

# SPAIN

## REPORT TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

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# EXECUTIVE SUMMARY

In its Concluding Observations to Spain's sixth periodic report, the Committee on the Elimination of Discrimination against Women (hereinafter, the Committee) highlighted its concern, among other things, at the rate of violence against women, trafficking of women and young girls, discrimination of women migrants (including obstacles to accessing healthcare) and barriers to exercising sexual and reproductive rights, particularly on the part of adolescent girls.<sup>1</sup>

Amnesty International hereby submits this report for the purposes of further informing the Committee on these issues, with regard to which the Spanish authorities' actions have been analyzed. The document focuses on Spain's lack of action in fulfilling the obligations set out in Articles 2, 3, 5 6, 12 and 15 of the Convention.

Amnesty International recognizes the progress made with the entry into force of *Organic Law 1/2004 on Measures for Comprehensive Protection from Gender Violence*. And yet Amnesty International has, in a number of different monitoring reports, repeated its concern at the lack of effective implementation of some of the measures contained in this Law. The organization welcomed the creation of specialist gender violence courts but has raised concerns that, despite their existence, barriers to protecting and ensuring justice for victims of gender violence remain.

Amnesty International regrets, however, that the law did not apply to all forms of violence against women, apart from that committed by a partner or former partner. Nor did the Law envisage the right to reparation, this being a right that is still not fully enforceable in Spain. More than 10 years have now passed since this Law entered into force, and yet the Spanish state still lacks a regulatory framework and appropriate public policies capable of guaranteeing a comprehensive response to sexual violence.

This report expands on Amnesty International's concerns with regard to the lack of a gender- or rights-based perspective in the austerity policies adopted in the context of Spain's economic crisis. The organization also deplores the decline in human rights and equality education that has occurred since civic education was removed from the curriculum in the 2013 educational reform.

Amnesty International believes that the Spanish state is continuing to provide inadequate guarantees with regard to offering international protection to women persecuted for their sexual orientation or who are victims of trafficking. Despite the progress made with regard to victims of trafficking, Spain continues to focus primarily on prosecuting the criminal networks rather than providing a comprehensive and rights-based response for the victims.

Finally, Amnesty International regrets the setbacks in terms of the right to health, including sexual and reproductive health. The entry into force of Decree-Law 16/2012 in September 2012 restricted access to free healthcare for irregular migrants, with a resulting impact on immigrant women, including victims of trafficking. Although the Government finally withdrew the draft bill of law aimed at restricting legal access to voluntary termination of pregnancy, it submitted a draft bill of law to Parliament in February 2015 requiring all women aged between 16 and 18, along with women with disabilities, to obtain the express consent of their legal representatives in all cases of voluntary termination of pregnancy. Amnesty International fears that this change in legislation will have a disproportionate impact on the most vulnerable, who may find themselves forced into an unwanted pregnancy or unsafe abortion.

# I. VIOLENCE AGAINST WOMEN BY PARTNERS OR FORMER PARTNERS AND SEXUAL VIOLENCE

*Articles 1, 2, 3, 7 and 15*

Between 1 January 2003 and 6 April 2015, 775 women died in Spain at the hands of their male partners or former partners.<sup>2</sup> According to the latest estimates, 12.5% of women over the age of 16 have suffered physical or sexual violence at the hands of their partner or former partner and 9.2% have suffered psychological violence over the last year (bullying, control, humiliation or threats).<sup>3</sup>

*Organic Law 1/2004 on Measures for Comprehensive Protection from Gender Violence* (hereinafter, the *Comprehensive Law*) came into force on 29 January 2005. Amnesty International welcomed its approval although it highlighted two failings that would weaken the Spanish state's response: a) the law is aimed at giving protection from gender violence committed by a partner or former partner, overlooking other forms of violence against women and girls such as sexual violence; b) the law does not address the right to reparation, which has meant that this right is currently not guaranteed in Spain for victims of violence against women.<sup>4</sup> On a public policy level, following a four-year period (2009-2012) in which there was no State policy to develop the *Comprehensive Law*, the Spanish government approved the *National Strategy for the Eradication of Violence against Women (2013-2016)* in 2013. Most of its measures are, however, fairly unspecific, the text lacks indicators of impact and, for some actions, not even an implementation level is given.<sup>5</sup>

## 1. THE STATE IS NOT PUTTING “ALL APPROPRIATE MEASURES” IN PLACE TO IMPLEMENT THE COMPREHENSIVE LAW

Amnesty International has monitored and analyzed the implementation of the *Comprehensive Law* by means of nine reports dating from 2005 to 2013.<sup>6</sup> The organization has noted that significant obstacles persist because the Spanish state has not put all appropriate measures in place for its proper implementation.

### 1.1 SEXUAL VIOLENCE AGAINST WOMEN AND GIRLS: STATE NOT ACTING WITH “DUE DILIGENCE”

The Spanish state lacks a regulatory framework and public policies that would guarantee a comprehensive response to sexual violence from a gender- and rights-based perspective. In recent years, Spain has broadened its list of criminal behaviour that is classified as sexual violence<sup>7</sup> and has increased the penalties,<sup>8</sup> primarily with the aim of improving the criminal protection of minors, in line with the obligations resulting from European regulations.<sup>9</sup> It has also raised the age of sexual consent from 13 to 16 years. Amnesty International acknowledges these improvements but notes that the effective protection of human rights with regard to sexual violence is facing more urgent challenges than that of increased penalties. The organization has warned of the need for a gender-based perspective in the Criminal Code in order to ensure protection of the human rights of women victims. This requires another kind of response to gender violence that will ensure that the justice administration exercises “due diligence” when prosecuting these crimes, investigating events and protecting women at risk. Raising the age of sexual consent in itself does not necessarily protect adolescents from sexual violence.<sup>10</sup> The European regulatory framework imposes obligations on states with regard to accessing and obtaining assistance, protection, justice and reparation which the Spanish state is very far from enforcing.<sup>11</sup> The National Strategy for the Eradication of Violence against Women (2013-2016) pays little attention to this form of violence, the weaknesses highlighted by Amnesty International<sup>12</sup> being retained unaltered. The most important of these are:

- The Spanish state does not gather data on the prevalence or magnitude of sexual violence as it does with regard to gender violence by a partner or former partner. Nor is there any data on the judicial response to complaints (files, acquittals, convictions).

- There are few specialist services providing support to victims of sexual violence, their geographic distribution throughout the country is uneven<sup>13</sup> and there is no 24-hour crisis centre anywhere in Spain, as recommended by the Council of Europe.<sup>14</sup>

- Lack of specialization in key sectors: health and justice. Spain does not meet WHO guidelines in this regard as there are no guarantees of specific training, either for emergency support staff in hospitals or among doctors and forensic experts.<sup>15</sup> Nor is there any legal framework or public policy committed to providing greater specialization of the legal sector (lawyers, prosecutors, judiciary).

- Young girls and sexual violence: doubly unprotected. There is no regulatory framework or action plan to combat all the forms of sexual violence committed against minors. The Government approved the 3rd National Plan to Combat Child and Adolescent Sexual Exploitation (2010-2013) but this has not been updated with a new plan. This document, for which there has been no published evaluation, did not include actions to combat sexual abuse committed in the child's own environment, despite this being the most common place for this kind of abuse to occur.<sup>16</sup> Amnesty International has documented cases of sexual violence that reveal an inadequate response in terms of protection and justice, particularly when they relate to girls of a young age.<sup>17</sup> The organization is particularly concerned at the lack of diligence within the justice administration when the defendant is the child's own father.<sup>18</sup> The measures included in the Law on the Legal Status of Victims of Crime and the draft Law on the Protection of Children do represent some progress but are neither sufficient nor adequate to promote due diligence when investigating these kinds of crime nor to ensure the effective protection of victims of sexual violence, either adults and children.

#### **Amnesty International recommends that the Spanish state**

- Approve a National Action Plan to combat sexual violence that would guarantee victims' rights to support, protection, justice and reparation and ensure, by means of an appropriate budget, that training, evaluation and reporting systems are implemented for all professionals.
- Adopt standards and public policies that address sexual violence against young girls from a rights- and gender-based perspective and provide a response that includes the detection and referral of cases, appropriate victim support and the provision of child-friendly processes of justice and protection.

## 1.2. SERIOUS BARRIERS TO OBTAINING JUSTICE AND PROTECTION, DESPITE THE COMPREHENSIVE LAW

The *Comprehensive Law* stipulated the creation of Courts for Violence against Women (hereinafter, their Spanish abbreviation, JVM) as specialist bodies with competence to initiate proceedings for crimes related to gender violence, protect victims and provide a coherent response to civil proceedings in the breakdown of relations between victim and aggressor. Amnesty International welcomed this measure given that the complexity of such crimes requires a gender perspective that can ensure a respectful and non-traumatic intervention for victims. From the very start, however, the organization has been warning of the persistence of barriers to this protection and justice.<sup>19</sup> The main barriers are:

- Lack of "due diligence" in investigating and prosecuting these crimes. Violence against women by their partner or former partner is difficult to establish as it is generally committed in private, and so great care is needed in the investigation. Amnesty International has, however, documented cases that demonstrate that the JVM are not investigating these crimes with "due diligence", particularly in cases of routine, psychological or sexual violence.<sup>20</sup> This investigative failure results in very high rates of dismissal and archiving of cases of gender violence, along with an increase in acquittals, which in 2014 accounted for some 50% of cases that were not archived.<sup>21</sup>

- *Failures to protect women at risk.* Since 2003, the Spanish state has enacted legislation to improve the system for protecting victims of gender violence, primarily through restraining orders and the creation of Comprehensive Forensic Assessment Units (UVFI), which are interdisciplinary teams intended to advise the JVM.<sup>22</sup> However, there are failings in their implementation which, in practice, make effective protection difficult:

- The UVFI are being established slowly and inconsistently, with no selection criteria to ensure the specialist nature of these teams.<sup>23</sup>
- The proportion of applications for restraining orders that are refused is growing every year. In addition to failings within the UVFI, this could be due to prejudices that raise doubts as to the credibility of complainants' testimony.<sup>24</sup>
- Incorrect risk assessments have been identified, both among those conducted by the Security Forces and by judges, including cases of women who were subsequently murdered.<sup>25</sup>
- Since 2012, there has been no analysis published of cases of women who have died after making complaints. Up to 2011, the General Council of the Judiciary (*Consejo General del Poder Judicial*) published an annual report that analyzed, among other things, possible institutional failings.

### 1.3 LACK OF A GENDER PERSPECTIVE IN JUSTICE ADMINISTRATION, WITH SERIOUS CONSEQUENCES

Implementation of the *Comprehensive Law* has failed to create a specialist legal sector in practice.<sup>26</sup> Amnesty International has highlighted the fact that, apart from technical training, the legal sector (lawyers, prosecutors, judiciary) lack any training that would help them understand gender violence and the victims' needs, or help them consider possible prejudices.<sup>27</sup> Amnesty International has denounced the persistence of discriminatory prejudices in the judicial system, which have a negative impact on the ability of women and children to obtain protection and justice. Two common practices will serve to illustrate this:

- *Women have been convicted by courts "specializing" in violence against women, as the violence has been considered mutual.* Between 2011 and 2014, the JVM and "specialist" criminal courts convicted 1,675 women following complaints, generally made by the aggressor themselves. In 2012, Amnesty International documented cases of victims charged following a "counter-complaint" and raised concerns at the lack of training of JVM to distinguish "mutual violence" from gender violence.<sup>28</sup>

- *Gender violence is not a decisive factor in agreeing visiting arrangements for children.* There is data to suggest that the JVM do not look holistically at issues of violence against women and the victimization of their children. Despite being established in law, the JVM rarely use the option of suspending visiting arrangements, even in cases where women have restraining orders against the father.<sup>29</sup> As this report went to press, two legislative proposals were underway to promote recognition of the status of victim for children that live in a family environment of gender violence. There are, however, doubts in both cases that the actual measures approved will be adequate to countering the deep-rooted and extended judicial practice that downplays the aggressive nature of the parent in decisions of this kind.<sup>30</sup>

### 1.4. LACK OF MINIMUM STANDARDS AND IMPACT OF AUSTERITY MEASURES

In its seventh and eighth reports to the CEDAW Committee, the Government states that: "*The budget cuts required by the serious economic crisis being suffered in Spain have not affected victim protection, support and rehabilitation services*".<sup>31</sup> There is, however, information to confirm that austerity policies have affected the implementation of the *Comprehensive Law* both at central, regional and local government levels. In recent years, the General State Budgets have reduced the budget lines destined specifically for actions to combat gender violence.

### Actions to combat gender violence (232C).

#### General State Budgets (Trend 2011-2015). Millions of euros

2011	2013	2015	2011-2015 change
30.3	22.2	23.7	-21%

Own compilation.

Between 2005 and 2015, the share of the General State Budgets devoted to the victim support services of the Autonomous Communities (CCAA) fell by 50%.<sup>32</sup>

The primary responsibility for financing, planning and managing resources for comprehensive victim support (information services, emergency centres, shelters and supervised flats) has been transferred to the CCAA and provincial delegations,<sup>33</sup> and there is no national legislation requiring them to guarantee the same minimum standards of availability, accessibility or quality throughout the country. In a context of crisis and austerity, this failure to guarantee national minimum standards, and the removal of municipal responsibility for this area, has resulted in diminishing support or the suspension or closure of essential services for lack of agreement between authorities as to responsibilities and finance. The following are some examples:<sup>34</sup>

- Ciudad Real (Castilla-La Mancha): closure of the Women's Support Centre in 2014. Running for 28 years, this centre provided support to some 2,700 women from different municipalities every year.<sup>35</sup> When the Government was asked in the Congress of Deputies about the anticipated measures to prevent similar cases from occurring in the future, given the delinking of the local authorities from their responsibility to provide services for women suffering from gender violence, the response was: "*This information will need to be gathered from the local and autonomous administrations of Castilla-La Mancha*".<sup>36</sup>
- Seville (Andalucía): suspension of six Women's Information Points for more than two months in 2015, for lack of agreement over their financing between the Seville City Council and the Autonomous Community of Andalucía. This decision left more than 3,000 cases without support or a referral and, according to information received, they have now been reopened under conditions that may weaken the service provision.<sup>37</sup>
- Madrid: closure, in 2012, of the residential "Mariana Pineda" centre, the only centre for women victims of gender violence with drug problems.<sup>38</sup>
- Autonomous Community of the Balearic Islands: closure, in 2011, of all 10 Victim Care Centres in the territory. The Ministry of Justice has now taken over responsibility for three of them, in the main towns, but the service is being provided with fewer staff.<sup>39</sup>

#### 1.5. LACK OF EFFECTIVE PROTECTION OF THE RIGHT TO HOUSING

In 2008, the UN Special Rapporteur on adequate housing raised concerns that, despite having approved the *Comprehensive Law*, women – and particularly victims of gender violence – were facing additional barriers to accessing adequate housing in Spain, and recommended that the State establish effective policies to guarantee this right, particularly in the case of single-parent families.<sup>40</sup> Since the start of the economic crisis in 2008, hundreds of thousands of people have had their homes repossessed in Spain.<sup>41</sup> Over this period, in contrast to the recommendations of the rapporteur, the Spanish government has not published duly disaggregated data that would enable either the number of women and young girls who have lost their homes to be identified nor how many of them were suffering from gender violence. Nor has the Government published an evaluative analysis of the impact of the evictions from a rights- and gender-based



perspective that would consider the specific effects on women and girls.

Although, the status of victim of gender violence was included in the legislation on mortgage repossessions in 2013 as a vulnerability to be taken into account when considering whether to suspend an eviction,<sup>42</sup> Spanish procedural law, however, does not require judges to analyze the reasonableness and proportionality of an eviction from the point of view of the vulnerability of each family, and this includes gender violence. Current legislation merely sets a number of fixed and highly restrictive vulnerability criteria that fail to protect the majority of people affected and lack a gender focus. Unlike in other countries, the Spanish state does not intervene in the negotiations between the banks and individuals, and this prevents any guarantee of “fairness” in these processes between the women, particularly the victims of violence, and the financial institutions. Furthermore, the authorities do not require eviction to be a last resort, as demanded by international law.<sup>43</sup>

#### 1.6 LACK OF EVALUATION OF THE IMPACT OF THE COMPREHENSIVE LAW AND LACK OF WOMEN'S INVOLVEMENT

In 2008, the Government submitted a report entitled *Evaluation of the application of Organic Law 1/2004 of 28 December on Measures for Comprehensive Protection from Gender Violence*. However, it only lists the measures implemented, and gives no analysis or evaluation of their impact.<sup>44</sup> In 2009, the Congress of Deputies created a sub-committee to study the application of the *Comprehensive Law*, the impact of which - in terms of improving the regulatory and political framework - was limited given that its results were not binding on the Government.<sup>45</sup> As this report goes to print, in May 2015,<sup>46</sup> and following ten years of implementation of the *Comprehensive Law*, there has been no real evaluation that ensures the central involvement of women survivors, in accordance with Article 7 of the Convention. This lack of a participatory and transparent evaluation is all the more evident with regard to actions such as the specialist courts (JVM), which are pioneering in theory but demonstrate failings in practice.<sup>47</sup>

#### **Amnesty International recommends that the Spanish state**

- Regularly evaluate the *Comprehensive Law*, through participatory and transparent processes that analyze the impact of the actions. More specifically, evaluate the functioning of the JVM, bearing in mind also information from professionals in the courts themselves, other professional opinions (prosecutors, lawyers), the victims and women's organizations.
- Ensure that the judges in the JVM, the prosecutors and staff of the Comprehensive Forensic Assessment Units are specialists in their area by providing compulsory training on violence against women, its roots and consequences, including a review of gender stereotypes, changing the requirements for accessing these spaces. To ensure the quality of their action, also anticipate reporting mechanisms.
- Ensure that victim support services are evenly spread across the country, on the basis of standards – availability, accessibility and quality – that are enforceable and guaranteed throughout the whole country by means of a system of stable funding involving all authorities.
- Conduct an evaluation of the impact of evictions, from a rights- and gender-based perspective, that analyzes the impact on women and girls, including cases of gender violence.
- Provide a legal guarantee regarding the judicial obligation to analyze the reasonableness and proportionality of an eviction, bearing in mind the vulnerability of each family, including situations of gender violence.
- Create an obligatory mechanism to guarantee fair treatment in the negotiations between the financial institutions and individuals, correcting the imbalance between the parties and ensuring that eviction is a last resort, after all other alternatives have been exhausted.

## 2. MIGRANT WOMEN AND GENDER VIOLENCE: PERSISTANT LACK OF PROTECTION

In its 2009 report on Spain, the Committee focused on the particular exposure of migrant women to poverty and violence, noting with concern the lack of comprehensive data and information on the situation of these women and urging the State to gather and publish data.<sup>48</sup> However, there is currently no systematic policy of gathering and monitoring disaggregated indicators, which would be an essential step in detecting and

combatting the discrimination that may affect migrant women.

With regard to the legal framework and measures to combat the direct and indirect discrimination of these women, there has been limited progress in legislation and a rights-based response appropriate to the specific needs of migrant women has not been achieved. Amnesty International highlights the persistence of two obstacles:

- The possibility of punishing, even deporting, an irregular migrant after she has contacted the security forces to report sexual violence still remains. This may give rise to the initiation of sanctions proceedings or her detention prior to deportation, if the victim has a current deportation order, since the Aliens Law<sup>49</sup> establishes no protection for these victims.<sup>50</sup> Reporting gender violence on the part of a partner or former partner could result in sanctions and even deportation if the victim is unable to prove her case in the criminal proceedings,<sup>51</sup> even though this does not depend on the woman but, as already noted, on the due diligence of the courts in clarifying the events.<sup>52</sup>

- The added disadvantage of women not understanding the language has not been mitigated. The *Comprehensive Law* set out a victim's right to receive information and advice, stipulating that the necessary resources have to be put in place.<sup>53</sup> However, apart from telephone information and leaflets published in different languages, no action has been taken to prepare the police and courts with regard to the right to accessible information and the right to good quality interpretation when a woman does not understand the official language.<sup>54</sup> In 2007<sup>55</sup> and 2012,<sup>56</sup> Amnesty International documented cases in which there was a lack of sufficient high-quality interpreters for some languages (and, moreover, most of these interpreters were men). This could seriously hinder a woman's access to justice. Given the Administration's lack of action, these weaknesses still persist.<sup>57</sup> The Law on Status of Victims of Crime establishes an obligation to ensure the availability of interpreters but does not guarantee their training or the quality of their work.

#### **Amnesty International recommends that the Spanish state**

- Conduct assessments that will ascertain the specific circumstances that result in the special vulnerability of migrant women in relation to gender violence.
- Reform the legislation on aliens to guarantee that victims of all forms of violence against women, including sexual violence, are protected from the initiation of sanction proceedings for illegal residence or the execution of proceedings already initiated, when they report an incident.
- Draw up guidelines and provide training to professionals to ensure that migrant women who are the victims of gender violence are clearly and comprehensibly informed of their rights throughout the whole judicial process.
- Create specialist groups of interpreters who can, as a minimum, work in the police and court spheres and who have training and an awareness of gender violence, and ensure that only these groups of interpreters assist the victims of these abuses.

### **3. WOMEN SEEKING ASYLUM DUE TO GENDER PERSECUTION**

*Law 12/2009 governing the right to asylum and subsidiary protection* recognizes persecution due to gender or sexual orientation as a motive for granting refugee status. The organization is concerned that this important step forward in legislation is not being effectively guaranteed, and women who claim gender persecution, including victims of trafficking and women persecuted for their sexual orientation, are being denied asylum.

- Refusing asylum to victims of trafficking. Most asylum requests made by victims of trafficking are rejected. The Spanish Network against Trafficking (*Red Española contra la Trata*) reports that the Asylum and Refugee Office is refusing these requests<sup>58</sup> without individually assessing the risks in each case.<sup>59</sup> The argument used to deny international protection is the existence of a method of protection given in the Aliens Law.<sup>60</sup> This general exclusion is contrary to the State's obligation to provide international protection,

and has been criticized by the Group of Experts of the Council of Europe Convention on Action against Trafficking in Human Beings (hereinafter, the European Convention on Trafficking).<sup>61</sup>

- Using the accelerated procedure to refuse asylum to women who allege persecution for gender or sexual orientation. Amnesty International has noted its concern at the fact that the Ministry of Interior is refusing to admit requests for international protection at border posts from women fleeing their countries because of persecution due to their gender or sexual orientation. It is applying an accelerated procedure that prevents a rigorous analysis of the risks and ignores the jurisprudence of the Supreme Court,<sup>62</sup> which has made it known that refusal via an accelerated procedure may violate the principle of *non-refoulement*. In April 2015, Amnesty International wrote to the Ministry of the Interior regarding the denial of international protection to two Cameroonian women who were alleging persecution due to their sexual orientation. In one of the cases, the European Court of Human Rights issued precautionary measures that brought about a halt to their return. In the other, her leave to remain was finally permitted on humanitarian grounds.<sup>63</sup>

#### **Amnesty International recommends that the Spanish state**

- Recognizes the right of trafficking victims to request international protection and to obtain this protection if they meet the requirements of refugee status or when it is not possible to return to their country of origin safely due to a real risk of suffering torture, inhuman or degrading treatment, in accordance with Law 12/2009 governing the right to asylum and subsidiary protection, which recognizes persecution for reasons of gender, and includes the victims of trafficking as a vulnerable group.
- Adopt the necessary instructions, regardless of where the request for asylum takes place, to ensure that all asylum seekers alleging persecution for reasons of gender or sexual orientation, particularly from countries with legislation that criminalizes sexual orientation or gender identity, have guaranteed access to an asylum procedure that encompasses all guarantees and enables a detailed and careful examination of their request.

#### **4. THE SPANISH STATE DOES NOT GUARANTEE THE RIGHT TO REPARATION**

Women victims of violence committed by individuals or State officials, whatever the aggression suffered, are not guaranteed the right to reparation because neither the *Comprehensive Law* nor any subsequent regulation has addressed this important right (compensation, complete recovery, satisfaction and guarantees of non-repetition),<sup>64</sup> including for aggression relating to a lack of due diligence on the part of a State institution or official. The current legal framework for most victims of gender violence, including sexual violence and trafficking,<sup>65</sup> is not an effective instrument for guaranteeing even the right to compensation and rehabilitation, as the rigidity of the requirements established in the legislation prevent access to such support for most victims.<sup>66</sup>

Amnesty International has documented the practical consequences of a lack of political and legislative attention to the right to reparation through the testimony of women who, having survived an attack, in some cases an extremely serious one, experience a serious lack of support for their recovery and, on occasions, an insecure situation that leaves them open to a possible repetition of the abuse.<sup>67</sup> In addition, the organization deplores the State's lack of will to effectively recognize the right to reparation even in cases when it has been urged to do so by a United Nations committee.<sup>68</sup>

#### **Amnesty International recommends that the Spanish state**

- Enact legislation and other measures that would establish in law and guarantee in practice the right of victims of all forms of gender violence and, where appropriate, their families, to fair and prompt reparation via speedy and accessible channels, and which includes compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition.

## II. MEASURES TO COMBAT GENDER STEREOTYPES

### *Article 5 (A)*

In its Concluding Observations to Spain's sixth report in 2009, the Committee noted its concern at the lack of adequate and effective measures with regard to changing sociocultural patterns related to gender violence.<sup>69</sup> Amnesty International has monitored the country's human rights education work and is seriously concerned at the decline in government action in this regard over the last few years in Spain.

- Human rights and equality education has been weakened. The *Comprehensive Law* committed the State to implementing formal education programmes on gender equality and violence prevention.<sup>70</sup> The introduction of *Civic and Human Rights Education*<sup>71</sup> as a course raised the visibility of human rights in the primary and secondary curricula and required the mainstreaming of human rights into the content of all subjects.<sup>72</sup> This course was removed in 2013 following further reform of the education law.<sup>73</sup> Amnesty International considers its removal to be deeply worrying as it was one of the main vehicles for achieving a fundamental change in values. Its removal also coincided with the assessment of the National Strategy for the Eradication of Violence against Women (2013-2016), which revealed the persistence of gender inequalities among adolescents, along with a high incidence of violence against women among this age group, including sexual violence.<sup>74</sup>

- Weaknesses in terms of messages and a lack of evaluation of prevention campaigns. Amnesty International is concerned that the government campaigns aim their messages largely at women, with very few of them focused on men (youths and adults), as recommended by the Istanbul Convention.<sup>75</sup> The organization also regrets the lack of evaluation of the impact of these campaigns.<sup>76</sup>

#### **Amnesty International recommends that the Spanish state**

- Reinstates human rights education as a subject, including gender equality, sexual/emotional diversity and non-discrimination, at all levels of the education system, through specific courses and the mainstreaming of this content in other subjects.
- Ensures that prevention campaign messages are appropriate, and aimed primarily at the general population but particularly at changing attitudes among men, as well as evaluating their impact.

## III. TRAFFICKING OF WOMEN AND GIRLS

### *Article 6*

The European legislative framework for combatting human trafficking<sup>77</sup> has, in recent years, resulted in legislative and public policy advances in Spain.<sup>78</sup> However, despite this progress, the Spanish state's response to trafficking remains focused on prosecuting criminal networks instead of focusing on the rights of the victims.<sup>79</sup> Amnesty International considers that the regulatory reforms, which are primarily punitive, do not comply with all of the European and international obligations regarding human trafficking. More specifically, the organization is concerned that:

- The response to trafficking is not a comprehensive one but instead focused on the trafficking of women for sexual purposes, failing to offer any response to trafficking for other exploitative purposes.<sup>80</sup> Nor does it address all possible victims equally since, by linking the identification of victims to migration control, Spanish women or EU nationals may not be included.<sup>81</sup>

- Obstacles to identification persist. Specialist organizations continue to document cases of victims of trafficking that have been detained and held in Alien Detention Centres prior to their deportation.<sup>82</sup> This reveals identification failings that have serious consequences in terms of further victimization and a lack of protection. It is worrying that these failings occur because the current protocol for action gives legal capacity for identification solely to police officers responsible for migration control and criminal investigation, with specialist NGOs playing only a secondary role in this essential work.<sup>83</sup>

- Collaboration with criminal investigations continues to determine victims' access to protection. Although, in line with the European Convention on Trafficking, the Spanish Aliens Law includes protecting victims of trafficking who are unable (lack the necessary information) or unwilling to denounce and/or appear as a witness in criminal cases against their traffickers, this protection is not fully applied in practice. This may be leaving particularly vulnerable victims unprotected.<sup>84</sup>

- Lack of protection of child victims. Child victims also suffer from the lack of a procedure for identifying, referring and supporting them that takes into account their specific needs, from a rights-based and child-friendly perspective. The Spanish Ombudsman<sup>85</sup> and the Group of Experts on Action against Trafficking in Human Beings have stated their concern at failings in the Spanish state's protection of the rights of child victims. The Group of Experts has recommended creating a specific referral mechanism for victims of child trafficking in order to take their special needs into account, and involving child specialists and police officers and prosecutors specialized in dealing with children.<sup>86</sup>

#### **Amnesty International recommends that the Spanish state**

- Adopt a comprehensive regulatory framework to combat trafficking that includes all reasons for exploitation, implemented from a rights-, gender- and child-based perspective that harmonizes the response throughout the whole country and contains adequate and effective measures to protect and assist all victims, regardless of their nationality or legal residency status.
- Give bodies and associations specialized in working with victims of trafficking a central role in identifying cases and promote their work of victim support in coordination with the State institutions throughout the whole process of assistance, protection and, where appropriate, obtaining justice.
- Establish compulsory training programmes for the judiciary, security forces, prosecutors and lawyers to ensure their specialization with regard to human trafficking, from a rights-, gender- and child-based approach.

## IV. RIGHT TO HEALTH, INCLUDING SEXUAL AND REPRODUCTIVE HEALTH

*Article 12, in relation to Article 2*

#### 4.1 BARRIERS TO ACCESSING THE RIGHT TO HEALTH ON THE PART OF MIGRANT WOMEN IN AN IRREGULAR ADMINISTRATIVE SITUATION, INCLUDING VICTIMS OF TRAFFICKING

On 1 September 2012 a decree entered into force,<sup>87</sup> approved by the Spanish government, limiting access to free healthcare for illegal migrants who, from that date on,<sup>88</sup> and apart from in exceptional circumstances, would have to pay for healthcare in Spain.<sup>89</sup> Amnesty International regrets its approval and, since its entry into force, has documented cases that reveal the added impact of this regulation on women, in terms of barriers to information on, and services related to, sexual and reproductive health, the possible failure to identify victims of gender violence and trafficking<sup>90</sup> and a lack of support for victims of sexual violence. More specifically, the organization considers that the law:

- Prevents primary healthcare centres (family doctors) from carrying out work to identify possible cases using indicators of suspected gender violence or trafficking, particularly in the case of foreign women living illegally in the country or who are the unidentified victims of trafficking, and for whom health screening is essential, as it is less likely that they will report their situation to the police.<sup>91</sup>
- Fails to comply with WHO guidelines and current health protocols in Spain by denying women and girl migrants who are victims of sexual violence access to all medical and psychological treatment necessary in the medium and long-term for their recovery.<sup>92</sup> These treatments, information and services are essential for the victims of sexual violence to be able to deal with the consequences of the crime they have suffered. A failure to guarantee access for all women and girl victims of rape or sexual aggression fully and on an equal footing with other such victims, by means of a free health service, is in violation of the Spanish state's duty to protect the human rights of women and girls, including rights to health, equality and non-discrimination.<sup>93</sup>

The application of this law by some autonomous regional governments has meant great inequalities in this area, too, as an irregular migrant's access to health services depends on where they live. Amnesty International has published two reports denouncing the fact that chaos in and disparities between the Autonomous Communities, and even between hospitals, is even resulting in treatment for pregnant women and emergency services being invoiced.<sup>94</sup>

#### **Amnesty International recommends that the Spanish state**

- Legally re-establishes the universal right to health, taking all measures necessary, including amendment of Royal Decree -Law 16/2012, to guarantee healthcare for all people living in Spain, regardless of their administrative situation.
- Fulfils its duty to guarantee that women victims of sexual violence who are living in Spain illegally have access to information on how to avoid pregnancy and sexually-transmitted infections (STIs), along with necessary medical assistance and treatment. These treatments must be considered an emergency, as they are necessary for the victim to be able to avoid an unwanted pregnancy and to have access to preventive treatment for STIs.

#### 4.2 AGE RESTRICTIONS ON THE EXERCISE OF REPRODUCTIVE RIGHTS: SPECIFIC CONCERNS REGARDING ADOLESCENTS AND YOUTHS

Organic Law 2/2010 of 3 March on sexual and reproductive health and voluntary termination of pregnancy (Law 2/2010) extended the guarantees for exercising sexual and reproductive rights in Spain and increased the legal access for women and girls to safe abortion services. In 2011, a public policy was approved aimed at guaranteeing its implementation throughout Spain.<sup>95</sup> In 2012, the UN Committee on Economic, Social and Cultural Rights urged Spain to ensure full implementation of Law 2/2010 and to pay special attention to the situation of adolescent and women migrants in order to guarantee their access to legal and safe abortion under Law 2/2010.<sup>96</sup> Since 2012, however, there has been evidence that the implementation of this law has come to a standstill<sup>97</sup> and that there are even initiatives aimed at reforming it, which could imply a new risk to adolescents' and young women's effective exercise of their sexual and reproductive

rights. In this context, Amnesty International is concerned that:

- Sex education is not a priority and there is evidence of its decline. In Spain, there is no kind of information or State framework of reference for teachers regarding the content of sex education,<sup>98</sup> and this creates serious differences in the content offered to pupils, not only between Autonomous Communities but between individual schools as well. According to studies, *“Budget cuts are [now] preventing the correct implementation of these measures, resulting in care and advice services of poor quality, if they exist at all.”*<sup>99</sup> Linked to the impact of austerity measures on the financing of contraception, this could be undermining the possibility of preventing early pregnancy and STIs.<sup>100</sup>

- The right of 16 to 18-year-olds to legal and safe abortion is at risk. Law 2/2010<sup>101</sup> establishes that, to access a voluntary termination of pregnancy, young people in this age group must inform their legal representatives, father or mother, person with parental responsibility or legal guardian, but do not require their express consent. The law even offers the possibility of not informing them in situations of vulnerability. In 2014, 12.38% of women aged 16 to 18 did not inform their parents for the following reasons: family abandonment, family breakdown, parents in prison, risk of suffering ill-treatment, emancipated minors living in the country without their parents, debilitating parental illness or parents openly opposed to abortion.<sup>102</sup>

On 18 February 2015, a proposed legislative reform to Law 2/2010 was submitted to the Congress of Deputies<sup>103</sup> aimed at requiring women aged 16 to 18 and women with a disability to obtain the express consent of their legal representatives in all cases of voluntary termination of pregnancy.<sup>104</sup> Removing the protection offered by the current law entails clear risks for the physical and mental health of young people, and will have a disproportionate impact on those already in a vulnerable situation and who may find themselves forced into an unwanted pregnancy or unsafe abortion.<sup>105</sup>

Amnesty International considers that this draft bill of law is contrary to the State's obligation to respect women's right to health, which requires the removal of barriers such as the consent of parents or other people.<sup>106</sup>

#### **Amnesty International recommends that the Spanish state**

- Implements all measures in its power to establish an effective and accessible system of information on sexual and reproductive health both in the context of formal education and in other kinds of centre.
- Maintains the current legislation on the right to abortion which, in line with international standards, enables 16 to 18-year-olds to terminate their pregnancy without the consent of their father, mother or other legal representative.
- Complies with the 2012 recommendation of the Committee on Economic, Social and Cultural Rights to ensure full implementation of Law 2/2010, placing special focus on migrant adolescents and women.

## ANNEX 1: OLGA

**Olga,**<sup>107</sup> a Russian national of 55 years of age, arrived in Spain in 2007 not knowing the language, through a contact that gave her work in domestic service where she received little pay and little leisure time.

In 2010, following a labour inspection of the restaurant where she was working illegally, her situation was reported to the police and a deportation case initiated against her. Her passport was confiscated and this expired in 2012 without her being able to renew it. Olga had a deportation order in place from July 2010 until May 2015. One of the reasons for this deportation order was that, despite having lived in the country for three years at that time, Olga was not registered and had no health card. She says she was not aware of such a requirement and that no-one had told her that registering would give her access to rights.

Shortly afterwards, Olga moved to Galicia where she began domestic work in a home, on the promise of a contract that never materialized. One night in March 2013, as Olga returned home, she was attacked by two masked men who forced her to climb a nearby mountain at gunpoint. There they threatened to kill her if she did not take off her clothes and, once naked, they inserted various items of undergrowth into her vagina. After the attack, the two men fled. Olga phoned her partner, who called an ambulance and the police. She was taken to hospital in Orense, where she was well-treated by the emergency and psychiatric doctors. She told them what had happened and also explained that, even before the attack, she had been suffering from severe vaginal bleeding. Officers from department of the Civil Guard that specializes in violence against women were in charge of the investigation and were present at all times while Olga was being treated, including during the operation to remove the remains of what had been inserted into her vagina. Without asking for her consent, the officers took photos. This police intervention was traumatic for Olga. At the end of the medical examination, and despite the fact that the Xunta de Galicia's care protocol for victims of gender violence states that the victim must be offered time to shower and rest, the officers insisted on taking her statement, meaning she was unable to rest until 4 in the morning. Olga states that, in contrast to the friendliness of the health staff, the police officers appeared to doubt her story.

Olga was discharged the following day but, two days later, had to return to the emergencies department because of profuse vaginal bleeding. A week after the attack, she returned again with the same symptom. Despite the fact that irregular migrants have a legal right to emergency healthcare, the three medical interventions by the emergencies service were all charged and, on 4 April 2013, Olga received a letter from the hospital requiring her to pay an amount of 893.83 euros or provide official documentation to prove the existence of criminal proceedings in relation to an act of sexual aggression.

Following the attack, Olga was never summoned before a judge as a victim and the procedure that was commenced in the hospital for sexual aggression was archived a few days later without being investigated. Two weeks later, officers of the Civil Guard picked Olga up at her home and took her to the police station where they took photos, fingerprints and told her she had been arrested for "faking" the attack in order to regularize her position in the country. Although Olga understands and speaks Spanish only with difficulty, no interpreter was provided. She was assigned a legal aid lawyer who recommended that she should not give a statement either to the police or to the Duty Magistrates' Court.

She was taken before the Duty Magistrate the next day. The injuries from the attack were still visible on her face but she was questioned as a "prisoner" and the prosecutor also made no comments. Olga was released on bail, with a requirement to present herself to the judge on the 1<sup>st</sup> and 15<sup>th</sup> of each month. The following day, however, she was arrested by two plain clothes police officers while with her partner in a bar. At the police station they again took photos and fingerprints and she was searched, after which she was asked to sign a document. She refused to sign it without a lawyer. She also recalls that they took her bra and, although she asked them to let her put it back on as she was cold, they refused. It was returned to her several days later on arrival at the Alien Detention Centre in Madrid.

The next day, the Duty Magistrate decided to send her to an Alien Detention Centre for her subsequent deportation. It was the same official who the previous day had called her a "prisoner". Olga recalls there "*were many 'legal' words I did not understand, but I couldn't ask*". That same day she was transferred to the Madrid Alien Detention Centre where she remained 48 days. She told her story to the Red Cross staff and also asked to see a doctor because she was having nightmares due to the attack and because she had been suffering from vaginal bleeding for three weeks. The doctor's response was to give her sanitary towels and prescribe a sedative, the name of which she cannot remember but which removed nearly all her ability to



think. In June 2013, she was released. This was because she could not be deported as her passport had expired. The deportation order remained in force, however, along with the criminal proceedings for “faking a crime”.

Following her release, Olga was supported by various NGOs and began to recover from the trauma she had experienced. At the same time, she also tried to regularize her situation in Spain. As there was no psychotherapist experienced in issues of sexual violence near her home, Olga had to make a 300 km round trip for each weekly session. Although the therapy was free, she found it difficult to cover the cost of the travel and so, in the end, she dropped out of the treatment. In December 2013, while she was renewing her passport with the aim of regularizing her position, she was again detained by the National Police for deportation, and spent a night in the cells. Following the mediation of the NGOs who were helping her, the Office of the Ombudsman intervened to obtain her release. The deportation order nonetheless remained in force until May 2015. Olga has had to report to the police station every month to prove her whereabouts. The criminal charges for faking a crime also remained in force until 11 April 2014, when the case was archived.

In June 2014, Olga and her Spanish partner began the process for getting married but the Public Prosecutor brought this to a halt with the claim that it was a marriage of convenience, despite the fact that their relationship had by then lasted four years. They were finally married in March 2015.

In September 2014, Olga obtained her health card given that, in the Autonomous Community of Galicia, it is possible to obtain this following a certain period of registration. In April 2015 she was urgently admitted to Orense Hospital where they removed her uterus and ovaries due to cancer. Although profuse bleeding is a sign of this illness, the medical report for this intervention made no reference to the previous bleeding, nor to the sexual aggression, even though the medical interventions took place in the same hospital. The first medical assessment, in May 2015, established that the cancer from which Olga was suffering had been developing for more than two years and so, in addition to the surgery, the doctor considered it necessary for her to undergo chemotherapy and radiotherapy.

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<sup>1</sup> Committee on the Elimination of Discrimination against Women. Concluding Observations. Spain. UN Doc.: CEDAW/C/ESP/CO/6, 7 August 2009, paras. 17,18, 19, 20, 21, 22, 25, 26, 31 and 32.

<sup>2</sup> Ministry of Health, Social Affairs and Equality. Government Department for Gender Violence. Statistics Portal: <http://estadisticasviolenciagenero.msssi.gob.es>

<sup>3</sup> Ministry of Health, Social Affairs and Equality. Government Department for Gender Violence. *Macroencuesta de Violencia contra la Mujer. 2015. Avance de resultados. pp. 4 and 5.*

<sup>4</sup> Amnesty International also deplores the fact that the recently approved Law 4/2015 of 27 April on the Status of Victims of Crime still does not address the right to reparation. See report: *Recomendaciones de Amnistía Internacional al Proyecto de Ley del Estatuto de la Víctima*. <https://doc.es.amnesty.org/cgi-bin/ai/BRSCGI/Estatuto%20Victima-2?CMD=VEROBJ&MLKOB=33221221212>

<sup>5</sup> By way of example, actions 197 and 198 “Implement training and awareness raising actions on gender violence aimed at staff in justice administration and members of the judicial and legal professions.” The strategy does not specify the number of actions or their content, so it is difficult to ascertain their appropriateness or their effective implementation.

<sup>6</sup> Of all the reports, we note the most relevant: AMNESTY INTERNATIONAL(2005): *Spain: More than Words Making protection and justice a reality for women victims of gender-based violence in the home*, AI Index: 41/005/2005; AMNESTY INTERNATIONAL-Spanish Section (2006): *Más derechos, los mismos obstáculos. La protección efectiva de los derechos humanos de las mujeres un año después de la plena entrada en vigor de la Ley de Medidas de Protección Integral contra la Violencia de Género*; AMNESTY INTERNATIONAL-Spanish Section (2007): *Pongan todos los medios a su alcance, por favor. Dos años de Ley Integral contra la Violencia de Género*; AMNESTY INTERNATIONAL-Spanish Section (2008): *Obstinada realidad, derechos pendientes. Tres años de la ley de protección integral contra la violencia de género*; AMNESTY INTERNATIONAL-Spanish Section (2009): *Una vida libre de violencia para mujeres y niñas. Las otras víctimas de la violencia de género*; and AMNESTY INTERNATIONAL-Spanish Section (2012): *¿Qué justicia especializada? A siete años de la Ley Integral contra la Violencia de Género: Obstáculos al acceso y obtención de justicia y protección*. AMNESTY INTERNATIONAL (2013): CEDAW Committee. Communication No. 47/2012. Amicus Brief. Available from [www.es.amnesty.org](http://www.es.amnesty.org)

<sup>7</sup> *Organic Law 1/2015 of 30 March amending Organic Law 10/1995 of 23 November on the Criminal Code.*

<sup>8</sup> *Organic Law 5/2010 of 22 June amending Organic Law 10/1995 of 23 November on the Criminal Code.*

<sup>9</sup> The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 2007 (Lanzarote Convention), ratified by Spain in July 2010, and Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA .

<sup>10</sup> Amnesty International-Spanish Section. *Recomendaciones al Proyecto de Ley de reforma del Código Penal*, April 2014.

<sup>11</sup> See Amnesty International-Spanish Section: *ESPAÑA: ¿Qué justicia especializada? A siete años de la Ley Integral contra la violencia de género: obstáculos al acceso y obtención de justicia y protección*, November 2012.

<sup>12</sup> Amnesty International-Spanish Section (2009): *Una vida libre de violencia para mujeres y niñas. Las otras víctimas de la violencia de género*. Amnesty International-Spanish Section (2008): *Obstinada realidad, derechos pendientes*.

<sup>13</sup> Amnesty International's concerns in 2009 (Una vida sin violencia para mujeres y niñas, 2009 Op. Cit. pp.25-26.) regarding a lack of services for these victims still persist today. See Amnesty International – Spanish Section. *Recomendaciones al Proyecto de Ley del Estatuto de la Víctima*, 2015.

<sup>14</sup> The Council of Europe standards recommend that States have one “crisis centre” for victims of sexual violence per 200,000 inhabitants. (Council of Europe: *Combating Violence against Women: minimum standards for support services*, September 2008, p.38.)

<sup>15</sup> Guidelines for medico-legal care for victims of sexual violence. World Health Organization, 2003.

<sup>16</sup> Ministry of Health, Social Policy and Equality. *III Plan de Acción contra la explotación sexual de la Infancia y la Adolescencia (2010-2013)*.

<sup>17</sup> With regard to very young victims (0-5 years) in particular, Amnesty International is concerned that, given the lack of training of the justice system in interviewing pre-school children, investigations are even more lacking. The organization notes that some courts use the young age of the victims as an argument to drop cases with hardly any investigation. As an example: the 3<sup>rd</sup> Section of the Provincial Court of Barcelona (Order No. 802/2011 of 29 November 2011) argued for a case to be dropped in which “it can be concluded from the psychological report that the child is not sufficiently competent to provide valid testimony regarding the alleged acts” and the Judgment of the 5<sup>th</sup> Section of the Madrid Provincial Court (Order No. 1602/2012 of 12 April 2012) which archived a case on the argument that “the truthfulness of the complaint cannot be established given the age of the child”. Quoted in Save the Children, *La justicia española frente al abuso sexual infantil*, 2012, p. 84.

<sup>18</sup> In 2012, Amnesty International documented the case of **Ana** (fictitious name), a four-year-old girl who told her mother and a psychologist that her father (separated from her mother) was abusing her sexually during visits, and asked not to see him again. Ana's mother reported the acts and provided the judge, in addition to a doctor's and a psychologist's report on her child, with other documents from the health services that had treated Ana (child psychiatric hospital, emergency service). Following the complaint, Ana was called before the court in the presence of the judge, prosecutor, her lawyer and a forensic expert. There she repeated once more the sexual abuse she had suffered and asked the judge for protection. The judge subsequently archived the case for “lack of indication of a crime”. In this same decision, he decided to deny all expert and testimonial evidence called for by the girl's legal representation, which could have clarified the events, considering it “unnecessary”. With the case dropped, the family court immediately ordered contact to be re-established between the girl and her father, warning the mother that the father might be given custody and that she would be fined EUR 500 for every month that the child did not see her father. Given the categorical refusal of the child to see her father, the mother has not forced her to re-establish contact and is currently facing a charge of “criminal disobedience”.

<sup>19</sup> Amnesty International-Spanish Section (2006): *Más derechos, los mismos obstáculos*, Op. Cit., pp. 41-57; Amnesty International-Spanish Section (2008): *Obstinada realidad, derechos pendientes*, Op. Cit. pp. 29-39 and Amnesty International (2012): *¿Qué justicia especializada?*, Op. Cit. (monographic report on the measures of the Comprehensive Law in relation to justice and protection).

<sup>20</sup> Amnesty International (2012): *¿Qué justicia especializada?*, Op. Cit. p. 11.

<sup>21</sup> Since the establishment of these courts in 2005, and up to 2012, the number of cases archived due to lack of evidence increased by 158%, while complaints of gender violence only grew by 4% and, between 2009 and 2013, actually decreased. (General Council of the Judiciary, 2012: *Datos estadísticos judiciales en aplicación de la L.O. 1/2004. Resumen de los 7 años. Datos desde julio 2005 a junio 2012*). In 2011, 36% of women with prior legal proceedings against their mortal aggressor saw their cases dropped or the defendant acquitted. (General Council of the Judiciary, 2012: *Informe sobre víctimas mortales de la violencia de género y de la violencia doméstica en el ámbito de la pareja o ex pareja en 2011*). In 2013 and 2014 this trend continued. (General Council of the Judiciary, *Datos de denuncias, procedimientos penales y civiles registrados, órdenes de protección solicitadas en los juzgados de violencia sobre la mujer y sentencias dictadas por los órganos jurisdiccionales en esta materia, años 2013 y 2014*).

<sup>22</sup> Law 27/2003 of 31 July on restraining orders for victims of domestic violence.

<sup>23</sup> The Report of the Public Prosecutor's Office, 2012, provides information on the absence of this kind of unit in provinces such as Tarragona or Cuenca and in the Autonomous Community of the Balearic Islands, p.683.

<sup>24</sup> Between the time the JVM were established and 2014, the proportion of restraining orders granted by these courts fell drastically. In 2014, 43% of requests were rejected, as opposed to 23% in 2006. General Council of the Judiciary, *Datos de denuncias, procedimientos penales y civiles registrados, órdenes de protección solicitadas en los juzgados de violencia sobre la mujer y sentencias dictadas por los órganos jurisdiccionales en esta materia, años 2006 y 2014*.

<sup>25</sup> General Council of the Judiciary (2012): *Informe sobre víctimas mortales de la violencia de género, 2011...Op. Cit*, p.107.

<sup>26</sup> Amnesty International has ascertained that the Public Prosecutor's Office does not require them to have any prior training. In the case of the judiciary, they did not manage to establish a compulsory initial training system for accessing these posts from June 2005 to January 2010. The only compulsory training consists of an "online" course that does not sufficiently guarantee effective training in gender issues or a consideration of prejudices.

<sup>27</sup> In this regard, the organization regrets the fact that the Spanish Parliament decided not to include the objectives of "ensuring impartial, respectful and professional treatment of victims, taking particular account of their needs from a gender perspective," into Law 4/2015 of 27 April on the Status of Victims of Crime, as envisaged in Directive 2012/29 of the European Union, which the Law is intended to transpose. It also regrets that this law includes a provision that is absent from the stated Directive: the "obligation to reimburse" assistance if a victim is convicted of "falsely reporting or simulating a crime" or in cases where an acquittal is ruled or the case is dropped. Amnesty International has warned that this could reinforce the notion that many victims make complaints out of self-interest. In contrast, the organization has documented cases of gender violence which, despite being true, were archived or ended in acquittal. (Amnesty International, Spanish Section: *Recomendaciones de Amnistía Internacional al Proyecto de Ley del Estatuto de la Víctima*, 2014, p.18)

<sup>28</sup> In 2012, Amnesty International noted its concern at the "counter-complaint" as a strategy used by some aggressors to intimidate their victims, and that it was not being properly dealt with by the courts. The organization has documented cases of victims being accused and convicted and considers this to be an extreme form of further victimization.

<sup>29</sup> According to data from the General Council of the Judiciary, in 2014, 97% of men with a restraining order preventing them from seeing the mother for gender violence were granted ordinary visiting arrangements with their children. (General Council of the Judiciary, 2014, *Datos de denuncias...Op. Cit*, p. 14).

<sup>30</sup> The draft Organic Law amending the system for protecting children and adolescents (Second Additional Provision) anticipates that a judge who does not agree to a suspension of the visiting and communication arrangements or of parental responsibility following a conviction for gender violence must, in all cases, rule on how the child will be protected, taking into account the best interests of the minor. Prior to this there was the *Draft Bill of Law on exercising joint parental responsibility and other measures to be adopted following marital breakdown*, a text that does lay down a general rule of suspending visiting arrangements for a father convicted of gender or domestic violence for the duration of his sentence (new Art. 92(a) 4). However, the State Council, as Prosecutorial Council, among other bodies, has issued reports opposed to this measure, and so there are doubts as to whether it will be approved. (Report of the Prosecutorial Council, 3 September 2013, and Opinion of the State Council No. 438/2014, 27 July 2014).

<sup>31</sup> Committee on the Elimination of Discrimination against Women. Seventh and eighth periodic reports that States Parties had to present in 2013. Spain. UN Doc.: CEDAW/C/ESP/7-8, de 17 December 2014, paras. 319.

<sup>32</sup> The Council of Ministers of 29 July 2005 approved a Fund to guarantee the work of the Autonomous Communities with regard to providing comprehensive victim support. This totaled EUR 10,000,000 for 2005 and EUR 12,000,000 for 2006. On 22 April 2015, with this same aim, in the context of the Sectoral Conference on Equality, the Ministry of Health, Social Services and Equality agreed to distribute, for 2015, the sum of EUR 4,180,000 plus an additional credit of EUR 1,000,000. Source: [http://www.msssi.gob.es/ssi/violenciaGenero/laDelegacionInforma/pdfs/DGVG\\_INFORMA\\_Conferencia\\_Sectorial\\_Igualdad.pdf](http://www.msssi.gob.es/ssi/violenciaGenero/laDelegacionInforma/pdfs/DGVG_INFORMA_Conferencia_Sectorial_Igualdad.pdf)

<sup>33</sup> Up to 2014, the local councils had responsibility in this regard and worked with victim support and information services. However, since then, *Law 27/2013 of 27 December on the rationalization and sustainability of local administration (Art. 27.6)* has removed this responsibility from them, unless expressly delegated by the State, the Autonomous Communities or Delegations, along with the necessary funding.

<sup>34</sup> The examples given highlight the Spanish state's current inability to comply with the obligation set out in the Istanbul Convention on preventing and combatting violence against women and domestic violence, ratified by Spain in August 2014, of establishing "the necessary legislative or other measures to provide or arrange for, in an adequate geographical distribution, immediate, short-term and long-term specialist support services to any victim." (Art. 22.1)

<sup>35</sup> After 26 years of being managed by the Provincial Delegation, this body decided to close it in 2012. Although the Ciudad Real Council tried to run it for the next 2 years, a court ruling decided to rescind the agreement that transferred responsibilities and the centre closed in 2014.

<sup>36</sup> (184) Written question Congress. Author: De las Heras Ladera, Ascensión (GIP), 5 March 2014. Reply: 184/047908 by the Secretary of State for Court Relations.

<sup>37</sup> Information confirmed by Amnesty International through an interview with one of the workers of the suspended service, via email, on 9 April 2015.

<sup>38</sup> Madrid City Council (DGIO). 2010, 2011, 2012, 2013 Activities Reports.

<sup>39</sup> Location of Victim Support Services and Offices in Spain, updated May 2014, by María del Mar Daza Bonachela. website:

[https://www.academia.edu/7194422/Servicios\\_y\\_Oficinas\\_de\\_Atenci%C3%B3n\\_a\\_las\\_Victimtas\\_en\\_Espa%C3%B1a..Lis\\_tado](https://www.academia.edu/7194422/Servicios_y_Oficinas_de_Atenci%C3%B3n_a_las_Victimtas_en_Espa%C3%B1a..Lis_tado)

<sup>40</sup> Report of the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr. Miloon Kothari, Mission to Spain. UN Doc: A/HRC/7/16/Add.2, of 7 February 2008, paras. 60, 61, and 99.

<sup>41</sup> According to court statistics, between 2008 and 2014, 578,546 repossession proceedings were commenced. These figures do not distinguish between main homes and other homes or commercial premises. There are statistics relating to main homes, provided by the Bank of Spain, from 2013 on, which report that more than 98,000 repossessions took place between January and June 2014.

<sup>42</sup> Art. 3 g) of Law 1/2013 of 14 May on measures to strengthen the protection of mortgage holders, restructure the debt and rented social housing. This article was subsequently amended by Royal Decree-Law 1/2015 of 27 February on the second chance mechanism, reducing the financial burden and other social order measures, although only in the sense of extending the time limit for suspending the eviction from 2 to 4 years.

<sup>43</sup> Committee on Economic, Social and Cultural Rights. General Comment 7 on forced evictions. Para 13.

<sup>44</sup> Ministry of Equality, Evaluation of the application of Organic Law 1/2004 of 28 December 2008.

<sup>45</sup> Report of the sub-committee created within the Committee on Equality for the study and functioning of the law on comprehensive measures to protect against gender violence and, where appropriate, proposed amendments, Boletín Oficial de las Cortes, No. 296, 23 November 2009.

<sup>46</sup> On 14 April 2015, various parliamentary groups demanded that the Government evaluate the *Comprehensive Law*, following 10 years of its enforcement. The Government responded that it was gathering information with which to conduct an evaluation of this law. However, there is a clear lack of public information in this regard, including in relation to women's and human rights organizations devoted to this issue. (*Moción consecuencia de interpelación urgente sobre las medidas que va a tomar el Gobierno para erradicar el aumento de la discriminación contra las mujeres en España*. Boletín Oficial de las Cortes, No.651, 22 April 2015).

<sup>47</sup> The above stated *Macroencuesta de Violencia de Género 2015*, offers limited progress with regard to previous surveys because it includes a satisfaction survey of women victims related to the support and protection services they received. However, Amnesty International regrets that the only body the women were not asked to evaluate in the survey was precisely the Justice Administration.

<sup>48</sup> Committee on the Elimination of Discrimination against Women, 44<sup>th</sup> period of sessions (20 July to 7 August 2009). Concluding Observations of the Committee on the Elimination of Discrimination against Women. Spain. UN Doc.: CEDAW/C/ESP/CO/6, 7 August 2009. Para. 31.

<sup>49</sup> Organic Law 2/2009, 11 December on reform of Organic Law 4/2000, 11 January on rights and freedoms of foreigners in Spain and their social integration.

<sup>50</sup> Amnesty International has documented cases of victims of sexual violence taken to Alien Detention Centres for deportation, only adding to the suffering of these women and denying them the right to assistance, justice and reparation.

<sup>51</sup> Aliens Law, Art. 31a 2to 4.

<sup>52</sup> In March 2011, the UN Committee for the Elimination of Racial Discrimination noted its concern that this requirement could dissuade foreign victims from going to the police; Concluding Observations of the CERD on the 18<sup>th</sup>-20<sup>th</sup> periodic reports of Spain, 10 March 2011. UN Doc.: CERD/C/ESP/CO/18-20

<sup>53</sup> Art. 18 of the *Comprehensive Law*.

<sup>54</sup> The *Plan to Prevent and Provide Support for Gender Violence among Foreign Immigrant Populations (2009-2012)* made no mention of the issue of interpreters and their use nor did it offer professional improvements for providing adequate information to these women.

<sup>55</sup> Amnesty International, Spanish Section, 2007: *Más riesgos, menos protección. Mujeres migrantes frente a la violencia de género*, pp.31-34.

<sup>56</sup> Amnesty International, Spanish Section, 2012: *¿Qué justicia especializada?*, Op. Cit. pp. 7 y 8.

<sup>57</sup> The persistence of this weakness was confirmed in 2015 by an investigation in the context of the European project "Speak Out for Support" (SOS-VICS), cofinanced by the European Union's Criminal Justice Programme and nine Spanish

universities. See <http://cuautla.uvigo.es/sos-vics/blogs/ver.php?id=127>

<sup>58</sup> Although the Spanish state does not publish data on the reasons why asylum is granted, in 2013, all asylum requests made by women coming from Sierra Leone were rejected, along with 98% of those made by women from Nigeria. Both countries figure among the main countries of origin of trafficking victims in Spain. Source: Ministry of the Interior's Statistical Yearbook, 2013.

<sup>59</sup> *Informe de la Red española contra la trata de personas para la coordinadora europea de lucha contra la trata. Visita oficial a España.* 26 and 27 February 2015, pp. 25-30.

<sup>60</sup> Aliens Law, Art. 59(a).

<sup>61</sup> Group of Experts on Action against Trafficking in Human Beings. *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain. First evaluation round.* GRETA(2013)16.p. 8.

<sup>62</sup> The most recent being the Judgment of the Supreme Court of 28 January 2014.

<sup>63</sup> Letter from Amnesty International to the General Directorate for Domestic Policy of 16 April 2015.

<sup>64</sup> Amnesty International, Spanish Section: *Recomendaciones al Proyecto de Ley del Estatuto de la Víctima*, 2014, p.1.

<sup>65</sup> Law 35/1995 of 11 December on *Assistance for Victims of Violent Crimes and Sexual Offences* (BOE No. 296, 12 December 1995)

<sup>66</sup> Amnesty International– Spanish Section (2009): *Una vida sin violencia para mujeres y niñas. Op. Cit. Cap. 5.4. Violencia de género y derecho a la reparación*, pp. 44-49.

<sup>67</sup> Amnesty International-Spanish Section (2009): *Una vida sin violencia para mujeres y niñas. Op. Cit.* Case of Ascensión Anguita Quesada; and *Amnesty International-Spanish Section (2012): ¿Qué Justicia especializada?, Op. Cit.* Case of María (fictitious name).

<sup>68</sup> By way of example, since the Committee's opinion in the case of Ángela González Carreño v Spain (UN Doc.: CEDAW/C/58/D/47/2012, 18 July 2014), the Spanish government has been unwilling to recognize its responsibility and compensate the complainant, as recommended in the Judgment. (Response of the Ministry of Justice of the Spanish government to the Committee, 21 January 2015, provided to Amnesty International by the organization Women's Link Worldwide).

<sup>69</sup> Committee on the Elimination of Discrimination against Women. Concluding Observations. Spain. UN Doc.: CEDAW/C/ESP/CO/6, 7 August 2009, paras. 17, 18.

<sup>70</sup> Articles 4 and 7 of the *Comprehensive Law*.

<sup>71</sup> Organic Law 2/2006 of 3 May on Education.

<sup>72</sup> The Committee on the Rights of the Child welcomed the existence of this course in its 2009 Concluding Observations. Spain. UN Doc.: CRC/C/ESP/CO/3-4, of 3 November 2010, para.19.

<sup>73</sup> Organic Law 8/2013 of 9 December on improving educational quality.

<sup>74</sup> Government of Spain. *Estrategia Nacional para la Erradicación de la Violencia contra la Mujer (2013-2016)*, p.55.

<sup>75</sup> Istanbul Convention on preventing and combatting violence against women and domestic violence (Art. 12).

<sup>76</sup> Government of Spain. Office of the Prime Minister. *2012 and 2013 reports on institutional communication and advertising*.

<sup>77</sup> Council of Europe Convention on Action against Trafficking in Human Beings, ratified by Spain on 1 August 2009, and Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

<sup>78</sup> In 2009, the 1st Comprehensive Plan for combatting trafficking for sexual exploitation was approved (2009-2012). In 2010 and 2015, improvements took place in the classification of the crime of trafficking (see laws given in footnotes 33 and 34), and in 2011 the Framework Protocol for Protecting Victims from Human Trafficking was approved.

<sup>79</sup> Recommendation of the Committee in its 2009 report.

<sup>80</sup> The 1st Plan on human trafficking and the Draft 2nd Plan only deal with trafficking of people for sexual exploitation, thus failing to comply with the stipulations of the European Convention on Trafficking.

<sup>81</sup> This concern has been noted by the Group of Experts on Action against Trafficking in Human Beings. Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain. First evaluation round. GRETA(2013)16.

<sup>82</sup> *Informe de la Red española contra la trata de personas, 2015, Op. Cit.* pp.14-16.

<sup>83</sup> Group of Experts on Action against Trafficking in Human Beings, Report...2013, Op. Cit.p. 67.

<sup>84</sup> *Informe de la Red española contra la trata de personas, 2015, Op. Cit. p.16.*

<sup>85</sup> The Ombudsman considers one of the outstanding challenges in Spain to be that of establishing mechanisms for detecting and supporting children. (Ombudsman, *La trata de seres humanos en España: víctimas invisibles. Actualización de 2013*, pp. 25-27).

<sup>86</sup> Group of Experts on Action against Trafficking in Human Beings, Report...2013, Op. Cit.p. 68.

<sup>87</sup> Royal Decree-Law 16/2012 on *urgent measures to guarantee the sustainability of the National Health System and improve the quality and safety of services.*

<sup>88</sup> On 31 March, the Ministry of Health announced to the media that the government had decided to permit access on the part of irregular migrants to primary healthcare (family doctors) once more. However, Amnesty International considers this insufficient as it has not been passed by parliament.

<sup>89</sup> The situations in which access to medical care is permitted are as follows: urgent medical care and pregnancy, birth and post-partum. Children will have medical care in all cases, along with people applying for international protection and victims of human trafficking in the period of re-establishment and reflection (according to Article 59(a) of said Aliens Law).

<sup>90</sup> Royal Decree 1192/2012 of 3 August governing the status of insured people and beneficiaries of healthcare in Spain, through the National Health System, in its Fifth Additional Provision, includes among its exceptions victims of human trafficking in a period of re-establishment and reflection. This therefore covers less than 10% of potential victims, according to information from the police themselves. This exception has been criticized by organizations in the Spanish Network against Human Trafficking as being excessively restrictive and not guaranteeing access to healthcare on the part of most victims of trafficking. See [http://redcontralatrata.org/spip.php?article224&var\\_mode=calcul](http://redcontralatrata.org/spip.php?article224&var_mode=calcul)

<sup>91</sup> In the case of victims of human trafficking, only those identified as victims and who have been granted a one-month period of re-establishment and reflection have access to health services. This means that most will not be given healthcare.

<sup>92</sup> See annexed Olga case. In addition, organizations working with Amnesty International have documented cases that reveal a lack of healthcare for victims of sexual violence, with serious consequences. (Fundación Aspacia. *Entre el miedo y la desprotección Mujeres migrantes en situación irregular frente a la violencia sexual en España*, 2013).

<sup>93</sup> CEDAW General Recommendation 24 para 18.

<sup>94</sup> Amnesty International (Spanish Section): *El laberinto de la exclusión sanitaria. Vulneraciones del derecho a la salud en las Islas Baleares*, July 2013 and *Sin tarjeta, no hay derecho. Impacto en derechos humanos de la reforma sanitaria en Castilla-La Mancha y en la Comunitat Valenciana*, April, 2015.

<sup>95</sup> Ministry of Health, Social Policy and Equality. *Estrategia Nacional de Salud Sexual y Reproductiva. 2011.*

<sup>96</sup> Committee on Economic, Social and Cultural Rights (CESCR), Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant. Concluding observations of the Committee on Economic, Social and Cultural Rights. Spain, 6 June 2012, E/C.12/ESP/CO/5.

<sup>97</sup> IPPF / State Family Planning Federation (FPFE). *Barómetro del acceso de las mujeres a la libre elección de anticonceptivos modernos en 10 países de la UE. Focus: España.* 2013, p.9.

<sup>98</sup> Law 2/210 establishes sex education as a recommended but not compulsory part of formal education.

<sup>99</sup> IPPF / State Family Planning Federation (FPFE). *Barómetro del acceso de las mujeres a la libre elección de anticonceptivos modernos en 10 países de la UE. Focus: España.* 2013, p. 12.

<sup>100</sup> According to Unicef, between 2006 and 2010 the proportion of 15 to 18-year-olds who had used a condom during their last sexual encounter fell by 10 percentage points. UNICEF (2014). *La Infancia en España 2014*, p. 48.

<sup>101</sup> Organic Law 2/2010 of 3 March on sexual and reproductive health and voluntary termination of pregnancy.

<sup>102</sup> ACAI, *Mujeres de 16 y 17 años que no han podido comunicar a sus padres o tutores la interrupción de su embarazo*, November 2014.

<sup>103</sup> Proposed *Organic Law on increased protection of children and women with reduced legal capacity*, submitted by the Parliamentary Group of the Popular Party.

<sup>104</sup> <https://www.amnesty.org/es/for-media/press-releases/espana-retira-ley-antiaborto-mejor-proteccion-mujer-2014-09-24>

<sup>105</sup> During its visit to Spain, the UN Working Group on Discrimination against Women noted its concern at the effects of this legal reform. (UN Working Group on the issue of discrimination against women in law and in practice finalizes country mission to Spain, press release, 19 December 2014.

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<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15444&LangID=E - sthash.Go9HCbO4.dpuf>

<sup>106</sup> See Committee on the Elimination of Discrimination against Women. Rec. 24, Article 12 of the Convention (Women and Health) 1999. The Committee on the Rights of the Child has also criticized States for introducing or maintaining the approval of parents as a requirement for adolescents to be able to access legal and safe abortion services, linking this obstacle to high rates of unsafe abortions, e.g. Kyrgyzstan, U.N. Doc. CRC/C/15/Add.127 (2000), para. 45 and 46 , Netherlands, U.N. Doc. CRC/C/15/Add.114 (1999).

<sup>107</sup> Fictitious name. Case documented by Amnesty International in May 2015. This case was previously documented by the *Fundación para la Convivencia Aspacia* and included in its report “*Entre el miedo y la desprotección. Mujeres migrantes en situación irregular en España frente a la violencia sexual*”, published in November 2013.

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