crucial aspects that could make women's rights a reality and, on the other, inappropriate measures have been used to tackle violence against women in the home. In terms of overall results, this has resulted in ineffective action being taken and caused those who actually suffer such abuse to experience defencelessness, exclusion, revictimization and disempowerment.

Having examined the response provided by the Spanish State, Amnesty International lays special emphasis on three points which need to be seriously addressed if the recently adopted legislation against gender-based violence is to be effective:

a) Account has to be taken of the needs of those who survive gender-based violence. This includes recognizing the particular disadvantages faced by certain groups and gearing strategies and measures towards empowering women, both as individuals and as a group;

b) All the obstacles and obstructions that stand in the way of or adversely affect women's human rights need to be identified and overcome. This means acting without delay to correct laws, mechanisms, practices and actions that discriminate against women or groups of women on grounds of origin, administrative status, race or on any other grounds; and

c) Steps should be taken to ensure that the public resources available can guarantee the care and protection required by survivors of gender-based violence in the home throughout Spain.

Since 2002, when it published a report entitled *There is no excuse*⁴⁴, and throughout 2003 and

⁴⁴ *No hay Excusa. Violencia de género en el ámbito familiar y protección de los derechos humanos de las mujeres en España* (There

2004, Amnesty International has been urging the Spanish State to pay attention to these points which have been raised in several international human rights instruments, including, among others, the Declaration and Platform for Action issued by the Fourth World Conference on Women, Beijing (1995), (subsequently referred to as the Beijing Platform for Action), and various European instruments.

One of the main recommendations made to States by human rights organizations relates to the importance of ensuring that, in addition to introducing such measures, they are geared towards achieving women's autonomy. In 2002, the European Council recommended States to "[r]eview legislation and policies with a view to (...) ensuring that measures are focused on the needs of the victims"⁴⁵ and recommended that member States "[i]ntroduce, develop and/or improve where necessary, national policies against violence based on: a. maximum safety and protection of victims; b. empowerment of victimized women by optimal support and assistance structures which avoid secondary victimization".⁴⁶

In this regard, UN General Assembly Resolution 52/86, concerning crime prevention and criminal justice measures to eliminate violence against women, urged States to formulate "specific crime prevention strategies that reflect the realities of women's lives and address their distinct needs".⁴⁷

It is worth pointing out that in 1999 the CEDAW Committee had already made observations and recommendations to Spain concerning the issues mentioned above upon which Amnesty International has laid great emphasis, including the particular risks and lack of protection faced by certain groups of women.⁴⁸

The recently adopted Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence contains specific provisions

is no excuse. Gender based violence in the home and the protection of women's human rights in Spain).Amnesty International, Spanish Section, November 2002.

⁴⁵ Recommendation Rec(2002)5 of the Committee of Ministers of the Council of Europe on the protection of women against violence, para. I, 3.

⁴⁶ Recommendation Rec(2002)5 of the Committee of Ministers of the Council of Europe on the protection of women against violence, para. 3 b).

⁴⁷ UN General Assembly Resolution, UN document A/RES/52/86, 2 February 1998, p. 3.

⁴⁸ *Concluding Observations of the Committee on the Elimination of Discrimination against Women*, Spain, 1999, UN General Assembly, 21st session, UN document A/54/38, para. 236/277.

that address several of the recommendations made by the Committee in 1999. However, Amnesty International believes that it is not sufficient for these points to be covered in the law. The real challenge is to make them effective and to develop them at a practical level.

The organization wishes to highlight issues relating to the Spanish State's obligation to refrain from discrimination and thereby guarantee the right of all women to receive protection and justice with regard to gender-based violence.

Amnesty International has been concerned that State plans and legislative and administrative measures to tackle gender-based violence adopted in recent years have not started from the premise that women are a heterogeneous group. The absence of studies and information relating to the particular risks faced by different subgroups has seriously hampered the protection work done by the authorities in this area, as indicated by the Beijing Platform for Action.

Until the Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence was passed, there had been no official recognition of the fact that certain groups of women are particularly vulnerable and disadvantaged. The absence of specific measures in both the First Action Plan (1998-2000) and the Second Comprehensive Plan (2001-2004) clearly demonstrated this.

The Beijing Platform for Action pointed to the importance of acknowledging the existence of "[s]ome groups of women, such as women belonging to minority groups, indigenous women, refugee women, women migrants, including women migrant workers, women in poverty living in rural or remote communities"⁴⁹ UN General Assembly Resolution 52/86 concerning crime prevention and criminal justice measures to eliminate violence against women, reminds States that they must take into account that "[s]ome groups of women are especially vulnerable to violence"⁵⁰.

Spanish society is diverse and the measures adopted should cover all aspects of this diversity. At the moment certain groups of women come up

⁴⁹ Beijing Platform for Action, UN document A/CONF.177/20, 17 October 1995, para. 116.

⁵⁰ UN General Assembly Resolution, UN document A/RES/52/86, 2 February 1998, p. 5.

When devising public policy to halt discrimination and violence against women, in addition to gender roles, other factors, such as nationality, social class, ethnic background, age and sexual orientation, also need to be taken into account. It is the combination of several forms of discrimination, among other things, which determines access, or the absence thereof, to a whole range of social and financial resources. These factors can make these groups of women more vulnerable to gender-based violence and hamper their access to protection and justice.

against additional obstacles and disadvantages which make them particularly vulnerable to gender-based violence in the home. Migrant women without legal documentation, Roma women and women with disabilities, among others, often do not have access to assistance and protection resources that meet their particular needs.

Migrant women

Over the past few years, Amnesty International has expressed concern about the standards and practices which undermine the protection of the fundamental rights of undocumented women migrants in relation to gender-based violence. Although human rights law unequivocally asserts that it is the State's duty to guarantee these women the same protection that is afforded to other victims, the reality is very different. This situation has been expressly denounced by Amnesty International in successive reports on gender-based violence in Spain as well as in the context of debates on immigration matters.⁵¹

⁵¹ No hay Excusa. Violencia de género en el ámbito familiar y protección de los derechos humanos de las mujeres en España, Amnesty International, Spanish Section, November 2002; Protección efectiva ¡ya! Análisis de las reformas legislativas propuestas por el Gobierno Español sobre violencia contra las mujeres, Amnesty International, Spanish Section, March 2003; Mujeres invisibles, abusos impunes. Mujeres migrantes indocumentadas en España ante la violencia de género en el ámbito familiar, (Invisible women, unpunished abuse. Undocumented migrant women in Spain who suffer gender-based violence in the home), Amnesty International, Spanish Section, July 2003; España: Resumen informativo de AI con relación al quinto informe periódico que presenta España ante el Comité de la ONU sobre la

However, as documented in this report, this group of women continues to encounter obstacles when seeking access to shelter resources and financial aid for survivors of gender-based violence.

In its 2004 report containing conclusions and recommendations addressed to Spain, the CEDAW Committee expressed its concern about the situation of women migrants in the following terms: “Noting that, since 1999, there has been a quadrupling of immigration into Spain, the Committee is concerned about the multiple forms of discrimination which migrant women, including those who are undocumented, may face by public authorities, private employers and individuals, as well as the difficulties in becoming integrated into Spanish society (...)”. In view of this, the Committee “urges the State party to take effective measures to eliminate discrimination against migrant women, both within immigrant communities and in society at large, and to ensure that the women concerned are made aware of available social services and legal remedies and are being supported in accessing them”.⁵²

For its part, in 2002, the Council of Europe urged States to “ensure that all available legal services

and solutions for the victims of domestic violence be provided to immigrant women who request them”.⁵³

In 1998, a report by the Ombudsman on domestic violence against women recommended “that sufficient publicity be given to shelters and refuges and that they be equipped to receive women who, as nationals of other countries, need shelter structures that are adapted to their own language and customs”.⁵⁴

This lack of response to cultural diversity seems to disregard the profound changes that have taken place over the past decade in the social and demographic composition of Spanish society as a result of the rapid increase in the immigrant population. Between 2002 and 2003, the immigrant population in possession of residence permits in Spain increased by 24.40 per cent, with an overall increase of 323,010 people during that year.⁵⁵ Furthermore, they make up an even greater proportion of the users of certain public services, which means that the latter have to devote a significant amount of attention to them. At Madrid’s Servicio de Atención a Víctimas de la Violencia Doméstica – SAVD (Service for Victims of Domestic Violence), 44.91 per cent of the women dealt with between January and August 2003 were foreign. In 2001, foreign women had accounted for 34.13 per cent, meaning that in less than two years there had been a 10.78 per cent increase.⁵⁶ However, the services are not equipped to provide appropriate care for people from cultural backgrounds that are very different from that of Spain and who sometimes do not speak the language. The testimonies collected by Amnesty International reveal that some of those in charge of providing services, including, for example, some shelters, are sometimes completely insensitive to the customs of others.

In an interview with Amnesty International in November 2004, the Director General for Women’s Affairs of the Autonomous Community of

Eliminación de la Discriminación contra la Mujer (Amnesty International summary of the fifth report submitted by Spain to the UN Committee on the Elimination of All Forms of Discrimination against Women), Amnesty International, Spanish Section, July 2004; España: Recomendaciones de AI al proyecto de Ley Orgánica de Medidas de Protección integral contra la violencia de género (Spain: Amnesty International Recommendations regarding the Draft Law on Comprehensive Protection Measures to Tackle Gender Based Violence), Amnesty International, Spanish Section, July 2004; España: ¿Somos todos iguales ante la ley? Preocupaciones y recomendaciones de AI a la reforma de la ley de extranjería (Spain: Are we all equal before the Law? Amnesty International concerns and recommendations with regard to reform of the immigration law), Amnesty International, Spanish Section, 2003; España: Oportunidades perdidas y mejoras insuficientes en materia de derechos humanos. Recomendaciones de AI a la reforma del Reglamento de la Ley de Extranjería (Spain: Lost opportunities and insufficient improvements with regard to human rights. Amnesty International recommendations with regard to reform of the regulations governing the immigration law), Amnesty International, Spanish Section, 2005.

⁵² Report by the CEDAW Committee, UN document A/59/38, 2004, para. 339.

⁵³ Committee of Ministers of the Council of Europe, on the protection of women against violence, Recommendation Rec (2002)5.

⁵⁴ *La violencia doméstica contra las mujeres*. Recommendations concerning social and welfare aspects, Ombudsman, p. 140, Madrid, 1998.

⁵⁵ *Anuario estadístico de extranjería* (Statistical Year Book of Aliens), *Observatorio Permanente de la Inmigración* (Permanent Observatory of Immigration), Office of the Secretary of State for Immigration and Emigration, Madrid, 2003, p. 55.

⁵⁶ January–August 2003 report, SAVD, Madrid, pp. 11-12

Madrid (CAM) provided clear evidence that undocumented women migrants who have suffered gender-based violence are prevented from accessing facilities: “At CAM facilities, access for undocumented women migrants was not considered. This means that lots of women do not get access to the resources available from the administration. Regulations need to be introduced to establish access, because in principle there is no such requirement, and although it is very hard from a personal standpoint to say this, we cannot offer undocumented women our services as things stand at the moment. They cannot come in because they do not file charges. If they do not file charges, they cannot enter the shelter system, the specific occupational training system, the labour mediation system, they do not have access to any of the resources”.⁵⁷

The obstacles that stand in the way of this group of women having their human rights protected have led to complaints being submitted to the Ombudsman by the very officials in charge of managing services for the survivors of gender-based violence, who find it impossible to guarantee them the help they need. In the Ombudsman’s report for 2003, the following example was included:

“The Social Services Director at the Centre for General Social Services in Guadarrama (Madrid) informed this Institution about the situation of a North African mother of two who was being ill-treated by her partner. This woman filed a complaint about these events and entered emergency accommodation as a matter of urgency. She remained there for one month, while appropriate permanent social provision was sought for her and her children. The problem was that no plans had been drawn up to provide an appropriate solution for a person of that kind, namely, a battered North African woman, married with children, who did not have a valid residence permit despite having lived in Spain for many years. Consequently, it was necessary to find her accommodation in a place which would accept people without valid documentation, accept children and could provide the necessary psychological, social and employment support to enable her to stay there for at least six months. According to the Director of the Centre for Social Services in Guadarrama, a number of different institutions were approached, all to no avail. In conclusion, it was found that, although

⁵⁷ Amnesty International interview with Patricia Flores, Director General for Women’s Affairs, Autonomous Community of Madrid, November 2004.

the emergency aid was adequate, there did not seem to be any kind of stable social facility available to prevent what in fact happened: that the woman was obliged to go back and live with her abuser”.⁵⁸

If the principle of non-discrimination, as set out in the Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence, is not to remain simply a statement of principle but is to effectively correct the existing discriminatory practices, the Central Government must develop clear guidelines so that this principle is integral to the management systems of all welfare and justice measures established for survivors.

Roma women

International human rights bodies also point to the particular vulnerability to gender-based violence faced by women from ethnic minorities and stress how important it is that, by taking into consideration their specific circumstances, States provide specific measures that are designed to guarantee full human rights protection for these groups.⁵⁹ In particular, the CEDAW Committee has expressed its concern at the lack of effective human rights protection for Roma women in Spain and has urged the Spanish Government to “*promote and protect the human rights of Roma women*”.⁶⁰

In Spain, the Roma community is the largest ethnic minority.⁶¹ The absence of official data regarding the incidence and specific characteristics of gender-based violence among this population, as well as the obstacles Roma women encounter when seeking protection, helps to perpetuate the invisibility and impunity of the gender abuse suffered by Roma women.

A study by the *Fundación Secretariado General Gitano* (General Secretariat of the Gypsy Foundation)⁶² outlines the difficulties faced by Roma

⁵⁸ Ombudsman, 2003 Report, pp. 183-184.

⁵⁹ Beijing Platform for Action, UN document A/CONF.177/20, 17 October 1995, para. 116.

⁶⁰ Report by the CEDAW Committee, UN General Assembly, 2004, UN document A/59/38, para. 345.

⁶¹ According to Spain’s Ministry of Labour and Social Affairs, the country’s Roma population currently stands somewhere between 600,000 and 650,000. Programa de Desarrollo Gitano (Gypsy Development Programme), Ministry of Labour and Social Affairs (www.mtas.es).

⁶² *Análisis sobre prácticas de intervención ante la violencia de género en la comunidad gitana* (Analysis of intervention practices for dealing with gender-based violence in the gypsy

women who have survived violence when they try to access the network of resources. These difficulties are due largely to the fact that the programmes or services on offer fail to take account of the particular characteristics of their culture. Furthermore, non-acceptance of children above a certain age is particularly off-putting for Roma women, for whom being taken away from their children is one of their greatest fears. This study shows the results of fieldwork carried out in 391 public and private centres and services in 16 autonomous communities, 84 per cent of which had no specific programme to cater for cultural diversity.

Another barrier identified as being crucial for Roma women is the fact that they are required to file a complaint with the police or the courts in order to access resources. Roma custom does not easily accept one Roma denouncing another before the courts of the majority society and therefore women only do so in very extreme situations, since this would inevitably cause them to distance themselves from their community.

Rosa⁶³, a Roma woman interviewed by Amnesty International, described the implications for a Roma woman of reporting her husband:

“I cannot report him, that’s the truth of the matter, because if I report him I will get the entire family against me, because that is the worst thing you can do among gypsies. (...) It is looked upon very badly for a woman to report her husband, it is the worst thing on this Earth and it is a sure road to ruin.”

Isabel⁶⁴, a Roma woman who tried to leave her husband after a brutal beating, tried to explain the difficulties she found when she sought help, and how, once she took the step of fleeing, she found no other options and was forced to return to her partner:

“I can look after myself my way, in my own manner, but not in yours. I mean, if they gave me some time to learn to read and write, things would be different. To have a little time to adapt to where you are, what you want to do, to know you’re going to make it with

community), *Fundación Secretariado General Gitano*, Madrid, 2004.

⁶³ An assumed name. Interviewed by Amnesty International in Huelva (Andalucía) in October 2004.

⁶⁴ An assumed name. Interviewed by Amnesty International in Madrid in October 2004.

your children and that you they won’t push you back, because they don’t offer you a way out, they don’t give you any help, they really don’t help you”.

Amnesty International believes that the planes de cooperación (cooperation programmes)⁶⁵ envisaged under the Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence should include specific measures for ensuring human rights protection for Roma women who suffer gender-based violence that address the circumstances of particular vulnerability and the institutional obstacles that this group faces.

Women with physical or mental disabilities

Another group recognized by international bodies as being especially at risk of gender-based violence in the home, as well as to additional discrimination, are women with disabilities.⁶⁶

In Spain there are almost two million thirty thousand women with disabilities. In Europe, it has been estimated that around 40 per cent of such women suffer or have suffered some form of violence.⁶⁷ However, according to Ana Peláez, speaking on behalf of the *Comité Español de Representantes de Personas con Discapacidad* (Spanish Committee of Representatives of Persons with Disabilities), the plans, measures, services and resources established to inform, advise and protect people who are subjected to abuse “have not taken into account the particular characteristics of women with disabilities and so they are not accessible to them. (...) Another way they are discriminated against is through the physical barriers and the obstacles to understanding and communication that exist at

⁶⁵ Article 32 of Basic Law 1/2004 of 28 December 2004, published in *BOE* No. 313, 29 December 2004.

⁶⁶ Beijing Platform for Action, para. 124 m, UN document A/CONF.177/20, 17 October 1995, and Resolution 1997/144 of the UN CEDAW Committee.

⁶⁷ Appearance of Ana Peláez, member of the Women’s Commission of CERMI (*Comité Español de Representantes de Personas con Discapacidad*, Spanish Committee of Representatives of People with Disabilities) and the Women’s Commission of the European Forum on Disability, before the Employment and Social Affairs Commission of the Spanish Parliament, in connection with the Draft Basic Law on Comprehensive Protection Measures to Tackle Gender Based Violence, 7 September 2004.

offices and courts and which prevent women with physical disabilities from freely accessing them".⁶⁸

Before the Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence was passed, there had been no legal provisions or official plans listing the duties incumbent on protection authorities in order to effectively safeguard the human rights of women with disabilities in the face of violence. The organization has learned that women with disabilities in Spain suffer serious discrimination when seeking to access basic welfare provision for survivors. Women are often expected to be able to live independently in order to access shelters for survivors, most of which are not equipped to receive people who have any kind of special need.

The Basque Ombudsman (*Ararteko*)⁶⁹ reported that "[w]hen women with drug addiction problems, mental illness or physical, psychological or sensory disabilities are victims of domestic abuse and violence, they cannot access these resources. Most of the apartments provided as shelter are not even appropriately fitted out for use by people with mobility problems (they are located on upper floors with no lift, etc)".⁷⁰

According to information received by Amnesty International, in July 2004 in Vitoria, a programme to provide psychological care for survivors of gender-based violence was transferred to a building with several flights of stairs and a very narrow lift which did not allow wheelchair access, triggering protests by women's organizations.

The most serious difficulty for deaf women is in obtaining access to information and in communicating that they are being abused.⁷¹ As far as

women who have mobility problems are concerned, shelters are often not designed to accommodate them. Amnesty International is concerned at the evident lack of sensitivity shown by institutions in designing and planning facilities that cater for the disadvantages faced by this group of women, whose disabilities in many cases have been the result of, or exacerbated by, gender-based violence in the home.

In the process of drafting the Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence, disabled people's organizations worked intensively with the authorities and succeeded in ensuring that the law recognized the vulnerability of this group, as well as the duty of institutions to remove the obstacles that currently undermine the protection of these women. Amnesty International welcomes this legal provision but would remind the authorities that the obligation to act with due diligence means that it has to be implemented and this requires the necessary professional and financial resources to be allocated to it. The specific needs of this group of women should be assessed and the government should ensure that specific steps are taken to provide care and reparation for all of these groups of women and to check that they are properly implemented in each of the Autonomous Communities.

⁶⁸ Appearance of Ana Peláez before the Employment and Social Affairs Commission of the Spanish Parliament in connection with the Draft Basic Law on Comprehensive Protection Measures to Tackle Gender Based Violence, 7 September 2004.

⁶⁹ This is the only public body in Spain that has carried out an inspection of the services provided for survivors of gender-based violence. The inspection included seeking the views of a wide range of survivors themselves.

⁷⁰ *Respuesta Institucional a la violencia contra las Mujeres en la Comunidad Autónoma del País Vasco. Informe extraordinario de la institución del Ararteko al Parlamento Vasco* (Institutional response to violence against women in the Autonomous Community of the Basque Country. Special report by the Basque Ombudsman's Office to the Basque Parliament), 2003, p. 33.

⁷¹ In 2000, the Women's Commission of the Federación Nacional de Sordos de España (National Federation of Deaf People in Spain) published a *Guía para profesionales*

ante la violencia y los malos tratos a mujeres sordas (Handbook for professionals dealing with violence and ill-treatment involving deaf women), available in Spanish at www.fnse.org. The purpose of the handbook is to train staff from institutions working with survivors about the particular needs of deaf women who have been subjected to gender-based violence in the home and the barriers such women face when seeking access to information and other services.

3.2. Preventing gender-based violence

Given that violence against women is not a random event but something which stems from cultural and social patterns that are deeply entrenched within society, international bodies have stressed the importance of working to raise social awareness and to educate.

Article 5 of the CEDAW Convention states that *“States Parties shall take all appropriate measures: (...) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”*.⁷²

Similarly, one of the main concerns raised in the July 2004 CEDAW report concerning Spain’s compliance with its commitments under the Convention was the persistence within Spanish society of a set of roles and stereotypes that discriminate against women and give rise to gender-based violence. The Committee therefore urged the Spanish State to *“take additional measures to eliminate stereotypical attitudes about the roles and responsibilities of women and men, including through awareness-raising and educational campaigns directed at both women and men and at the media, and carefully monitor the impact of such measures”*.⁷³

Amnesty International has expressed concern about the focus of the awareness-raising initiatives undertaken by the authorities in recent years. The messages have been mostly directed at survivors themselves, with little emphasis and few resources being devoted to raising awareness within society as a whole, particularly among men.⁷⁴ The most common messages sent out to date have been ones repeatedly stressing to women the importance of taking the initiative to report violence and ask for help. Since these messages have not been accompanied by others directed at those perpetrating the violence against them, the idea that women are responsible for their own situation has been reinforced.

⁷² Article 5, CEDAW.

⁷³ Report by the CEDAW Committee, UN General Assembly, 2004, UN document A/59/38, paras. 333-334.

⁷⁴ *No hay Excusa. Violencia de género en el ámbito familiar y protección de los derechos humanos de las mujeres en España*, Amnesty International, Spanish Section, November 2002, pp. 28 and 29.

The organization has also criticized the short duration of awareness campaigns, thereby not allowing time for feedback or for the ideas to permeate society, and the fact that advertising companies were commissioned to run them, with no input from civil society, especially women’s organizations. Finally, a glaring omission was the absence of any in-depth evaluation of the impact of the campaigns in question.

As far as educational measures are concerned, Amnesty International has emphasized their importance in preventing gender-based violence and is disappointed to find that measures to prevent gender-based violence in a co-educational environment, including the crucial task of training teachers, have received substantially less financial support than other measures.⁷⁵

Amnesty International welcomes the provisions relating to education contained in the Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence, including those relating to introductory and on-going training for teachers. The organization believes that educating teachers about equality between men and women is part and parcel of providing them with sound human rights training that goes beyond merely passing on knowledge and techniques. Amnesty International has been calling for human rights to be made a compulsory subject in teacher training, in line with the proposals and recommendations made by the UN Decade for Human Rights Education (1995-2004) and those put forward for the subsequent decade 2005-2014.

⁷⁵ *Ibidem*, p.31.

3.3. Detecting abuse

The Beijing Platform for Action stated that it was essential to “[r]ecognize, support and promote the fundamental role of intermediate institutions, such as primary health-care centres, family-planning centres, existing school health services, mother and baby protection services, centres for migrant families and so forth in the field of information and education related to abuse”.⁷⁶

Primary healthcare centres, mental health services and hospital emergency departments could provide some of the best means of detecting gender-based violence. According to the World Health Organization, “Most women come into contact with the health system at some point in their lives. This makes the health care setting an important place where women undergoing abuse can be identified, provided with support and referred if necessary to specialized services. Unfortunately, studies show that in most countries, doctors and nurses rarely enquire of women whether they are being abused, or even check for obvious signs of violence”.⁷⁷

General recommendation 24 by the CEDAW Committee addresses the States’ obligation to intervene in the area of health in order to protect women’s right to health:

“Since gender-based violence is a critical health issue for women, States parties should ensure (...) the enactment and effective enforcement of laws and the formulation of policies, including health care protocols and hospital procedures to address violence against women and abuse of girl children and the provision of appropriate health services”.⁷⁸

In Spain, specialist health workers and institutions responsible to the Ministry of Health and Consumer Affairs both agree that “almost all survivors visited their doctor in the year after they were assaulted”.⁷⁹

Amnesty International is concerned that the resources and training provided for health workers in health centres that perform this important task are

insufficient. Despite the existence of willing health professionals who are fully aware of the importance of their job, the material conditions in which they have to do their work prevents them from devoting all the attention required by such an evidently complex “new front” as the detection of gender-based violence in the home.

This lack of resources means that the bulk of measures and strategies designed to provide care to survivors of this kind of abuse are focused on women seeking emergency help and little attempt is made to detect any evidence of violence that is not revealed by the victim herself.

As part of the activities undertaken in the context of the First Action Plan against Domestic Violence (1998-2000), the Inter-Territorial Council of the National Health System developed a health protocol for dealing with ill-treatment. Although as part of the First Action Plan this material was printed, reprinted in 2000 and distributed throughout the country (there were 25,095 copies in total), Amnesty International has learned that its distribution was not accompanied by a suitable programme of action to raise awareness and train staff or to push for its evaluation.

With regard to the lack of training among health workers, a specialist in primary healthcare said that “[n]o resources at all are provided for training, health programmes stay on desks in health ministry offices”.⁸⁰ In response to a question from Amnesty International, another health professional who works in a Madrid health centre replied that, “Here we carry on doing what we have always done, I think a letter arrived with instructions as to what to do in cases of ill-treatment, but that’s all”.⁸¹

Amnesty International has also received complaints from health workers about the lack of priority given to initiatives for training personnel in these matters. In this regard, a specialist interviewed by Amnesty International said the following:

“Health professionals could perform early detection and that is vitally important, because a woman who has been abused for a year or two is not yet totally destroyed (...). Training is a highly useful tool for motivating professionals, but workforces are frozen, locums are not brought in. All professionals are entitled to forty hours of training per year, but how can you go if they don’t provide a locum? I was never

⁷⁶ Beijing Platform for Action, UN document A/CONF.177/20, dated 17 October 1995, para. 125 f).

⁷⁷ *WorldReport on Violence and Health*, World Health Organization, Washington D.C., 2002, p. 106.

⁷⁸ CEDAW Committee, General Recommendation 24, 20th session, 1999, para. 15(a) and (b).

⁷⁹ *Sociedad Española de Medicina de Familia y Comunitaria, Ministerio de Sanidad y Consumo, Violencia Doméstica* (Spanish Society for Family and Community Medicine, Ministry of Health and Consumer Affairs, Domestic Violence), p. 29, Madrid 2003.

⁸⁰ Interview conducted by Amnesty International with Pilar Blanco in Madrid, October 2004.

⁸¹ Interview conducted by Amnesty International with a professional from a public health centre, Madrid, November 2004

*asked if I wanted AIDS training, they sent me off to do it and they brought in a locum”.*⁸²

Some organizations within the health sector have complained that, despite rising healthcare needs, there has been no increase in staffing which means that health workers are forced to treat as many as 50 or 60 people during their working day.⁸³ A manifesto signed in October 2003 by *Sociedad Española de Medicina de Familia y Comunitaria - SEMFYC* (Spanish Association for Family and Community Medicine) stated that *“we family doctors in Spain see 40 per cent more patients than our European counterparts, with a ratio of family doctors to the total number of practicing physicians that is below the European average. As a result, we are the doctors who have least time to devote to patients who visit our surgeries”*.⁸⁴ These organizations complain that in these conditions it is practically impossible to make a thorough examination of someone who comes seeking medical treatment and therefore detect possible cases of violence against women in the home.

The lack of training and resources provided to health workers is also patently obvious in the case of Nadia⁸⁵, a woman whose husband brutally assaulted her on a number of occasions over a period of eleven years. She was even left for dead following one attack which caused her permanent brain damage. She had visited health centres on many occasions to have her injuries treated. She always blamed them on accidents. Once, a doctor asked her if her husband had hit her:

“It was the only time I saw a woman doctor and she immediately understood what was going on and she didn’t give me time to lie to her (...). She didn’t ask ‘What is wrong with you?’, she said, ‘This man has hurt you, hasn’t he?’. That’s when I admitted what had happened, because she asked me directly and in a few seconds I tried to tell her everything but I couldn’t because he was there. My eardrum had been perforated, I was six or seven months pregnant, well, I was beaten to a pulp, I had marks all over my body, but the worst was my ear which was bursting, and my head (...). He used to stamp on my head in his shoes and that is how he perforated my eardrum. (The doctor) said: I am going to call the police right

⁸² Interview with Amnesty International, October 2004.

⁸³ SEMFYC, *Manifiesto: Por la calidad y dignidad de la Atención Primaria* (Manifesto: For Quality and Dignity in Primary Healthcare), 2 October 2003.

⁸⁴ Ibidem.

⁸⁵ An assumed name. Interview with Amnesty International in Madrid, October 2004.

*now, and I refused (...). I think I made an impact on that woman and in fact I think if I saw her again in a crowd of a hundred people, I would recognize her. The only thing I remember about that woman was the look of horror on her face. All she could say to me was, ‘I’m sorry but I’m going to file a report, it’s my duty’.*⁸⁶

Nadia said that every time she visited the emergency department of a health centre, her husband was allowed to go in with her. Although other doctors had also realized what was going on when they saw her injuries and even bite marks, no one ever informed her that she could get protection: *“I did not have any information, that is what makes me sad, I waited for eleven years because I didn’t have the information. No one ever told me there were institutions that would give you a bed, a place in a shelter, where you and your children would be safe, I really didn’t know about it”*.⁸⁷

In the case of Mercedes⁸⁸, insufficient time during her appointments with the doctor was the reason why she did not obtain the necessary support: *“I used to tell him my story (the doctor), I told him everything that was happening and what I was going through (...) but since he didn’t have time, he paid no attention”*.⁸⁹

In Spain, the *Guía de Buena Práctica Clínica en Abordaje en situaciones de violencia de género* (Good Practice Guide for Dealing with Gender-Based Violence), published in 2004 by the *Organización Médica Colegial de España* (Spanish Medical Association) and the Ministry of Health and Consumer Affairs, points out that *“Without adequate health intervention that allows a diagnosis to be made of all these situations and comprehensive treatment of the clinical repercussions to be provided so that women can recover and play an active and independent role in a new setting in which the violence has been left behind, the problem will never be solved (...) Not all survivors of this violence file a complaint so that a judicial investigation can be opened, but their health is undermined in*

⁸⁶ An assumed name. Interview with Amnesty International in Madrid, October 2004.

⁸⁷ An assumed name. Interview with Amnesty International in Madrid, October 2004.

⁸⁸ An assumed name. Interview with Amnesty International in Huelva (Andalucía), October 2004.

⁸⁹ An assumed name. Interview with Amnesty International in Huelva (Andalucía), October 2004

*all cases, and they all end up seeking medical help for reasons that are more or less directly related to it”.*⁹⁰

Amnesty International believes that the health authorities should without delay introduce information and detection measures to face up to the challenge posed by the huge number of survivors of gender-based violence who do not seek direct help but who do visit health centres. Public bodies should adapt their responses to the situation and needs of survivors so that women will have greater confidence in them. They should also support them in exercising their right to live their lives free from violence. It is regrettable that this recent criticism of the overall situation by the World Health Organization applies to Spain: “(...) *the response of the health sector to violence is largely reactive and therapeutic. Because that response tends to be fragmented into areas of special interest and expertise...*”⁹¹

The World Health Organization (WHO) is proposing that national health systems, in their entirety, should aspire to providing good quality assistance to the survivors of all types of violence, as well as any rehabilitation and support resources that are required to prevent subsequent complications. According to the WHO, the priorities should be as follows:

- Improvements to emergency response systems and the ability of the health care sector to treat and rehabilitate survivors;
- Recognition of signs of violent incidents or ongoing violent situations, and referral of survivors to appropriate agencies for follow-up and support;
- Ensure that health, judicial, policing and social services avoid renewed victimization of earlier survivors and effectively deter perpetrators from re-offending;
- Incorporation of modules on violence prevention into the curricula for medical and nursing students.

⁹⁰ *Guía de Buena Práctica Clínica en Abordaje en situaciones de violencia de género*, Spanish Medical Association and Ministry of Health and Consumer Affairs, pp. 14-15, Madrid, 2004.

⁹¹ World Report on Violence and Health, World Health Organization, Summary, p. 12

World Report on Violence and Health. World Health Organization, Geneva, 2002. Summary, p. 10.

To overcome this limited approach, specialist health personnel interviewed by Amnesty International say that a comprehensive health programme against violence is required and not just individual health care protocols. They believe that protocols are limited in their scope, whereas treatment of gender-based violence in the home requires an integrated approach that sees it as a public health issue. Those who specialize in the field are calling for a programme which “*covers the phases of planning, organization, development and evaluation, a health programme which operates at all levels of the health system, includes epidemiological monitoring, provides for evaluation, looks at the different intervention strategies to be followed at individual and community level, and envisages prevention, care and rehabilitation. In short, a healthcare programme just like in other cases that is much more global, (health) protocols do not approach it as a health problem*”.⁹²

The Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence, in its chapter on health, calls for a section on comprehensive prevention and intervention in cases of gender-based violence to be included in National Health Plans⁹³. This would seem to indicate the establishment of a health programme similar to the one outlined above. However, when the Inter-Territorial Council of the National Health System discussed setting up a Commission against Gender-Based Violence that would make proposals about the measures required to “*implement the health protocol*”⁹⁴, it was not clear whether the aim was to move towards a comprehensive health programme, of which the protocol would be just a part, or if the working tools would remain unchanged.

⁹² Interview conducted by Amnesty International with Dr. Pilar Blanco Prieto, a specialist in primary care and violence in the home, Madrid, October 2004.

⁹³ Article 11.4 of the Basic Law on Comprehensive Protection Measures to Tackle Gender Based Violence reads as follows: “In the resulting National Health Plans there shall be a section on comprehensive prevention and intervention with regard to gender-based violence”.

⁹⁴ Article 12 of Basic Law 1/2004 on Comprehensive Protection Measures to Tackle Gender Based Violence, 28 December 2004, published in *BOE* No. 313 on 29 December 2004.

An essential starting point must be getting to know and understand the conditions that make it hard for women to escape from situations of gender-based violence. The relevant section of the Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence should therefore serve to consolidate a health strategy that encompasses the early detection of violence and the establishment of welfare provision and a suitable referral system for all survivors.

The fact that health workers lack the training and resources to detect and treat victims of violence means that a golden opportunity to detect violence is lost. From the outset, women's fundamental rights are left unprotected. Primary detection by health care services could be instrumental in ensuring that survivors have access to resources which they might otherwise never obtain. If the Spanish State fails to provide the necessary resources so that trained personnel can detect these situations and treat them and so that survivors can enter into contact with a network that will safeguard their rights, then it is a long way from meeting its obligation to prevent and protect women from gender-based violence.

In the opinion of Amnesty International, it is vital that the regulations developed from the Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence addresses the question of drafting, disseminating and effectively implementing a comprehensive plan for early detection and care of gender-based violence within the health system. It is also essential for any such plan to be based on what, for the World Health Organization, is a fundamental recommendation: it must incorporate proper *"safeguards against revictimization" – the placing of victims at risk of further violence by perpetrators, censure from their families or communities, or other negative consequences*".⁹⁵

3.4. Help and shelter

The response survivors receive when they first contact public services set up to help them deal with gender-based violence can have a decisive effect on their lives. The intervention such services make may shape their future actions and decisions, including whether to stay trapped in a violent

⁹⁵ World Report on Violence and Health, World Health Organization, Summary 2002, p. 42.

relationship or stand up for their rights. Within the international human rights framework, the right to a remedy and reparation encompasses the provision of services to help survivors recover from the human rights violations they have suffered. This framework applies to survivors of gender-based violence.

Amnesty International is concerned that such immediate and comprehensive help is not being guaranteed for all survivors. The organization has received testimonies from women who did not find such support or did not receive it when they needed it, thus affecting their subsequent decisions.

The provision of psychological assistance to survivors is often one of the areas that is most neglected by public authorities.

Gloria⁹⁶, who lives in a town in the Madrid region, told Amnesty International how her immediate need for help was not met: *"I went to the place in Arganda the Guardia Civil told me about, where they help women. They did nothing, because, just imagine: they listened to me, they told me what I needed, because I was not balanced that day, I was in a bad way, and they told me to go and see a psychologist in twelve days' time. I needed a psychologist then, not in twelve days (...) and I didn't go back after twelve days"*.

In his 2003 report, the Ombudsman for Andalucía said, *"We have seen how, in many cases, the actual resources fell far short of users' expectations, either because they had initially been given the wrong information or because access to help depended on the existence of a favourable social situation"*.⁹⁷

In successive reports on Spain published since 2002, Amnesty International has been expressing concern at the fact that shelter facilities do not meet the needs of survivors of gender-based abuse and that the management approach used by them is not geared towards encouraging women's autonomy.

The Beijing Platform for Action urged governments to *"[p]rovide well-funded shelters and relief support for girls and women subjected to violence"*.⁹⁸ There is concern that shelter facilities for survivors in Spain fail to meet the following conditions, which are essential if they are to be effective:

Availability: each State must have sufficient numbers of these facilities.

⁹⁶ An assumed name. Interview with Amnesty International in the Madrid region, October 2004.

⁹⁷ Report to Parliament, 2003. The Ombudsman for Andalucía, p.30.

⁹⁸ Beijing Platform for Action, para. 125 (a).

Accessibility: such facilities should be accessible to everyone under the State's jurisdiction without distinction, especially the most vulnerable groups and those with the least social power.

Acceptability and quality: such facilities should be geared towards achieving women's autonomy, ensuring that an ethical approach is taken to the work done with survivors, especially with regard to confidentiality, and incorporating interculturality and a gender perspective. The staff responsible for providing such services must have the necessary training and professionalism to be able to respond to the needs of survivors.

Limited resources and uneven provision depending on location

According to the Report on Action against Domestic Violence (*Memoria de actuaciones contra la violencia doméstica*), compiled by the General Administration of the State and the Autonomous Communities in 2003 and published by the Instituto de la Mujer in September 2004, there are 293 *temporary accommodation facilities* in Spain. As well as emergency centres, these include shelters (*casas de acogida*) and safe houses (*pisos tutelados*), as well as 27 facilities of other kinds.

The occupancy rate varies greatly, depending on the town or autonomous community in question. The perception among professionals who come into contact with these facilities is that occupancy has fallen since the introduction of the "protection order", since this quickly enables many women to remain in their own homes.

The *emergency centres* were devised as places of shelter and protection in urgent situations, from where, following an assessment of their case, women are referred to the facilities considered most suitable for them. They are not designed for long stays, but the average time spent in them, depending on the autonomous community in question, ranges from six days in La Rioja to 30 in Madrid.⁹⁹

Shelters are envisaged as centres in which women's need to be safe is accompanied by comprehensive work that enables survivors to overcome the trauma suffered as a result of the abusive relationship and to be able to lead a more

⁹⁹ *Instituto de la Mujer, Memoria de actuaciones contra la violencia doméstica*, compiled by the General Administration of the State and the Autonomous Communities in 2003, published September 2004.

independent life. The specific services provided by these shelters usually include advice on legal, psychological or social and work-related matters. There are 106 centres of this type throughout Spain.

The third type of facility is the *safe house*, usually an apartment. These are made available to women who have already spent time in a shelter and, despite having had their more urgent needs met, still need psycho-social support and accommodation. There are 126 such apartments throughout Spain.

Finally, in some areas hotels and boarding houses are sometimes used as emergency accommodation.

Administrations	Emergency centres	Shelters	Safe houses
General Administration	0	1	0
Andalucía	8	8	23
Aragón	0	3	0
Asturias	0	4	1
Balearics	1	9	0
Canary Islands	0	14	15
Cantabria	0	2	2
Castilla la Mancha	4	11	1
Castilla y León	3	17	3
Cataluña	3	5	7
Extremadura	0	2	2
Galicia	1	9	2
Madrid	4	3	5
Murcia	1	4	1
Navarra	1	1	5
Basque Country	3	0	51
La Rioja	1	1	0
Valencia	2	10	8
Ceuta	1	1	1
Melilla	0	1	0
TOTAL	33	106	127

Source: *Memoria de actuaciones contra la violencia doméstica*, compiled by the General Administration of the State and the Autonomous Communities in 2003, published September 2004, Instituto de la Mujer, Ministry of Labour and Social Affairs.

The table shows that, owing to decentralized administration, services and resources are unevenly distributed throughout the country. The CEDAW Committee, in its report to the Spanish State in 1999, remarked on the differences between the different areas of Spain resulting from decentralization and expressed concern that women's rights may be unevenly protected for reasons of geography. Analysis of the resources on offer in the different

autonomous communities reveals that these differences, which are often quite significant, occur not only between different autonomous communities but can also be considerable even between locations within the same community.

The availability of services and resources has also varied at different times. According to information obtained by Amnesty International, their survival has been affected by changes in local or autonomous administrations and sometimes the decision on whether or not to put them into operation has depended on the particular circumstances pertaining at the time.

As shown in the table above, the provision of both shelters and safe houses has gradually increased in recent years. However, Amnesty International notes with concern that the number of emergency centres has actually declined from 41 in 2000 to 31 in 2003 despite the fact that the need to provide survivors with emergency accommodation as a matter of urgency has not subsided.

The organization has found that, in some areas and in some circumstances, the authorities, when seeking to address the need to get women away from their abusers as soon as possible, do not always move them to specialist centres (emergency centres). In the Basque Country, Cataluña and other regions, because of the shortage of places in such centres, the authorities resort to the use of hotels and boarding houses which are clearly unsuited to the needs of the women in question, who are left there alone, without any kind of accompaniment or support. According to a report by the Basque Ombudsman:

*“All professionals consulted, those working in the administrations under examination as well as other experts, agree that hotel accommodation is not ideal or even advisable. However, sometimes, this solution is preferable to the prospect of ‘abandoning’ the woman in an apartment without any protection or support at all for an entire weekend, for example”.*¹⁰⁰

¹⁰⁰ *Respuesta Institucional a la violencia contra las Mujeres en la Comunidad Autónoma del País Vasco. Informe extraordinario de la institución del Ararteko al Parlamento Vasco* (Institutional response to violence against women in the Autonomous Community of the Basque Country. Special report by the Basque Ombudsman’s Office to the Basque Parliament), 2003, p. 239.

Alicia¹⁰¹ lived in Barcelona with her husband and her father, both of whom used to beat her frequently. During the interview, she showed us a number of scars from knife wounds inflicted on her by her husband. When she left the house where she lived with her small son, she was afraid they would go looking for her and find her. As an emergency solution, she was sent to a hostel, where she was left alone:

“They sent me to a hostel. I was petrified. Every time the doorbell rang I used to lock myself in my room and hide with my son wherever I could, praying that it wouldn’t be them (her father and her husband). I was there for two or three days before they sent me to the centre.”

In small towns even access to a hostel is difficult. The Basque Ombudsman’s report refers to the problems which arise when a woman has to leave her home on public holidays, weekends or when social services offices are closed: *“To illustrate this point, two incidents occurred this year, one in Vizcaya and the other in Guipuzcoa, the latter on more than one occasion. Without going into the reasons why, there were no free beds in the hostels to which survivors were usually sent, so the women had to go back to the house from which they had fled, or the local police had to find another hotel, with the officer having to pay for it out of his/her own pocket”.*¹⁰²

In Amnesty International’s opinion, central government should review the distribution and availability of centres throughout Spain in order to correct the current regional shortcomings and imbalances.

Obstacles and grounds for exclusion that affect accessibility

One of the main concerns Amnesty International has been raising is access to services and resources. Setting conditions or specifying particular profiles that hamper women’s access to the resources available to protect their human rights and help them to recover is a violation of specific human rights standards, including the prohibition of discrimination, and flies in the face of the guidelines issued by treaty-monitoring bodies and bodies responsible for human rights promotion and protection.

Amnesty International has gathered information and compared and contrasted what the

¹⁰¹ An assumed name. Interview with Amnesty International in Madrid, October 2004.

¹⁰² *Respuesta Institucional a la violencia contra las Mujeres en la Comunidad Autónoma del País Vasco. Informe extraordinario de la institución del Ararteko al Parlamento Vasco*, 2003, p. 190.

officials managing the services and resources and the users themselves have to say about the criteria that may be causing certain women to be excluded from them. Some civil servants and officials alluded to the existence of supposed general regulations that deprive certain groups of the right to receive help and protection, as in the case of, for example, undocumented migrant women.

In addition to undocumented migrant women, the organization has learned that there are other groups of women who may encounter obstacles when seeking to access facilities. They include women with sons older than 12 or 13 who wish to keep them with them, women with serious mental health problems, women who are HIV positive or who have AIDS, alcoholics and drug addicts, prostitutes and former prostitutes, women with a police record and, in many cases, women with disabilities and even pregnant women, since there are no facilities equipped to meet their needs. Furthermore, since shelters are deemed to be “social services”, based on a model in which the service users are taken on because they are considered to be a group that is suffering material hardship, female survivors of violence who come from social strata that do not fit that particular disadvantaged profile can also encounter barriers.

María¹⁰³ arrived from Colombia in 1999. She has a four-year-old daughter with her Spanish partner who, when she was eight months pregnant, beat her up, hitting and even kicking her. She is still not a legal resident in Spain and has had to visit hospital emergency departments with fractures and other injuries on four occasions. Her main fear is that the authorities will grant custody of her daughter to her abuser, something which she was told on several different occasions by workers at the shelter:

“My case was special. Because I was here illegally, I was thrown out of the shelter. Well, I wasn’t exactly thrown out, but I was told I would have to go to a centre for immigrants and that I wasn’t allowed to stay at the shelter. A week went by and they said: Look María, you’ve got to get used to the idea that you have to go to an immigrants’ centre because you can’t stay here, because right now you are not legal and it’s just impossible. I said that I couldn’t go to a centre for immigrants with my daughter because it was like putting a sign up saying: I’m leaving the

¹⁰³ An assumed name. Interview with Amnesty International, Huelva (Andalucía), October 2004.

country, and the father wasn’t going to let his daughter leave with me. So I had to call him and go back to him, I had no other choice. Because, what could I do when they were practically throwing me out?(...) and I swear I had no choice but to call him because it was either that or nothing.”

When María was interviewed by Amnesty International, she was still living with her abuser, hoping that he would agree to marry her so that she could acquire legal status. She is undergoing psychological treatment and cannot sleep without medication.

Opañel, a women’s organization, highlighted the lack of real options for women “without papers”: *“The problem is that, once a woman says: ‘I don’t want to carry on suffering this way, I want to do something, I want to leave’, what options are open to her? Really, whether or not she is given good service, because the option for these women is that they end up in a non-specialist facility and are denied the rights and opportunities other women have and, in the end, they are highly likely to take a step backwards and go back to their partners, because at least there they have a roof over their heads and something to eat. It is very hard for all women, but these women often have no options at all”*.¹⁰⁴

In the Basque Country and Castilla La Mancha, the facilities run by official institutions do allow survivors to be admitted regardless of their administrative status, provided that they are on the municipal register. However, the changes made as a result of recent reform of the immigration legislation¹⁰⁵, allowing the police to have direct access to municipal registers¹⁰⁶, could constitute a further obstacle. Amnesty International has already criticized this reform because, by acting as a deterrent to registration, it may have contributed to rendering undocumented migrant women invisible, and as a consequence the abuse they suffer remains unpunished.¹⁰⁷

¹⁰⁴ Interview conducted by Amnesty International with women running the Opañel Women’s Association, in Madrid, October 2004.

¹⁰⁵ Basic Law 14/2003 of 20 November in Law 7/1985 of 2 April, regulating the basis of the local system.

¹⁰⁶ The municipal registers provide immigrants with the documentation they require to access basic social and health resources.

¹⁰⁷ *Mujeres invisibles, abusos impunes. Mujeres migrantes indocumentadas en España ante la violencia de género en el ámbito familiar*, Amnesty International, Spanish Section, July 2003.

Sometimes, the services and resources themselves set and impose conditions and requirements that limit access. According to information obtained by Amnesty International, a wide range of women in Spain may be refused access to crucial resources when they seek protection and help.

Amnesty International has learned that most shelters in Spain refuse entry to women with sons over the age of 12 or 14, depending on the regulations in place at each individual shelter. In many cases, this will have a significant deterrent effect on women who do not wish to be separated from their children. Maribel¹⁰⁸ spent time in a shelter where she was allowed to live with her children, but she said this about the existence of this type of exclusion in other regions: *"If my children couldn't come with me (to the shelter), I really would be out on the streets. It just doesn't seem fair that they can do this"*.

Another obstacle to access is the requirement to have filed a complaint. Although this requirement has been called into question because it contravenes the recommendations made by the Council of Europe¹⁰⁹, it is still being implemented. Despite the fact that a document on the entry criteria and requirements to be used by shelters, which was approved at a Sector Conference in September 1999, expressly states that *"[i]n no case should an official complaint of the abuse be required"*¹¹⁰ for entry into an emergency centre, in practice, in most cases, for the victim care system to enter into operation, it is indeed a requirement. A person in charge of a sheltered apartment run by the MPDL (*Movimiento por la paz, el desarme y la libertad*, Movement for Peace, Disarmament and Freedom), a non-governmental organization based in Madrid, told Amnesty International that *"for an immigrant woman, especially one without papers, the thought of having to file a complaint in order to enter a shelter can fill her with panic"*.¹¹¹

Women involved in prostitution and women suffering from drug addiction, alcoholism or some

kind of mental illness are not allowed into shelters. Despite the fact that they have been subjected to gender-based violence, there has been no attempt to set up facilities that will address their needs and circumstances and they are usually referred on to centres that have not been designed to take in and protect survivors of gender-based violence, including, on occasion, municipal hostels.

According to *Hetaira*, a group that defends the rights of prostitutes, in Madrid women involved in prostitution are required to give it up in order to gain access to services and they are referred on to an organization that works to rehabilitate female prostitutes.¹¹²

Carmen¹¹³ was refused access to the usual shelter facilities in Barcelona because she was a former drug addict and also HIV positive:

"The first thing my social worker told me was that I would only be allowed to stay there for two weeks at the most, and that I should be patient because it was a house where there's a lot of discipline, because, well I found this out later, it's a place for female prisoners who are allowed to spend time outside prison. (...) They told me there was no room for me because of my background, because I've been in jail, I'm (HIV) positive, and lots of other things so I was turned down at all the centres. They didn't give me a reason because they were ashamed, but later I was told by the Barcelona Association for Separated and Divorced Women that it was because of my record, because nine-and-a-half years ago I had been a delinquent, or whatever you want to call it, because I'd been in prison, because I'd been a heroin addict, a drug addict. But they should also have taken into account the fact that I've been out of that for almost ten years, that I have rehabilitated myself. (...) I've managed to carry on with my life and now I'm looking after my son (...) and they would always say: 'you are going to have all the doors shut in your face', both the women's welfare team and the shelter guardian. My pleas were turned down everywhere".

According to information received by Amnesty International, when survivors of gender-based violence are referred on to centres that are part of the Madrid region's shelter network, they are tested for drugs. If the test is positive, they will not be referred on to the residential facility they have asked to go to.¹¹⁴ It is worrying that these women are not

¹⁰⁸ An assumed name. Interview with Amnesty

International in Vitoria, Basque Country, October 2004

¹⁰⁹ Recommendation Rec(2002)5 of the Committee of Ministers of the Council of Europe on the protection of women against violence.

¹¹⁰ *Instituto de la Mujer, Documento sobre los criterios y requisitos que deben cumplir los centros de atención y acogida a las mujeres víctimas de violencia doméstica*, Madrid, 1999.

¹¹¹ Interview with Amnesty International, Madrid, October 2004.

¹¹² *El País*, 25 November 2004.

¹¹³ An assumed name. Interview with Amnesty International in Madrid, October 2004

¹¹⁴ Application form for referring victims of violence to shelter facilities run by the Autonomous Community of Madrid, to which Amnesty International has had access.

offered specialist resources which could help them overcome their addiction at the same time.

Women who have been excluded from the shelter network are unlikely to be referred on to another service that can meet their need for protection and help as survivors of gender-based violence. They are sent to facilities that are unequipped to deal with women who have been subjected to this type of abuse. If there are enough places and it is possible, they are referred on to immigrant centres, drug addiction recovery centres, services for women who want to give up prostitution, apartments for inmates of open prisons, accommodation for young mothers run by religious groups and, often, municipal hostels, which are not designed to take in women who have been subjected to violence and are still at risk. Sometimes, the authorities even consider hostels for the homeless to be suitable facilities because, in the absence of staff to look after them in shelters, they are considered to be safer there because they are supervised, despite the fact that their location is well-known.¹¹⁵

Amnesty International also learned of cases in which women who had used sheltered accommodation on several occasions had problems in returning to them. Inés¹¹⁶ was refused entry to the shelter in Huelva because she had already used it several times in the past and had always gone back to her abuser:

"They took me to the youth hostel and I stayed there all night with my son. In the morning, the director of the shelter came to see me with their lawyer and asked me what I thought I was doing, given that they had taken me in I don't know how many times."

Amnesty International also found that women who are not in a precarious socio-economic situation are also excluded from shelter facilities in many areas.

According to the *Federación de Mujeres Separadas y Divorciadas* (Spanish Federation of Separated and Divorced Women), "[t]here is a huge contradiction between the theoretical discourse on gender-based violence and the resources available in practice. For example, the theory says, and no-one now disputes it, that gender-based violence affects all social classes and all cultural levels, that it is universal and is inflicted by men on women, regardless of the economic, cultural or any other social circumstances that affect

¹¹⁵ Amnesty International received reports that this was the case in Vitoria (Basque Country).

¹¹⁶ An assumed name. Interview with Amnesty International in Huelva (Andalucía), October 2004.

*the woman. So now we have to look at what is going on with resources because, according to the theory, the aim should not be to solely address the needs of marginalized groups, all the more so, in my particular area".*¹¹⁷

According to the same organization, the fact that certain resources, such as emergency centres or shelters, are seen as social services for women without financial resources distorts the nature of the facility:

*"The argument is that this (a shelter) is for women who have no means of support. And I understand that. I understand that (...) if you call it a shelter and you think that its only function is to give shelter, it is obvious that someone with money does not need that. But, of course, the fact is that 'shelter' is just one part of the programme which this service must offer. It is a part but not the most important part. We do not only have to provide physical safety but we have to make women feel psychologically secure again, we have to give them back the means to put the jigsaw of their shattered personality back together again".*¹¹⁸

At one emergency centre, Cristina¹¹⁹ was told that the resources were not designed for people like her: *"(The people working at SAVD – the Service for Victims of Domestic Violence) said, 'Well, file a complaint and you can stay here tonight, although I don't think you'll be comfortable here, because you can tell you're not someone who, how can we put it, well this is for immigrants, a different type of person, you probably won't fit the profile'."*

Amnesty International has also observed that survivors of gender-based violence have to first be processed by social services in order to be able to receive help, advice and other support services for survivors of gender-based violence. Women should have direct access to these, without needing a "referral" from social services.

This barrier is referred to by the Basque Ombudsman. Referring to a telephone helpline covering all three territories of the Basque Country, in only one of which (Guipuzcoa) is it compulsory to go through social services in order to access resources, the report says: *"There is a certain sector of the population that is not accustomed to using social services, certain social classes, the wealthier ones, and who think that accessing this type of service will somehow 'stigmatize' them. And it is well-*

¹¹⁷ Interview with leading members of the Federation of Associations of Separated and Divorced Women, carried out by Amnesty International in Madrid, November 2004.

¹¹⁸ Interview with Amnesty International, Madrid, October 2004.

¹¹⁹ An assumed name. Interview with Amnesty International in Madrid, October 2004.

*known that women in these social strata are not exempt from gender-based violence. This is supported by information provided by those responsible for the 900 helpline for survivors of abuse. Among users of this helpline, faced with the prospect of having to first go through basic social services in order to obtain psychological care, only women from Guipuzcoa have asked to see a private psychologist”.*¹²⁰

Amnesty International believes that development of the Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence should include a review of access to shelter facilities, with access to a type of shelter that meets their needs being guaranteed to all survivors of gender-based violence.

Inappropriate remedies and the poor quality of resources

The Council of Europe calls on States to provide survivors with immediate and comprehensive care services that take a multidisciplinary approach, take account of the abuse suffered and the woman’s current situation, and are geared towards helping her become independent. International instruments and agreements on violence against women point out that resources provided for survivors should avoid secondary victimization.¹²¹

Amnesty International is concerned that emergency and shelter facilities are not contributing in the way that they should to helping survivors of gender-based violence to become independent. The organization has received reports from survivors, professionals and people responsible for public bodies about the inadequacies of the programmes set up to help survivors and the excessive monitoring of women living in such facilities.

Amnesty International has observed that in Spain survivors have no say over what happens to them. From the information it has received about existing resources, the organization has found that women are rarely involved in managing their stay and in planning their own rehabilitation journey and that

¹²⁰ Basque Ombudsman, *Respuesta Institucional a la violencia contra las Mujeres en la Comunidad Autónoma del País Vasco. Informe extraordinario de la institución del Ararteko al Parlamento Vasco* (Institutional response to violence against women in the Autonomous Community of the Basque Country. Special report by the Basque Ombudsman’s Office to the Basque Parliament), p. 152, 2003.

¹²¹ Appendix to Council of Europe Recommendation Rec (2002)5, para. 2 b).

it is the decisions of those in charge and the specialist services that prevail.

Many of the testimonies received from women who have used the facilities provided by the authorities show that the level of support and protection they receive depends on the degree of sensitivity and interest shown by the individual whose job it is to provide the services in question.

In addition to observing the paucity of information about services to address basic needs such as mental health, the organization was extremely concerned about the types of treatment and approach used by those whose job it is to help survivors in emergencies facilities and permanent or temporary shelters.

Women interviewed by the organization who had used a variety of shelters in different parts of Spain had very similar complaints to make about them.

According to a report by SAVD, the Service for Victims of Domestic Violence run by Madrid City Council, covering the period between January and August 2003, 20.40 per cent of women “decide to return to their abuser, most of them women whose situation is less serious or who have not yet made a decision to end the relationship with their partner”.¹²² It is noticeable that the failings and quality of the service itself are not identified as factors that may contribute to women agreeing to go back to their abuser.

The Ombudsman for Andalucía, in his report to the Autonomous Parliament in 2003, had this to say about the dramatic situation faced by many survivors due to the lack of options open to them:

*“The recovery of survivors of gender-based violence relies on the implementation of measures to provide them with suitable training, help them enter the labour market and supply them with decent accommodation. We cannot expect them to find enough strength on their own to acquire those basic essentials when they are lacking for the population as a whole. And we know from the complaint files that on more than one occasion their strength has failed them and some of them have had no choice but to go back to the very men who abused them to make sure they had a roof over their head and food for their children. Others (should we say the less fortunate?) have gone down another circuitous route, that of marginalization from society and the labour market. Unfortunately, this is happening in Andalucía (...)”.*¹²³

¹²² *Memoria enero-agosto 2003* (January-August 2003 Report), SAVD 24 horas, Madrid, p. 26.

¹²³ Ombudsman for Andalucía, 2003 Report to Parliament, p.31.

The National Ombudsman also issued a report containing the following recommendations about the way in which resources for providing help and shelter to survivors should be managed: *“With the social resources currently devoted to this issue, the priority should be to reintegrate the women affected back into society and employment in a dignified and independent manner, in particular implementing active policies which enable them to get a job. In short, shelters should be turned into proper centres for the comprehensive recovery of these women”*.¹²⁴

The *Asociación de Asistencia a Mujeres Violadas*, a group working to help women who have been raped, explained to Amnesty International what, in their opinion, the current facilities are lacking: *“We were asking for emergency safe houses for the first 48 hours and then, immediately afterwards, comprehensive rehabilitation centres, which do not exist. Shelters are currently places where women stay for three or four months, with no psychological therapy to rehabilitate them. A woman who has suffered gender-based violence is a woman who is totally destroyed. The shelters we have at the moment, the official ones, do not have psychologists who can start working with women and their children. In my opinion, it is not long enough. Obviously, they stop them being murdered for the time being but, after three months, these women, in some cases, in most cases, are back on the outside with none of their psychological problems resolved and, more especially, in the case of women who have no profession or resources, with no home and no money”*.¹²⁵

Over the past few years, minimum requirements have gradually been established for all facilities providing shelter. However, these have focused more on their physical conditions and habitability than on their internal operating structures and procedures. In 1999 the *Instituto de la Mujer* published a document on the criteria and requirements that shelters should comply with,¹²⁶ as established in the 1998-2000 Action Plan against Domestic Violence. The document is meant as a guide to the various administrations and organizations that run programmes to help women who have suffered gender-based violence in the

¹²⁴ Ombudsman. *La violencia doméstica contra las mujeres*. Recommendations concerning social and welfare aspects, p. 139, Madrid, 1998.

¹²⁵ Interview with women involved in the Federation of Associations for the Welfare of Women who have been Raped, carried out by Amnesty International in Madrid, October 2004.

¹²⁶ *Instituto de la Mujer, Documento sobre los criterios y requisitos que deben cumplir los centros de atención y acogida a las mujeres víctimas de violencia doméstica*, Madrid, 1999.

home. Some autonomous communities, such as Andalucía, have published their own regulations concerning the minimum standards expected of such centres.

Although international and regional human rights bodies recommend *“that (survivors) should obtain medical and psychological care”*, in Spain this guarantee is far from being met, especially in regard to psychological help.

Guadalupe¹²⁷, told Amnesty International about her experience at a shelter: *“The psychologist was on holiday and when her holiday ended she had to have some kind of operation and couldn’t come to work. When I went there, she still hadn’t come back. (...) I talked to a worker who had come in to cover for holidays and it turns out she was working there with us as an instructor but was also a psychologist, so I used to talk to her because I had to get things off my chest to someone, but it wasn’t her responsibility to say: I am here as a psychologist”*.

The fact that women are in extreme difficulties at the time when they are seeking access to an emergency centre is not usually taken into account in order to provide them with the material and psychological support they need to recover. If they are not offered the support they need and are left in a very precarious situation, they may end up going back to their abuser. Some of the testimonies from the women interviewed by Amnesty International reveal the lack of attention paid to survivors’ most basic needs.

Nadia¹²⁸, a woman with two children aged five and six, told us of her experience at the Madrid SAVD: *“It is a nice place, it has everything, but it is not suitable for a woman to sleep there with her children, never mind 15 (people), right? There was an empty fridge, I’ll never forget it. Someone would come in and leave one litre of milk for all 16 of us. The first night I was struck by the fact that there wasn’t even any food and, when I arrived there, there wasn’t even a bit of fruit to keep your child quiet while you’re filing a complaint or whatever. (...) I was particularly surprised by what happened with this woman’s baby. He had been crying all evening, until about one or two in the morning. So one of the staff comes up and reprimands this woman, who spoke very little Spanish but she got by all right. She says: ‘This child is making a racket and is not letting anyone sleep’, so the black girl jumps up and says: ‘My son is hungry and I’ve been here for two days and he isn’t getting the food he needs’. So (the staff*

¹²⁷ An assumed name. Interview with Amnesty International in Huelva (Andalucía), October 2004.

¹²⁸ An assumed name. Interview with Amnesty International in Madrid, in November 2004.

member) says: *'Well, you know perfectly well that until tomorrow we cannot give the child anything to eat'. I'll never forget that, you know (...). They told me that this was only an emergency stay place, trying to justify to me that if you go hungry and there's no food or anything then that's normal, because you should actually feel lucky to have been taken in and if you have to go hungry for two days, just put up with it, it could be ten days. (...) I don't want to stay here, God help me, I'd rather have the beatings, I can't watch my son go hungry.'*

After years of physical and psychological abuse, in 2004 Isabel fled from one of her husband's beatings. With her clothes torn and injuries all over her body, she went to the social services office in her area to ask them to organize for her to enter an emergency shelter on the outskirts of Madrid. Isabel described her arrival at the centre as follows:¹²⁹

"I arrived there with no clothes, no shoes, and my clothes all torn. The first days I didn't dare, I felt really ashamed, but then I told the girl (in charge), look I need some clothes (...) I spent at least three days with my clothes like that (...) until a girl from Ecuador, who had also been abused, came and when she saw me, she opened her suitcase and offered me some trousers".

Guadalupe¹³⁰ tells of her experience of being in a shelter in the following terms: *"The shelter, I mean, I didn't like it much. The food came in dribs and drabs, and there were four nappies for the whole day. We asked them for a packet of wipes and they said we could only use three wipes per day so that one packet would last us a month".*

A Muslim woman from Morocco said the following about the food at the shelter in Madrid where she and her children lived for nine months: *"The food was very bad and my children had to eat pork. My daughter would ask me whether it was pork and I would say no, that it was something else. The instructor heard me once and said that it wasn't right, that I shouldn't be lying to my children",¹³¹*

The document issued by the *Instituto de la Mujer* specifically states that shelters should have internal regulations establishing rules on how to live together as a group and the rights and obligations of the users. In some centres, such regulations have ended up becoming just a tool for keeping the users under control and in their place. Several of the testimonies talk about a disciplinary climate which,

rather than helping to give women autonomy, actually helps to reinforce their experience of having no rights.

Amnesty International is concerned at the perception of women using these services and facilities some professionals running them have. The director of a shelter in Palencia, when interviewed by Amnesty International, stressed the large number of women migrants for whom the facility had to cater and how *"expensive these women were."* According to her, they were also *"terribly demanding"*, saying that *"they want to eat one thing and not another"*, at which the centre's social worker nodded in agreement.¹³²

The director of the shelter in Ciudad Real told Amnesty International that, in many cases, *"what lies behind the way women are treated is tremendous prejudice, overprotection, paternalism, despotism, power relationships".¹³³*

Many of the testimonies show the rigidity of the rules of behaviour in shelters. Certain restrictions emphasize the differences between staff and users: *"I was the Coca Cola trafficker at the shelter. It was forbidden. The women would go to work in the morning carrying a little bag with Coca Cola cans in it, because you couldn't throw them away in the bins at the shelter, otherwise they would start an investigation. There are privileged people at the centre who are allowed to drink coffee, but not the abused women. I saw women drinking hot chocolate while they could smell coffee elsewhere".¹³⁴*

Begoña¹³⁵, whose first experience of a shelter was very positive, then had a second experience which she described as hell. The following is her story: *"At the shelter in Jaén, it was great, the personal support and help was excellent".* After leaving the shelter and finding a job, her abuser tracked her down and she was forced to go to another emergency centre. *"From there, they sent me to Huelva and that was when my nightmare began. It's not just that I couldn't lock the door but they came in whenever they felt like it, in pairs, like a couple of police officers, saying things like: we're going to check your room, and they would open the wardrobe, look through everything, under the bed, they looked at everything you had and if you didn't have it all tidy, they would tell you off".*

¹²⁹ An assumed name. Interview with Amnesty International in Madrid, in November 2004.

¹³⁰ An assumed name. Interview with Amnesty International in Huelva (Andalucía) in October 2004.

¹³¹ An assumed name. Interview with Amnesty International in Madrid, October 2004.

¹³² Interview with Amnesty International in Palencia, Castilla-León, October 2004.

¹³³ Amnesty International interview with Concha Tolosa Díaz, Ciudad Real, Castilla La Mancha, October 2004.

¹³⁴ An assumed name. Interview with Amnesty International in Madrid, November 2004.

¹³⁵ An assumed name. Interview with Amnesty International in Huelva (Andalucía), October 2004

A report by the Monitoring Commission on conditions at the Castellón shelter says the following:

*"The internal regulations at the centre should be changed and an attempt made to reach a consensus with the residents, since at the moment it is more like a parole situation [for prisoners] than rules to help a group of adult survivors of abuse to live together".*¹³⁶

One of the residents at the Castellón shelter sent Amnesty International a letter outlining that in order to obtain a transfer to a safe house or receive certain financial help on leaving the shelter, women are dependent on a report from the centre's director and the general feeling is therefore that it is "best to keep quiet" rather than make a complaint,

*"If you ask why I didn't speak up before, well, because we all fear reprisals, because we are all mothers and they write out reports to the Children's Department and they keep us under tabs with those reports".*¹³⁷

The report by the Monitoring Commission on the Castellón shelter also refers to deeply-rooted prejudices towards residents on the part of civil servants and officials:

*"It has been observed that the staff responsible for both technical and political aspects display prejudice towards the women who need to use their services and it is so internalized that they do not even realize that they have it (...). ...a comment by the centre's director: 'You must take into account that these women use the social services and that sometimes women with psychological problems have been given more credibility than the professionals working at the shelter'."*¹³⁸

The internal regulations at the Castellón shelter include a point relating to responsibility for children which reads: *"If residents work, working hours must be compatible with the care and attention of children at times when they are not at school"*. Many of the women who have to live in shelters have children and so need to have a job in order to be independent and not be forced to return to their abusers.

According to information obtained by Amnesty International, the lack of help with childcare has meant that some women have had to give up the chance to work, thus limiting their possibilities of becoming financially independent.

¹³⁶ *Comisión de Seguimiento de la Casa de Acogida de Castellón, Situación de la casa de acogida de mujeres maltratadas de Castellón* (Monitoring Commission on the Castellón Shelter, Conditions at the Castellón Shelter for Abused Women), 27 February 2003.

¹³⁷ *Ibidem*.

¹³⁸ *Ibidem*.

Children are not the only reason why a woman living in a shelter may have to leave a job. Inés¹³⁹ spoke about how hard she found it to combine life at the shelter with a job: *"When I was at the shelter, I found a job three days later at a cooperative in Mazagón. But at cooperatives you tend to finish late and so one day I finished at two in the morning and [the director of the shelter] told me I couldn't go to work any more"*.

In a case which was referred to the Ombudsman for Andalucía, a woman complained about the treatment she received from the professionals at a shelter, who had given her no support in her search for work. She believed that *"her stay there (at the shelter) had caused her more psychological harm, due to the time wasted and the mounting personal strain"*.¹⁴⁰

In its response to the Ombudsman, the *Instituto Andaluz de la Mujer - IAM* (Andalusian Institute for Women's Issues) said: *"We cannot guarantee jobs and accommodation for all women who need them, since these are structural matters which affect millions of citizens of both sexes in our country"* and, in further comments, it took the following view of the stance taken by the complainant: *"What she wanted was not help to get out of a relationship of dependence and subjugation but to obtain benefits which would allow her to cease being dependent on her partner, and this is not the main objective of the Servicio de Atención y Acogida a mujeres maltratadas (Welfare and Refuge Service for Abused Women); the IAM has other services and programmes for that which are designed to encourage women's participation in the labour market and secure their autonomy"*.¹⁴¹

Amnesty International is concerned that the rehabilitation programmes for survivors provided at shelters are not helping to encourage psychological, financial and employment autonomy for women. The organization believes that the support programmes run by shelters to help women become independent should be reviewed to ensure that they are effective, which is not the case at the moment.

Another situation about which Amnesty International is concerned, and which is closely linked to the above, is that of women survivors once they leave sheltered accommodation. The organization has received testimonies from women who, on leaving

¹³⁹ Interview with Amnesty International, Huelva, October 2004

¹⁴⁰ Ombudsman for Andalucía, Report to Parliament 2003, p.870.

¹⁴¹ Ombudsman for Andalucía, Report to Parliament 2003, p.870.

centres, have found themselves in a very precarious financial situation and socially extremely vulnerable.

Below are a few examples of this precariousness, which forces them to remain reliant on state aid and benefits:

After leaving a shelter and renting an apartment, Fátima¹⁴², who is Moroccan and has permission to work and reside in Spain, was forced to give the apartment up because she did not have enough money to pay the rent. After living with some friends for a few weeks, she had to go and live in a centre for immigrants. There, she found it very difficult to combine work with caring for her two children aged six and seven:

“I was working out in the country, and I had to get the bus at quarter to eight in the morning from near the bullring and I was out until half past five or six. My children were at school until five o’clock. At first, a boy who worked there used to take them to school and pick them up but (when) it became someone else’s turn, they told me that it couldn’t carry on, they couldn’t pick up my children any more so I had to change jobs. I found another job, working for an elderly person, from ten till three and eight till ten. I had to give that one up too because I couldn’t leave the children alone (in the immigrants’ centre) from eight till ten”.

Beatriz¹⁴³ is an alcoholic and suffers from mental illness. When she was interviewed by Amnesty International, she was living on the streets. After being subjected to violence by her partner on a regular basis, as demonstrated by the numerous scars all over her body, she was taken in by a shelter run by an order of nuns (*Monjas Adoratrices*) in Granada but she had to leave and once again found herself with no other options: *“There (at the diocesan house), it was great, because I used to work in the countryside, I would pick tomatoes, clean the house, prune the garden, mow the lawn, I could turn my hand to anything. Just when things were going really well there, the Instituto de la Mujer rang to say I had to go back to Huelva because they said my budget had run out and that it was for three months and no more. Just as things were going really well for me, they tell me I’ve got to go back to Huelva and that’s when my life began to fall apart again”.*

¹⁴² An assumed name. Interviewed by Amnesty International in Huelva, Andalucía, in October 2004.

¹⁴³ An assumed name. Interviewed by Amnesty International in Huelva, Andalucía, in October 2004.

3.5. Financial help not available to all survivors

The right of survivors to receive financial support to help them end the relationship of dependence they have with their abuser has been established in international instruments as part of the overall support to survivors that States should guarantee. For example, the Beijing Platform for Action urges governments to “provide appropriate assistance to enable them to find a means of subsistence”.¹⁴⁴

In Spain, women who have proof that they have been subjected to gender-based violence in the home, in the form of a protection order, and who have limited financial resources are entitled to receive *Renta Activa de Inserción - RAI*, a type of unemployment benefit, amounting to 368 euros per month, for a period of ten months. If the woman can prove that she needs to move house, she will also receive a further payment amounting to three months of RAI.

The Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence also provides for financial help amounting to six months’ unemployment benefit for women who have been subjected to gender-based violence in the home and granted a protection order by the courts. It further establishes that adult women who have suffered gender-based violence should have priority in accessing public housing and hostels. Although this legislation came into force in January 2005, at the time this report was completed, the help envisaged within it has not yet been effectively implemented.

Amnesty International is concerned because it has learned that not all survivors of gender-based violence who can prove that they need financial help have access to such aid. First of all, the Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence links provision of such aid to being in possession of a “protection order” issued by the courts¹⁴⁵, which, as pointed out in the section of this report dealing with such orders, does not apply in almost 25 per cent of cases.

Secondly, the legal nature of the aid provided to survivors means that it falls within the realm of social assistance to job seekers, making it

¹⁴⁴ Beijing Platform for Action, para. 125 a).

¹⁴⁵ Article 27, Basic Law on Comprehensive Protection Measures to Tackle Gender Based Violence.

impossible for undocumented migrant women survivors to obtain it. It would be inconsistent on the part of the Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence if, having established the principle of non-discrimination, foreigners without legal residency continued to be denied such financial assistance.

Amnesty International has also been informed of other cases of women who, despite facing severe economic difficulties, were refused financial assistance.

Guadalupe¹⁴⁶ was refused financial help when she left a shelter: *“I left the shelter and when you leave you have to meet certain requirements so that they will give you help when you get out. I supposedly didn’t meet them. They said I didn’t meet the requirements because my mother had sold some land before I left for Gibraleón, before I came here, back home. (...) So they wouldn’t give me any help”.*

The 2003 report by the Ombudsman for Andalucía included the case of a woman recognized as being 65 per cent disabled and living in a shelter in the province of Malaga, who *“expressed her despair at the lack of support she was receiving from the shelter when it came to finding affordable rented accommodation”.* With regard to her financial situation, the report stated that *“[i]t had seriously deteriorated after the RAI benefits ran out and she lost her job as a carer. She had also not been selected for the “Cualifica” [“Qualify”] job programme run by the LAM because of impairment to her hands. She had no income whatsoever and was therefore receiving emergency aid from Caritas and the municipal social services, after having had to resort to begging to obtain any money at all. She was living in rented accommodation with her daughter and grandson. This situation led to a deterioration in her mental health and she had commenced treatment with antidepressants”.*¹⁴⁷

¹⁴⁶ An assumed name. Interview with Amnesty International, Huelva, Andalucía, October 2004.

¹⁴⁷ Andalusian Ombudsman, Report to Parliament 2003, p.869.

3.6. The State's duty to guarantee justice for survivors and their right to fair and impartial legal proceedings

The CEDAW Committee urges States to provide “effective complaints procedures and remedies, including compensation”¹⁴⁸ to ensure that all survivors of violence against women have access to justice and that those responsible for the abuse are punished.

The United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power,¹⁴⁹ in the section on Access to justice and fair treatment, articles 4 to 6, stipulates that:

“4. Victims shall be treated with compassion and respect for their dignity. They shall be entitled to access the mechanisms of justice and rapid reparation of the damage which they have incurred, in line with the provisions of national legislation.

5. Where necessary, judicial and administrative mechanisms shall be established enabling victims to obtain reparation via official and unofficial procedures that are expeditious, fair, accessible and not too costly. Victims shall be informed of their rights to obtain reparations using these mechanisms.

6. Judicial and administrative procedures shall be adapted to the victims' needs:

Informing victims as to their role and the scope, chronological development and progress of actions, and the decisions relating to their cases, especially when pertaining to serious crimes and when this information has been requested;

- a) Allowing the opinions and concerns of victims to be presented and examined in the appropriate stages and always in favour of their interests, without prejudice to the accused and in line with the national criminal justice system;*
- b) Providing suitable help to victims throughout the judicial process;*
- c) Adopting measures to minimise the inconveniences to victims, protect their privacy, where necessary, and guarantee their safety, and that of their families and of witnesses in their favour, against any intimidation or reprisal;*

¹⁴⁸ General Recommendation No. 19, 11th session (1992), item 24 i), HRI/GEN/1/Rev. 5, 26 April 2001.

¹⁴⁹ Adopted by the UN General Assembly in Resolution No. 40/34, 29 November 1985.

- d) Avoiding unnecessary delays in the resolution of cases and in executing the orders or decrees which afford compensation to victims.”*

3.6.1 Shortcomings in the provision of information to survivors regarding their rights and in access to good quality legal assistance

Amnesty International is concerned that the right of survivors to receive full and accurate information about their rights and the opportunities available to them to obtain legal assistance and go to court is not being guaranteed. It is also concerned that professionals who deal with survivors are not trained in such a way that these rights can be guaranteed. The organization has come across cases in which incorrect information has had a paralyzing effect on the victim's decision to escape the violence.

UN General Assembly Resolution 52/86 concerning crime prevention measures and criminal justice for the elimination of violence against women recommends that, in terms of assistance to victims, States should: “Provide information to women who are victims of violence in regard to their rights and how to enforce them, on how to participate in the criminal process, and on the preparation, development and completion of the process”.¹⁵⁰

The UN Special Rapporteur on Violence against Women said that the purpose of the “statement of the victim's rights” is to acquaint women with all the legal remedies available to them during the initial stage. It should also outline the duties of the police and judiciary throughout the proceedings.¹⁵¹

In Spain, in the context of developing the *Ley Reguladora de la Orden de Protección* (law governing regulation of protection orders), a State-wide protocol has been drafted to regulate the conduct of police forces in dealing with domestic violence. It includes the obligation “to ensure that survivors are informed clearly and in an easily comprehensible way of the content, processing and effects of a protection order, and the police, social and welfare resources available to them, as well as where to find them”, and “to provide specific information about

¹⁵⁰ UN General Assembly Resolution 52/86 on *Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice*, UN document A/RES52/86, 2 February 1998, p.8.

¹⁵¹ UN document E/CN.4/1996/53/Add. 2, para. 21.

free legal assistance and advice services provided by specialist lawyers".¹⁵²

According to reports received by Amnesty International, the provisions of the protocol are far from being carried out in practice, not only by police officers but also by the professionals who are the first "links in the chain", and whose lack of diligence in providing information to survivors can be very detrimental to the latter's situation. All survivors interviewed by the organization revealed that they had often been extremely uncertain about what their actual rights and possibilities were.

Elena¹⁵³ suffered abuse from her partner for a long time as a result of information given to her by a social worker: "I did not want to file charges because social services had told me that if I did (...) they would take my daughter away, that she would be put in a boarding school or an orphanage (...). If something like this happens again, you're going to end up without your daughter, because if there's more abuse, with a child...'; that's what she told me (the social worker) (...) That's why, even when the Civil Guard came here, in the beginning I told them he hadn't hit me, that nothing had happened. I told the Civil Guard to leave (...). I was afraid to report him because of that".

In Huelva, Inés¹⁵⁴ said the following about her most recent court appearance: "At the last hearing he was with a lawyer and I didn't have one, because I was told I didn't need one, that's what they told me at the court: no, no, you won't need a lawyer, he will, because he's the accused. (...) There, in the clerk's office [at the court], I said: 'I want a court-appointed lawyer [abogado de oficio] because I am entitled to one, aren't I?' and they said, 'But you don't need one, it's him who needs one'."

Beatriz Monasterio, a lawyer from the *Asociación Libre de Abogados - ALA* (Free Lawyers' Association) who specializes in advising survivors of gender-based violence, told Amnesty International

¹⁵² *Protocolo de actuación de las fuerzas y cuerpos de seguridad y de coordinación con los órganos judiciales para la protección de las víctimas de violencia doméstica y de género* (Protocol relating to the conduct of the security forces and coordination with judicial bodies in the protection of victims of domestic and gender-based violence), Monitoring Commission on the implementation of protection orders for victims of domestic violence, approved 10 June 2004, p. 6.

¹⁵³ An assumed name. Interview with Amnesty International in the province of Madrid, November 2004.

¹⁵⁴ An assumed name. Interview with Amnesty International in Huelva, Andalucía, October 2004.

that "many women are not even given time to find a lawyer, they are not told that they can in the police station".¹⁵⁵

The fact that survivors of these crimes receive incorrect information or none at all about their right to be assisted by a lawyer means that they frequently do not receive any legal advice at all. According to data from the Report on Violent Deaths in the Context of Domestic Violence in 2003, prepared by the Consejo General del Poder Judicial, in 92 per cent of proceedings there was no record that the survivor concerned was assisted by a lawyer. In the remaining 8 per cent, the survivor was assisted by a lawyer when giving her statement to the court but in only 4 per cent of cases was a lawyer actively involved in the entire proceedings.¹⁵⁶

Observations on the provision of free legal aid

The free legal aid services specializing in "domestic violence" that were set up by different bar associations throughout Spain in agreement with the public services have not in practice brought the benefits that might have been expected. The complex nature of these kinds of cases requires specialist training if they are to be conducted properly. However, Amnesty International has learned that specialist training for duty solicitors working in legal aid schemes is usually confined to a course lasting just 20 hours.

The inadequacy of such training means that such services tend to be carried out partly by lawyers who have acquired training in this field at their own initiative and partly by others who are working as duty solicitors without having the necessary training.

Among the testimonies gathered by Amnesty International, there are many complaints about the legal assistance provided to survivors, in particular that the professionals concerned were negligent and not bothered about what happened to them and even disregarded their wishes. Pilar¹⁵⁷ told us of how disconcerted she was when her lawyer incorrectly listed the injuries inflicted on her by her abuser:

"Suddenly, I realized that the trial was going on and the lawyers were in there but neither of them (the duty solicitor

¹⁵⁵ Interview with Amnesty International in Madrid, November 2004.

¹⁵⁶ *Informe sobre muertes violentas en el ámbito de la violencia doméstica en el año 2003*, Consejo General del Poder Judicial, Madrid, 2004, p. 18.

¹⁵⁷ An assumed name. Interview with Amnesty International in Huelva, Andalucía, October 2004.

nor the lawyer from the emergency shelter) had read the medical report on my injuries or the complaint I had filed. They asked him (her abuser) if he knew that I couldn't see with my left eye and he said I could see perfectly. I can see perfectly, the problem I have is tinnitus in my left ear".

The following experience reported by Lucía¹⁵⁸ concerns the conduct of a lawyer who, against the survivor's wishes, sought to dissuade her from taking legal action:

"That lawyer contacted his lawyer and they wanted to make a deal (...). She was a legal aid duty solicitor working on domestic violence cases and she wanted me to make a deal and withdraw the complaint. (...) That's when I changed lawyers. I said, I can't stick with someone who's telling me to withdraw the complaint. She told me that we would have to tone down the indictment because my husband was really scared about the accusations".

Staff at a sheltered apartment for immigrant women run by a non-governmental organization called MPDL (*Movimiento por la Paz, el Desarme y la Libertad*, Movement for Peace, Disarmament and Freedom) in Madrid told Amnesty International about the following case: *"That woman filed her complaint with the assistance of a duty solicitor and we contacted the solicitor because she had not requested a protection order or any other kind of measure, nothing at all, she had simply helped the woman when she was making her statement, that's all. I contacted the solicitor and told her, 'Look, I think a protection order should...'. 'No, she said she was leaving the family home...'. 'But a protection order is much more than that, it's not a question of whether or not she wants to leave the house. A protection order...'. 'What for?' 'As a lawyer, you must conduct the case and do it properly.' The woman had been attacked and was in imminent danger. In the end, we called SAVD [Service for Domestic Violence Survivors run by Madrid City Council] and told them what was happening and asked for a new lawyer. The new one asked for a protection order, which was granted, together with the appropriate measures".*¹⁵⁹

Lack of diligence in following up cases and keeping in contact with survivors is another common complaint: *"I was assigned a lawyer (...) she was actually very polite, she told me about my rights and such, but I've never actually seen any of the rights the lady told me about because, after that, whenever I tried to see her, she was never available.*

¹⁵⁸ An assumed name. Interview with Amnesty International in Madrid, October 2004.

¹⁵⁹ Interview conducted by Amnesty International with MPDL staff in Madrid, October 2004.

*Eight months went by before I was able to talk to her again".*¹⁶⁰

The lack of diligence and the negligence displayed by these lawyers means that survivors have no confidence in them, which has a negative impact on women's right to legal defence. Amnesty International believes that the State should review the provision of legal assistance to survivors to ensure that the service they receive is specialized, thorough and diligent.

3.6.2 Inappropriate treatment when filing complaints and during legal proceedings

UN General Assembly Resolution 52/86 concerning crime prevention measures and criminal justice for the elimination of violence against women urges States, through the police and judiciary, "[t]o encourage and assist women victims of violence in filing charges and throughout the process".¹⁶¹ From the testimonies collected throughout Spain, Amnesty International has found that for many survivors the first obstacle in their quest for support appears when they first attempt to file a complaint, often inducing them to return to their abuser.

The State security forces have a duty "to pay special attention to providing help and protection for women who have been subjected to violent behaviour in their homes and to mitigate, as far as possible, the effects of such abuse".¹⁶²

After various episodes of physical and psychological abuse and six months after having to visit the hospital emergency department following a beating which left her with a permanent injury to an ear, Pilar¹⁶³ contacted an organization that supports women who have been subjected to gender-based violence and decided to report her abuser to the police. She went to the police station with her three-year-old daughter and a psychologist from the

¹⁶⁰ Interview with Amnesty International, Madrid, November 2004.

¹⁶¹ UN document A/RES/52/86, para. 10 b, p. 8.

¹⁶² *Protocolo de actuación de las fuerzas y cuerpos de seguridad y de coordinación con los órganos judiciales para la protección de las víctimas de violencia doméstica y de género* (Protocol relating to the conduct of the security forces and coordination with judicial bodies in the protection of victims of domestic and gender-based violence), Monitoring Commission on the implementation of protection orders for victims of domestic violence, approved 10 June 2004.

¹⁶³ An assumed name. Interview with Amnesty International in Huelva, Andalucía, October 2004.

support group. The police made her wait from three o'clock on Sunday afternoon until six o'clock in the afternoon of the following day to file the complaint. Having spent the night at a centre for the homeless run by Caritas where she was not given any psychological support or information about her rights and the resources available to her, she arrived at the court to make her statement where her abuser asked her to go back to him. She caved in and did so. This is what she told Amnesty International:

"At the police station they told me that I couldn't file a complaint because it was Sunday and there were not enough staff (...). One police officer was even laughing when we first went in and he said, 'Well, go back home and file a complaint tomorrow.' (...). I spent the night in Betania [a centre for the homeless run by Caritas]. I had left home with the clothes I was wearing, my documents and the hospital report about my injuries - I had been sleeping with it since he hit me. Next day they told me they would pick me up at ten o'clock to go and file the complaint. (...) The inspector arrived gone eleven and told me I could not file a complaint because all the staff in charge of that kind of thing were busy because there had been a murder. They arranged to pick me up at three o'clock and we finally went to file the complaint. I filed it and they then sent me to an emergency shelter."

In the town in the Community of Madrid where she lives, Elena¹⁶⁴ was repeatedly refused permission to file a complaint and was on several occasions told to come back another day: *"I called the Civil Guard, they came and took me to the doctor but they wouldn't let me file a complaint because it was very late (it was one or two in the morning). When I rang the next day to do it, they said I should call back tomorrow and when I did, they told me to stop pestering them and to call after the holidays, around the tenth of January. That's what they said to me, word for word, 'We'll be here on the tenth of January.'"*

The appendix to the report of the Special Rapporteur on violence against women submitted to the United Nations Human Rights Commission on 2 February 1996, entitled *A Framework for Model Legislation on Domestic Violence*, states that upon receiving a complaint, the police should interview parties and witnesses, including children, in separate rooms to ensure that they have the opportunity to speak freely and record the complaint in detail. They should also advise the victim of her rights, fill out and

¹⁶⁴ An assumed name. Interview with Amnesty International in the province of Madrid, November 2004.

file a domestic violence report in accordance with the law, and provide or arrange transport for the victim to the nearest hospital or medical facility for treatment, if it is required.¹⁶⁵

Amnesty International has heard of cases in which some police authorities, far from complying with the duties outlined above, have refused to accept a complaint if there is no injury report. The case of Rosa,¹⁶⁶ as well as illustrating this concern, shows what effect inappropriate treatment at the time of attempting to file a complaint can have: after being assaulted by her husband and overcoming the cultural pressure which had previously stopped her reporting him, she finally went to a police station determined to file a complaint for assault. The police demanded that she return with an injury report. On the way to the health centre, she decided to go back home.

Similarly, several testimonies reveal the lack of privacy at some police facilities where complaints are supposed to be filed. Cristina¹⁶⁷ told of her experience in a Madrid police station where she was expected to give her statement in an area that led on to the waiting room, which meant she did not have even a minimum level of privacy. Because it was evident that her statement could be heard by those waiting next door, Cristina tried to speak very quietly to the officer, who kept telling her to speak up.

An activist who has spent many years defending the human rights of survivors of gender-based violence in Spain told Amnesty International that the police response is often unsatisfactory, even in cases where women's lives are in danger:

"I am talking about women who are maybe not in imminent danger of death, but those who are in imminent danger of being killed, they are not being properly dealt with either since they are still dying, there is no judicial response and they are not given protection".¹⁶⁸

¹⁶⁵ Report of the UN Special Rapporteur on Violence against Women, its Causes and Consequences, Mrs. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights Resolution 1995/85, Commission on Human Rights, 52nd session, UN document E/CN.4/1996/53/Add. 2., 6 February 1996, pp. 12-25.

¹⁶⁶ An assumed name. Interview with Amnesty International in Madrid, October 2004.

¹⁶⁷ An assumed name. Interview with Amnesty International in Madrid, October 2004.

¹⁶⁸ Interview conducted by Amnesty International with staff at the Federation of Associations for the Welfare of Women who have been Raped, Madrid, October 2004.

Although, according to information gathered from testimonies and interviews, the treatment of women who file complaints at police stations is far from appropriate, Amnesty International has learned of some very positive initiatives that have been introduced by the security forces in some areas. One example of this type of "good practice" is the work of the *Diana Group* set up by the local police in Seville (Andalucía).

The *Diana Group* set up by the local police force in Seville

In 2002, as a result of a protocol signed between the Department for Equality and the Local Government Office of Seville City Council, a specialist unit was created within the local police force to deal with gender-based violence. According to a representative of the *Diana Group*, the specialist unit came into being after it was noticed that, although women who have been subjected to abuse frequently use police services, they often experience the police as being remote from them. Consequently, and to avoid secondary victimization, the *Diana Group* is geared towards providing survivors with ongoing specialist care so that, rather than having to deal with lots of different officials who are unaware of their overall situation, they are seen by a specially trained group who know about the specific issues facing them.

Recognition of the specific dynamic that exists in this type of crime and the impact it can have on the lives of victims has determined the criteria on which their intervention is based: immediacy, proximity and continuity.

To help it get closer to survivors, the local police unit adopted a name that did not consist of initials and, to ensure that the service provided is as effective as possible, its officers wear plain clothes.

In Spain, a complaint may be filed either at a police station or at a duty court (*juzgado de guardia*). A report published by the Consejo General del Poder Judicial in 2003 referred to what happens when a complaint is filed as follows: "(The reforms) make it clear that there should be a level of willingness and sensitivity which, as things stand, has yet to be established in the day to day processing of complaints

about abuse and the initial procedures that need to be followed".¹⁶⁹

Cristina¹⁷⁰ told Amnesty International about the difficulties she had when trying to fill out her complaint at the court: *"I went to the duty court to lodge a complaint. That was on 18 March, it was the day before Father's Day. At the court, it was after lunch, three in the afternoon and there was no-one there. The duty judge had gone off to pronounce about a body or I don't know what, and there was no-one there. So the lady who was there, a civil servant, says to me I should do it myself (...), she was a civil servant and she was there to accept the complaint or whatever you wrote down (...). She says, 'Well, look, you fill this bit in here, what happened, how it happened and then I sign it and the legal process starts'. I was feeling terrible by then, because I had left home... I don't know how I did it (...). No-one told me anything there at the court, I had gone there on my own (...). There was me thinking there would be people there to advise me, a lawyer or... But no, they tell me to write the complaint, put what had happened. So I take it and because I don't have any... well I just (wrote) what had happened that day, I didn't say it had happened repeatedly, or... (...) In the end, she helped me because I just couldn't do it. In the end she was kind"*.

The *Asociación de Mujeres Opañel* told Amnesty International about one of the cases they helped out with: *"At the court the atmosphere is not welcoming, the (staff) who received her complaint looked at her as if to say... 'Come on, hurry up because I don't have all day,' and the woman was desperate, she wanted to leave three times on the way there (they had been to two police stations before arriving at the court). It took us all day.(...) These are women who we accompany and we explain more or less what the procedure is, we talk to them, but just imagine a woman on her own, she'll end up going home. And also they don't give them any information. (...) How can they speak in such a way to women suffering what they are suffering?"*¹⁷¹

The Council of Europe reminds States that they have a duty to *"take all necessary measures to ensure that throughout the procedure the physical and psychological*

¹⁶⁹ García Calvo, Manuel (coord.), *El tratamiento de la violencia doméstica en la Administración de Justicia* (The Treatment of Domestic Violence by the Justice System), Consejo General del Poder Judicial, Madrid, 2003.

¹⁷⁰ An assumed name. Interview with Amnesty International in Madrid, in November 2004.

¹⁷¹ Interview conducted by Amnesty International with members of the Opañel Women's Group in Madrid, in October 2004.

status of victims be taken into account".¹⁷² In this regard, the Spanish *Consejo General del Poder Judicial* established in a document issued in 2001 that *"the treatment given to victims of this type of crime in court offices must, at all times, be especially considerate, ensuring that "institutional victimization" is not added to the damage stemming from the abuse already suffered"*.¹⁷³

Although all survivors interviewed for the purposes of this report referred to their passage through the courts as a traumatic experience, the organization is not aware of the existence of any studies into the treatment survivors receive within the justice system or the measures implemented to protect survivors and witnesses that take account of the characteristics of this type of abuse.

In October 2000, the possibility of not obliging witnesses to be brought face to face with the accused was raised at a non-jurisdictional plenary session of the Second Division of the Spanish Supreme Court, which confirmed that this was possible and appropriate and required simply a ruling by the court in charge of the case giving the reasons for it.¹⁷⁴ The court may state the grounds for doing so during the oral proceedings.

Amnesty International is concerned that the legislation on protection is not being enforced, or is being inconsistently enforced, by judges. Women have the right not to appear in court at the same time as their abusers and for their personal details not to be made public in the trial documentation. Institutions have a duty to ensure that women do not suffer double victimization by being forced to come face to face with their abusers in court. The law must be applied in such a way that their human rights are not violated yet again. The Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence did not in the end include any additional provision in this important area, therefore leaving a serious gap as far as protection of both survivors and their children during criminal proceedings is concerned.

¹⁷² Recommendation Rec(2002)5 of the Committee of Ministers of the Council of Europe on the protection of women against violence, 30 April 2002, para. 41.

¹⁷³ *Consejo General del Poder Judicial, Guía Práctica de actuación contra la violencia doméstica* (Practical Handbook for Dealing with Domestic Violence), agreed at the plenary session of the *Consejo General del Poder Judicial* held on 21 March 2001.

¹⁷⁴ Non-jurisdictional plenary session of the Second Division of the Spanish Supreme Court, 6 October 2000.

Pilar¹⁷⁵ told Amnesty International about her experience on the day of the trial, showing both the emotional trauma she went through by having to give evidence in the presence of her abuser and, once again, the lack of legal assistance available for survivors:

"They introduced me to the lawyer I had been assigned. I couldn't speak, I had not slept all night and I was feeling really anxious... with a... I didn't feel safe where I was. He had been assigned a lawyer the day before, who had prepared for the bearing and asked for a report on the therapy we had been to together. The judge let me leave and come back in again twice because he could see I couldn't speak. I just wanted it all to end, to run away, to pick up my daughter, I just wanted to get out of there."

Marta¹⁷⁶ describes her court appearance when she was forced to give evidence in the presence of her abuser in the following terms:

"The hearings started, and the court house at Torrejón is very small, they put you in a room like a room in a normal house, with the guy at this distance from you... so, for me, it was an incredible shock, every time I saw him, it was like going completely backwards. Because, for me, sitting in front of him was like being back home, I couldn't even speak. Then, of course, you feel defenceless, because when it comes to giving evidence, he is a very cool-headed man who knows exactly what to say, he knows what he has to do, and you're just so stuck for words that you make no sense. You have no credibility, the only thing with any credibility is the panic attack you get every time you're near him. You feel, how can I put it, so small, and he looks so big... And although they say, 'Don't worry, there are policemen here', and all that, you just feel so defenceless. (...) They know how to intimidate you, he didn't even need to touch me, he could paralyze me with just one look. I was so scared that just imagining him looking at me got me trembling".

Survivors of gender-based violence already find it difficult to have to relive the violence they have suffered when they testify and the presence of their abusers unnecessarily adds to their distress and the feeling that they have no protection.

A member of the *Asociación de Mujeres Opañel* who works with immigrant women who have been subjected to gender-based violence told Amnesty International of her experience of the courts: *"Things*

¹⁷⁵ An assumed name. Interview with Amnesty International in Huelva, Andalucía, October 2004.

¹⁷⁶ An assumed name. Interview with Amnesty International, in Madrid, October 2004.

are really badly organized. When they called us to go and give evidence at the court, supposedly within 72 hours, we asked for a police car to take us there, because we had information that this man was quite dangerous and we were told that no one could come and pick us up, that we would have to take a taxi, or go by metro or however we liked. (...) At the court, we had to wait about three hours with the guy sitting right opposite us in the corridor (...) Once the statements have been made and the hearing is over, then they do protect you a lot. But before that we could have met the guy on the street, we had to sit there for three hours with him right in front of us, and no one bothered about that. And then, well, that woman went there with us, but we saw other people there, with the woman and husband there together, one in front of the other, and, of course, the woman was trembling".¹⁷⁷

When the Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence was being drafted, Amnesty International pointed out that the way in which the *Ley de Protección de Testigos y Peritos en Causas Criminales* (Law on the Protection of Witnesses and Experts in Criminal Trials)¹⁷⁸ is currently implemented does not ensure that legal proceedings and formalities are suited to the emotional needs of survivors and the need to protect them and their relatives. The Law on the Protection of Witnesses and Experts, which has not been accompanied by specific regulations, contains only general guidelines on protection and there is no proper guarantee that it will be appropriately and effectively enforced since it depends on what the judge decides in each individual case. The main problem is that not all judges know about the possibility of applying this law and the measures adopted frequently do not meet the needs of the women concerned.

3.6.3 Difficulties in obtaining and effectively enforcing protection orders

UN General Assembly Resolution 52/86 concerning crime prevention and criminal justice measures to eliminate violence against women stipulates that States must give the courts the authority to issue protection and restraining orders in

¹⁷⁷ Interview conducted by Amnesty International with members of the Opañel Women's Association, Madrid, October 2004.

¹⁷⁸ Law 19/1994 of 23 December, concerning the protection of witnesses and experts in criminal proceedings (*Protección de Testigos y Peritos en Causas Criminales*).

cases of violence against women, including removal of the perpetrator from the domicile, prohibiting further contact with the victim and other affected parties, inside and outside the domicile, and to impose penalties for breaches of these orders.¹⁷⁹

The *Ley Reguladora de la Orden de Protección de las Víctimas de la Violencia Doméstica* (law regulating protection orders for victims of domestic violence)¹⁸⁰ authorizes judges to order protective measures of a civil, criminal or social nature within 72 hours of such a request being made.

Since the law came into force in August 2004, there has been a significant increase in the number of requests and, in the first half of 2004, a total of 17,017 protection orders were sought throughout Spain. Between April and June 2004, 9,689 protection orders were sought.¹⁸¹

Protection denied

The UN Special Rapporteur on violence against women has stated that the burden of proof in granting a protection order is on the accused.¹⁸² However, in Spain, about 25 per cent of survivors who seek legal protection have their applications turned down.¹⁸³

The number of rejections ranges from 10 per cent in Castilla La Mancha to 36 per cent in Cantabria, although the data provided by the *Consejo General del Poder Judicial* does not allow us to determine the reasons why such protection orders are denied.¹⁸⁴ Although the reasons for the authorities' refusal to grant protection orders are not publicized, Amnesty International has learned from lawyers working to defend the rights of survivors that women who report psychological violence are often not granted a protection order because the risk to them is not considered to be sufficiently demonstrated. Amnesty International is concerned at the lack of transparency

¹⁷⁹ UN document A/RES/52/86, para. 7 g).

¹⁸⁰ Law 27/2003 of 31 July, regulating protection orders for victims of domestic violence (*Ley Reguladora de la Orden de Protección de las Víctimas de la Violencia Doméstica*).

¹⁸¹ *Consejo General del Poder Judicial, Datos de órdenes de protección* (Data on Protection Orders), (1 January - 31 March 2004), Madrid, 2004.

¹⁸² UN document E/CN.4/1996/53/Add.2, para. 39.

¹⁸³ *Consejo General del Poder Judicial, Datos de órdenes de protección* (Data on Protection Orders), (1 January - 31 March 2004), Madrid, 2004.

¹⁸⁴ Report on protection orders published by the *Consejo General del Poder Judicial* during 2004.

surrounding the reasons for turning down such requests.

After thirty years of marriage, Aurora¹⁸⁵ decided to put an end to the situation of physical and psychological violence she was suffering. Towards the end of the time she was living with her husband, she used to sleep in a locked room until one day she found the lock removed. Faced with ongoing threats, she took refuge in the home of a relative who lived in the same town. Later on, as the threats continued, she had to leave there too and go and live in her children's house in a town in the Community of Madrid. Under the terms of the separation, she was granted the family home, where her husband still lived. During a visit to the town with one of her children, her husband, who was still living in the house, insulted and threatened her. She therefore filed a complaint against him but he was acquitted at a summary trial on a minor offence (*juicio de faltas*). Other people in the town had also reported him for issuing threats and a shotgun he owned was taken away from him. Aurora applied for a protection order to enable her to return to her home town without being subjected to threats and possibly assault by her husband.

The judge turned down her application, claiming that Aurora now lived in the Community of Madrid and that her husband had not gone to look for her there. At the time of her interview with Amnesty International, Aurora was obliged to remain living in Madrid and could not return to her home town in Extremadura because there were no protection measures in place there in the event she went back there to live.

The judge gave the following grounds for denying the protection order:

"It being unquestionable that the husband will have to leave the house when the civil judgment is enforced, a matter which is not the subject of this ruling, the fact is that there is no situation of current risk to the wife arising from the incidents that were reported, since she lives in the Community of Madrid at the home of her children which her husband does not visit, and the presence of the wife at their home in Siruela is voluntary since she knows that her husband still lives in the house.. (...) It will be a different matter if the husband goes looking for his wife once he has to leave the house and tries to get in. However, that is not the issue we are concerned with at present and therefore there is no option but to turn down the request for a

¹⁸⁵ An assumed name. Interview with Amnesty International in Madrid, November 2004.

protection order, without issuing a civil decision of any kind, since that has already been settled in the separation ruling and it would not be appropriate to do so at this time".¹⁸⁶

In September 2004, a judge refused to grant a protection order to a woman who told the court that she had suffered psychological and physical violence and threats for years. "I'm going to slit your throat. I'm going to burn the house down with the children inside" and "I have a license to kill because I'm undergoing treatment", were some of the threats reported by the complainant, which were also corroborated by her children in a statement made to the police. The following considerations were given in the court ruling as grounds for denying the order:

"In the case we are dealing with, we are confronted with a process of separation that is in its initial stages and which, following a period of years in which the relationship deteriorated, is becoming difficult and very painful. In this context the complainant has spoken of two incidents of aggression that took place 7 and 5 months ago respectively, about which there is no objective information and where there are contradictions in the versions of events provided. Apart from these incidents, all we have heard about is a recent argument in which we do not doubt that there was a significant confrontation between the two interested parties (and between the accused and the couple's children). However, details of the threatening behaviour referred to by the complainant are very hazy".¹⁸⁷

The judge who refused the protection measures did not allow the children of the complainant to appear as witnesses. At the time of her interview with Amnesty International (October 2004), the woman was living with her children in the same house as her abuser and said, "We are very afraid, he's someone who has said he is going to pour petrol over the house. We get together to make sure we arrive at the house in a group. At least two of us go together because we don't want to be there alone".¹⁸⁸

¹⁸⁶ *Juzgado de Primera Instancia e Instrucción* (First Instance and Magistrates' Court), Herrera del Duque (Badajoz). Preliminary proceedings, *juicio de faltas* (summary trial on a minor offence) No. 81/04.

¹⁸⁷ *Juzgado de Instrucción No 27* (27th Magistrates' Court), Madrid, Preliminary proceedings, fast-track procedure (*procedimiento abreviado*) No. 4814/2004.

¹⁸⁸ Interview with Amnesty International, Madrid, October 2004.

The organization has learned of cases in which the refusal to grant protection orders for women in serious danger was due to a lack of professional diligence on the part of the judge as well as a failure to understand the reasons why most women spend years without reporting the abuse they are subjected to and only do so once they are in the process of separating from their partner when the situation intensifies and they fear for their lives. This situation in which the danger is real is often wrongly taken as opportunism on the part of the complainant so that the separation process can be speeded up.

The failure of abusers to comply with protection orders

The prosecutor specializing in domestic violence at the Malaga courts told Amnesty International that *“there has to be a willingness on the part of the abuser to comply with the order”*¹⁸⁹ and she thinks that a safety plan tailored to the needs of each survivor should be drawn up by the court which, at the request of the prosecution, should include what is to be prioritized in each case. A more effective surveillance system needs to be set up so that the court can establish what the priorities are for each woman.

Amnesty International has come across cases where there is evidence of a lack of diligence on the part of State officials in monitoring compliance with restraining orders placed on abusers as well as a lax attitude to breaches of such orders which clearly contravenes international standards.

In January 2004, Encarnación Rubio went to the Civil Guard's barracks in Armilla, Granada, to report that her husband had tried to run her over. In her statement to the officers, she complained that she had been continually subjected to both threats and insults. These acts were originally processed as misdemeanours but they were later deemed to constitute the more serious offence of habitual abuse (*maltrato habitual*) by a magistrates' court where a protection order was issued in favour of Encarnación, stating that her abuser could not come within 100 metres of her.

According to numerous testimonies, he repeatedly breached this order and, on one occasion, the local police even had to eject him from Encarnación's home. The court learned of this from

two sources: the police and the victim herself. On another occasion, Encarnación's sister told the Civil Guard that her brother-in-law had breached the restraining order but by the time the patrol arrived he had already left and nothing was done. At the end of March, Encarnación Rubio was run over three times by her husband. When he saw that she had survived the first time, he ran over her twice more with his car to make sure she was dead.

The former partner of Carmen¹⁹⁰ breached a restraining order issued by a court in Barcelona, by turning up when she and her daughter were in a bank. Seeing how panic-stricken both were, one of the people there revealed that he was a police officer and called for a patrol car to come. She was taken to the *Servicio de Atención a Mujeres - SAM* (Women's Service) of the National Police.

Despite the fact that the accused was in breach of the restraining order, *“had been in prison for murder, illegal possession of firearms and explosives, drug trafficking, well for...”*, at SAM Carmen was told that *“if there has been no assault or threat, there is nothing they can do”*. The police officers who had gone to the bank took her back to the police station they came from to file a complaint. A patrol car was sent out from there to find her former partner and *“they found him shortly afterwards, fifty metres away from my daughter's house, with a rucksack containing a curved sword (catana), a large knife, an axe, a penknife, a mallet hammer and... well all that. He had called my brother to say that he no longer cared about the family and that he had seen my son and that he was going to kill me and rip out my guts”*.

Concern was expressed in the Report by the Attorney General's Office for 2003 about how breaches of protective measures are dealt with. The number of indictments for this offence had risen to 853 in 2003 (compared to 340 in the previous year): *“This figure demands studied reflection about the criminal action that is taken against the perpetrators of this offence since, despite having the legal instruments to respond strictly and firmly to breaches of measures imposed by the courts (...), these instruments are not enforced to the extent that is desirable”*.¹⁹¹

In the case of Lourdes¹⁹², despite the fact that a restraining order lasting five years had been placed on her former husband, he went on

¹⁸⁹ Interview conducted by Amnesty International with Flor de Torres, November 2004.

¹⁹⁰ An assumed name. Interview with Amnesty International in Madrid, October 2004.

¹⁹¹ State Attorney General's Office, 2003 Report, p.580.

¹⁹² An assumed name. Interview with Amnesty International in Bilbao, Basque Country, October 2004.

continually harassing her, even when she went on holiday:

“One morning, at 6 am, the dogs starting barking madly and in the afternoon we went down to the lake for a swim and he just walked right out in front of my father, really cocky, he didn’t speak to me, but just gave me a look...” Lourdes called the police and they found him there. *“I thought they were going to arrest him. (...) He breached the restraining order on a daily basis. He used to wait for me on the landing (...) I have won three cases because he broke the restraining order and he was given fines of two or three euros a day for two, three or six months. (...) So the upshot is, I insult you, you file a complaint, they fine me one or two euros a day and I can threaten you whenever I like, I can even threaten to kill you, I’m going to kill you, whore, I’m going to kill you.”*

As far as restraining orders are concerned, Amnesty International has come across cases in which the measures imposed virtually contradict each other such as, for example, agreeing that the order applies everywhere except in the place where both parties work or banning the accused from coming within 300 metres of the victim except in the building where she lives because he lives on a different floor of the same building. In the latter case, the ban consisted of not being allowed to go to the floor on which her apartment was located and her request to move to another family house, where the ban could be enforced effectively, had been turned down. The court agreed *“to ban Pedro J. from going within 300 metres of Ana T. or her home, when the said home is that in street (A) and, with regard to the home located in street (B), from ascending to the floor in which the said home is located, namely the fourth floor (...) As regards allocation of the use of the home in street (A), which it is requested be awarded to Ana T., the request is not admissible, it being necessary to comply with the provisions of the ruling already issued by the Family Court in this regard and whatever ruling is in due course made by the Madrid Provincial Court in response to the appeal that has been lodged”*.¹⁹³

In an interview with Amnesty International, staff at the Women’s Information Centre in Basauri said that, *“Of course, there has been a lot of progress on paper. I have been here for 16 years and I can see the difference, which is huge. Things have changed a lot, at the level of institutions, and a bit as far as their involvement is concerned, and also at the legal level. In other words, all the protection mechanisms*

¹⁹³ Preliminary proceedings conducted by a magistrate’s court in Madrid, to which Amnesty International had access during an interview with the complainant, Ana (an assumed name). The details of the court and case number have been withheld at her request.

from social services to social resources and all the criminal justice mechanisms, for protecting survivors, regarding the offences themselves, how they are prosecuted, the protection orders, all that has changed a lot, that is evident. So, what is the problem? The problem is that all of that is theory and you have to then see how things work in practice. In practice, what we have is that depending on where you live, the services available to you will be completely different”.¹⁹⁴

The effectiveness of the protection provided to survivors who have been granted such orders has been questioned both by women’s organizations and by the institutions involved in enforcing them. In February 2005 the commission responsible for monitoring the implementation of protection orders for victims of domestic violence (*Comisión de Seguimiento de la Implantación de la Orden de Protección de Víctimas de Violencia Doméstica*) reported that a total of ten women who had been granted protection or restraining orders died during 2004. Trade unions representing the security forces have called for more resources to be made available so that they can ensure that women are protected.

3.6.4 The obligation to prosecute

An important point raised in UN General Assembly Resolution 52/86 concerning crime prevention measures and criminal justice for the elimination of violence against women is that *“[t]he primary responsibility for initiating prosecutions lies with prosecution authorities and does not rest with women subjected to violence”*.¹⁹⁵

Although in recent years there has been a gradual improvement in the way the *Ministerio Fiscal*, the Spanish public prosecution service, deals with these offences, its handling of some cases still falls short of expectations.

In Spain, prior to the reforms that were introduced to amend court practice in this area,¹⁹⁶ responsibility for filing a complaint and pushing the

¹⁹⁴ Interview conducted by Amnesty International with staff at the *Centro de Información a Mujeres*, Basauri, Basque Country, October 2004.

¹⁹⁵ UN document A/RES/52/86, para. 7 b).

¹⁹⁶ Basic Law 3/1989 of 21 June, updating the Penal Code; Basic Law 10/1995 of 23 November, amending the Penal Code; Basic Law 14/1999 of 9 June, amending the 1995 Penal Code with regard to matters concerning the protection of victims of ill-treatment and the Code of Criminal Procedure.

proceedings forward lay with the victims of gender-based violence, which led to many cases being shelved if the victim “gave up” the legal action. This was especially common in trials for misdemeanours (*faltas*), but it also happened in trials for criminal offences (*delitos*). Only since 1999 have all types of behaviour connected with gender-based violence in the home, including physical assault as well as threats and psychological abuse, been considered criminal offences that should be pursued *sua sponte*. This means that prosecution of the offence and the subsequent pursuance of legal proceedings no longer rely on the actions of the victim but that the State is responsible for initiating criminal proceedings, taking the action forward and ensuring that, by means of a diligent investigation and a trial conducted with full judicial guarantees, the victims obtain justice.

In practice, however, it is still mainly up to the complainants to instigate action. In a study published in 2003, the *Asociación de Mujeres Juristas “Themis”* (“Themis” Association of Women Jurists) concluded that, “*the prosecution sua sponte of domestic violence, despite being established in law, in fact seldom happens if the victim herself has not filed a complaint*”.¹⁹⁷

Court statistics, even as recently as 2004, categorize data in a way which shows that this type of offence is handled differently to other criminal offences. A section entitled “complaints withdrawn” appears alongside one entitled “complaints filed” and accounts for about 15 per cent of the total number of offences related to gender-based violence that were processed. These are cases in which the victim has told the court that she wishes to put a stop to the proceedings. Although this does not imply that such cases are closed, Amnesty International is concerned that the offices of the *Consejo General del Poder Judicial* responsible for compiling statistics continue to use a classification which is inconsistent with the provisions of criminal and procedural law stipulating that these offences should be prosecuted *sua sponte*.

Amnesty International recalls that the obligation to prosecute these offences *sua sponte* should be seen as integrally linked to the State's duty to “*guarantee the safety of victims and their families and (...) protect them against intimidation and reprisals*”.¹⁹⁸

¹⁹⁷ *Asociación de Mujeres Juristas “Themis”, La violencia familiar en el ámbito judicial* (Domestic Violence in a Legal Context), *Junta de Comunidades Castilla-La Mancha*, 2003, p. 31.

¹⁹⁸ UN document A/RES/52/86, 7 h).

The role of the Public Prosecution Service

The recommendation by the Council of Europe's Committee of Ministers, adopted in 2002,¹⁹⁹ clearly states that the public prosecution service must take a leading role in pursuing offences related to gender-based violence.

Since issuing Circular 1/1998 on the role of the Public Prosecutor in prosecuting abuse inflicted in a domestic or family environment, the *Fiscalía General del Estado* (State Attorney General's Office) has issued several instructions to prosecutors setting out the regulations which should guide their actions in these proceedings.

According to Instruction 4/2004 of 14 June 2004, concerning the protection of victims and the strengthening of protective measures relating to offences involving domestic violence, it is essential for the prosecutor to be present when the victim makes her statement to the court. It goes on to say that: “*This institutional duty to appear must apply whatever type of procedure is being followed. Whether in the framework of any of the fast-track types or in the context of ordinary criminal proceedings, the representative of the Public Prosecution Service must consider this initial statement by the victim as a privileged source of knowledge in order to be able to propose the necessary protection measures*”.²⁰⁰

The role of the public prosecutor in trials related to gender-based violence in the home is key. Given the small number of women who are accompanied by a lawyer during proceedings, as discussed above, it is all the more important that the public prosecutor acts with due diligence. However, although Amnesty International has received reports from specialist lawyers saying that the public prosecution service is gradually becoming more involved, criticism of the passivity of its officials persists.

According to the study already mentioned, compensation is sought for the victim in the event of physical injury in only 9 per cent of proceedings in which the prosecutor brings charges. Compensation is not sought at all if the abuse is psychological.

According to those in charge of the women's division of the Free Lawyers' Association (ALA), “*the prosecutor here is the linchpin because, however much we*

¹⁹⁹ Rec 2002/5, Committee of Ministers of the Council of Europe.

²⁰⁰ *Fiscalía General del Estado*, Instruction No. 4/2004 of 14 June, concerning the protection of victims and the strengthening of protective measures relating to offences involving domestic violence.

emphasize all the abuse the woman has suffered, if the prosecutor considers that the evidence sought by the lawyer with regard to the woman is insufficient, then what the prosecutor says goes. There should be more emphasis on the State becoming more involved. The public prosecutor must get involved".²⁰¹

A report on trials of domestic violence cases in Castilla-La Mancha published by Themis in 2003 made the following observation: *"The prosecutor asks for acquittal in 61 per cent of cases which go to trial. In 90 per cent of these, the victim has not gone to court or has forgiven her abuser. It is worth noting that in 62 per cent of cases in which the victim has attended court and forgiven her abuser, acquittal has been sought when there has been physical abuse. 64 per cent of proceedings in which the case has been brought by the prosecutor are endorsed by the victim"*.²⁰²

3.6.5. The lack of due diligence in investigations and the scope for impunity

Amnesty International believes that the fact that there is currently ample opportunity for offences related to gender-based violence to remain unpunished essentially stems from a lack of due diligence in prosecuting and investigating such offences, as well as the prejudice that exists with regard to these types of offences which can affect how the judge views the evidence.

UN General Assembly Resolution 52/86 concerning crime prevention measures and criminal justice for the elimination of violence against women urges States *"to develop investigative techniques that do not degrade women subjected to violence and minimize intrusion, while maintaining standards for the collection of the best evidence"*.²⁰³

Court procedures must be *"accessible and sensitive to the needs of women subjected to violence and [must] ensure the fair processing of cases"*.²⁰⁴

Amnesty International is concerned that the gathering of evidence in these cases is not being carried out with due diligence and that the type of legal proceedings used are not suited to the specific characteristics of this type of offence. The organization regrets that the Basic Law on

²⁰¹ Interview conducted by Amnesty International with those in charge of the women's division of the Free Lawyers' Association (ALA), in Madrid, November 2004.

²⁰² *Asociación de Mujeres Juristas "Themis", La violencia familiar en el ámbito judicial*, 2003.

²⁰³ UN document A/RES/52/86, para. 8 b).

²⁰⁴ UN document A/RES/52/86, para. 10 d).

Comprehensive Protection Measures to Tackle Gender-Based Violence did not address these issues.

Observations about "fast-track trials"

With the entry into force in 2003 of a new fast-track trial procedure (*"juicio rápido"*) to be used for offences involving domestic violence²⁰⁵, the aim was to solve additional problems that had arisen as a result of the extreme length of trials. However, since the fast-track system for prosecuting cases of gender-based violence in the home came into force, there have been criticisms that, given the particular nature of these types of offences, it is not suited to dealing with them.

Amnesty International has noted the criticisms made by the Consejo General del Poder Judicial with regard to these types of proceedings: *"... [W]ith regard to violent offences that can be described as habitual domestic violence (...), in many cases, it is often difficult in practice to try them using this procedure. In other words, this type of offence – which is often complex – should never be tried straightaway. (...), given the difficulties of combining swift justice with the procedural complexities that stem from the length of time it takes to gather evidence to corroborate the events that result in this type of offence being committed, it is advisable that they be excluded from the remit of the fast-track procedure"*.²⁰⁶

The State Attorney General's Office has also talked about how difficult it is to ensure that all the necessary evidence has been gathered when using this type of procedure, because, *"as [we] had been warning, (...) it was going to be difficult in the short period of time that a duty court has to do its work for it to be able to complete the investigation phase in cases of this nature"*.²⁰⁷

This is due to the fact that a series of procedures that are hard to complete in a short period of time need to be carried out. These include, for example, the medical and psychological examinations required as evidence and the joining of

²⁰⁵ Law 38/2002 of 24 October, partially reforming the Code of Criminal Procedure in relation to the swift and immediate prosecution of certain offences and misdemeanours and amendments to the fast-track procedure.

²⁰⁶ *Consejo General del Poder Judicial*, report on the draft law submitted to Parliament by various parliamentary groups (No. 122/000199), partially reforming the Code of Criminal Procedure in relation to the swift and immediate prosecution of certain offences and misdemeanours and amendments to the fast-track procedure, p. 22.

²⁰⁷ *Fiscalía General del Estado*, 2003 Report, p.595.

other proceedings to the case. Indeed, as noted by the State Attorney General's Office, this time factor *"has made it impossible for the offences established under Article 173, number 2, of the Penal Code to be handled in accordance with the regulations that apply to fast-track trials"*.²⁰⁸

Amnesty International is concerned that the operational defects detected in the fast-track trial system may be putting women's rights at risk and believes that, although cases of gender-based violence in the home need to be dealt with more quickly, this should not be done at the expense of endangering the right of the victim to receive protection and appropriate reparation and to see her abuser punished.

Lawyer Maria José Varela made the following remarks about the fast-track trials: *"Emergency proceedings imply the following: the woman files charges, the police officer recording the complaint summons her to appear in court, at that point she is offered action under [Article] 109 of the Code of Criminal Procedure without being told what that means, she is just given a paper to sign. She does not know that she is entitled to attend with a lawyer and that if she does not appear that day, she will not be given more time to come back and bring legal action, because at that court hearing she has to formally bring the action and so then the deadline will be up. When she is given a trial date, she will no longer be able to appear as a party [to the prosecution] and will not therefore be able to offer any evidence in this regard. When a woman goes to the police, she is fleeing from a specific situation that has just occurred, fleeing from that attack, and she will probably only tell the police about what has just happened. This means that many other acts which currently fall under Article 173.2 [of the Penal Code] will probably go unpunished; they will only act in pursuance of Article 153 [of the Penal Code], and this is what is happening, and psychological violence will also go totally unpunished because it is clearly not easy to investigate"*.²⁰⁹

Despite the fact that this criticism of "fast-track trials" is not new and that in the past few months there has been much debate about the institutional response to gender-based violence, these proceedings have not yet been reviewed.

Although it is necessary to speed up proceedings and ensure that protection measures are issued immediately, such rapid decision-making is not

²⁰⁸ *Fiscalía General del Estado*, 2003 Report, p.593.

²⁰⁹ Testimony of lawyer and expert on gender-based violence Maria José Varela Portela concerning the bill on comprehensive protection measures against gender-based violence, Official Record of the Sessions of Parliament, No. 67 of 22/07/2004, Labour and Social Affairs Committee.

compatible with the evidence-gathering needs in these types of cases, especially in cases of psychological violence. In the time allowed for the gathering of evidence in fast-track trials, it is simply not possible to obtain a forensic psychological report on the victim. The Malaga prosecutor specializing in domestic violence pointed out that *"it is impossible to get a conviction for psychological abuse by going down that road"*. She went on to say that *"it is impossible in a fast-track trial to gather all the evidence calmly and we are unable to establish that an offence has been committed on an habitual basis"*.²¹⁰

Forensic pathologist Miguel Lorente agrees: *"... There is absolutely no assessment of psychological damage, which is what an abused woman suffers from most. Psychological damage cannot be assessed in a matter of minutes, it requires specialist attention, which need not be slow or cause delay, and this is possible if you have trained staff to do it. (...) I think fast-track trials have got confused with rushed trials"*.²¹¹

Forensic pathologist Guillermo Portero also believes that the procedure is unsuitable because it fails to ensure that the necessary time is available to issue a forensic report on psychological violence. In his view, in most cases of gender-based violence, there is both physical and psychological abuse.²¹²

The State should review the legal proceedings established for dealing with cases of gender-based violence in order to ensure that they are suited to such cases, that the scope for impunity which exists at the moment is eliminated and that the right to justice is made a reality for all survivors.

Forensic experts seldom involved

Amnesty International is concerned that forensic experts are seldom involved in trials relating to violence against women in the home.

According to data provided by the *Consejo General del Poder Judicial* in a study on violent deaths in

²¹⁰ Interview conducted by Amnesty International with Flor Torres, a prosecutor from Málaga.

²¹¹ Testimony by forensic pathologist Miguel Lorente Acosta concerning the bill on comprehensive protection measures against gender-based violence, *Diario de Sesiones* (Official Record of the Sessions of Parliament), No. 67 of 22/07/2004, Labour and Social Affairs Committee.

²¹² Guillermo Portero Lazcano, *La violencia doméstica desde la perspectiva médico-forense* (Domestic Violence from a Forensic Perspective), published in *Cuadernos penales José María Lidón, nº1, Las recientes reformas penales: algunas cuestiones*, Bilbao, Universidad de Deusto, 2004.

the home in 2003²¹³, forensic pathologists had no involvement in 64 per cent of cases and in only 18 per cent of cases did they issue a report after carrying out a medical examination of the victim.²¹⁴

In cases of abuse such as violence against women, where the only witness at trial is usually the victim herself, examination of the victim by a forensic expert is particularly important.

Amnesty International welcomes the fact that the Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence has provided for the establishment of “*unidades de valoración forense integral*” (“comprehensive forensic assessment units”)²¹⁵, belonging to the central State administration and the autonomous communities that are competent to deal with judicial matters. Their task is to draw up protocols for working with gender-based violence. However, if this work is to be effective, enough staff will have to be allocated to it so that their involvement in proceedings of this kind can be assured.

Discrimination and prejudice in the assessment of survivors' statements

Amnesty International is concerned at the existence of prejudice on the part of those responsible for dispensing justice and also that the proper handling of these cases may rely on how “close” the professional in charge of the case is to this issue at a personal level. It is also therefore worrying that there are no plans to provide compulsory training to all staff working in the justice system who are responsible for processing cases of gender-based violence.

²¹³ The investigation looked into deaths classified as domestic violence by the examining magistrate involved in each case. Among the report's findings was the fact that in 24.5 per cent of cases, legal proceedings for abuse had been instituted prior to death. It was in relation to these proceedings that the involvement of the various authorities and officials was analyzed.

²¹⁴ *Informe sobre muertes violentas en el ámbito de la violencia doméstica en el año 2003*, Inspection Service of the *Consejo General del Poder Judicial*, Domestic Violence Working Group, Madrid, 2004, p. 19.

²¹⁵ Additional provision No. 2 of the Basic Law on Comprehensive Protection Measures to Tackle Gender Based Violence.

When interviewed by Amnesty International, Ana²¹⁶ expressed her astonishment at the treatment her case received: “*I presented lots of evidence, phone calls, a letter, loads of things, and the prosecutor goes and says we are abusing the justice system, that he does not see the actions as harassment and that he sees no such situation and that we are abusing the system. (...) You file a complaint backed up with lots of evidence and they tell you you are abusing the justice system. I said to the secretary there, ‘What state do you have to be in when you come here before they pay any attention to you? Half-dead?’*”

A court in Barcelona acquitted a man accused of repeated acts of violence against his wife, degrading treatment that is contrary to moral integrity and a minor offence of causing bodily harm. In his ruling, the judge made the following comments: “*Over the course of the three hearings that were held, even the physical appearance of Latifa D., who was not only smartly turned out but wearing different fashionable clothes every day, with rings, bracelets and strange earrings and large spectacles, shows that Latifa D. is capable of seeing what is going on outside, understanding and adapting herself to it, and has an ability to cope that clearly does not tally with that of a woman who has spent six months subjected to abuse*”.²¹⁷ This judgment was ratified by the *Audiencia Provincial de Barcelona*, Barcelona Provincial Criminal Court, in March 2004.

For eleven years, Nadia²¹⁸ suffered what she called “*horrendous beatings*”, which have left her scarred for life. The last assault by her husband could have killed her. However, when the judge asked her why she had put up with it for so long, Nadia told her (the judge) that she should not judge her. The judge asked her no further questions and ruled that a misdemeanour (*falta*)²¹⁹ trial be opened. Consequently, Nadia took her story to a television station's news programme and, that very day, her case was transferred to a criminal court to be processed once again as an offence (*delito*), with the prosecution seeking a sentence of over twenty years:

“*So, that woman (the judge) gets it into her head that I'm not the prototype of an abused woman. I express myself well, I have character, I stand up for myself well and I'm not anything like your typical battered woman. Even my own*

²¹⁶ Interview with Amnesty International, Madrid, October 2004.

²¹⁷ Judgment 449 handed down by the 22nd Criminal Court, 27 November 2003.

²¹⁸ Interview with Amnesty International, Madrid, November 2004.

²¹⁹ A minor criminal offence which never entails a prison sentence.

lawyer said to me once, 'Nadia, if you have to go there with your hair standing on end, do it.'

So if you go there crying and with your hair standing on end, you get more rights than someone who doesn't cry and doesn't have their hair standing on end but may be worse off than you? This is a question of rights, regardless of how I might or might not look, and that woman was basing herself directly on my appearance. That comes from ignorance, what the judge doesn't realize is that I feel as if I have grown. (...) Maybe the judge sees it as cheeky and that I'm strong. She doesn't realize that I have been hiding under the table for eleven years and now I'm lifting my head up and I want to say, 'here I am, this is what happened to me'."

Representatives of the *Asociación de asistencia a mujeres violadas*, a group working to help women who have been raped, told Amnesty International of their experience in court: "Often, when we go to court, I now say to women who are self-assured and know how to express themselves, 'Look, please don't wear make-up, wear shabby clothes, talk softly, '... (...) Showing too much strength, in some courts, is counterproductive. Automatically, you don't fit the profile. It is really hard, especially for professional women, women who have a profession, because you find them too. There are civil servants, psychologists and many professional women who have been subjected to violence and to prove it, you have to pretend you are a poor illiterate woman who has been completely torn to shreds. If you are too composed, you don't fit the profile".²²⁰

In May 2004, in view of the increasing number of complaints being filed with the courts, the chief justice of the Barcelona courts claimed, without providing any evidence at all for it, that women were abusing the system for filing complaints of ill-treatment in order to gain an advantage in their separation proceedings. Despite incurring criticism from women's organizations, her assertion was endorsed by other judges and prosecutors.²²¹

Maria José Varela, a lawyer specializing in gender-based violence, told Amnesty International: "Of the more than 2,000 complaints cited by the chief justice of Barcelona, only 16 were (apparently) false and none concerned domestic violence. Since the judge said this, in every single case I have been involved in, every single one, the defence lawyer has said while arguing his case, 'We already know that many women make false complaints because even the chief justice has said so'."²²²

²²⁰ Interview with Amnesty International, Madrid, October 2004.

²²¹ *El País*, 28 May 2004.

²²² Interview with Amnesty International, Barcelona, October 2004.

Scope for effective impunity

Amnesty International has learned that, when cases come to court, one of the main concerns for survivors who have already had some experience of the courts, is which judge will be in charge of their case. Sometimes, although expert and forensic evidence is submitted and experts testify in court, these opinions are not taken into account by the judge.

Nadia²²³ told us about the way her judge seemed to question the seriousness of her case, despite the fact that her injuries are documented in numerous medical reports: "That women (the judge) questioned not only my word but that of a series of doctors who, there in those reports, described the state I am in, how I want to get over it..., I don't want pity".

Putting forward "too much" evidence can even cause judges to call into question the truth of what happened. In a judgment handed down at a criminal court in Madrid, the judge said: "As any prestigious criminal law expert would say, two or three lines are sufficient to show that an offence has been committed. If so many pages, so many witnesses, are necessary to convince the court that a criminal offence has been committed, it is because there is no real basis for it, and they are building their case on sand".²²⁴

In the same judgment, the accused was acquitted of domestic violence and slander on the following legal grounds: "This Court considers that this conduct, in any case, does not go extend outside the family realm and is not significant enough to warrant the intervention of criminal law".

Amnesty International is concerned that some legal professionals still consider that violence in the home warrants less state intervention than that perpetrated in public places.

In a judgment handed down by the 3rd Criminal Court in Sabadell, the accused was acquitted of domestic violence and recurrent violence, one of the grounds being that "the requirement that there should be no subjective disbelief appears to be impaired by the existence of spurious motives...".²²⁵ In this case, neither the defence nor the accused himself claimed that there was any spurious motive and the judge does not

²²³ Interview with Amnesty International, Madrid, October 2004.

²²⁴ Judgment No. 256/2004, 19 July 2004, 16th Criminal Court, Madrid.

²²⁵ 3rd Criminal Court, Sabadell, Judgment No. 157/04, 11 May 2004.

explain what such a motive might be nor what evidence there was of its existence, unless he was referring to the complainant's intention to seek a separation from her husband. An appeal against the judgment was heard by the Barcelona Provincial Criminal Court but it was dismissed.

Sometimes, the failure of judges to take the opinions of experts into consideration can lead to very serious human rights violations.

In another judgment handed down by the Provincial Criminal Court of the Balearic Islands, the accused was acquitted of attempted homicide, and was convicted solely of bodily harm, based on the following argument:

"This Court has no doubt that the accused drove his car into the woman with the intention of hitting her forcefully and causing her physical injury. It does, however, harbour doubts over whether what he was actually seeking to do by his action was kill her; to determine whether there is proof of an intention or desire to kill, we must look at the evidence available and from the evidence that has been corroborated, we cannot infer what the charges are asking because, even bearing in mind that the accused had threatened to kill the woman and that he drove his car at her resulting in the injuries shown, and even taking into consideration that the car came to a halt because the half-shaft broke, the truth is that the accused knew he had a flat tyre (therefore limiting his ability to manoeuvre) and, above all, subsequently behaved in a way that was inconsistent with the alleged intention of causing death, because, with the woman at his mercy and in an isolated place, he did not carry on assaulting her or try anything else and did not stop her from getting out of the car or attracting the attention of other drivers, which, even if there had been that initial animus necandi, led him to give up his efforts, thereby leaving only the injuries he caused as punishable; in any case, this Court doubts that there was any intention to kill."

The Provincial Criminal Court of Murcia also repeatedly minimized the seriousness of what had happened in the following ruling:

"The subsequent actions of the defendant show that he was upset about his wife leaving him but not that he really intended to kill her since on 25 October he held a sharp object to her neck but did not make any attempt to stick it in; similarly, on 7 November, at 12.30 am, there was no attempt to kill her since he confined himself to giving her a beating that only required first aid despite the fact that at that time he had the opportunity to have caused her serious injury or even death given that it was night time, she was alone and there was no one around since no one came to her aid despite her cries for help, and she left the place and went to the house of her parents; lastly, intent to kill the wife (still less the children) cannot be

inferred when at four o'clock in the morning he went to the house of his parents-in-law and with a bottle of petrol set fire to the door of the patio and not the main entrance of the house. All things considered, the principle of presumption of innocence prevents the assumption being made, from what went on before, from the act of throwing alcohol over her without setting fire to it, and from what happened later, that he intended to kill his wife when he threw alcohol over her, only that he intended to frighten her to get her to change her mind and go back home with him",²²⁶

Despite in some cases having suffered brutal physical attacks, all the women interviewed by Amnesty International agreed that psychological violence has far worse consequences. However, in Spain psychological violence and its after-effects continue to be minimized by the courts.

When she appeared before the judge and was asked if she had suffered physical abuse, Mar²²⁷ said that she had suffered both physical and psychological abuse. She said that, in addition to pushing her around and throwing things at her, her husband would belittle her in front of their children, insult her a lot, treat her as though she was worthless and manipulate her psychologically. She also complained about his relationship with the children, to which the judge replied:

"I understand what you are telling me and I understand that it may be hard for you but it is not ill-treatment, the sort of ill-treatment that constitutes a punishable criminal offence and warrants a prison sentence which is what your husband is facing today. (...) I am asking you whether there has really been a situation of ill-treatment that could be deemed to constitute a criminal offence, something more than a matrimonial and family crisis which could indeed result in separation",²²⁸

Representatives of the *Asociación de Asistencia a Mujeres Violadas*, a group working to help women who have been raped, told Amnesty International that they were concerned because *"(in) the overwhelming majority of cases of psychological abuse, which for me is extremely serious, the accused is acquitted. Some judges understand, and some forensic experts understand, but sometimes not even the forensic psychological reports go into detail about the state of the woman, who may be a mother, does the shopping, comes and goes, who... well... appears to be OK.*

²²⁶ Provincial Criminal Court of Murcia, Judgment No. 11/2004, 27 March.

²²⁷ An assumed name. Interview with Amnesty International, Barcelona, October 2003.

²²⁸ *Juzgado de Instrucción No 1* (First Magistrates' Court), Sabadell, case No. 44, hearing 1, vol. 1, 14 April 2004.

*They have to be completely falling apart and incredibly depressed in order for a forensic expert at the courts in Plaza Castilla (Madrid), in particular, to actually detect depression stemming from psychological violence”.*²²⁹

3.6.6. Lack of reparation

“Any human rights violation gives rise to a right to reparation on the part of the victim or his or her beneficiaries, implying a duty on the part of the State to make reparation and the possibility for the victim to seek redress from the perpetrator”.²³⁰

As far as violence against women is concerned, the CEDAW Committee stipulates that States should provide “*complaints procedures and remedies, including compensation*”.²³¹

According to the most well-developed doctrine of international human rights law on the issue of reparation, the right of victims to receive fair and adequate reparation must comprise four fundamental elements:²³²

Restitution: This should, wherever possible, restore the victim to the original situation that pertained before the abuse was inflicted.

Compensation: The right to financial compensation stems from the idea of damages in civil

²²⁹ Interview conducted by Amnesty International with representatives of the Federation of Associations for the Welfare of Women who have been Raped, Madrid, October 2004.

²³⁰ Revised final report on the question of the impunity of perpetrators of human rights violations (civil and political) prepared by Louis Joinet, in accordance with resolution 1996/119 of the Sub-Committee on the Prevention of Discrimination and the Protection of Minorities of the UN Commission on Human Rights, 49th session, UN document E/CN.4/Sub.2/1997/20/Rev.1, 2 October 1997.

²³¹ General Recommendation 19 by the CEDAW Committee, UN document A/47/38, 29 January 1992, para. 24 i.

²³² *Civil and political rights*. The right to a remedy and reparation for victims of violations of international human rights law and humanitarian law. Note by the High Commissioner for Human Rights. Basic principles and guidelines on the right to reparation for victims of [gross] violations of human rights and international humanitarian law, Rev. 1, October 2004, submitted for the approval of the Commission on Human Rights at its 61st session, UN document E/CN.4/2005/59, 21 December 2004, para. 19, p. 21.

law. In practice, compensation for damages often has to be paid by individuals who cannot afford to do so. The State must ensure that victims are awarded adequate compensation for damages, even in cases where the individual responsible for the abuse is unable to pay, by obtaining reimbursement from the man in question at a later date.

Rehabilitation: This means taking whatever steps are necessary to promote the physical, psychological and social recuperation of victims.

Guarantees of non-recurrence: The State must ensure that the abuse is not repeated and provide effective protection for all victims.

The United Nations Basic principles and guidelines on the right to reparation for victims of [gross] violations of human rights and international humanitarian law stipulate that it is the duty of the State to “*endeavour to establish national programmes for reparation and other assistance for victims in the event that the party liable for the harm suffered is unable or unwilling to meet their obligations*”.²³³

Amnesty International is seriously concerned that the State is not guaranteeing reparation for victims. The organization has expressed its concern at the fact that the Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence did not envisage judicial measures to guarantee and strengthen the right of survivors of gender-based violence to receive fair and adequate reparation.

Restitution includes the duty to return the survivor, broadly speaking, to a similar situation to that which she enjoyed before her rights were violated, while compensation specifically refers to financial indemnity for any damage that it is possible to assess in that way. In Spain, such compensation, which must be proportionate to the damage caused by the violence inflicted in the home, is extremely rare, if not practically non-existent.

Although the idea of restitution is almost unknown in practice in Spanish law, the little importance attributed within the judicial process to the victim’s right to receive adequate compensation is also sometimes taken to extremes when the already small amount awarded is further reduced by a higher court.

Spanish legislation should guarantee restitution and rehabilitation for victims by taking

²³³ UN document E/CN.4/2005/59, 21 December 2004, para. 16, p. 21.

continuous action in the context of the State's duty to guarantee them access to justice, but this should not preclude also establishing a system for helping survivors who are in difficulties, as well as incentives to facilitate their integration into the labour market and social inclusion, provided by the Labour and Social Services Ministry.

In the case of compensation, throughout Spain the scale used for making compensation payments in the case of traffic accidents is often used in cases of violence against women. No account is taken of the fact that, unlike traffic accidents, the offences committed were intentional.

In an appeal judgment handed down by the Provincial Criminal Court of Alicante in June 2004, the amount of compensation awarded to a survivor was reduced despite the fact that a forensic pathologist had confirmed the extent of her injuries. The amount was reduced from €44.5 per day of *baja impeditiva* [the benefit paid by the Spanish State during the initial period of illness or injury when it is impossible to work] and €24.05 per day of *baja no impeditiva* [the benefit paid during the period required to recover completely from illness or injury] to €3 per day in each case, due to the "insignificance of the injuries".²³⁴

In the judgment under appeal, compensation amounting to €4,795.42 and €2,888.75 respectively had also been awarded to the two victims. This was completely withdrawn on appeal, arguing that the sequelae "as described in the report do not stem from the minimal injuries but rather from the tension, differences and ongoing arguments at home, sequelae which therefore do not stem from the incident that was the subject of judgment".²³⁵

According to international legal doctrine on reparation to victims of human rights violations, "States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgements".²³⁶ However, in Spain, the fact that a court judgment orders compensation to be paid to a survivor does not always mean that she will receive it. In particular, in cases where the accused is self-employed, it is difficult to show that they are solvent.

²³⁴ Provincial Criminal Court of Alicante, Section One, Judgment No. 344, 28 June 2004.

²³⁵ Provincial Criminal Court of Alicante, Section One, Judgment No. 344, 28 June 2004.

²³⁶ UN document E/CN.4/2005/59, 21 December 2004, para. 17, p. 21.

Esperanza²³⁷, a woman who was subjected to gender-based violence for over twenty years and whose ex-husband refused to pay compensation on the grounds that he was insolvent, told Amnesty International about the response she received from the court when she asked for help in obtaining the compensation to which she was entitled:

"I went once to talk to the examining magistrate and I said, 'Look, he has declared himself insolvent, hasn't he? But he has put everything in someone else's name (...). He is not insolvent and here we are, my three daughters and I, living on *renta activa de inserción laboral* (long-term unemployment benefit) of 368 euros.' And the judge says to me, 'I understand, but here in the court we do not have enough staff to follow up on this case and carry out an investigation. If you hire a detective and bring me the evidence...?'"

Amnesty International is concerned that the right of gender abuse survivors to obtain financial compensation for the injuries they have suffered is not being effectively guaranteed by the State.

The law on benefits and assistance for the victims of violent crime and crimes against sexual freedom

Under Law 35/1995 concerning benefits and assistance for the victims of violent crime and crimes against sexual freedom (*Ley de ayudas y asistencia a las víctimas de delitos violentos y contra la libertad sexual*) and the regulations governing its implementation, survivors may be eligible for certain types of benefit. Such benefits are incompatible with receipt of compensation resulting from the same offence, unless the guilty party is found to be partially insolvent, in which case it may go up to, but never exceed, the total amount established as compensation. In order for women who have suffered (non-sexual) violence to obtain the benefits available under this law, they must have suffered injuries that are deemed to be serious and, if they are foreigners from outside the European Union, they must hold a residence permit or come from a country which has a reciprocal social security agreement with Spain.

In Spain, psychological violence and its sequelae are still being trivialized by medical, police and judicial authorities, and the law on benefits and assistance for the victims of violent crime and crimes

²³⁷ Interview with Amnesty International, Huelva, October 2004.

against sexual freedom also fails to make any provision for this type of abuse.²³⁸

Amnesty International was sorry to see that the Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence did not envisage amending that law. In that regard, it contrasts with the draft comprehensive law against gender-based violence put forward by the Socialist Parliamentary Group in December 2001 which did propose amending Law 35/1995 to explicitly include victims of recurrent abuse in the home, regardless of the extent of the injuries, and to allow them to receive a higher amount than that stipulated in the sentence.

A report by the State Attorney General's Office in 1999 described the shortcomings of the law on benefits and assistance to the victims of violent crime and crimes against sexual freedom in the following terms:

*“The current draft of the law on benefits and assistance to the victims of violent crime and crimes against sexual freedom does not satisfactorily meet the protection needs of victims of domestic violence but provides an opportunity which should not be wasted. As it currently stands, there are three aspects of the law which are particularly unsatisfactory: the fact that receipt of public aid is incompatible with the receipt of compensation for damages arising from the offence or misdemeanour (Article 5.1), compensation or aid arising from a private insurance policy, or temporary incapacity benefit under the Social Security system (Article 5.2); the fact that benefit for temporary incapacity is limited to cases in which the said incapacity lasts for more than six months (Article 6.1.a); and the fact that public aid to cover the cost of therapy for damage to mental health is limited to crimes against sexual freedom (Article 6.4). These legal restrictions therefore determine entitlement to public aid in such a way that at the moment it is virtually impossible for victims of domestic violence to receive any public aid, except in the event of an extremely serious attack on the victim's physical or moral integrity”.*²³⁹

Amnesty International is concerned that the current law on benefits for victims of violent crime and crimes against sexual freedom continues to exclude all survivors of gender-based violence who

have suffered sequelae that do not constitute serious physical or sexual abuse.

It is also difficult to find out how many survivors of domestic violence have been able to gain access to such aid. The Ombudsman tried, unsuccessfully, to obtain this information. According to his 2003 report to Parliament, he requested a report from the *Dirección General de Costes de Personal y Pensiones Públicas*, General Directorate of Staff and Public Pension Costs, in connection with a complaint he had received:

*“After the Regulations [governing the law on benefits and assistance to the victims of violent crime and crimes against sexual freedom] had been in force for several years, and in order to update the information which had previously been provided and, in particular, to verify whether this legal instrument was appropriate for addressing one of the elements to which this type of offence gives rise, namely the provision of financial assistance to female victims, this Institution requested a report on how much financial aid had been awarded to victims of ill-treatment or sexual abuse in the home, specifically including the number of applications made and the number of cases settled in favour of the applicant, the type of benefit sought and the type of benefit granted to the various beneficiaries, and whether any applications for the type of benefit permitted under the Regulations for women who had suffered any of the acts described in Article 153 of the Penal Code had been authorized”.*²⁴⁰

The report received by the Ombudsman stated that the nature of the offence was not specified in the case files, only the amount of financial aid granted to the victim. Upon further enquiry at the offices of the Ministry of Justice, the Ombudsman was informed that the Ministry did not get involved in the processing of cases, so he again asked the General Directorate to specify whether any aid had been granted under the law. *“The answer provided by the General Directorate stated that the specific information requested by the Ombudsman was of no significance as far as their management procedures were concerned, and was not therefore subject to computer processing or included in consultable databases”.*²⁴¹

Consequently, it can be said that we simply do not know how many women who have suffered serious injuries as a result of domestic violence have been able to obtain this aid.

It has been argued that the cost of extending the aid available for victims of terrorism to other

²³⁸ Law 95/1995 of 11 December concerning benefits and assistance for the victims of violent crime and crimes against sexual freedom .

²³⁹ *Informe de la Fiscalía General del Estado sobre el tratamiento jurisdiccional de los malos tratos familiares en el año 1999* (Report by the State Attorney General's Office on the jurisdictional handling of domestic abuse in 1999), Madrid, 2000.

²⁴⁰ Ombudsman, Report to Parliament 2003, p.188.

²⁴¹ Ombudsman, Report to Parliament 2003, p.189.

types of victim such as the victims of gender-based violence is simply unaffordable. The statement setting out the purpose of the law on benefits and assistance to the victims of violent crime and crimes against sexual freedom includes the following comment: “Basic reasons of financial prudence currently prevent the establishment of a benefits system for victims of violent crime that is comparable to that available for victims of armed groups and terrorists, both in terms of the amount of benefit and the cover provided for physical damage”.²⁴²

However, while the financial report accompanying the law allocated an annual amount of 89,550,803 euros to this aid, between 1998 and July 2002 aid totalling only 2,200,000 euros had been authorized.²⁴³

The State’s responsibility with regard to human rights violations committed within its jurisdiction encompasses not only abuses committed by its own officials but also abuses committed by private individuals when the State has acted without due diligence.

The United Nations Basic principles and guidelines on the right to reparation for victims of [gross] violations of human rights and international humanitarian law stipulate that “a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law”.²⁴⁴

The Supreme Court judgment in the case of Mar Herrero shows how this principle of international law has not been applied.

In the summer of 1999, Mar Herrero decided to end the relationship she had had for several months with a man she had met at work. Mar did not know that her partner had been convicted in February 1995 of the attempted murder of his previous partner after the latter decided to break up with him. Despite the fact that the prison trainer and psychologist both warned that there was a high risk that he would commit a similar offence if there was a

recurrence of circumstances such as those which led to his conviction, he was given conditional release in March 1999. After the break-up, the man began to harass and threaten Mar, who reported him to the police, as a result of which she discovered that the person with whom she had had a relationship had a criminal record. The court responsible for supervising enforcement of sentences (*Juzgado de Vigilancia Penitenciaria*) was informed of what had happened and the prosecutor’s office asked for the man’s conditional release to be revoked. The judge in charge of the court refused the request on the grounds that there was no final judgment proving that the offence of which the man was accused had been committed. A week later, he murdered Mar Herrero.

In May 2003, the *Sala de lo Penal del Tribunal Supremo*, Criminal Division of the Supreme Court, reversed a judgment by the *Tribunal Superior de Justicia de Madrid*, Madrid High Court, awarding State compensation to the family of Mar Herrero, arguing that the State could only be held liable if “the offence giving rise to civil liability had been committed by the authorities or prison officials (administrative or judicial) responsible for monitoring the convicted prisoner when out on parole, or the judiciary or officials at the Alcobendas court knew about the threats to which the victim was being subjected, well before she was murdered”, since “the offence was the result of the free decision (and therefore the responsibility) of the man on conditional release who was not acting on behalf of or on the orders of the State and was not carrying out a public or social activity sponsored by it or for which it was responsible”.²⁴⁵

Accountability

In addition to the fact that court rulings such as the ones cited in this report contribute significantly to the feeling of widespread distrust in the justice system shown in the survey carried out by the Centre for Sociological Research (*Centro de Investigaciones Sociológicas* - CIS) referred to at the beginning of this report²⁴⁶, there is also the perception that the judiciary do not assume their rightful responsibilities. This is compounded by the fact that apparently arbitrary decisions by judges that have serious and even fatal consequences for victims have no consequences for the judges themselves.

In June 2003 Ana María Fábregas died in Barcelona at the hands of her former husband. She

²⁴² Law 95/1995 of 11 December, concerning benefits and assistance to the victims of violent crimes and crimes against sexual freedom.

²⁴³ Montalbán Huertas, Inmaculada, *Perspectiva de Género: criterio de interpretación internacional y constitucional* (Gender Perspective: A criterion for international and constitutional interpretation), *Consejo General del Poder Judicial*, Madrid, 2004, p. 127.

²⁴⁴ UN document E/CN.4/2005/59, 21 December 2004, para. 15, p. 20.

²⁴⁵ Judgment 780/2003 of 29 May, Supreme Court, *Sala Segunda de lo Penal* (Second Criminal Division).

²⁴⁶ See footnote 2.

had reported her alleged abuser on three occasions for physical and mental ill-treatment, sexual assault, threats, failure to comply with a judgment and an order to stay away from her, and coercion, but she was never called to give evidence by the judge responsible for the case and the complaints were not investigated. In September 2004, following a complaint from the family which led to disciplinary proceedings being opened, the committee of the *Consejo General del Poder Judicial* responsible for scrutinizing the actions of the judge found that the judge was not negligent and that no punishment was required, and the case was closed.

Alicia Arístregui, a resident of Navarra, first reported the violence she had been receiving for 14 years from her husband, from whom she was seeking a separation, on 12 January 2002. Next day she entered a shelter for battered women run by the Navarra Government. On 14 January, as a precautionary measure, an order was issued prohibiting her husband from going within 500 metres of her and from communicating with her in any way for six months.

In the complaint she filed, Alicia Arístregui also said she was convinced that her husband would carry out his threats because she considered him to be an aggressive person who, as would later appear in the forensic psychiatric report, had been jailed in 1980 for bodily harm and in 1982, 1985 and 1986 for robbery with violence.

From then on, until her death, he made repeated threats against both Alicia Arístregui and her family and the order to stay away was continually disobeyed. Both of these things were reported on numerous occasions by Alicia and her brothers but on no occasion was effective protection provided by the courts and she was never summoned by the court to give evidence. The situation carried on until the morning of 9 April 2002 when Alicia Arístregui, after leaving her children at the school bus stop, was taken by surprise by her husband who stabbed her in the heart and then another four times after she had fallen to the ground, thereby causing her death.

The restraining order was never at any time brought to the attention of the Municipal Police in her town (Villava). In July 2003, the *Consejo General del Poder Judicial* endorsed the conduct of the judge on the grounds that “coordination of the different police bodies is not the responsibility of the judiciary”.

Alicia Arístregui’s family never received any compensation.

Every year the Spanish Ombudsman receives complaints relating to the cases of women who were murdered after seeking protection. Amnesty International is concerned that effective and rigorous accountability mechanisms have not been introduced to deal with cases in which there has been a lack of due diligence on the part of the courts.

3.7. The training of professionals and officials responsible for enforcing the law and helping survivors



On 25 November 2004, Amnesty International presented the Spanish Prime Minister with over 100,000 signatures requesting that women be effectively protected against gender-based violence. On the right is Eugenio Arístregui, the brother of Alicia, who was murdered by her husband after asking for protection.

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The Framework Decision by the Council of Europe relating to the standing of victims in criminal proceedings²⁴⁷ establishes that:

1. Through its public services or by funding victim support organizations, each Member State shall encourage initiatives enabling personnel involved in proceedings or otherwise in contact with victims to receive suitable training with particular reference to the needs of the most vulnerable groups.

²⁴⁷ Council of Europe Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JAI)

2. Paragraph 1 shall apply in particular to police officers and legal practitioners.

Although in Spain training on domestic violence is carried out, it is voluntary. According to a technical expert from the *Observatorio sobre violencia doméstica y de género* (Observatory on Domestic and Gender-Based Violence) established by the *Consejo General del Poder Judicial*, “only those who are interested in the issue go”.²⁴⁸ Similarly, such training tends to be addressed to “specialist units” and not to all professional groups working directly or indirectly on gender abuse. With a few exceptions, such training does not look at the causes and consequences of gender-based violence or the experiences and needs of survivors in any depth.

The 1997 European Parliament resolution calling for a European Union wide campaign for zero tolerance of violence against women stressed the importance of providing training for those working with women who have been subjected to gender-based violence and took the view that “such training should be compulsory for judges presiding over cases of gender-based violence”.

General Recommendation 24 by the CEDAW Committee establishes that the State has an obligation to “ensure gender-sensitive training to enable health-care workers to detect and manage the health consequences of gender-based violence” (para. 15 b).

The Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence envisages the drawing up of a *Plan Nacional de Sensibilización y Prevención de la Violencia de Género* (National Plan to Raise Public Awareness and Prevent Gender based violence) “encompassing a broad programme of complementary training and retraining of the professionals involved in these situations”. Under other headings, it also envisages “specific training on equality and non-discrimination on grounds of sex as well as gender-based violence being incorporated into training courses for magistrates, senior judges, prosecutors, court officers, the security forces and forensic pathologists”. It goes on to state that “when bar associations require duty solicitors working in legal aid to complete specialized courses, they shall provide specific training that helps them to conduct an effective and professional defence in matters relating to gender-based violence”.

²⁴⁸ Interview conducted by Amnesty International with an official working at the *Observatorio sobre violencia doméstica y de género*, *Consejo General del Poder Judicial*, December 2004.

In order to prevent violence, protect survivors and keep track of those responsible, Amnesty International believes that, as well as having “specialist units” of professionals, there needs to be compulsory training for everyone involved in working with survivors within all the different spheres of competence. It is especially important for professionals and officials to receive training about the situation of women belonging to groups that are particularly vulnerable.

3.8. The obligation to check that the law is effective

The Beijing Platform for Action highlights the need for States to “adopt and/or implement and periodically review and analyse legislation to ensure its effectiveness in eliminating violence against women, emphasizing the prevention of violence and the prosecution of offenders; [and] take measures to ensure the protection of women subjected to violence, access to just and effective remedies, including compensation and indemnification and healing of victims”.²⁴⁹

Amnesty International is concerned that no in-depth review or periodic analysis of the institutional response to gender-based violence is being carried out despite the evidence of obstacles and shortcomings in its operation.

The Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence sees reviewing the effectiveness of the agreed measures and their suitability to survivors’ needs as a task for the newly-created *Observatorio Nacional de Violencia sobre la Mujer* (National Observatory on Violence against Women).²⁵⁰ Amnesty International hopes that, since one of the main ways of checking whether the measures are appropriate is to look at the experiences of the victims, survivors will be involved throughout any evaluation process.

²⁴⁹ Beijing Declaration and Platform for Action, UN document A/CONF.177/20, 17 October 1995, para. 125 d).

²⁵⁰ Article 30 of Basic Law 1/2004 of 28 December, published in *BOE* No. 313, 29 December 2004.

4. Women's organizations at the forefront



A mass rally against gender-based violence organized by several women's organizations. © Las Tejedoras

For years, women's organizations have been the driving force behind any legislative and social changes that have taken place to bring an end to gender-based violence. It is through their work that human rights abuses suffered by women in the home have come to be recognized as such and to be seen as a matter for public concern and not just a private affair.

In 1995, the Beijing Platform for Action recommended that non-governmental organizations should participate in the "*formulation and implementation of national strategies and action*".²⁵¹ In Spain, women's associations have been working actively for over thirty years to denounce violations of women's human rights and demand the legal and social reforms required for those rights to be guaranteed.

Article 2 of the Basic Law on Comprehensive Protection Measures to Tackle Gender-Based Violence includes the following guiding principle: "*To promote the collaboration and participation of institutions, associations and organizations that take action against gender-based violence from within civil society*". It also guarantees the involvement of "*women's organizations with a nationwide presence*" in the National Observatory on Violence against Women.

²⁵¹ Beijing Platform for Action, UN document A/CONF.177/20, 17 October 1995, para. 298.

In Spain, a number of official women's organizations, which emerged during the 1970s and 80s, work to defend women's rights and provide legal and psychological assistance to women who have suffered gender-based violence. Other organizations also carry out extremely important work at a local level to provide assistance to survivors and help them to recover.

As far as non-governmental organizations are concerned, in the report entitled "*There is no excuse*", Amnesty International said the following:

*"Looking at the four main stages of any type of action (diagnosis, preparation, execution and evaluation), the conclusion is that non-governmental organizations do not have a prominent role in the diagnosis, preparation and evaluation of any measures taken. Indeed, the only point at which the government does seek to involve [women's] groups is, it would seem, in the execution of the different services".*²⁵²

Amnesty International believes that the survivors of gender-based violence themselves need to have a greater say in debates as well as in the preparation of public policies and resources by the authorities at both local and national level. In general, their experiences have not been taken into account when it comes to evaluating their needs and planning resources and services.

Survivors are kept out of the decision-making processes in a system that has supposedly been set up to protect their human rights, and they do not belong to any organization that is recognized by the State as an interlocutor.

Amnesty International believes that the starting point for evaluating services should be the needs and demands of the users and that if such services continue to be established and designed within the current decision-making centres, it will be difficult to ensure that they function effectively and appropriately.

Despite the difficulties and the little support provided by the authorities, we are beginning to see the emergence of groups of survivors who provide support to other survivors through the sharing of experiences. Their voices should always be listened to before drafting measures and taking decisions to tackle gender-based violence. It should not be forgotten that it was as a result of many years of work by women's organizations that gender-based violence

²⁵² *No hay Excusa. Violencia de género en el ámbito familiar y protección de los derechos humanos de las mujeres en España*, Amnesty International, Spanish Section, November 2002, p. 23.

has ceased to be invisible and begun to appear higher up on the policy agendas of governments, political parties and international organizations. In Spain, it is women's organizations who have made gender-based violence in the home a key issue. Survivors, together with such organizations, should play an important role in the consultation and planning process for developing measures to tackle violence against women in Spain.

Self-help groups and proposals from survivors' organizations

If there is any support being provided for women trying to escape a violent relationship that meets their needs and does not discriminate against them in any way, it usually comes from women's organizations or women survivors' organizations.

Some women who themselves have undergone gender-based violence and are aware of the obstacles that need to be confronted in order to escape it have decided to set up groups to help other women overcome the service shortcomings and difficulties they face. For those women who have turned to them, these initiatives by self-help and support groups consisting of former victims have provided the support they had been unable to find through the institutional response. Despite the material difficulties they have had, and continue to have, such groups are a direct manifestation of the type of needs that are normally not taken into consideration by those devising policies and resources for women in that situation.

In July 2002, in Huelva, a group of women who had suffered gender-based violence set up the "Miríadas" group. It consisted of 40 women who had found that the institutional resources available did not solve all the problems encountered by those seeking to escape a situation of violence. Now, in 2005, it has 436 members and during 2004 it helped 990 women in Huelva and elsewhere in Spain (via a telephone helpline in the case of women from other localities). It currently provides psychological, social and legal services.

In 2000, in the town of Sant Boi near Barcelona, Cataluña, the "Emi" group against gender-based violence in the home was set up. Rosa María Bieto, its coordinator, told Amnesty International: *"We saw that there was a huge difference between the women with whom we kept in contact afterwards and continued to do individual work with and those women who left the shelter and*

then found themselves alone again in the same environment as before, so we thought we could perhaps contribute something there".

Rosa María Bieto also explained to Amnesty International that *"the association works mainly as a women's self-help group. But we also saw a need to put forward our views at all levels, at the social, administrative and political level... To describe how an abused woman lives, how a law really affects or fails to affect what actually happens to her, because these are things which are often considered from the top but not from the bottom, which is why we thought we could make a contribution, because we were able to communicate in a way that, though not dramatic, was effective, and since 2000 we have been working in this way"*.

The coordinator of "Emi" emphasized the added value of women helping each other: *"The fact that it's a woman telling you... 'Yes, that happened to me, and so did that, and the other, and I escaped and here I am now fighting... ' and they see that you are alright and they take you as an example and, as time goes by, the same women become examples for others because they go through their own process together and we have come to see it as quite an important complement to the work of professionals, although of course we do not force women to participate. Our rule is to respect whatever way each woman chooses to go through her own process, making her own decisions when she thinks it is the right time, and we are not there to tell her what to do but to explain what we have done and hope that that will serve as a reference for her"*.²⁵³

In Vitoria, the Lurberritua collective brings together women who have already escaped abuse but who are still encountering many difficulties in their daily lives because of it. They meet together in a self-help group which they call *"las del después"* ("the afterwards women"), since their main complaint centres on the lack of help available after getting away from the situation of violence.

According to the women interviewed by Amnesty International, self-help groups, which are sometimes also run by local governments such as that of Palencia, provide invaluable help. Many women decide to get out of an abusive situation after attending a self-help group for a while, since contact with other women and sharing experiences with them can spur them on to making the decision and be the starting point for retrieving their self-esteem.

²⁵³ Interview with Amnesty International, Sant Boi, Barcelona, October 2004.

Francisca²⁵⁴ has been going to the Puenteillas centre in Palencia for over a year. She is 70 and has been married for 44 years, during which time her husband never assaulted her physically but subjected her to continuous sexual and psychological abuse. It took her years to realize she was suffering from sexual violence and she said, *“I realize now when I see it on television that it was rape”*. She is waiting for her lawyer to call so that she can start separation proceedings but she is full of doubts. For a short while now she has had an apartment where she can go when the situation with her husband gets worse and there she says she feels good for the first time she can remember. However, her husband, who is an alcoholic and addicted to gambling, is ill and she feels responsible for looking after him, which is why she has not yet made a decision to leave. In 1981, after their daughter’s wedding, she tried to commit suicide by taking 60 tranquillizers. For her, attending the self-help group has become the focus of her activities: *“If on the day of the meeting I happen to be in Valladolid with my daughter I come back so as not to miss it. (...) I thought I wasn’t a talker and there I am..., it all pours out... So I find out at my age that I can actually speak... and other women listen to me... and I feel very good talking and being listened to”*.

²⁵⁴ An assumed name. Interviewed in Palencia (Castilla-León) in November 2004

Conclusions

Amnesty International very much welcomes the Spanish State's decision to introduce legislation to address gender-based violence by means of comprehensive protection measures. The organization believes that the passing of this legislation to protect the human rights of women in the face of a recognized gender-based risk provides an opportunity for the institutional response to be brought into line with international standards relating to the abuse of women at the hands of their partners or former partners. Violence against women is a form of discrimination which seriously limits women's ability to enjoy rights and freedoms on an equal footing with men, and it is the duty of the Spanish State to act without delay and using all the means at its disposal to eliminate discrimination against women and the violence that is directed against them because of their gender. Similarly, a State is accountable if it fails to adopt measures or act with due diligence to prevent, impede, follow up and investigate these kinds of human rights abuses, punish those responsible and provide survivors with reparation.

While recognizing the progress made with regard to protection under the law, Amnesty International reminds the Spanish authorities that their obligations include, but are not confined to, the passing of laws. Political will must be translated into practice and this requires, on the one hand, ensuring the development of institutional standards and arrangements to make laws effective and enforceable and, on the other hand, eliminating any inappropriate mechanisms, practices and approaches that may still be influencing the work and actions of officials responsible for enforcing the law and helping survivors.

Despite having identified some positive points which it has no hesitation in encouraging, the organization has found an institutional response that still falls short of complying with the obligations that stem from the State's duty to protect women's human rights and make them a reality. The aim of the conclusions of this report is to alert the Spanish State to the challenges it has to face up to and which will remain a concern as long as they are not tackled effectively.

The vast majority of women who suffer abuse at the hands of their partners or former

partners do not turn to the public networks established to provide assistance and protection in cases of gender-based violence and are also not detected by the health services or other social services. There are specific groups of women who are clearly excluded from accessing these resources or who face specific barriers in seeking to do so, thereby exacerbating their vulnerability and defencelessness. Service provision is uneven throughout Spain and the scope and quality of such services, as well as the approach they take, do not comply with the international guidelines for satisfying the right of survivors of this kind of abuse to obtain protection and recover. Women who decide to file a complaint or seek protection from the authorities tend to come up against inappropriate treatment and even misleading information from the outset. Amnesty International has found that women who have suffered abuse from their partners or former partners do not have access to information about their rights or the resources available to them. In their journey through the justice system, complainants do not receive good effective legal assistance. They often experience insensitivity which, in the absence of procedural safeguards to protect them from secondary victimization and ensure that they are properly protected, can easily result in discrimination. The risks they and those testifying on their behalf face are not adequately assessed by judges who, on many occasions, have made decisions based solely on an assessment of the dangerousness of the accused to the general public. All of this severely undermines survivors' right to an effective remedy and fair and impartial legal proceedings. There are also serious failings with regard to compliance with the obligation to exercise due diligence in prosecuting, investigating and punishing offences and the organization notes with concern that survivors' right to obtain the fullest possible protection and reparation is still not guaranteed.

Within this general context, Amnesty International believes that it is necessary to draw particular attention to the following concerns:

1. An institutional response that is neither geared or sensitive to women's human rights

- The measures, programmes and resources for addressing gender-based violence have not been designed or managed by putting the needs of the women suffering such abuse at their core. The specific additional disadvantages faced by particularly

vulnerable groups have also not been taken into consideration.

- The training of professionals responsible for enforcing the law and helping survivors of gender-based violence in the home has depended on how willing and interested such civil servants and officials are in doing it.

- Periodic evaluations to review the effectiveness of the legislation, plans and measures have either not taken place or not been made public.

2. The barriers preventing access to assistance and protection resources.

- Many different groups of women encounter problems and obstacles when seeking access to assistance and protection resources.

- One of the main grounds used to exclude survivors from accessing such resources is their administrative status, as in the case of undocumented migrant women. Women with disabilities are often denied residential facilities because they have not been designed to meet their needs. Women suffering from mental illness, including drug and alcohol addiction, are not admitted to these facilities and are not offered any other sort of assistance that meets their needs.

- One obstacle which particularly affects undocumented migrant women and Roma women is the requirement imposed by some emergency centres and temporary shelters that they have to had filed a complaint with the courts before being allowed in.

3. The uneven availability of resources, shortcomings in the provision of suitable solutions and observations on the treatment of survivors

- The availability of resources is uneven, varying between one autonomous community and another and even within the same community. Resources are insufficient and some of the emergency facilities used, such as hostels and boarding houses, are unsuitable.

- The types of regulations governing how survivors should live together in temporary accommodation often conflict with the objectives of aiding women's recovery and developing their skills and independence.

- Timely and properly resourced psychological assistance to aid survivors in their recovery and rehabilitation is not guaranteed.

- There is evidence of the use of stereotypes, prejudice and discrimination in the work of civil servants and professionals responsible for looking after survivors.

4. Obstacles hampering access to justice and observations about how complainants are treated during legal proceedings

- Survivors do not have accessible information about their rights and receive no advice about the ways and means they can exercise them.

- Complainants who bring their cases before the courts often have no legal assistance or, when they do, it is inadequate.

- At the level of the police, no steps have been taken to ensure that survivors are dealt with immediately, diligently and sensitively.

- The legislation on the protection of victims, witnesses and experts during trials involving cases of gender-based violence in the home is not properly enforced. Complainants are often obliged to appear at the same time as their abuser during legal proceedings.

- There is evidence of the use of gender stereotypes and discrimination in the work of officials and professionals responsible for dispensing justice.

5. Lack of due diligence in prosecuting and investigating gender-based violence

- Although acts of gender-based violence in the home are classified as offences that are to be prosecuted *sua sponte*, in practice the onus still lies with the woman to file a complaint as in a private prosecution.

- There is insufficient impetus and diligence in the gathering of evidence and insufficient involvement of forensic experts. Procedural frameworks which may undermine the forensic work and prevent the injuries from being properly assessed, especially in cases of psychological violence, are also used.

6. Difficulties in obtaining and enforcing protection orders

- Not all complainants who request protection measures are granted them. The grounds given by judges for refusing them are often flimsy or vague, leaving considerable scope for injustice.
- The mechanisms used to monitor compliance with restraining orders are ineffective and the breaching of such orders does not result in deterrent action against the perpetrator or the taking of additional measures to protect the victim.

7. Effective impunity and the absence of reparations for survivors

- In the event of conviction, sentences tend to be disproportionate to the seriousness of the offence. Prison sentences are often suspended or alternative measures that do not constitute an effective penalty are applied.
- The justice system is not properly protecting the right of survivors to receive fair and timely reparation. Judges are still using inappropriate payment scales to determine how much compensation should be paid for damages. When abusers declare that they are unable to afford the civil liability imposed on them as a result of criminal proceedings, survivors are left with no compensation at all.
- The law on assistance for victims of violent crime (*Ley de Ayudas a Víctimas de Delitos Violentos*) still does not apply to victims of psychological violence.
- The right to receive reparation comprising compensation, restitution, satisfaction, rehabilitation and guarantees of non-recurrence is not firmly guaranteed by the State.

Recommendations

Spain must take decisive action to enforce legislation and eradicate a whole set of practices, mechanisms and approaches which could carry on determining the institutional response and the work of civil servants and officials in such a way that women's human rights continue to be adversely affected.

Amnesty International is calling on the Spanish authorities to adopt the following **general recommendations**:

1. Establish regulations and make the necessary institutional arrangements, including adequate budgetary allocation, to put into practice and enforce the legislation and measures introduced to deal with gender-based violence directed at women by their partners and former partners. In doing so, the Spanish State must demonstrate that the institutional response to gender-based violence is being addressed as a matter of priority within the framework of its obligation to eliminate discrimination against women without delay by using all the means at its disposal.
2. Ensure that the provision of services to assist and protect survivors of gender-based violence meets minimum standards and that the institutional response provided throughout territory under Spanish jurisdiction complies with them. Such minimum standards should ensure that survivors, without discrimination and regardless of whether or not they have filed a complaint, are able to access shelter facilities and receive immediate and comprehensive assistance from coordinated professional services that include appropriate examinations and treatment to help them recover from any physical injuries or other damage to their health, including any treatment that is necessary to aid rehabilitation and help them become independent, as well as post-traumatic psychological and social support. Steps must be taken to ensure that women are provided with accessible

information about their rights and that they have the necessary means and resources to exercise them, including timely information about the right to be assisted by a lawyer so that they have access to, and can effectively exercise, the remedies available to them within the justice system.

3. Ensure that the institutional response to the need to protect the human rights of all women who have been subjected to gender-based violence is professional and sensitive. In all the areas of care involved and at all levels, civil servants and officials must be educated and trained about the State's responsibility to exercise due diligence in preventing, prosecuting, investigating and punishing any abuse that is inflicted on women by their partners or former partners, and in protecting survivors, as well as the latter's right to receive appropriate treatment and help, an effective remedy before the courts and the fullest possible reparation.
4. Take all necessary measures to ensure that survivors are never subjected to secondary victimization or any treatment by police, service providers and court personnel that does not take into account their gender-based needs.
5. Tailor the State response to address the additional difficulties that put certain groups of women at greater risk, making sure that the necessary resources are made available to meet their needs. Abolish discriminatory practices and any immigration regulations that prevent undocumented migrant women from obtaining protection and help in the event that they are subjected to abuse at the hands of their partners or former partners.
6. Periodically review and evaluate the effectiveness and usefulness of the legislative and other measures established to deal with gender-based violence, ensuring that, since the experience of survivors is one of the main means of determining whether measures are effective, their views are incorporated throughout the review and evaluation

- process and that the results of any such reviews are made public.
7. Establish mechanisms so that women's organizations can be involved in devising and implementing assistance plans and programmes and ensure that the views and needs of the women using help and protection services are borne in mind when designing, running and evaluating them.
 8. Develop accountability mechanisms to apply to the conduct of law enforcement officials and the work of officials responsible for managing resources and servicing the needs of survivors of gender-based violence.
 9. Implement the recommendations addressed to Spain by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), and any others relating to gender-based violence made by other international bodies and mechanisms responsible for monitoring compliance with other treaties that Spain has signed or ratified.

Among the specific recommendations Amnesty International is calling on the Spanish authorities to implement are the following:

Concerning prevention and assistance and protection resources

- Carry out awareness-raising campaigns that send out an unambiguous message to the male population of all ages that violence against women is unacceptable and that encourage support for equality between men and women.
- Establish a health programme to address gender-based violence, ensuring that staff working within the public health network have the appropriate training and tools to enable them to identify women who have been subjected to gender-based violence and

provide them with adequate information and assistance so that they can be restored to health.

- Ensure that social services are equipped to detect gender-based violence and provide adequate information to survivors. However, use of such services should not be made a prerequisite for gaining access to specialist assistance and protection resources provided for survivors of gender-based violence.
- Issue clear guidelines to the relevant government agencies to ensure that all survivors of gender-based violence, regardless of their administrative status, are entitled to receive comprehensive assistance and protection, including financial help, emergency or temporary accommodation and free legal assistance. Instructions should also be sent out to make it clear that it is not necessary to lodge an official complaint in order to gain access to emergency or temporary accommodation.
- Ensure that the personal circumstances or situation of survivors of gender-based violence are taken into account so that they always have access to suitable emergency or temporary shelter facilities. Facilities that meet the needs of women with disabilities must be provided.
- Take the necessary steps to ensure that all emergency and temporary accommodation provided for survivors of gender-based violence is managed in accordance with proper standards that provide the women with what they need to recover and are geared towards encouraging them to develop their own abilities and

increase their independence so that they can rebuild their lives free from violence.

- Establish flexible and effective channels of cooperation between the police, social services, the health service, specialist shelter and assistance facilities and the justice system in order to ensure coordinated action.

Concerning the right of survivors to receive fair and proper treatment when filing a complaint and throughout any legal proceedings

- Ensure that police personnel receive and handle information from survivors, and provide information to them, in a proper manner and that they deal with complaints appropriately and without delay.
- Ensure that personnel within the justice system who are involved in legal proceedings concerning gender-based violence receive training in order to improve their understanding of violence against women, its causes and consequences, and that they are properly prepared to deal with these offences. This includes treating complainants fairly and appropriately and providing survivors and those appearing as witnesses on their behalf with adequate protection measures during proceedings.
- Take all necessary steps to ensure that survivors of gender-based violence receive good quality legal assistance at all stages of legal proceedings.
- Establish complaints and disciplinary mechanisms for dealing with any inappropriate or discriminatory treatment by law enforcement officials of women

who file complaints about gender-based violence.

- Amend the regulations governing the Law on the Protection of Witnesses and Experts to ensure that, at all stages of judicial proceedings and if they request it, survivors and witnesses appearing on their behalf have the right to refuse to give evidence in the presence of the accused.

Concerning the obligation to investigate offences with due diligence and prosecute and punish them

- Ensure that all complaints concerning violence against women committed by their partners or former partners are investigated immediately, thoroughly and impartially.
- Take all necessary steps to ensure that the gathering of forensic evidence and information is carried out in accordance with standard protocol.
- Issue guidelines to law enforcement agencies that clearly set out the duties and responsibilities that each one has in dealing with gender-based violence.
- Establish mechanisms so that forensic experts can work effectively on cases of gender-based violence and provide them with the conditions they require to do their work. Address the issue of the possible negative effects that fast-track trials have as far as forensic work is concerned and the repercussions this has in terms of the level of impunity that surrounds these offences.
- Publish information on conviction rates for violent offences against

women in the home, specifying the type of sentence actually served and identifying any possible differences between the type of sentences imposed and those imposed for other equally serious offences.

Concerning protection orders

- Grant protection orders to all survivors of gender-based violence who apply for them, ensuring that swift judicial action is taken to protect their fundamental rights to life, integrity and personal safety.
- Monitor compliance with protection orders and effectively punish any breaches of such measures on the part of abusers in proportion to the level of seriousness.
- Ensure that there is effective and coordinated action at the level of the courts and police to enforce any protection orders that are issued.

Concerning the right to receive the fullest possible reparation at the appropriate time

- Guarantee that survivors have the right to receive reparation, including compensation for any physical, psychological, moral, social and financial damage suffered, and the right to restitution, satisfaction, rehabilitation and guarantees of non-recurrence. Amnesty International reminds the Spanish State that the right of survivors to receive rehabilitation services and be granted reparation must be guaranteed by the State.
- In cases where violent offences have been proven but the abuser declares himself to be insolvent or cannot be located, mechanisms

must be established to ensure that survivors are not deprived of this right in practice. In all cases, survivors of gender-based violence are entitled to have access to, and be provided with, any appropriate resources they require for their recovery and rehabilitation.

- Introduce all necessary legal and other measures to ensure that justice is done: these include protecting the right of survivors of gender-based violence to receive the fullest possible reparation, adequately assessing any damages and acting swiftly to enforce any rulings made with regard to compensation.
- Review the law concerning benefits and assistance for the victims of violent crime and crimes against sexual freedom (*Ley de ayudas y asistencia a las víctimas de delitos violentos y contra la libertad sexual*) so that survivors of all forms of gender-based violence (physical, psychological and sexual) are included as beneficiaries.
- Review implementation of the law concerning benefits and assistance for the victims of violent crime and crimes against sexual freedom in order to improve the procedures for providing information to survivors and for processing and granting applications for benefits.