

# ***Domestic Abuse as a Human Rights Violation & the Principle of Due Diligence: An Intersectional Approach***

*Human, Civil & Constitutional Rights Violations,  
Discrimination,  
Lack of Due Diligence,  
Corruption & Criminal Liability,  
in Cases of Domestic Abuse within Family Courts & Family Law*

**Spain: A Case Study  
by Quenby Wilcox**

*“There are criminals that proclaim to their friends “I killed her because she was mine” and nothing else, as if the thing were very reasonable, and just within all justice, and right of the property holder, that makes man the owner of a woman. But, no one, no one, not even the most macho of the super machos have the courage to confess “I kill her out of fear”, because in the end the fear of the woman to the violence of the man is the mirror of the fear of the man of the woman without fear.”*

— *Eduardo Hughes Galeano*

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## FOREWORD

It is under the following declarations that this report was prepared, and that I defend my right to challenge judicial systems and governments across the globe in their failure to protect victims of domestic abuse & violence, as well as refusal to recognize their legal obligation to do so...

*Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,*

*Reaffirming also the importance of the Universal Declaration of Human Rights and the International Covenants on Human Rights as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,*

*Stressing that all members of the international community shall fulfill, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfil this obligation according to the Charter,*

*Acknowledging the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,*

*Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,*

*Reiterating that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of those rights and freedoms, Stressing that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State,*

*Recognizing the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels.*

*Declaration on the Right and Responsibility of Individuals, Groups & Organs of Society to Promote & Protect Universally Recognized Human Rights & Fundamental Freedoms*

I further quote:

*" Perhaps the sentiments contained in the following pages, are not YET sufficiently fashionable to procure them general favour; a long habit of not thinking a thing WRONG, gives it a superficial appearance of being RIGHT, and raises at first a formidable outcry in defense of custom.*

*But the tumult soon subsides. Time makes more converts than reason. As a long and violent abuse of power, is generally the Means of calling the right of it in question (and in Matters too which might never have been thought of, had not the Sufferers been aggravated into the inquiry)...*

*Many circumstances hath, and will arise, which are not local, but universal, and through which the principles of all Lovers of Mankind are affected, and in the Event of which, their Affections are interested...*

*As no Answer hath yet appeared, it is now presumed that none will, the Time needful for getting such a Performance ready for the Public being considerably past. Who the Author of this Production is, is wholly unnecessary to the Public, as the Object for Attention is the DOCTRINE ITSELF, not the MAN. Yet it may not be unnecessary to say, That he is unconnected with any Party, and under no sort of Influence public or private, **but the influence of reason and principle.***

*Common Sense by Thomas Paine*

*Quenby Wilcox*

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***INTRODUCTION:***

***A State's Obligation  
to Protect, Defend  
and Further the  
Rights of Citizens***

# INTRODUCTION

The concept of human rights as well as a States obligations towards its people dates back to BC 539 and Cyrus the Great.

## ***Charter of the Rights of Nations Cyrus, The Great, 539 B.C.***

*...I will impose my monarchy on no nation...I never let anyone oppress any others, and if it occurs, I will take his or her right back and penalize the oppressor.*

*...I will never let anyone take possession of movable and landed properties of the others by force or without compensation... prevent unpaid, forced labor.*

*...everyone is free to choose a religion. People are free to live in all regions and take up a job provided that they never violate other's rights. No one could be penalized for his or her relatives' faults.*

*I prevent slavery and my governors and subordinates are obliged to prohibit exchanging men and women as slaves within their own ruling domains....*

[www.farsinet.com/cyrus](http://www.farsinet.com/cyrus)

Since then civilizations around the world have attempted to develop comprehensive, coherent moral and legal codes that define the rights of the individual as well as the duties, responsibilities, and obligations of its governing bodies.

The concepts of human rights within our societies today have been developed over the thousands of years through:

- Religions, such as Judaism, Hinduism, Christianity, Buddhism, Taoism, and Islam
- Philosophers, such as Grotius, Hobbes, Locke, Voltaire, Thomas Paine, John Stuart Mill, G.W.F. Hegel, Immanuel Kant Jean-Jacques Rosseau, Mary Wollstonecraft, George Mason, Francis Hutcheson, etc., etc.
- Documents, such as the Magna Carta (1215), the Petition of Right (1628), the US Constitution (1787), the French Declaration of the Rights of Man and of the Citizen (1789), and the US Bill of Rights (1791).

- Revolutionist, such as Samuel Adams, Patrick Henry, John Adams, Benjamin Franklin, Thomas Jefferson, Thomas Paine, George Washington, James Madison and Alexander Hamilton.
- And defended by Statesmen, such as Winston Churchill, Senator J. William Fulbright, Martin Luther King, Jr., Nelson Mandela, Mahatma Gandhi, Dalai Lama...

All of the ideas, principles and doctrines of the past 2000+ years have culminated in the widely accepted notions that every individual possesses certain inalienable rights, with a government's power and legitimacy emanating from the people, and there-by instilling them with an obligation to protect, defend, and respect the rights of those it governs.

These beliefs go to the very heart of what constitutes a democracy and its principles.

In the past decade international treaties and tribunals have clearly recognized violence against women in the home and community as a human rights violation. Which presents the question of what does domestic violence as a human rights violation, and a State's failure to protect victims, really mean within the context of a democracy and democratic judicial procedures?

In the past few decades, governments have made repeated promises and passed progressive gender-based laws designed to protect victims of domestic violence as well as combat discrimination against women. However, these same governments have been sorely negligent in fulfilling those promises and their obligations under these laws.

In response to this negligence, international tribunals and bodies have expanded State responsibility in protecting victims of domestic violence under the principle of due diligence, which has important implications for victims within national tribunals as well as international ones.

The prevalence of domestic violence in communities around the world is well documented, as is the widespread failure of law enforcement and judicial systems to protect the victims, as well as the detrimental

impact domestic violence has on a society at large (economically as well as socially).

As such, eradicating this violence as well as the customs and traditions which serve to encourage and sustain it, must become the number one priority of governments around the world, **not just in rhetoric, but in reality.**

No longer can judicial systems turn a blind-eye to the suffering of victims of domestic violence.

No longer can governments pass laws designed to defend the rights of victims, but fail to implement them.

No longer can State and non-State actors violate the rights of victims and due process with total impunity.

No longer can governments negate responsibility for violations of rights and due process within their borders under the pretext of ignorance, or that said violations were committed by non-State actors.

Governments, as well as societies, can no longer consider domestic violence, nor the abuses of power within their communities, a “private matter” in which they have no concern or obligation.

The rampant violations of rights and lack of due process within family courts is more than just a simple “crisis”. **It is a problem of global proportions, with astronomical consequences for our societies, and must be addressed IMMEDIATELY by the government officials and agencies that are empowered and entrusted to protect and defend the rights of citizens.**

**The obligation of governments to prevent the violations of the rights of its citizens, and those who reside within its borders, go to the very heart of the role of governments within a democracy.**

***I cite the Declaration of Independence, Declarations of the Rights of Man and of the Citizen, and Spanish Constitution.***



## ***The Declaration of Independence - 1776***

*We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.*

## ***Declaration of the Rights of Man and of the Citizen - 1789***

*The representatives of the French people... believing that the ignorance, neglect, or contempt of the rights of man are the sole cause of public calamities and of the corruption of governments, have determined to set forth in a solemn declaration the natural, unalienable, and sacred rights of man, in order that this declaration, being constantly before all the members of the Social body, shall remind them continually of their rights and duties.*

## ***Spanish Constitution - 1978***

*The Spanish Nation, desiring to establish justice, liberty, and security, and to promote the well-being of all its members, in the exercise of its sovereignty, proclaims its will to:*

*Guarantee democratic coexistence within the Constitution and the laws, in accordance with a fair economic and social order.*

*Consolidate a State of Law which ensures the rule of law as the expression of the popular will.*

*Protect all Spaniards and peoples of Spain in the exercise of human rights, of their culture and traditions, languages and institutions.*

*Promote the progress of culture and of the economy to ensure a dignified quality of life for all. Establish an advanced democratic society,*

*and Cooperate in the strengthening of peaceful relations and effective cooperation among all the peoples of the earth.*

***Domestic Abuse  
& Discrimination  
Against Women  
as Human Rights  
Violations***

## **Spain: A Case Study**

### **Violence & Discrimination Against Women as a Human Rights Violations & the Principle of Due Diligence**

There is perhaps no other country in the world that's Constitution, progressive gender-based laws, ratification of international conventions, and rhetoric of governments better provide for the eradication of domestic violence and abuse as well as abolition of discrimination against women than in Spain.

However, due to the long-standing traditions of oppression, domination, nepotism, and corruption, which serve to encourage and sustain abuses of power, within the community as well as the home, efforts to protect and defend the rights of women are ineffective.

The examination of domestic violence in Spain as well as their long-standing discriminatory traditions and customs provide a perfect opportunity to understand why and how societies, and their governments, are failing to protect the rights of victims.

Up until the death of Franco and installation of a Constitutional Monarchy, the Spanish people lived under a highly oppressive government, isolationist policies and a rigid, feudalistic system, which promoted not only widespread poverty but extensive corruption.

Women were afforded no rights under the law, in their communities or homes. Few worked outside of the home, with the majority financially dependent upon their husbands, who were at liberty to dictate all aspects of family life and decisions.

In the past 30 years Spain has experienced enormous social and economic change, under a progressive democracy however, the underlying traditions, beliefs and practices which were used by government officials and antiquated social structures are still omnipresent in its institutions and society at large.

While this study examines the dynamics which serve to perpetuate and encourage gender violence in Spain, these forces are the same as those found within societies around the world. **And, in order to effectively combat and eradicate domestic violence within our societies these forces must be recognized and understood.**

## ***"Good Practices in Combating and Eliminating Violence Against Women"***

*by the United Nations Division for the Advancement of Women 2005*

**"The failure of justice systems across the globe to effectively charge, investigate and prosecute human rights violations against women and girls has resulted in a system of global impunity for perpetrators, which must be urgently addressed....**

Law and legal systems reflect wider cultural values, and in this respect they have been implicated as structures that have not only reflected, but also re-created, gender-based power relations.

As a consequence, legal reform has been a core strategy in efforts to create gender equality. **Legal strategies with respect to violence against women need to take account of the explicit and implicit ways law and its implementation has failed women, leaving them unprotected and with no route to redress and justice....**

**Discrimination is a cause of, and makes women more vulnerable to, violence.** A form of protection, therefore, is the **repeal of all types of discriminatory laws including those relating to inheritance rights, divorce, citizenship, sexual and reproductive rights, division of matrimonial property and employment....**

**Once laws have been enacted there is a need for ongoing independent institutional mechanisms for oversight. These can take the form of an Ombudsperson, a national Rapporteur or gender equality machinery. The fact that violence against women occurs in cross-border contexts also invites the development of cross-border cooperation....**

Too often **inter-agency work at local levels is little more than "window-dressing"** meetings, roundtables and even entire projects which result in reports, workshops or conferences, **but create minimal change in the support, safety and services provided for victims/survivors, the sanctions applied to perpetrators or the efforts aimed at prevention.**

A clear leadership role for women's specialist services should be built into all inter-agency projects alongside a linked reference **group of survivors, or another feedback mechanism, to ensure accountability and monitoring...**

Human rights standards are the bare minimum of what every human being should expect to enjoy in their daily lives. They provide internationally recognized and legally enforceable benchmarks.... **Adherence to international human rights instruments, without reservations, strengthens women's enjoyment of human rights and fundamental freedoms, including protection from gender-based violence. Such instruments include:**

- International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights;
- Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol
- International Convention on the Elimination of All Forms of Racial Discrimination;
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Convention on the Rights of the Child;
- The gender provisions of the Rome Statute of the International Criminal Code
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- Convention relating to the Status of Refugees and the protocol relating to the Status of Refugees;
- United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;
- Security Council Resolution 1325 (2000) on women, peace and security;
- Declaration on the Elimination of Violence against Women:

***Broken Bodies, Shattered Minds***  
***Torture and Abuse of Women***  
 by Amnesty International 2001)

**Torture by private individuals**

**International human rights treaties not only regulate the conduct of states and set limits on the exercise of state power; they also require states to take action to prevent abuses of human rights.** States have a duty under international law to take positive measures to prohibit and prevent torture and to respond to instances of torture, regardless of where the torture takes place and whether the perpetrator is an agent of the state or a private individual.

The International Covenant on Civil and Political Rights requires states to “ensure” freedom from torture or ill-treatment. The UN Human Rights Committee, the expert body that monitors implementation of the Covenant, has stated: **“It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7 [torture and ill-treatment], whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity”**.<sup>4</sup>...

**UN Convention against Torture**

Article 1: “For the purposes of this Convention, the term **‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a**

third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

The UN Convention against Torture establishes the responsibility of the state for acts of torture inflicted “at

third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

The UN Convention against Torture establishes the responsibility of the state for acts of torture inflicted “at

the instigation of or with the consent or acquiescence of a public official”. The European Court of Human Rights has affirmed that states are required to take measures to **ensure that individuals are not subjected to torture or ill-treatment, including by private individuals.**

**In 1998, the Court found that the United Kingdom had violated Article 3 of the European Convention on Human Rights prohibiting torture and ill-treatment,** because its domestic law did not provide adequate protection to a nine-year-old boy beaten with a cane by his stepfather.<sup>5</sup>

Human rights treaties are “living instruments”, which evolve and develop over time. Decisions by the inter-governmental bodies which monitor states’ compliance with international treaties, as well as by national courts, continually refine and develop the interpretation of what constitutes torture.<sup>6</sup> Largely thanks to the efforts of the worldwide women’s movement, **there is wider understanding that torture includes acts of violence by private individuals in certain circumstances.**

Acts of violence against women constitute torture for which the state is accountable when they are of the nature and severity envisaged by the concept of torture in international standards and the state has failed to fulfill its obligation to provide effective protection... to fulfill its obligation to provide effective protection...

### Severity of the harm

**The severity of the harm inflicted upon women by private individuals can be as damaging as that inflicted on women who are tortured by agents of the state.** The long-term effects of repeated battering in the home are physically and psychologically devastating. Women are traumatized and injured by rape, wherever the crime takes place. The medical consequences include psychological trauma, wounds, unwanted pregnancies, infertility and life-threatening diseases...

### Intentionally inflicted

Many abuses in the family or community are intentionally inflicted. In addition, such abuses are often inflicted for similar reasons to torture in custody. Torture in custody is often used not only to extract confessions but also to instil profound dread into victims, to break their will, to punish them and to demonstrate the power of the perpetrators. Similar purposes characterize acts of torture in the family or the community. **The perpetrators may seek to intimidate women into obedience or to punish women for allegedly bringing shame on relatives by their disobedience...**

### State responsibility

The perpetrators of violence against women in the home and community are private individuals, but this does not necessarily mean that the state escapes responsibility for their actions. **Under international law, the state has clear responsibility for human rights abuses committed by non-state actors — people and organizations acting outside the state and its organs.**

Internationally, the state is accountable in a number of specific ways. It can be deemed responsible for carrying out the human rights violation because of a connection with the non-state actors, or it can be responsible for its failures to take reasonable steps to prevent or respond to an abuse.

The way in which the state is responsible is categorized in different ways. These include complicity, consent or acquiescence, and failure to exercise due diligence and to provide equal protection in preventing and punishing such abuses by private individuals. In all these circumstances, the state is allowing violence against women to continue, and in this report the term **"failure of state protection" is used to cover complicity, consent, acquiescence and lack of due diligence.**

### Due diligence

The concept of due diligence describes the threshold of effort which a state must undertake to fulfill its responsibility to protect individuals from abuses of their rights. The Special Rapporteur on violence against women has held that **"...a State can be held complicit where it fails systematically to provide**

**protection from private actors who deprive any person of his/her human rights.”**<sup>7</sup> Due diligence includes taking effective steps to prevent abuses, to investigate them when they occur, to prosecute the alleged perpetrator and bring them to justice in fair proceedings, and to **ensure adequate reparation, including compensation and redress**. It also means ensuring that justice is dispensed without discrimination of any kind.

**The standard of due diligence was articulated and applied by a regional human rights court, the Inter-American Court of Human Rights.** The Court stated:

**“An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention [American Convention on Human Rights].”**<sup>8</sup>

The Court stated: “The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.”<sup>9</sup>...

...State inaction can be seen in a **range of different areas. These include inadequate preventive measures; police indifference to abuses; failure to define abuses as criminal offences; gender bias in the court system; and legal procedures which hamper fair criminal prosecution.**

**Many women victims of violence find access to legal redress and reparations difficult, if not impossible. Impunity and indifference habitually surround many acts of violence against women. Focusing on when the state fails to protect people from harm by others, and how it can be held to share responsibility for the harm, does not ignore the original abuser’s responsibility.**

**In every case, the direct perpetrators must be fairly tried and punished for their crimes. AI considers that acts of violence against women in the home or the community constitute torture for which the state is accountable** when they are of the nature and severity envisaged by the concept of torture in international standards and the state has failed to fulfill its obligation to provide effective protection.



# ***RIGHTS OF WOMEN:***

## ***PROVISIONS FOR ELIMINATION OF VIOLENCE AGAINST WOMEN & DICRIMINATION AGAINST WOMEN UNDER THE LAW***

***The Spanish Constitution  
The Spanish Civil Code,  
European Contract Law,  
Organic Act on Integrated Protection  
Measures Against Gender Violence,  
the Equality Act,  
CEDAW, inter alia***

# ***SPAIN***

# **Spanish Constitution 1978**

The Spanish Nation, desiring to establish justice, liberty, and security, and to promote the well-being of all its members, in the exercise of its sovereignty, proclaims its will to:

- Guarantee democratic coexistence within the Constitution and the laws, in accordance with a fair economic and social order.
- Consolidate a State of Law which ensures the rule of law as the expression of the popular will.
- Protect all Spaniards and peoples of Spain in the exercise of human rights, of their culture and traditions, languages and institutions.
- Promote the progress of culture and of the economy to ensure a dignified quality of life for all.
- Establish an advanced democratic society &
- Cooperate in the strengthening of peaceful relations and effective cooperation among all the peoples of the earth.

## **Preliminary Title**

### **Section 1**

- (1) Spain is hereby established as a social and democratic State, subject to the rule of law, which advocates freedom, justice, equality and political pluralism as highest values of its legal system.
- (2) National sovereignty belongs to the Spanish people, from whom all state powers emanate.

### **Section 9**

Citizens & public authorities are bound by the Constitution & other legal provisions.

- (2) It is the responsibility of the public authorities to promote conditions ensuring that freedom and equality of individuals and of the groups to which they belong are real and effective, to remove the obstacles preventing or hindering their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life.
- (3) The Constitution guarantees the principle of legality, the hierarchy of legal provisions, the publicity of legal statutes, the non-retroactivity of punitive provisions that are not favourable to or restrictive of individual rights, the certainty that the rule of law shall prevail, the accountability of public authorities, and the prohibition of arbitrary action of public authorities.

## **Part I**

## **Fundamental Rights and Duties**

### **Section 10**

- (1) The dignity of the person, the inviolable rights which are inherent, the free development of the personality, the respect for the law and for the rights of others are the foundation of political order and social peace.

- (2) Provisions relating to the fundamental rights and liberties recognized by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Spain. **(Convention on the Elimination of Violence Against Women (CEVCM), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Declaration of Basic Principle of Justice for Victims of Crimes and Abuses of Power (DJVCAP), Convention on the Rights of Children (CRC))**

### **Section 13**

- (1) Aliens in Spain shall enjoy the public freedoms guaranteed by the present Part, under the terms to be laid down by treaties and the law.

## **CHAPTER 2**

### **Rights and Freedoms**

#### **Section 14**

Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.

#### ***Fundamental Rights and Public Freedoms***

#### **Section 15**

Everyone has the right to life and to physical and moral integrity, and under no circumstances may be subjected to torture or to inhuman or degrading punishment or treatment.

#### **Section 17**

- (1) Every person has the **right to freedom and security**. No one may be deprived of his or her freedom except in accordance with the provisions of this section and in the cases and in the manner provided for by the law.

#### **Section 18**

- (1) **The right to honour, to personal and family privacy and to the own image is guaranteed.**
- (3) Secrecy of communications is guaranteed, particularly regarding postal, telegraphic and telephonic communications, except in the event of a court order.

#### **Section 19**

Spaniards have **the right to freely choose their place of residence, and to freely move about within the national territory.**

#### **Section 24**

- (1) **All persons have the right to obtain effective protection from the judges and the courts in the exercise of their rights and legitimate interests, and in no case may there be a lack of defense.**

## Spanish Civil Code

### On Marriage – The Rights and Responsibilities of the Partners

#### Article 66

**The husband and wife are equal in their rights and responsibilities.**

#### Article 67

**The husband and wife must respect and assist each other and act in the best interest of the family.**

#### Article 68

The couple is obliged to live together, remain faithful to each other, and assist each other.

#### Article 71

Neither of partner can attribute the representation of the other without previously it having been accorded.

### Matrimonial Common Property

#### Article 1344

Matrimonial common property are those which the husband and wife have acquired by either partner and will be divided in half upon dissolution of said property.

#### Article 1347

Common property assets are:

- 1º That which has been obtained for the work or industry of either partner.
- 2º The fruits, rents or interests that is produced by common and separate assets.
- 3º That which has been acquired for good and valuable consideration of the common wealth, whether acquired for the "community" or for only one of the spouses.
- 5º Companies and its establishments started during the marriage for one or the other spouses at the expense of common property assets.

#### Article 1349

The right of usufruct of a pension that belongs to one of the spouses, forms a part of individual assets, but the fruits, pensions or accrued interest during the marriage will be common assets.

#### Artículo 1371

The loss or sums paid during the marriage by one of the spouses in any sort of gambling will not diminish his or her part of common assets, **unless the sum lost can be considered immoderate in relation to the circumstance of the family.**

### **Artículo 1375**

In absence of a marriage contract, **the management and disposition of common assets correspond to both of the spouses.**

### **Dissolution of Marriage Article 97**

The spouse to whom the separation or divorce produces an economic imbalance in relation to the position of the other, which involves a worsening of the situation he or she had during the marriage, has a right to maintenance which shall be fixed in the judicial decree, taking into account, among other, the following circumstances:

- The agreements that the spouses may have reached. Their age and state of health.
- Professional qualifications and the probabilities of gaining employment.
- Past and future dedication to the family.
- Collaboration, by his or her own labour, with the commercial, industrial, or professional activities of the other spouse.
- The duration of the marriage and their marital life.
- The eventual loss of a right to a pension
- The wealth and economic means and necessities of both spouses

## **European Contract Law**

### **MARRIAGE – A CONTRACTUAL AGREEMENT**

#### **Article 1.103**

##### **Usages and Practices**

- (1) The parties are bound by any usage to which they have agreed and by any practice they have established between themselves.
- (2) The parties are bound by any usage which would be considered generally applicable by persons in the same situation as the parties, except where the application of such usage would be unreasonable.

#### **Article 1.104**

##### **Interpretation and Supplementation**

- (1) These Principles should be interpreted and developed in accordance with their purposes. In particular, regard should be had to the need to promote good faith and fair dealing, certainty in contractual relationships and uniformity of application.

#### **Article 1.105**

##### **Meaning of Terms**

In these Principles, except where the context otherwise requires:

- (1) "act" includes omission;
- (2) "court" includes arbitral tribunal;
- (3) an "intentional" act includes an act done recklessly;
- (4) "non-performance" denotes any failure to perform an obligation under the contract, whether or not excused, and includes delayed performance, defective performance and failure to co-operate in order to give full effect to the contract.

**Article 1.106**  
**Good Faith and Fair Dealing**

- (1) In exercising his rights and performing his duties each party must act in accordance with good faith and fair dealing.
- (2) The parties may not exclude or limit this duty.

**Article 1.107**  
**Duty to Co-operate**

Each party owes to the other a duty to co-operate in order to give full effect to the contract.

**Article 1.108**  
**Reasonableness**

Under these Principles reasonableness is to be judged by what persons acting in good faith and in the same situation as the parties would consider to be reasonable. In particular, in assessing what is reasonable in the nature and purpose of the contract, the circumstances of the case, and the usages and practices of the trades or professions involved should be taken into account..

**Article 1.109**  
**Imputed Knowledge and Intention**

- (1) A party is to be treated as having known or foreseen a fact, or as being in a position where he should have known or foreseen it, if any person for whom he was responsible knew or foresaw the fact, or should have known or foreseen it, unless that person was not involved in the making or performance of the contract.
- (2) A party is to be treated as having acted intentionally or with gross negligence or not in accordance with good faith and fair dealing if a person to whom he entrusted performance or who performed with his assent so acted. **Article 4.501**

**Right to Damages**

- (1) The aggrieved party is entitled to damages for loss caused by the other party's non-performance which is not excused under Article 3.108.
- (2) The loss for which damages are recoverable includes:
  - (a) non-pecuniary loss; and
  - (b) future loss which is reasonably likely to occur.

**Article 4.502**  
**General Measure of Damages**

The general measure of damages is such sum as will put the aggrieved party as nearly as possible into the position in which he would have been if the contract had been duly performed. Such damages cover the loss which the aggrieved party has suffered and the gain of which he has been deprived.

## **Organic Act 1/2004 of 28 December on Integrated Protection Measures Against Gender Violence**

Gender violence is not a problem confined to the private sphere. On the contrary, it stands as the most brutal symbol of the inequality persisting in our society. It is violence directed against women for the mere fact of being women; considered, by their aggressors, as lacking the most basic rights of freedom, respect and power of decision.

Article 15 of our Constitution recognises the right of all people to life and to physical and moral integrity, stating that they may in no case be subjected to torture or to inhuman or degrading punishment or treatment. Our Magna Carta goes on to state that these rights are binding on all public authorities, and that their exercise may only be regulated by law.

The United Nations Organisation at its 4th World Conference in 1995 affirmed that violence against women was an obstacle to the achievement of the objectives of equality, development and peace and that it violated and impaired the enjoyment of human rights and fundamental freedoms.

It also defined such violence in a broad sense as an expression of the historically unequal relations of power between men and women. There is now even a technical definition of the battered woman syndrome which comprises "the aggressions suffered by women as a result of the sociocultural constraints acting on the male and female sex, placing them in a position of subordination to men and expressed in the three basic settings of personal relations; abuse within the partner relationship, sexual aggression in social life and harassment at work".

Aggressions against women have a particular incidence in the reality of Spain, in that we now have a greater awareness than before about their repercussions, thanks largely to the work of women's organisations in their fight against all forms of gender violence. They no longer constitute an "invisible crime" but are the object of collective rejection and a clear cause of social alarm.

The public authorities cannot remain indifferent to gender violence, which stands as one of the most flagrant attacks on the basic rights such as freedom, equality, life, integrity and non discrimination defended by our Constitution. These same public authorities are obliged under the terms of article 9.2 of the Constitution, to deploy positive action measures to make these rights real and effective, removing any obstacles which prevent or impede their full enjoyment...

This Act will take up the recommendations of international bodies on providing a global response to the violence exercised against women. We can quote in this regard the:

- 1979 Convention on the elimination of all forms of discrimination against women; the United National Declaration on eradicating violence against women, issued in December 1993 by the General Assembly;
- the resolutions of the last World Conference on Women held in Beijing in September 1995;
- resolution WHA49.25 of the World Health Assembly, issued by the WHO in 1996, declaring violence a priority public health problem;
- the European Parliament report of July 1997;
- the resolution of the United Nations Human Rights Commission of 1997;
- the declaration of 1999 as the European Year for Action to Combat Violence against Women, among others.

Just recently, Decision 803/2004/EC of the European Parliament approved a community programme of action (2004-2008) to prevent and fight violence against children, young people and women and protect its victims and groups at risk (the Daphne II programme), which sets out the stance and strategy on this issue of the representatives of Union citizens.

### **Article 1. Purpose of the Act**

1. The purpose of this Act is to combat the violence exercised against women by their present or former spouses or by men with whom they maintain or have maintained analogous affective relations, with or without cohabitation, as an expression of discrimination, the situation of inequality and the power relations prevailing between the sexes.
2. The present Act establishes integrated protection measures whose goal is to prevent, punish and eradicate this violence and lend assistance to its victims.
3. The gender violence to which this Act refers encompasses all acts of physical and psychological violence, including offences against sexual liberty, threats, coercion and the arbitrary deprivation of liberty.

### **Article 2. Guiding principles**

This Act deploys a comprehensive battery of measures in pursuit of the following ends:

- a) Strengthen preventive awareness among citizens, providing the public authorities with effective instruments to fulfil this goal in the educational, social services, health, advertising and media spheres.
- b) Establish the rights of women suffering gender violence, which shall be enforceable through the public authorities, to ensure them rapid, transparent and effective access to the services provided.
- c) Improve the provision of information, care, crisis, support and integrated recovery services at least to the minimum standards required under the objectives of this Act, and establish a system to effectively coordinate



- existing services at regional and municipal levels.
- e) Guarantee economic rights for women suffering gender violence in order to facilitate their social integration.
  - f) Establish a comprehensive system of institutional protection whereby the General State Administration, through the Special Government Delegation on Violence against Women in conjunction with the State Observatory on Violence against Women, promotes public policies designed to offer safeguards to the victims of gender violence.

### **Article 18**

#### ***The right to information.***

1. Female victims of gender violence have the right to receive comprehensive information and advice adapted to their personal circumstances, through the services, agencies and offices provided by the public authorities.

The said information shall include the measures envisaged in this Act for their protection and security, and the rights and assistance provided therein, along with details on the location of care, crisis, support and integrated recovery services. ..

### **Article 19**

#### ***The right to integrated social assistance***

1. The female victims of gender violence are entitled to receive care, crisis, support and refuge, and integrated recovery services. The organisation of such services by the Autonomous Communities and local authorities shall reflect the principles of 24-hour attention, urgent action, specialised care and professional multidisciplinary.
2. Multidisciplinary care shall in all cases involve:
  - a) Information to victims
  - b) Psychological assistance
  - c) Social assistance
  - d) Monitoring of women's rights claims
  - e) Educational support to the family unit
  - f) Preventive training in the values of equality conducive to their personal development and their skilling in non-violent conflict solving.
  - g) Support to employment training and insertion.
3. Services shall be organised to ensure the effectiveness of their delivery by means of staff specialisation and one-stop capabilities.
4. Such services will act in coordination with each other and in collaboration with the Police, Violence against Women Judges, the health services and the institutions responsible for providing victims with legal counsel, in the corresponding geographical zone. They may also apply to the Judge for any emergency measures they deem necessary.
5. Minors under the parental authority, guardianship or custody of the victim shall also be entitled to receive integrated assistance through these services. Social service departments should have staff qualified in dealing with minors, in order to prevent or avoid situations which might cause mental or physical harm to minors living in a family setting where there is gender violence.

6. The cooperation instruments and procedures between the General State Administration and the Autonomous Communities on matters regulated herein shall include a commitment by the General State Administration to provide funding earmarked for the provision of these services.
7. Equality bodies shall input to and evaluate the programmes and actions undertaken and issue recommendations for their improvement.

#### **Article 20**

##### ***Legal aid***

1. Women victims of gender violence who prove they have insufficient means to initiate legal action, as stipulated in Act 1/1996 of 10 January on Free Legal Aid, have the right to be defended and represented free of charge by a Lawyer or Court Representative in all administrative processes and proceedings that ensue directly or indirectly from the violence suffered.

#### **Article 31**

##### ***National law enforcement and security agencies***

1. The Government shall set up dedicated units within the national law enforcement and security agencies specialising in the prevention of gender violence and supervising the enforcement of the legal measures adopted.
2. In order to maximise the effectiveness of protection measures, the Government will take action to ensure that local police forces work along with the national law enforcement and security agencies, within their existing collaborative framework, to ensure the correct enforcement of the measures ordered by the courts which figure among those envisaged in this Act or in article 544 *bis* of the Criminal Procedure Act or article 57 of the Criminal Code.
3. The national law enforcement and security agencies shall be guided in their actions by the Protocol for National Law Enforcement and Security Agency Action and Coordination with the Courts for protection against gender and domestic violence.
4. The terms of this article shall apply in the Autonomous Communities running police forces entrusted with the protection of people and property and the preservation of law and order in their respective territories, as provided in their Statutes, in Organic Act 2/1986 of 13 March on Law Enforcement and Security Agencies and in their police regulations; all this towards the common goal of maximizing victim protection.

#### **Article 32**

##### ***Collaboration plans***

1. The public authorities will draw up collaboration plans which ensure the organised rollout of initiatives for the prevention and prosecution of gender violence and the care of its victims, which should involve the health authorities, the judicial authorities, national law enforcement and security agencies, social services departments and equality organisations.

2. Protocols will be drawn up in implementation of these plans whose procedures will ensure a global, integrated effort by the various authorities and services involved, and secure the evidence stage during the proceedings under way.
3. The authorities with health competences shall promote the application, regular update and dissemination of protocols setting out uniform procedures for healthcare providers, in both the public and private domain; in particular, the Protocol approved by the Interterritorial Council of the National Health Service.

These protocols will facilitate the prevention and early detection of gender violence and ongoing assistance to women suffering or at risk of suffering it. As well as setting out the procedures to be followed, protocols should make express reference to referrals to the judicial authorities where there is evidence or a reasonable suspicion of physical or mental damage caused by aggressions or abuse.

4. In implementing the actions prescribed herein, particular attention shall be given to the situation of women whose personal and/or social circumstances put them at greater risk of suffering gender violence, or

## ***Constitutional Act 3/2007***

### ***Effective Equality Between Women and Men***

**Article 14 of the Spanish Constitution proclaims the right to equality and non-discrimination on the grounds of sex.**

Article 9.2, in turn, ratifies public authorities' obligation to further conditions that will ensure that individuals, and the groups of which they form a part, **enjoy real and effective equality.**

Equality between women and men is a universal legal principle acknowledged in a number of international texts on human rights, most prominently the Convention on the Elimination of all Forms of Discrimination against Women adopted by the United Nations General Assembly in December in 1979 and ratified by Spain in 1983. In this vein, significant advancements have been introduced by monographic world conferences, such as Nairobi 1985 and Beijing 1995.

Equality is likewise a fundamental principle in the European Union. Since the entry into force of the Treaty of Amsterdam on 1 May 1999, equality between women and men and the elimination of the inequalities between them constitute an objective that must be integrated into all the policies and actions undertaken by the Union and its members.

...Full recognition of formal equality before the law, while indisputably constituting a decisive step, has proved to be insufficient....a need is identified for legislative action geared to combating all subsisting direct or indirect expressions of discrimination on the grounds of sex and to furthering true equality between women and men by removing the obstacles and social stereotypes that hinder its attainment.

Consequent to our body of constitutional law, this demand embodies a genuine right to which women are entitled, but at the same time it is an element that will enrich Spanish society itself by contributing to economic development and a rise in employment levels.

Moreover, special consideration is afforded in the Act to concerns around double discrimination and the specific difficulties encountered by women in particularly vulnerable situations: members of minorities or immigrant groups and women with disabilities...

....Attention should also be drawn to the fact that in order to attain such real and effective equality between women and men, the Act provides for a general framework for the adoption of so-called positive action. In this regard it mandates all public authorities to reverse verifiable *de facto* situations of inequality that cannot be remedied by the mere formulation of the principle of legal or formal equality. And where such action may involve the formulation of an unequal right in women's favour, precautionary and conditioning requisites are established to ensure its constitutional legitimacy.

## **Purpose and scope**

### **Article 1**

#### **Purpose of the Act.**

Women and men are equal in human dignity, equal in rights and duties. The purpose of this Act is to ensure equal treatment and opportunities for women and men, in particular via the elimination of discrimination against women of whatsoever circumstances or background and in all areas of life, specifically in the political, civil, occupational, economic, social and cultural domains, so as to build a more democratic, fair and solidary society, pursuant to Articles 9.2 and 14 of the Constitution.

To this end, the Act establishes the principles governing the action of public authorities, regulates natural and corporate persons' public and private rights and duties and lays down measures designed to eliminate and correct all forms of discrimination on the grounds of sex in the public and private sectors.

### **Article 2**

#### **Scope**

1. All persons possess the rights deriving from the principle of equal treatment and the prohibition of discrimination on the grounds of sex.
2. The obligations laid down in this Act will be applied to all natural and corporate persons present or acting on Spanish soil, regardless of their nationality, registered address or residence.

### **Article 3**

#### **The principle of equal treatment for women and men**

The principle of equal treatment for women and men means the absence of all direct or indirect discrimination on the grounds of sex, in particular as regards maternity, the assumption of family obligations or marital status.

### **Article 4**

#### **Integration of the principle of equality in the interpretation and enforcement of laws**

Equal treatment and opportunities for women and men is a principle that informs the body of law and, as such, will be integrated and observed in the interpretation and enforcement of legislation.

### **Article 5**

#### **Equal treatment and opportunities in the access to employment, vocational training and promotion, and working conditions**

The principle of equal treatment and opportunities for women and men, applicable in the domain of private and public employment, will be guaranteed as provided in the applicable legislation in: **access to employment, including self-employment**, vocational training, and promotion; **working conditions including remuneration and dismissal**; and affiliation with and participation in trade union and employers' organizations or any association whose members practise a specific profession, including the benefits granted thereby.

Difference of treatment based on a sex-related characteristic will not constitute discrimination in access to employment, including the necessary training, where, in light of the nature of the particular tasks concerned or the context in which they are performed, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

### **Article 6**

#### **Direct and indirect discrimination**

1. Direct discrimination is regarded to be a situation where one person is treated less favourably on the grounds of sex than another is, has been or would be treated in a comparable situation.
2. Indirect discrimination is regarded to be a situation where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.
3. In whatsoever event, instructions to directly or indirectly discriminate on the grounds of sex will be regarded to be discriminatory.

**Article 7**  
**Sexual harassment and harassment**  
**on the grounds of sex**

1. Without prejudice to the provisions of the Penal Code, for the intents and purposes of this Act sexual harassment is any form of verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, degrading, or offensive environment.
2. Harassment on the grounds of sex is any behaviour prompted by a person's sex with the purpose or effect of violating his or her dignity, creating an intimidating, degrading or offensive environment.
3. Sexual harassment and harassment on the grounds of sex will be considered to constitute discrimination under any and all circumstances.
4. The conditioning of a right or expectation of a right to the acceptance of a situation constituting sexual harassment or harassment on the grounds of sex will likewise be regarded to be discrimination on the grounds of sex.

**Article 8**  
**Discrimination on the grounds of**  
**pregnancy or maternity**

Any less favourable treatment of women relating to pregnancy or maternity constitutes direct discrimination on the grounds of sex.

**Article 9**  
**Indemnity to reprisal**

Discrimination on the grounds of sex is also regarded to exist in the event of any adverse treatment of or negative effect suffered by persons owing to the lodging of a complaint, claim, accusation, suit or appeal of any nature intended to prevent their discrimination or demand effective compliance with the principle of equal treatment for women and men.

**Article 10**  
**Legal consequences of discriminatory conduct**

Any act or clause in legal transactions constituting or causing discrimination on the grounds of sex will be considered to be null and void and will give rise to liability both through a system of redress or indemnity that will be real, effective and proportional to the injury suffered and, as appropriate, through an effective system of deterrents consisting in penalties to prevent discriminatory conduct.

**Article 11**  
**Positive action**

1. In order to ensure the effectiveness of the constitutional right to equality, public authorities will adopt specific measures favouring women to correct situations of obvious *de facto inequality with respect to men. Such measures, which will be applicable while the situation subsists, must be reasonable and proportional to the objective pursued in each case.*
2. Private natural and corporate persons may also adopt such measures under the terms provided in the present Act.

of sex, it will be incumbent upon the defendant to prove the absence of discrimination in the measures adopted and their proportionality.

For the intents and purposes of the provisions of the preceding paragraph, where deemed useful or relevant, judicial bodies may request a report or opinion from the competent public bodies, *ex parte*.

2. The provisions of the preceding item will not be applicable to penal proceedings.

## **Article 14**

### **General criteria governing public authority action**

For the intents and purposes of this Act, the general criteria governing public authority action will be:

1. Commitment to the effectiveness of constitutional law on equality between women and men.
2. Integration of the principle of equal treatment and opportunities in economic, labour, social, cultural and artistic policy as a whole to prevent occupational segregation and eliminate differences in remuneration, as well as to fuel female entrepreneurial growth in all the domains covered by such policies as a whole, and reevaluate women's work, including housework.
3. Partnering and cooperation among the central, regional and local governments and the application of the principle of equal treatment and opportunities.
4. Balanced participation of women and men in lists of candidates to public office and decision-making.
5. Adoption of the necessary measures to eradicate gender violence, family violence and all forms of sexual harassment and harassment on the grounds of sex.
6. **Consideration of the specific difficulties encountered by women who are members of particularly vulnerable communities, such as women members of minorities or immigrant groups**, girls, women with disabilities and elderly women, widows and victims of gender violence, for whom the public authorities may also adopt positive action measures.
7. **Protection of maternity**, focusing particularly on society's assumption of the effects of pregnancy, childbirth and breastfeeding.
8. Establishment of measures that ensure the reconciliation of women's and men's working and personal and family lives and **furtherance of co-responsibility for housework and family care**.
9. Furtherance of instruments for cooperation among the central, regional and local governments and the social partners, women's associations and other private institutions.
10. Furtherance of the effectiveness of the principle of equality between women and men in interpersonal relationships.
12. All the points enumerated in this article will likewise be fostered and integrated in Spanish international development policy.

## **Article 15**

### **The cross-sectional approach to the principle of equal treatment for women and men**

The principle of equal treatment and opportunities for women and men will cross-sectionally inform the action taken by all public authorities. ...

## **Convention on the Elimination of All Forms of Discrimination against Women CEDAW**

*"...the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields "*

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs...

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,



Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

### ***Article 1***

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

### ***Article 2***

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

### ***Article 4***

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no

1. way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.
2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

### **Article 5**

States Parties shall take all appropriate measures:

- (a) 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;
- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

### **Article 6**

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

### **Article 11**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
  - (a) The right to work as an inalienable right of all human beings;
  - (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
  - (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
  - (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
  - (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
  - (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

### **Article 16**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

### **Article 13**

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights...

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;

### **Article 15**

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

***SOCIAL  
NORMS & CUSTOMS  
WHICH  
ENCOURAGE, SUPPORT,  
AND SUSTAIN VIOLENCE  
AND DISCRIMINATION  
AGAINST WOMEN***

## Gender-Bias and Discrimination

### Understanding the Dynamics

In order to confront and solve a problem, one must first understand its various sources and roots from an intersectional perspective.

In understanding gender-bias and discrimination it is important to distinguish between “bias” and “discrimination”. Bias is a positive or negative preconceived notion, idea or belief about someone or something. Discrimination is an act or behavior which disfavors a person or group over another person or group. Most discrimination is based on race, religion, sexual-orientation, or gender, with gender being the most common as it covers half of the planets population.

As with all biases and cases of discrimination, the supporting beliefs are so deeply entrenched in ones value-system they are not considered discriminatory or unfair. The justification is always “But, that is always how its been done” or “It is what it is”, with no question of the morals or ethics involved.

Conventional wisdom believes that women in the “west” are liberated while women in the “east” are oppressed. However, as the reports presented in this study demonstrate, the norms, traditions, customs and beliefs which sustain oppression and discrimination against women are the same in all societies, as well as omni-present these societies. Admittedly, some are more oppressive of women than others, but this should be regarded as a continuum rather than two polarized extremes.

Efforts towards equal opportunities in education and the work-place family-planning, and domestic abuse publicity campaigns while an important first step, cannot eradicate thousands of years of biases and discriminatory customs. **In order to do this, these long-standing traditions must be acknowledged, examined, and publically denounced and sanctioned, with perpetrators being prosecuted and sanctioned to the fullest extent of the law.**

No more are the attitudes, beliefs and customs which discriminate against women more obvious than in court systems, at times with

deadly consequences for them and their children.

In cases of domestic abuse, or any abuse of power, the importance of covering up for the abuse and silencing the victim is so deeply entrenched in our cultures that few people are even conscious of their complicity to the situation.

Perhaps, one of the most detrimental and prevalent idea in case of domestic abuse is that “this” is a “private matter” or “civil dispute”, and of no concern or consequence. In no other case within modern, democratic societies is assault, rape, torture, death threats, inhuman and degrading treatment, etc. considered a “civil dispute”.

Of course, legally these are all criminal offenses, however, once inside the judicial systems these infractions are not judged under current laws, but rather antiquated norms. Women and their testimonies are judged on archaic ideas of them being “hysterical”, “paranoid”, “exaggerating idiots”, “inventing stories to get the upper-hand” “over-sensitive” “not understanding complicated legal codes and judicial systems”... and simply not believed. In most cases there is not even a pretense of investigations into any allegations of abuse, and when evidence is presented it is discarded by lawyers and judges alike as “irrelevant”.

On the other hand men are considered “truthful”, “level-headed”, “knowledgeable”, “intelligent”, “strong” and whose testimonies are given weight over that of the women.

However, this is only “half” of the story, and in order to understand why and how these biases and discriminatory practices are so strongly adhered to, one has to understand the role violence plays in maintaining the status quo of rigid, hierarchal societies, where everyone has his place and everyone in his place. Where one’s place in society is determined by birth and no social upward mobility is allowed.

In Maslow’s hierarchy of needs as soon as one level of needs is met, man (and woman) will move to the next level. However, in a world of limited resources everyone’s needs cannot be met equally. In response “civilizations” developed complex traditions, norms and institutions that

maintained a small elite class who would be able to meet higher level needs, at the expense of the largest portion of the population, who would only be able to meet the basic ones.

Obviously, this created a situation where those who lived in poverty would obviously be dissatisfied with the state of affairs, and rise up in protest. In response, a highly-complex, but “adaptable” socialization system was developed based on suppressing dissent, suppressing communication and sharing of ideas, suppressing initiatives and progress through hard-work that might lead to social mobility of individuals, castigating free-thought, castigating empathy and emotional attachment, while encouraging egoism, greed, narcissism, ignorance, jealousy, hate, anger, racism, discrimination, etc.

This socialization system was all held together through domestic psychological and physical abuse and violence and ignorance, producing hedonistic societies where violence in all its forms was rampant, but rigid-hierarchies were maintained, largely through discriminatory traditions and customs.

In response and an attempt to bring balance back into the state of humankind, social, religious, legal and political institutions were developed in order to contain the violence, give parameters and validity to the abuse and re-insert humanity and morality back into the equation.

In spite of these oppressive, violent societies the creativity, imagination, compassion, gentleness, ability to love, etc. of man (and woman) have managed to survive, and even thrive enough to allow for technological creativity and advancement, and artistic expression.

This brings us to the present where due to technology, man at present has the capacity to fulfill all of the needs of its populations, rendering the “functionality” and desirability of antiquated, abusive societies obsolete, and even a threat to the survival of the human race.

While mankind has made enormous advancement in the past century in moving towards a more peaceful, “equitable” world it is still left with many societies based on violence, rigid-social structures and inequities, with the more socio-economically advanced one dealing with “residual”

abuse and violence, discriminatory traditions and norms, as well as hate, greed, jealousy, ignorance, and anger.

Perhaps the most detrimental and pervasive consequence of this “state of affairs” is the anger produced by the injustices the entire situations creates. This anger is largely responsible for the rampant drug abuse and addiction, which in the past 50 years has been aggravated by the increasing use of psychological pharmaceutical drugs, as well as high crime rates.

Which brings us back to the examination of the gender stereo-types of men and women which have been developed in the past 4-5000 years.

Women have been viewed as *“too weak, lacked strength, their brains were too small. So those who could, stayed home and looked after the children accepting the role of homemaker and mother... and expressive nurturing females to look after home and children... with a “society needing strong competitive males to produce and earn money... established “traditional” societal norms and idealized the sexual division of labor.”*

*(Adaptation of the Trailing Spouse: Does Gender Matter? by Anne Braseby).*

Women were considered incompetent with numbers and managing money, they were too emotional and scatter-brained to hold down jobs, were academically inept, and needed a man on whom they could depend. Men on the other hand were the great thinkers, politicians, businessmen, good at managing money and the family finance, worked well under pressure, etc. and were needed to protect their wives, who in return would be submissive and obedient.

Marriages were a necessity for procreation of a large labor force, and a financial arrangement amongst the wealthy, with sexual intercourse considered a marital obligation. Prostitutes were available to men who needed to satisfy their “animal urges”, while women, at least “nice” women, had no such needs or urges.

Children were seen as necessities, with large families a status symbol and sign of wealth for proud fathers. They were brought up under strict and rigid socialization techniques design to mold them to conform to the socio-economic class in which they were born. Children were



considered assets in marital negotiations for the wealthy, and to care for elderly parents in their old age for the poor, as well as an important source of labor within the homes and work-force for the poor. Children held no social or legal status, and were considered the property of their fathers.

Everyone was expected to fulfill their role in society and maintain the façade and image of a perfectly content and functioning family and community. We still find this situation in extremist/religious sects in the USA, which at times are involved in systematic sexual child abuse, domestic violence and even mass suicides. The only acceptable social/work positions outside the family unit were within religious institutions. Homo-sexuality was considered an aberration and “sin” as well as for the most part illegal. No allowances were made for individuality, self-actualization or anything that was “abnormal/deviant” behavior outside of this model.

Within this structure and situation psychopathic and sociopathic personality types and their “double” personality skills were actually highly functional and productive, as were the socialization techniques of children effective in producing these personality-types.

Of course the down-side, and by-product, of the situation were sexual disorders such as pedophilia, sado-masochism, voyeurism, etc., as well as violent crimes such as torture, rape and murder. However, many of these “dysfunctional” members were offered “respectable” job amongst rulers and religious order who used their “skills” in the torture chambers against those who failed to “conform” and in wars with neighboring nations.

In order to maintain this status quo of abuse and violence the dissuasion of dissent had to be very strong and effective. And, since women were entrusted with a socialization process of the young which was contrary to the maternal instincts of our species, the importance of assuring that these members maintain their roles and execute their duties was essential.

This perhaps explains why traditions and customs grew up which relegated women to total dependence upon men and society. Their acquiescence and complicity in the entire scenario was essential.

Conventional wisdom and present “feminist/liberation of the sexes” theories postulates that by affording women positions of power within the private and public sector, equality of women will be attained within a society. However, if we examine societies around the world throughout history, women are not only instrumental, but an essential element, in executing the traditions which assure domination of women.

Female genital mutilation is perhaps the most well-known of these traditions, but is only one example at an extreme. For example, mothers teaching “little girls must act like ladies and not “muss” their clothes”, daughters who are groomed and taught to “look for rich husbands”, etc. are common place within even the most “modern’ societies today.

Scientifically provable conclusions about cause and effect relationships of how and why “civilization” consistently developed societies where women are subjugated and discriminated against, is difficult at best. But, its prevalence in societies around the world today as well as the absolute necessity for its abolition in creating a peaceful, globally-economic stable world is undeniable.

In examining traditions and norms which discriminate against women it is important to remember that they are all part of a continuum rather than static, polarized actions or events that exist only in the most oppressive, poverty-stricken societies. *The Duluth Power and Control Wheel* is a useful tool in examining not only abusers within the home, but also the societal norms and traditions which support, encourage and sustain the abuse and subjugation of women.

All of these strategies and tactics are designed to instill obedience and subjugate women, as well as utilize them as a scapegoat in protecting the supposed honor of men and/or community.

**The importance of protecting family and community “honor” cannot be stressed enough as it is directly linked to the significance of maintaining a façade of “perfection” and “content” society. All signs of, and consequences of abuse, such as substance abuse, mental and sexual disorders, violent crimes, etc. must at all cost be concealed for the “greater good”, that of maintaining the façade of respectability, decency and morality.**

# **The Duluth Model – Power and Control Wheel**

## **Using Economic Abuse/Economic Control**

One of the most important strategy in **controlling, dominating**, and obtaining the **obedience** of women is through financial control. Customs and traditions include:

- Restriction to labor markets and/or professional advancement
- Restricting pay-levels and pay raises
- Laws and/or customs in the courts which restrict or deny access to financial assets and/or property
- Laws and/or customs within the courts which can deny access to information about family-income or assets
- Laws and/or customs in the courts which can impose financial sanctions or fines, but do not allow for access to family income or assets with which to cover said sanctions or fines.

## **Using Coercion, Intimidation and Threats/Psychological Control**

Another important element in dominating women are threats of violence, coercion, and intimidation. Customs and traditions include:

- Authorities or members of the community threatening women with social ostracization or legal/judicial reprisal for filing complaints against abuse
- Authorities or members of the community destroy property or threats of violence against women and/or her children
- Authorities or members of the community banalize complaints or treat victims who file complaints with disrespect or contempt
- Authorities or members of the community cover-up or suppress evidence of abuse, make false statements regarding the victim or abuser, or falsify evidence in favor of abuser or against victim
- Family members and religious leaders use religious norms to justify abuse or silence women and complaints of abuse
- Members of the community ostracize and shun the victim, and/or silence complaints of abuse explicitly or implicitly
- Judicial systems and/or legal counsel who not trained and/or intentionally negligent in defending women's rights
- Government regulatory agencies who are ineffective in regulating, licensing, and sanctioning members.

### **Using Emotional Abuse/Psychological Abuse**

Another important element in dominating women is emotional and psychological abuse. Customs and traditions include:

- Authorities, religious leaders, family/community members condescending, derogatory, or insulting remarks about or to women
- Authorities, family/community members, members or mental health professionals who use complaints of abuse and/or actions of women to defend themselves or children as psychopathologies or “abnormal” behavior
- Judicial/legal systems and procedures that are so complex, bureaucratic and contradictory that not even legal counsel or domestic abuse activists and associations can effectively understand the intricacies or procedures and/or defend the rights of women and children
- Authorities, judicial actors, family members, or members of the community who manipulate the victims with arguments intended to instill feeling of guilt and shame for aggression or complaints of aggression.

### **Using Isolation/Psychological Abuse**

Another important element in dominating women is isolation, which is one of the most effective and widely used practices in torture techniques. Customs and traditions include:

- Authorities, family members, or members of the community limit or prohibit access to contact with other victims and/or information about legal recourse or rights
- Authorities or members of the community failure to facilitate the organization of associations designed to defend women’s rights and/or effectively defend those rights through dissemination of information, demonstrations or access to the media

### **Using Male Privilege/Social Abuse**

Another important element in dominating women is the active or passive use of male privilege . Customs and traditions include:

- Authorities, members of the community, legal provisions and judicial decisions which devalue the homemakers work and contribution to society and/or according more important to men’s work

- Legal provisions and judicial decisions which fail to recognize or support women's right to participate in family decisions regarding children, management of money and assets, work-life of either spouse, place of residence, etc.
- Authorities, members of the communities, family members, law enforcement officials, judicial actors, and/or religious leaders who validate, explicitly or implicitly, male privilege or prerogative

### **Using Children/ Social & Psychological Abuse**

One of the most important element in dominating women is threatening to harm their children. Customs and traditions include:

- Authorities, community members, family members, or religious leaders who instill feelings of guilt about a woman's desire to not procreate, care for her children vs. working outside of the home, etc.
- Authorities, family members or judicial actors who use children in judicial proceedings, including inciting derogatory remarks about one parent or another, unnecessary interviews, etc.
- Authorities, family members, law enforcement officials, judicial actors, etc. who use and/or restrict visitation rights of a parent in order to harass, threaten or coerce another parent
- Judge's threats and/or decisions to restrict custodial rights of a parent in order to coerce victims of abuse from filing future complaints.

### **Minimizing, Denying, and Blaming/Psychological Abuse**

Another important element in dominating women is minimizing, denying, and blaming. Customs and traditions include:

- Authorities, community members, mental healthcare providers, religious leaders, law enforcement officials and judicial actors who minimizing and banalizing domestic abuse and violence or denying its existence and/or importance
- Authorities, community members, mental healthcare providers, religious leaders, law enforcement officials and judicial actors who shift the responsibility for abuse onto the victim and/or stating that her actions produced said abuse

## **VIOLENCE AGAINST WOMEN AND SOCIETIAL BASED DISCRIMINATION**

### ***Project on a Mechanism to Address Laws that Discriminate Against Women***

*Office of the High Commissioner for Human Rights Women's Rights and Gender Unit*

#### ***Obedience Laws - Husband's marital power***

*There appears to be a strong correlation between paternal power and preference in relation to legal decisions affecting children and a husband's marital power over a wife or the expectation of obedience...*

*...In States requiring obedience, the consequences of "disobedience" may be onerous and often limit a woman's autonomy. In States identified as having codified obedience, the penalty for a 'disobedient' woman involves the forfeiture of maintenance or some other economic benefit.<sup>488</sup> **All States include leaving the home without permission or disobeying instructions about working or not working outside the home as conditions likely to lead to a wife being said to be disobedient.**<sup>489</sup> **This denial of a woman's independent or unfettered right to work outside the home may be because the husband is supposed to support her. However, the effect is to create dependence....***

*....Another "obedience" related issue is that of so-called honour crimes whereby a **woman is killed by a family member or someone hired to kill her for "dishonouring" the family for behaving or beingalleged to have behaved in a manner that they find offensive....***<sup>513</sup>

*Equally problematic are procedural laws which recognise **violence against women as problematic only when the woman is adjudged to be of "good character."** Laws also discriminate in giving greater weight to the evidence of a man over that of a woman. P. 97*

#### ***Broken Bodies, Shattered Minds***

*by Amnesty International*

#### ***Torture and ill-treatment in the name of 'honour'***

*Girls and women of all ages are assaulted in the name of honour in countries in every region of the world....*

*....The treatment of women as commodities — the property of male relatives — contributes to this form of violence against women. Ownership rights are at stake in conflict settlements involving handing over women, and when the chastity of women is called into question. In honour crimes, the woman victim is seen as the guilty party, the man who "owned" her as the victim who has suffered loss of honour. Consequently he is the aggrieved person with whom the sympathies of the community lie. P. 10*

### ***Abuses in the Community***

Women who fail to conform to social norms are often ostracized and even punished with violence....

Amnesty International shows preoccupation for the refusal to accord a protection order to women who have filed a complaint and have been in serious situations of risk. 179 The organization shows preoccupation for the **lack of**

**credibility that some courts concede to the testimony of victims, especially when it concerns psychological violence.**

### **Home: a place of terror**

**Without exception, women's greatest risk of violence comes not from 'stranger danger' but from the men they know, often male family members or husbands ... What is striking is how similar the problem is around the world".** This is the conclusion of a major recent study.<sup>13</sup> Violence in the home is a truly global phenomenon. The figures may vary in different countries but the suffering and its causes are similar around the world....

States have a duty to ensure that no one is subjected to torture or ill-treatment, whether committed by official state agents or by private individuals. **Far from providing adequate protection to women, states all around the world have connived in these abuses, have covered them up, have acquiesced in them and have allowed them to continue unchecked..."**

### **Failure to investigate: gender bias in the police**

International standards require that complaints and reports of violence against women be promptly, impartially and effectively investigated. However, the reality is often sadly different.

**In many parts of the world, the police routinely fail to investigate abuses reported by women, treating violence in the home not as a criminal matter or a human rights concern, but as a domestic affair for which they have no responsibility.** For women belonging to racial, ethnic or religious minorities, the police are often even more reluctant to intervene, either on spurious grounds of "cultural sensitivity" or through racial prejudice. Gender bias among police is rarely addressed by governments, despite their international obligation to eradicate it. **Rarely do the authorities investigate allegations of bias, apply appropriate disciplinary measures to police officers who discriminate against women victims** and train all police officers in how to deal with allegations of violence against women. Few recruit sufficient women police officers, essential because in many societies women victims of violence find it difficult to tell male police officers intimate details about the physical abuses they have suffered.

The failure of a state to investigate allegations of violence against women



constitutes a failure of state protection. Acts of violence against women constitute torture when they are of the nature and severity envisaged by the concept of torture and the state has failed to provide effective protection.

**Police often share the attitudes of perpetrators of violence against women and consciously or unconsciously shield the offenders.** They frequently send abused women back home rather than file complaints. Sometimes they advise mediation and reconciliation without realizing that the women who approach them have usually compromised and accepted as much as they could bear. **In many instances, police have humiliated victims, adding to their suffering rather than alleviating it....**

...Abused women are reluctant to seek police help for a variety of reasons. According to the UK's British Crime Survey, most women only report domestic violence after repeated assaults and most abused women conceal their injuries for fear of further infuriating the abuser, out of shame or because they believe themselves somehow at fault. Canadian government statistics indicate that more than **75 per cent of women seriously assaulted by their husbands did not report the incident to police....**

#### **Failure to prosecute and punish: gender bias of courts**

**Judges are part of the society in which they live, reflecting its cultural values, moral norms and its prejudices. Rising above prejudice is a prerequisite of judicial office, but discrimination against women and lack of understanding of violence against women as a human rights issue frequently lead to bias in the way trials are conducted and in decisions and rulings....p. 18**

**...In many countries, women seeking justice face insuperable economic obstacles.** Lack of money, as well as educational deprivation, militate against women seeking and obtaining legal redress for abuses they suffer. Rights awareness programs and legal aid are sorely lacking where they are needed most. **In some countries corruption permeates the judiciary, and more men than women are in a position to offer financial inducements to obtain the outcome they want.**

**While judges often take a lenient view of men abusing women, many have failed to consider severe domestic violence suffered by women as relevant when assessing women's responsibility for offences committed by them.... P. 19**

**...The failure of a state to prosecute and punish those responsible for violence against women constitutes a failure of state protection.** Acts of violence against women constitute torture when they are of the nature and severity envisaged by the concept of torture and the state has failed to provide effective protection... p.20



### **Social and cultural hurdles to redress**

Women may not be able to obtain redress for abuses for a variety of reasons. **Many arise because women are deprived of their economic, social and cultural rights. Economic dependence and inadequate welfare provision in many parts of the world force women to bear continued abuse. Abused women often have nowhere to go, no money to sustain themselves or their children, and no funds to seek legal counsel in order to pursue redress.** Legal aid is often not available to abused women. Social and economic deprivation go hand in hand with ignorance of legal rights and the criminal justice process, so women are often unaware of their alternatives. They may justifiably fear further humiliation by police and the risk of being sent back to further abuse.

**They may also fear for their safety or their children's safety, or that they will lose custody of their children.** According to the British Crime Survey, for example, most women only reported domestic violence after having suffered violent abuse some 35-40 times. P. 20

## **Institutional Inadequacies**

In examining factors which contribute to violations of rights and discrimination against women in judicial systems, the inadequacies and negligence which institutionalized into the various professions that are involved in the judicial process.

It is important to note that domestic violence exists within all socio-economic classes, and one of the most detrimental stereotypes and prejudice in cases of domestic abuse is that of the abuser. The idea that abusers are low-class, disheveled, belligerent, drunks and/or minorities with criminal records is so entrenched in the minds of people, they refuse to believe any that anyone who does not “fit the profile” could possibly be an abuser.

The reality of the situation is that many abusers are clean-cut, controlled or demure, well-off or rich, “up-standing” citizens, whose deviant behavior is well hidden from even his (or her) closest entourage. They often seek positions of power where they have easy access to victims, whether it be children in the case of pedophiles, or any other victims of domestic abuse. These abusers also feed off of the pain and suffering they inflict as well as their ability to manipulate others.

Lawyers, judges, psico-social teams which in effect determine custody, as well as prosecutors and social service personnel are accorded an enormous power over the lives of victims of abuse and violence.

And, while most of these professionals are dedicated people who execute their jobs with integrity, it must be acknowledge that a certain percentage of these professionals will themselves be violent abusers who enjoy wielding power and inflicting pain on defenseless victims. It is clearly documented in reports that most abuser who use the courts to continue their abuse do so with the assistance of judicial actors.

It is for this reason that it is extremely important that all professions within the judicial system are highly regulated and controlled, with extremely strict sanctions for their negligence or misconduct.

Perhaps of first importance are **lawyers, their training, licensing and the regulation of their professional conduct and misconduct**. As seen in reports the training of lawyers by law schools is sorely lacking in adequately preparing them for present judicial systems, there complexities, and the proper defense of their clients.

However, of perhaps greater importance and concern is the **lack of research, statistics or information as to the prevalence of professional misconduct and negligence or the effectiveness of legal regulatory agencies in sanctioning said misconduct and negligence**.

The only statistical data available is that of state bar associations in the USA, which show an average of **2-2.5% disciplinary rate** of complaints filed. This is extremely disquieting given Justice Burger's estimate of **75% lawyer inefficiency rate**, which concurrence with other reports of 70% failure rates within judicial systems.

In my case, only time will tell the effectiveness of the *colegio de abogados de Madrid* in investigating and sanctioning the conduct of legal counsel implicated in my case. However, if my complaints are accorded the same lack of diligence as past dealings with the free legal clinics offered by the *colegio de abogados*, where all questions on points of law and legal procedures were met with responses of "I do not know" or "I am not a lawyer, and cannot answer that question", I assume all negligence and incompetence will be left unsanctioned.

**In light of the aforementioned, it appears that the efforts of regulatory agencies of lawyers to assure that the highest standards of ethics and professionalism is offered by legal counsel in the defense of their clients is sorely inadequate. Not only should statistical data be compiled at regional and national levels, but transparency and the highest level of competency should be assured within the disciplinary process of lawyers (and procuradores), AND SHOULD BE CARRIED OUT WITHOUT DELAY.**

Of second concern is the qualification, competence and integrity of judges within legal systems. Once again research, statistical data, and information as to negligence and incompetency amongst judges

at local, regional and national levels is sorely lacking. The lack of a comprehensive regulatory and disciplinary system with complete transparency is particularly worrisome given the power and latitude that judges are accorded in judicial decisions judges are accorded.

**Once again not only should regional and national judicial regulatory agencies dedicate efforts into research and compilation of statistical data in the competence of judicial decisions and the role of the judge in the entire process.**

Judges are ultimately responsible in assuring that all citizens (foreign nationals included) are accorded equality under the law, the right to due process, and effective protection of their fundamental rights and freedoms.

**THE FAILURE TO ASSURE THE AFOREMENTIONED ULTIMATELY LIES WITHIN THE PRESIDING JUDGE, WHO SHOULD BE HELD ACCOUNTABLE AND RESPONSIBLE FOR ANY AND ALL VIOLATIONS OF RIGHTS AND LACK OF DUE PROCESS. WITHOUT DELAY JUSTICE DEPARTMENTS MUST DEVELOP COMPREHENSIVE AND TRANSPARENT REGULATORY AND DISCIPLINARY SYSTEMS.**

Of third concern is the qualification, competence and integrity of psico-social teams within judicial systems. Once again research is scarce and sporadic, however, the high level of lack of training and qualifications as well as prejudice and discrimination against women prevalent amongst these civil servants **THE NEED FOR COMPREHENSIVE, TRANSPARENT REGULATION AND SANCTIONING OF MISCONDUCT IS CLEARLY INDICATED.**

***Trial Lawyer Incompetence:  
What The Studies Suggest About the  
Problem, The Causes and the Cures***

by Christen R. Blair

"the lack of adequate training of lawyers for courtroom work is a ... very serious problem in the administration of justice..."

**75% of the lawyers appearing in the courtroom were deficient....**

...citing the examples: **poor preparation, inability to frame questions properly, lack of ability to conduct a proper cross-examination, lack of ability to present expert testimony, lack of ability in the handling and presentation of documents and letters, lack of ability to frame objections adequately, lack of basic analytic ability in the framing of issues, lack of ability to make an adequate argument to a jury, and lack of basic courtroom manners and etiquette."**

Chief Justice Burger

"Particular skills which he suggested...**opening arguments, direct and cross-examination, the art of objecting and summation...drafting complaints, answers, motions, and interrogatories, and the taking of depositions and the interviewing of witnesses."**

Judge Kaufman

## **The Legal History Project**

by Peter C. Hansen

<http://www.legalhistory.com/index.html>

The first error, overemphasis on legal training, is the most serious because it greatly promotes the other three errors. Legal instruction today, particularly in U.S. law schools, is overly focused on preparing students to work in law firms or other branches of legal practice.

... Such a program's end product is the legal technician, a lawyer more or less able to perform mechanical legal tasks but almost wholly unaware of the profession's intellectual and cultural traditions.

For a school to leave such talented people ignorant of their profession's history is a disservice to them and to society, and can only undermine the legal system into which they are ultimately hurled.

The second error, a belief in legal history's irrelevance, often springs from this modern legal training and is augmented by the crush of modern practice.

As pressure mounts on lawyers to perform tasks faster and faster over increasingly long workdays, they tend to see only the law to be applied each instant. This telescoping often couples with a proper avoidance of outdated law to produce a blanket dismissal of the legal past as irrelevant.

Such a view is regrettable among practitioners, but downright shameful when found in law schools. In the crush to churn out "ready-to-practice" recruits, many law courses, particularly upper-level ones, stuff pupils' heads with the latest regulatory ephemera and case decisions instead of walking students through the dry and difficult classics of the legal past.

This immersion in legal pop culture is intended to help pupils "market" themselves as novice specialists, but actually does them a disservice. Instead of providing them with a solid knowledge of the law as an ancient and powerful tradition, it transmits a set of quickly dated talking points. This is no substitute for a lastingly useful and valuable legal education founded on an understanding of history.

The third error, "presentism," often occurs where some effort is actually made to teach the legal past. Since all legal pedagogy involves the study of past decisions, it is all too easy to conclude that history is being taught in every legal subject.

In most cases, however, "history" is not being taught at all. Instead, the legal past is in many lessons presented as a primitive state of error now inevitably corrected by the more enlightened present.

This approach is often found in constitutional law, but can be noticed also in more "practical" courses such as contract, tort and property. At a minimum, the failure

to present the past sympathetically in its own context prunes away inconvenient facts and details, thereby obfuscating the past law's reasons and purposes.

Even worse, it can lead to irrelevant judgments about the past's "rightness" or "morality" that interfere with the true purpose of historical study, namely to understand how and why the law has developed in different times and in different circumstances. Instead of providing such insights, presentist study results in a skewed picture of the legal past that may be worse than no inkling at all.

This fourth error, simple ignorance of the legal past, is the result of a poor or missing education in legal history such as described above.

It is a problem which builds on itself as legal technicians pervade legal academia and fill the younger ranks with those as ignorant as themselves. Since lawyers are the living bastions of the law, their unawareness of the law's past and traditions is a dangerous weakness in the social structure.

Without a broad and well-grounded perspective on the law, a lawyer is more susceptible to selfishness, mistaken notions and flights of fancy. When such a person makes use of the law's great powers to further legally immature ideas, he or she can tear the social fabric asunder. **The examples of such arrogance are common and plain to the eye: arbitrary and personal rule by judges and officials; misguided and intemperate legislation; overturning of tradition for ill-defined, often revolutionary social goals; vexatious and outrageous litigation; and, behind all of these, a disdain for civil and political rights and processes that endangers everyone.**

### Stop Violence Against Women

[www.stopvaw.org](http://www.stopvaw.org)

#### Judicial Inadequacies

- Prosecutors may also believe the same myths and stereotypes that absolve the perpetrator of personal responsibility for his actions
- In spite of strongly worded laws prohibiting assault in some countries, prosecutors are often reluctant to enforce these laws in domestic violence cases.
- Judges play important roles in the legal system's response to domestic violence... (and) hold substantial power to sanction (or absolve) batterers, protect (or not protect) battered women, and to send messages to the community, the victim, and the batterer alike that domestic violence will not (or will) be tolerated.
- Sometimes judges exercise their discretion (in interpreting or enforcing laws) in ways that undermine victim safety and batterer accountability.

## **Jurisprudence Study on the Impact of PAS in Asturian Courts**

Institute for Women of Asturias  
Lawyers for Equality

### **Court Psychologists Inadequacies**

"... it is important to make a distinction between professionals licensed by forensic clinics...and professionals that are members of psycho-social groups...(who lack) a specific status and whose activities are not duly regulated..."

What capacity do they (court psychologists and social workers) possess to carry out this role? We have only found "procedural protocol" or "good practice guides" in certain CCAA, but never any specific norms, nor a reference to their professional qualifications, nor specific knowledge of psychology or social work..."

...in examining the complaints of gender violence, we have found cases that have violated the rights of women victims (...) These violations are produced in the majority of cases during judicial procedures and on occasions by psycho-social teams during their examinations, who lack training in gender violence and do not have sufficient resources to carry out investigations or inquiries to understand the conflict between the two parties.

...the determinations of psycho-social teams was accepted by the court as an irrefutable conclusion. The courts consider the technical teams experts for the simple fact that they have obtained this position. However...one can confirm that a large majority of decisions which are over-turned are based on mala praxis of psycho-social teams assigned to the courts and their lack of specialization in child psychology, deficiencies in the methodology used in their reports, and in many cases in violation of principles of ethics, breaking deontological codes...

...in 85% of cases studied where there have been the intervention of psycho-social teams or an expert psychologist assigned by the courts, the courts dutifully follow the recommendations of those reports.

The percentage increases to 88.24% when the intervention comes from the psycho-social team.

In regards to this criteria, the rulings and indications of the team become dogma of faith, absolute truths molded into court decisions without any more reason than those given by the technical teams, without any value, consideration of proof, nor analysis of the circumstances of the case or of the minor. "



### **Psychiatrists Inadequacies**

Stop Violence Against Women

[www.stopvaw.org](http://www.stopvaw.org)

- Few forensic doctors receive any training on how to work with domestic violence victims.

Forensic doctors expressed extreme skepticism of women victims of violence...They expressed the opinion that a woman would lie to achieve an advantage in a court case...they universally expressed mistrust of women.

### ***More Rigths: The Same Obstacles***

by Amnesty International

Rosario Fernández Hevia. Magistrada de lo Penal.  
Ex -Decana de los Juzgados de Gijón

Lack of theoretical knowledge (by mental health care professionals) about domestic violence, its causes and consequences, is superseded by stereotypes in patriarchal cultures that effect communication with the victims."

As we have seen the social, legal, psychological and religious norms and customs used to control and dominate women while varied and diverse are all based on a deeply incultrated belief in patriarchal superiority and prerogative and used by all members and institutions of a society.

Biases against women, and in favor of men, result in widespread all-encompassing discrimination against women by:

- **Psycho-social teams** of the courts whose personal bias of patriarchal prerogative and lack of training in and understanding of violence against women influences their opinions, decisions and recommendations, but are also influenced by the bias of patriarchal prerogative inherent within the practice of psychiatry and psychology
- **Judges** who are ultimately responsible for protecting the rights of citizens and assuring due process within their court-room are accorded unbridled power in discriminatory interpretations, rather than impartial applications of laws

- **Prosecutors** whose impartiality, competence and diligence is essential in protecting the rights of victims and prosecuting perpetrators of abuse
- **Lawyers** whose competence, training, knowledge, and integrity are of utmost importance in defending the rights of victims
- **Judicial civil-servants** whose actions and competence, or lack of, is essentially unregulated or overseen, due to guaranteed employment.

As seen the competence, integrity and lack of gender bias of judicial actors are absolutely essential in protecting the rights of citizens and assuring due process within court procedures. However, due to a lack of due diligence, and at times corruption as we shall see later on, the organizations and associations that train, license, regulate professionals as well as sanction their negligence, gender-bias in the courts is rampant and unconstrained.

Total integrity, the highest level of competence and diligence of regulatory agencies are OBLIGATORY in assuring due process within the courts and fulfilling governments obligations to eradicate discrimination against women within the courts and society at large. Unfortunately, as the stated by the *United Nation Division for the Advancement of Women* inter-agency work is often no more than “window-dressing”, and at the root cause of wide-spread discrimination and negligence.

Alls of these factors combined are the reason that legislative solutions cannot, and will not, be effective until the abusive traditions and norms of a society that are used to sustain and encourage abuse and discrimination are eradicated. **And, this will never happen until those who are**

**negligent in their duties are held accountable for said negligence.**

**Democratic government have a DUTY AND RESPONSIBILITY to protect and defend the rights and interests of their citizens. Until government authorities and agencies assume these responsibilities with the utmost competence and integrity the human rights violations of victims of domestic abuse living under their jurisdiction will continue to occur.**

### **The Failure of States to Prevent Domestic Violence Due to Gender Biases and Discrimination**

*The Committee on Elimination of Discrimination Against Women, the United Nations Division of Advancement of Women, the Special Rapporteur on Violence Against Women (SRVAW,) the Commission on Human Rights – Women and Gender Rights Unit, Amnesty International, inter alia, repeat in report after report that the signing of international treaties and passage of laws on discrimination and violence against women ARE NOT, AND CANNOT BE, effective until discriminatory traditions, norms and customs are eradicated and that antiquated discriminatory laws are rescinded.*

**As noted in reports by Amnesty International, Spain has not yet acknowledged or addressed gender based-violence in the home as a human rights violations nor the States responsibility of the principle of *due diligence* in protecting victims.**

**A LIFE WITHOUT VIOLENCE  
FOR WOMEN AND CHILDREN  
(UNA VIDA SIN VIOLENCIA PARA MUJERES Y NIÑAS)**  
by Amnesty International 2009

According to figures from the government for the period of 1999-2007, **the number of dead women at the hands of their partner or ex partner rose from 58 in 2005 to 68 in 2006, and 71 in 2007.**<sup>58</sup> According to official figures about the characteristics of the dead women in 2007 shows that 30 percent of the victims had filed at least one complaint with the police against the man who killed them. <sup>60</sup> Of all of the murdered women at the end of 2008, 16 of them had filed complaints and 10 had asked for restraining orders that were violated.

**The index of murdered victims per million is much higher for foreign women than Spanish. In the last nine years (1999-2007) this index has been 2.05 per million for Spanish women and 13.18 for foreign women.** (61)

If in 2005, 17 foreign women were killed, in the year 2008, 34 lost their lives at the hands of their partner or ex partner.

In 2008 the rate of murdered victims of domestic abuse per million was 13.93 for foreigners and 1.57 for Spanish women,<sup>(62)</sup> which means that the **first group is almost more than 9 times at risk** than the second group.

**80 percent of the cases in the Specialized Courts for the Violence Against Women were treated as punctual injuries.** According to information from the Consejo General del Poder Judicial, **46 percent of complaints were dismissed.** 63

**Mas Alla de Papel**  
by Amnesty International

**Introduction**

...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....**

...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 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, insensitive 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 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.... P. 2-3.

**....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. P. 5.

....According to official figures, 70 per cent of women who suffer violence have been doing so for over five years.<sup>13</sup>

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".**<sup>14</sup>

### **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."<sup>15</sup>

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

The testimony of Marta<sup>16</sup> 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 defenseless, 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**.

Ana<sup>18</sup> 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 Gloria<sup>19</sup>, 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'.**" p. 10-12

**"...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 ... 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...."**

**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.....**

...When ...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.**<sup>23</sup>

**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.**<sup>24</sup>...



## ***Rhetoric vs. Reality***

Mr. Miguel Lorente, delegate to the Spanish government for Gender Violence in his testimony to the *Committee on the Elimination of Discrimination against Women (CEDAW)*, demonstrates to what extent the Spanish government ignores and denies the failure of the *Integral Law Against Gender-based Violence* to effectively protect the rights of domestic violence victims within judicial procedures.

### **Committee for the Elimination of Discrimination Against Women, 44<sup>th</sup> Session, Summary of the 888<sup>th</sup> Meeting, New York, Wed., July 22 2009**

(CEDAW/C/ESP/6,CEDAW/C/ESP/Q/6 and Add.1) 22 July 2009

**"Mr. (Miguel) Lorente (Spanish Delegate for Gender Violence)** said that on balance, the first three years of implementation of the Organic Law on comprehensive **protection measures against gender violence had been positive. The evaluation had covered all the measures falling within the purview of the law, including prevention, protection, assistance and punishment and re-education of perpetrators.** During that time period, the regulations for implementation had been drafted, as well as the organizational structure for providing assistance. **In terms of prevention, the outcome had been positive..."**

However, in the article *Black December for Women*, El Pais, Dec. 12, 2010, ([www.elpais.com/articulo/sociedad/Diciembre/negro/mujer/elpepisoc/20101218elpepisoc\\_4/Tes](http://www.elpais.com/articulo/sociedad/Diciembre/negro/mujer/elpepisoc/20101218elpepisoc_4/Tes)) Mr. Lorente recognizes that *"the change has not arrived to every corner and what most need changing are the abusers."*

And, the Minister of Social Politics, Equality and Health, Leire Pajin rightfully states that the polemic surrounding false accusations *"is not doing any favor to the blight of victims. The debate is feeding the violence and encourages situations of violence to become even more violent."*

The debate about the existence (or non existence) of false accusations as is the debate surrounding Parent Alienation Syndrome (PAS) distracts the attention away from the real problem: **judicial and social systems that are plagued with discriminatory policies and practices and negligence in protecting the rights of victims. Until these problems within the courts are addressed, State sanctioned human rights violations will continue to occur on a daily basis.**

***PRACTICES WITHIN  
FAMILY COURTS:***

***Favoritism for  
Abusers***

***&***

***Lack of Due Process  
for Victims***

## Discriminatory Traditions and Practices in Family Courts - The Why's and How's

In order to effectively examine discrimination from an intersectional perspective, one must study the beliefs and biases behind that discrimination. This includes the biases in favor of men as well as biases against women within the courts, amongst judicial actors from the private and public sector as well as a society at large.

While some of the studies cited in the following section were conducted in the USA, they are introduced here due to the fact that the biases and resulting discriminatory actions cited within are as applicable to Europe (Spain included) as they are to North America. Their admissibility as evidence to widespread discriminatory practices against women within divorce courts in Spain are presented under art. 20 and 24 of the Acto de Igualdad 3/2007.

In considering the biases used in custodial and financial decisions there is clear **patriarchal prerogative** and “**double standard**” in the following areas:

- **Parental competency**, based on a belief that men's **work-life** does not impede their ability to be responsible parents, but that a woman is not capable of effectively handling both
- **The importance of “morality”** based on one's sexuality in deciding parental competency (ie. female chastity vs. a male's “natural urges”). It should be noted that no correlation exists between a person's ability to be “good” parent and their sexuality.
- In **cases of domestic abuse** and violence the assumption of **patriarchal prerogative** in “discipline” over women and children as well as the assumption that women lie about any complaints of abuse
- The idea that **homemakers are not entitled to money earned by the husband**, which not only fails to recognize a contribution they may have made to their husband's career, but also their hard work and dedication to maintaining a home as well as raising children. The failure of judges to accord financial settlements which recognize years of dedication and work with no financial remuneration and sacrifice to one's career as well as widespread failure of legal counsel's to exercise due diligence during “discovery” (solicitation of financial records) relegates the homemakers to a status of servitude/slavery within a society.

## **FAILURE TO ASSURE DUE PROCESS IN FAMILY COURTS**

In **Europe, North American, and Australia** it is estimated that each year **120 – 300 million women and 240-600 million children suffer violence within the home, with millions of children being ordered into unsupervised contact with physically or sexually abusive parents following divorce** (based on estimations derived from statistics of UNICEF, [www.leadershipcouncil.org](http://www.leadershipcouncil.org), and the New England Law Review, Spring 1990).

According to Amnesty International (*Mas Alla de Papel*), **in Spain alone 2 million women each year suffer some form of abuse from their partner or ex-partner.**

“Conventional wisdom” believes that in western countries, women are favored in custodial decisions as well as financially during divorces; however, statistics demonstrate the contrary. Additionally, **due to the failure of courts to examine or consider evidence of domestic abuses, millions of women and children around the world are being re-victimized by judicial systems each year.**

## **DUE DILIGENCE IN FAMILY COURTS**

The Spanish government, or any State, has the responsibility of due diligence in protecting the rights of the people living under their jurisdiction (Vasquez vs. Honduras, A. vs. UK, and Gonzales vs. USA) as well as an obligation to reverse the norms and customs that have served to subjugate and dominate women within their societies (CEDAW and The Equality Act 3-2007,) but their institutions are completely failing to assume this responsibility.

In the past 30 years governments have repeatedly avowed their dedication and commitment to combating discrimination against women within societies and institutions.

However, most efforts during this time have been restricted towards promoting educational and employment opportunities. Unfortunately, these measures are ineffective in addressing violence within the home, and the problems it creates within a society.

**In effect, signatories of human rights treaties are continually in violation of these agreements, and will continue to do so until they are held accountable for their violations of due process.**

The widespread belief that the passage of legislation will in and of itself transform judicial systems and social norms that for centuries have been dedicated to maintaining a status quo based on violence, domination and submission is naïve and counter-productive in efforts to protect victims.

**The true battle in promoting human rights and eliminating discrimination against women lay in understanding from an intersectional viewpoint the forces that sustain violence and promotes prejudices. In order to do this one must OBJECTIVELY examine the forces at work from a historical, sociological, psychological and anthropological perspective.**

***Project on a Mechanism to Address Laws that Discriminate Against Women***

***Office of the High Commissioner for Human Rights Women's Rights and Gender Unit 2008***

**....Laws governing family life were the ones most likely to be identified as containing discriminatory provisions.....<sup>329</sup>**

**.....Constitutional guarantees of equality are important because of the principle of constitutional supremacy that prevails in almost all States.<sup>335</sup> If the Constitution is the supreme law of the country, one would expect that other laws would be in compliance therewith.<sup>336</sup>**

However, States parties' reports to the human rights bodies, the concluding observations of said bodies and indeed responses to the questionnaire all show that **where women's rights are concerned, this is clearly not always the case.**

Questionnaire responses showed that **most States had "universalist constitutions", that is, constitutions that respect international human rights norms of non-discrimination and equality and had explicit provisions outlawing discrimination on grounds of amongst other things, sex or gender<sup>337</sup> and which also upheld the principle of equality and non discrimination above custom, culture or religion.**

Some had specific constitutional provisions on women's right to be free from discrimination and other gender related harmful practices...

However, it was noted that some constitutions, while guaranteeing equality before the law, were silent on the relation between potentially discriminatory customary or religious laws and the non discrimination provision...:

**"Personal law regarding marriage, divorce, restitution of conjugal life, inheritance, and guardianship will be prevailed (sic) if there is a conflict between constitutional and personal law."<sup>340</sup>**

**In case of conflict between a discriminatory provision and the Constitution, then that discriminatory provision is to be referred to the Constitutional Court.** Despite this the questionnaire response indicates that there are several discriminatory laws on the books...

**The CRC concluding observations reinforce the importance of seeing de jure and de facto discrimination as part of the same continuum....**

...By way of contrast is **the Spanish approach to the resolution of potential internal conflict of laws which is documented in the questionnaire response:**

"In the event of a conflict arising between the fundamental right to equality established in the Spanish Constitution of 1978 and a State or Regional law that includes some form of discrimination, **Spanish Constitution of 1978 (arts. 161 and 163) sets forth several proposals for resolving the conflict.**

Along these lines, an appeal of unconstitutionality can be made to the Spanish Constitutional Court against the said, allegedly discriminatory law.

**The declaration of unconstitutionality of the law in question by the Constitutional Court will oblige the State or Regional Parliament that issued this particular law to modify it in whatever respects have been indicated by the Constitutional Court as being contrary to the fundamental right to equality;** or as the case may be, the declaration of unconstitutionality by the Constitutional court may affect the entire law;

in such a case the entire parliamentary process required for the elimination of the discriminatory content of the law declared unconstitutional by a Constitutional court ruling will have to be initiated."<sup>346</sup>

#### **INTERSECTIONAL DISCRIMINATION AGAINST WOMEN CEDAW**

*The Committee on the Elimination of all forms of Discrimination against Women (CEDAW) has noted that this requires States to monitor through measurable indicators, the impact of laws, policies and action plans and to **evaluate progress achieved towards the practical realization of women's substantive equality with men. There is clear evidence that even those States whose constitution's guarantee equality before the law (the majority) have laws that discriminate** There is clear evidence that even those States whose constitution's guarantee equality before the law (the majority) have laws that discriminate against women.*

Personal status laws were identified as the most problematic. **Discriminatory provisions were found in laws enshrining a ... paternal power vis-à-vis decisions concerning the child which was often linked to marital power over the wife, ... different grounds for divorce and discriminatory property division on death and divorce.**

**Even procedural laws were sometimes found to be discriminatory privileging male witnesses over female ones.** Discriminatory practices and provisions were also identified in employment law and criminal law.....

## Intersectionality

**Linked to the issue of substantive equality must be the recognition that women are not a homogenous group.**<sup>68</sup> Their heterogeneity requires us to take into account the fact that women do not experience discrimination in the same way.<sup>69</sup> Women are separated by age<sup>70</sup>, caste<sup>71</sup>, class, race<sup>72</sup>, religion, disability<sup>73</sup>, indigeneity<sup>74</sup>, minority status<sup>75</sup> including sexual orientation<sup>76</sup> and multiple other factors.

**This demands that we take a holistic look at the way societies are organized and the differential impact of discrimination on the various groups within it. This last point has been termed “intersectionality” – a process by** which one recognizes that certain groups may suffer multiple forms of discrimination simultaneously. <sup>77</sup>

... The Race Committee has in its general comment 25 on gender related dimensions of racial discrimination<sup>80</sup> devised a four point “intersectionality questionnaire” which is helpful in considering how people are differentially impacted by gender based discrimination. It requires one to consider:

- i) The form a violation takes;
- ii) The circumstances in which a violation occurs;
- iii) The consequences of a violation;
- iv) The availability and accessibility of remedies and complaint mechanisms.

In *Mas Alla de Papel* Amnesty International also refers to the importance of examining intersectional discrimination.

### ***Mas Alla de Papel*** by Amnesty International

...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...**

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”.<sup>49</sup>



## **Project on a Mechanism to Address Laws that Discriminate Against Women**

Office of the High Commissioner for Human Rights  
Women's Rights and Gender Unit

### **Grounds for Divorce**

*Clear from convention provisions enshrining equality between men and women in the family including equal rights to enter marriage, for the duration of the marriage and at its dissolution, is the understanding that the law should not discriminate against the spouses in any way.<sup>548</sup> The existence in some legal systems of different divorce grounds for men and women would seem to go against these basic principles.*

**... even in those States with the same grounds for divorce may see a gendered interpretation of the grounds to the detriment of women found to have acted improperly or outside acceptable social norms..**

### **New England Law Review: Gender Bias Study of the Court System in Massachusetts Volume 24, Spring 1990**

...We found gender bias to be in operation when decisions made or actions taken were based on preconceived or stereotypical notions about the nature, role, or capacity of men and women. We observed the effect of myths and misconceptions about the economic and social realities of men's and women's lives and about the relative value of their work. Throughout this report the workings of bias are illustrated in statistical data, expert testimony, and first-hand accounts of people using the court system...

...Gender bias was not born in the court system. Rather, it reflects the prevailing attitudes and conditions of our society. Regardless of its genesis, the cost of gender bias is great. **The court system must examine its role in continuing and contributing to gender bias, and it must work to correct the problems that exist...**

### **Custodial Considerations**

In most cases, mothers get primary physical custody of children following divorce. ..this pattern does not reflect judicial gender bias, but the agreement of the parties and the fact that **in most families mothers have been the primary caretakers of children...**

**Refuting complaints that the bias in favor of mothers was pervasive, we found that fathers who actively seek custody obtain either primary or joint physical custody over 70% of the time.**

3. When fathers contest custody, **mothers are held to a different and higher standard** than fathers....

Any shortcomings the woman has, whether directly relating to her parenting or not, are closely scrutinized. Whereas, if a father does anything by way of caring for his children, this is an indication of his devotion and commitment... "in cases where working mothers have custody, change of custody is granted to fathers who remarry women who are home full time."

About half of the probate judges surveyed agreed that "Mothers should be home when their children get home from school," and 46% agreed that "A preschool child is likely to suffer if his/her mother works."

Women who are separated from their children temporarily may lose custody, even if they have been primary caretakers... The court treats a mother much more severely than a father if she leaves her family and then returns. She will have a big fight on her hands in order to get any visitation rights. On the other hand if the father leaves and returns, the judge will ask him what visitation does he want.....

...The practice of denying custody to a woman who temporarily relinquishes custody creates special pressures on battered women. Shelters for battered women are in short supply; shelters that can accommodate children are even more so. Since vacate orders against batterers may not be enforced, a battered woman may be forced to choose between her own safety and the custody of her children...

..Dating and cohabitation by mothers is still viewed differently than dating or cohabitation by fathers...The mother's new husband or boyfriend is seen as distracting her from her role as caretaker [for] the children, as at risk for physically or sexually abusing the children, as proof that the mother is unstable or promiscuous or less than adequate. At best, he is merely irrelevant. However, the father's new wife or girlfriend proves that he is stable, working toward providing a new supportive nuclear family. And she is assumed to be a caring person who can and does more than adequately care for his children...

**6. In determining custody and visitation, many judges and family service officers do not consider violence toward women relevant.**

...Nearly half of the attorneys reported that, in cases in which a woman alleges that she has been abused, court-affiliated mediators sometimes or often make remarks indicating that such abuse is not relevant to the determination of child custody and visitation issues. These observations are confirmed by the statements of judges and family service officers themselves....

...A number of women will try to prevent visitation because they have been beaten, but if there is no incidence of the husband beating the children, the father should get visitation rights. There are several problems with this attitude. Research studies indicate that witnessing, as well as personally experiencing, abuse within the family causes serious harm to children (Note, 1985; Buell,

1988). Moreover, a boy who witnesses his father beating his mother is more likely to become a wife abuser than if he were abused himself. n59 In [\*843] addition, there is a strong correlation between wife abuse and child abuse (Straus, 1981; Guarino, 1985). These facts make it crucial that the abuse of any family member be taken into account when determining abuse and visitation....

...Even in criminal cases, attorneys reported, visitation may be ordered. In one case, a man who fired into the home of his ex-girlfriend, killed her friend, and was charged with attempted murder of his child was given visitation rights; in another, a man who was in court to plead guilty to raping a woman was asked whether he wanted visitation rights over the child who was conceived as a result of the rape. Finally, an attorney described a case in which a court clinic recommended that custody go to the father; that is, as soon as he was released from prison for killing his wife, the child's mother....

7. A majority of the probate judges surveyed agreed that **"mothers allege child sexual abuse to gain a bargaining advantage in the divorce process."**

A family law attorney in the Boston focus group stated: "In sex [\*844] abuse cases when a small child describes explicit abuse and the experts corroborate that there has been abuse the court's reaction is disbelief." Another attorney agreed, seeing the problem as one of gender bias. "The feeling is that the woman is using abuse to control the husband. There is an immediate bias in favor of not believing the story." In Worcester, attorneys agreed, **"Women and children who allege sexual abuse are simply not believed,"**

...The conclusion of the ABA's study is further substantiated by recent research suggesting that changes in living situations brought about by a divorce may prompt a child to disclose previous or current sexual abuse for the first time (McFarlane, 1986). Furthermore, other experts note that under the stress of divorce, a parent may become abusive for the first time, sexualizing affection and behaving in inappropriate ways (Schuman, 1984)...

8. **The courts are demanding more of mothers than fathers in custody disputes.**

...women who violate the terms of child custody are threatened with jail while the attitude toward men who fail to comply is "boys will be boys";...

...Although the child's interest is supposed to be primary, courts will not order a father to visit his child, even if his failure to visit distresses the child. The psychological harm that missed visits cause children also has an impact on the custodial mother, for it is she who must deal with her child's distress... visitation seems to be viewed entirely as a right of the father, rather than as a responsibility of the father toward the child and the other parent.

**...The punitive approach taken by some courts toward women who interfere with fathers' visitation rights contrasts with the tolerance shown by some judges to fathers who fail to pay court ordered child support... and to men who commit acts of violence against women...**

It should be noted that even in cases of accusations of Parental Alienation Syndrome (PAS) women are discriminated against in custodial decisions as documented in

***Jurisprudence Study on the Impact of PAS in Asturias Courts***

*Institute Asturias of Women*

*Lawyers for Equality*

First, when PAS is "diagnosed" coming from the father, the "therapy of menaces" is not applied, and no modification of custodial rights is applied nor is the "best interest of the child" considered. Additionally, visitation rights of the mother may be restricted in order to not "traumatize" the child who suffers the visits as something "terrible."

Second: When PAS is diagnosed coming from the mother, there is an immediate change of custody, many times without any fore-warning, and a "therapy of de-programming" is applied. Restricting or removing visitation and communication with the mother, in the supposed well-being of the minors.

**Further testament to the flagrant discriminatory customs in judicial proceedings is the proclivity of court psychologists to consider accusations of PAS by fathers as important in custodial decisions, but accusations and even evidence of domestic abuse by mothers as immaterial.**

**The fact that something as well documented and studied as the signs of domestic abuse and violence AND the effects it has on its victims is COMPLETELY DISCOUNTED, while a supposed syndrome whose existence has not been scientifically proven or recognized by psychiatric association's is given enormous weight only when detrimental to fathers interest is nothing less than incredible. THIS ABSURD PARADOX IS PERHAPS THE GREATEST EXAMPLE OF FLAGRANT DISCRIMINATORY POLICIES WITHIN DIVORCE COURTS.**

Further evidence as to widespread discriminatory policies within divorce proceedings involving domestic abuse is documented by studies posted on the Leadership Council website, [www.leadershipcouncil.org](http://www.leadershipcouncil.org). While these studies only cover American and Canadian courts, the same factors, customs and biases prevalent there are at play in all OECD countries and judicial systems.

## **ARE "GOOD ENOUGH" PARENTS LOSING CUSTODY TO ABUSIVE EX-PARTNERS?**

By Stephanie Dallam -- updated 2008  
for the Leadership Council on Child Abuse & Interpersonal Violence.

### **INTRODUCTION**

High conflict families are disproportionately represented among the population of those contesting custody and visitation. These cases commonly involve domestic violence, child abuse, and substance abuse. Research indicates that that custody litigation can become a vehicle whereby batterers and child abusers attempt to extend or maintain their control and authority over their victims after separation. Although, research has not found a higher incidence of false allegations of child abuse and domestic violence in the context of custody/visitation, officers of the court tend to be unreasonably suspicious of such claims and that too often custody decisions are based on bad science, misinterpretation of fact, and evaluator bias. As a result, many abused women and their children find themselves re-victimized by the justice system after separation.

Empirical research examining this issue is summarized below.

### **RESEARCH**

**Abrams, R., & Greaney, J. (1989). *Report of the gender bias study of the Supreme Judicial Court of the Commonwealth of Massachusetts.***

A 1989 study by the Massachusetts Supreme Judicial Court found that in cases involving custody and visitation litigation, "The interests of fathers are given more weight than the interests of mothers and children." (pp. 62-63).

**Ackerman, M. J., & Ackerman, M. C. (1996). *Child custody evaluation practices: A 1996 survey of psychologists. Family Law Quarterly, 30, 565-586.***

**Research has found that many custody evaluators consider alienation of more significance than domestic violence in making custody recommendations.** A survey of 201 psychologists from 39 states who conducted custody evaluations indicated that **domestic violence was not considered by most to be a major factor in making custody determinations. Conversely, three-quarters of the custody evaluators recommended denying sole or joint custody to a parent who "alienates the child from the other parent by negatively interpreting the other parent's behavior."**

**Bemiller, Michelle. (2008). *When Battered Mothers Lose Custody: A Qualitative Study of Abuse at Home and in the Courts. Journal of Child Custody, 5(3/4), 228-255.***

Abstract: The following study adds to research that examines child custody cases involving a history of interpersonal violence. This study contributes to past research by providing qualitative accounts of women's experiences with intimate partner violence prior to custody loss, institutional abuse at the hands of the family court, and abuse experienced after custody loss. Data come from a

**Chesler, P. (1991, 1986). *Mothers on Trial: The Battle for Children and Custody*. NY: Harcourt Brace Jovanovich, Publishers.**

Phyllis Chesler interviewed 60 mothers involved in a custody dispute and found that fathers who contest custody are more likely than their wives to win (p. 65). **In 82% of the disputed custody cases fathers achieved sole custody despite the fact that only 13% had been involved in child care activities prior to divorce** (p. 79 tbl. 5). Moreover, 59% of fathers who won custody litigation had abused their wives, and 50% of fathers who obtained custody through private negotiations had abused their wives (p. 80 tbl. 6).

**The Committee for Justice for Women and the Orange County, North Carolina, Women's Coalition. (1991). *Contested Custody Cases In Orange County, North Carolina, Trial Courts, 1983-1987: Gender Bias, The Family And The Law*. Author.**

The Committee for Justice for Women studied custody awards in Orange County, North Carolina over a five year period between 1983 and 1987. They reported that:

"...in all contested custody cases, 84% of the fathers in the study were granted sole or mandated joint custody. **In all cases where sole custody was awarded, fathers were awarded custody in 79% of the cases. In 26% of the cases fathers were either proven or alleged to have physically and sexually abused their children.**"

**Emery, R. E., Otto, R. K., & O'Donohue, W. T. (2007). *Custody Evaluations: Limited Science and a Flawed System*.**

***Psychological Science in the Public Interest*, 6(1), 1-29.**

Theoretically, the law guides and controls child custody evaluations, but the prevailing custody standard (the "best interests of the child" test) is a vague rule that directs judges to make decisions unique to individual cases according to what will be in children's future (and undefined) best interests.

Furthermore, state statutes typically offer only vague guidelines as to how judges (and evaluators) are to assess parents and the merits of their cases, and how they should ultimately decide what custody arrangements will be in a child's best interests. In this vacuum, custody evaluators typically administer to parents and children an array of tests and assess them through less formal means including interviews and observation.

**Sadly, we find that (a) tests specifically developed to assess questions relevant to custody are completely inadequate on scientific grounds; (b) the claims of some anointed experts about their favorite constructs (e.g., "parent alienation syndrome") are equally hollow when subjected to scientific scrutiny; (c) evaluators should question the use even of well-established psychological measures (e.g., measures of intelligence, personality, psychopathology, and academic achievement) because of their often limited**

relevance to the questions before the court; and (d) little empirical data exist regarding other important and controversial issues (e.g., whether evaluators should solicit children's wishes about custody; whether infants and toddlers are harmed or helped by overnight visits), suggesting a need for further scientific investigation.

**Erickson, Nancy S. (2005, Spring). Use of the MMPI-2 in Child Custody Evaluations Involving Battered Women: What Does Psychological Research Tell Us? *Family Law Quarterly* vol 39, no. 1, p. 87-108.**

Erickson notes:

The effects of domestic violence on survivors, who are primarily women, may be severe. Battered women's advocates often note that, in custody cases, the batterer often "looks better" to the court than the victim does because he is confident and calm, whereas she is still suffering the effects of his abuse and therefore may appear hysterical, weepy, angry, or otherwise not "together."

When a custody evaluation is conducted by a psychologist, the revised version of the Minnesota Multiphasic Personality Inventory (MMPI-2) is often used as part of the evaluation process. The MMPI-2, like other traditional psychological tests, was not designed to be used in custody evaluations and arguably should not be used for such purpose except "when specific problems or issues that these tests were designed to measure appear salient in the case."

If it used, Erickson notes that "great care must be taken" as "a misinterpretation could result in placing custody of a child with a batterer, which could put the child at severe risk."

Erickson reviews research on the use of MMPI evaluations with battered women and found that that the psychological stress that battered women suffer may result in MMPI scores that do not accurately evaluate their ability to parent.

**Faller, K. C., & DeVoe, E. (1995). Allegations of sexual abuse in divorce, *Journal of Child Sexual Abuse*, 4(4), 1-25.**

The authors examined 214 allegations of sexual abuse in divorce cases that were evaluated by a multidisciplinary team at a university-based clinic. 72.6% were determined likely, 20% unlikely, and 7.4% uncertain. The temporal relationship between allegations and divorce were analyzed and results revealed that in cases where CSA was judged to be likely or uncertain, in 18% of these cases divorce followed discovery of sexual abuse, in 32% cases discovery of sexual abuse followed divorce, in 34% of cases sexual abuse followed divorce, and 16% of allegations were found to be unrelated to divorce. Of the 20% of cases that were judged to be false or possibly false cases, only approximately a quarter (n = 10) were determined to have been consciously made. The remainder were classified as misinterpretations.



Faller and DeVoe found that 40 concerned parents experienced negative sanctions associated with raising the issue of sexual abuse. These sanctions included being jailed, losing custody to the alleged offender, a relative, or foster case, limitation or loss of visitation, admonitions not to report alleged abuse again to the court, Protective Services or the police, and prohibitions against taking the child to a physician or therapist because of concerns about sexual abuse in the future. None of the parents experiencing these sanctions were ones who were judged to have made calculated false allegations. In fact, sanctioned cases tended to score higher on a composite scale of likelihood of sexual abuse, and were more likely to have medical evidence than cases without sanctions.

Goelman, D. M., Lehrman, F. L., & Valente, R. L. (Eds.). (1996). *The impact of domestic violence on your legal practice: A lawyer's handbook*. Washington D.C.: ABA Commission on Domestic Violence.

"Custody litigation frequently becomes a vehicle whereby batterers attempt to extend or maintain their control and authority over the abused parents after separation... **Be aware that many perpetrators of domestic violence are facile manipulators, presenting themselves as caring, cooperative parents and casting the abused parent as a diminished, conflict-inciting, impulsive or over-protective parent.**"

Johnston, J. R., Lee, S., Olesen, N. W., Walters, M. G. (2005) "Allegations and Substantiations of Abuse in Custody-Disputing Families." *Family Court Review*, 43, 283–294. Johnson, N. E., Saccuzzo, D. P., & Koen, W. J. (2005). Child custody mediation in cases of domestic violence: Empirical evidence of a failure to protect. *Violence Against Women*, 11(8), 1022-1053.

This study shows that victims of domestic violence (DV) are greatly disadvantaged when states require mediation of child custody disputes. The investigators empirically evaluated outcomes and found that mediators failed to recognize and report DV in 56.9% of the DV cases. The court's screening form failed to indicate DV in at least 14.7% of the violent cases. Mediation resulted in poor outcomes for DV victims in terms of protections, such as supervised visitation and protected child exchanges. As a result, the capacity of mediators to focus on the child's best interest is called into question.

Kernic, M.A., Monary-Ernsdorff, D. J., Koepsell, J. K., & Holt, V. L. (2005). Children in the crossfire: Child custody determinations among couples with a history of intimate partner violence. *Violence Against Women*, 11(8), 991-1021.

This retrospective cohort study examined the effects of a history of interpersonal violence (IPV) on child custody and visitation outcomes.

The investigators analyzed documentation on more than 800 local couples with



young children who filed for divorce in 1998 and 1999. These included 324 cases with a history of domestic violence and 532 cases without such a history. The researchers estimate that at least 11.4% of Seattle **divorce cases involving couples with dependent children involve a substantiated history of male-perpetrated domestic violence**. The findings reveal a lack of identification of IPV even among cases with a documented, substantiated history, and a lack of strong protections being ordered even among cases in which a history of substantiated IPV is known to exist.

**In 47.6% of cases with a documented, substantiated history, no mention of the abuse was found in the divorce case files.**

"The court was made aware of less than one fourth of those cases with a substantiated history of intimate partner violence."

Mothers in cases with a violent partner were no more likely to obtain custody than mothers in non-abuse cases. **Fathers with a history of committing abuse were denied child visitation in only 17% of cases.**

**Logan, T. K., Walker, R., Jordan, C. E., & Horvath, L. S. (2002). Child custody evaluations and domestic violence: Case comparisons. *Violence & Victims, 17*(6), 719-42.**

This study is one of the first to examine characteristics of disputed custody cases and their custody evaluation reports differences between domestic violence and non-domestic violence cases. This study selected a 60% random sample of cases with custody evaluations in Fiscal Year 1998 and 1999 (n = 82 cases). Out of the 82 cases, 56% (n = 46) met criteria for classification into the domestic violence group and 44% (n = 36) did not. In general, **results indicated that although there were some important differences in court records between cases with and without domestic violence, there were only minor differences between custody evaluation reported process and recommendations for the two groups.**

**Lowenstein, S. R. (1991). Child sexual abuse in custody and visitation litigation: Representation for the benefit of victims.**

***UMKC Law Review, 60, 227-82.***

Sharon Lowenstein examined 96 custody and visitation disputes involving allegations of child sexual abuse from 33 states. Visitation was the principal issues in 36 cases. The father was alleged to have sexually molested their child in each of these 36 cases. Yet in two-thirds (24) of these cases fathers were granted unsupervised visitation.

Custody was the principle issue in 56 cases. **In 27 of the 56 cases (48%) mothers lost custody. In 17 of these cases (63%) the mother lost custody to a father**

alleged to be a perpetrator. In two cases (3.6%) fathers lost custody. No father lost custody to a mother whose household included an alleged perpetrator (either the mother, a stepfather, the mother's boyfriend, or one of mother's relatives).

Meier, Joan. *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*,

A.U. J. Gender, Soc. Pol. & the Law, 11:2 (2003), 657-731, p. 662, n. 19, and Appendix.

Joan Meier surveyed the 2001 case law and identified 38 appellate state court decisions concerning custody and domestic violence. **She found that 36 of the 38 trial courts had awarded joint or sole custody to alleged and adjudicated batterers.** Two-thirds of these decisions were reversed on appeal. These cases included a case in which the perpetrator had been repeatedly convicted of domestic assault (*In re Custody of Zia*, 736 N.E. 2d 449 [Mass. App. Ct. 2000]); in which a father was given sole custody of a 16-month old despite his undisputed choking of the mother resulting in her hospitalization and his arrest (*Kent v. Green*, 701 So. 2d 4 [Ala. Civ. App. 1996]); in which the father had broken the mother's collarbone (*Couch v. Couch*, 978 S.W.2d 505 [Mo. App. 1998]); had committed "occasional incidents of violence" *Simmons v. Simmons*, 649 So. 2d 799, 802 [La. App. Ct. 1995]); and had committed two admitted assaults (*Hamilton v. Hamilton*, 886 S.W.2d 711, 715 [Mo. App. 1994]) . More such instances can be found in the article.

**The investigators found that only in 10% of cases was primary custody was given to the protective parent and supervised contact with alleged abuser. Conversely, 20% of the cases resulted in a predominantly negative outcome where the child was placed in the primary legal and physical custody of the allegedly sexually abusive parent. (see p. 108). In the rest of the cases, the judges awarded joint custody with no provisions for supervised visitation with the alleged abuser.**

Neustein, A., & Leshner, M. (2005). *From Madness to Mutiny -- Why Mothers are Running from Family Court and What Can Be Done About It*. (Northeastern University Press.

This scholarly book documents case after case where accusations of sexual abuse by a child resulted in forced contact with the alleged abuser, and sometimes complete termination of parental contact with a loving parent who seeks only to protect the child.

Morrill, A. C., Dai, J., Dunn, S., Sung, I., & Smith, K. (2005). Child custody and visitation decisions when the father has perpetrated violence against the mother. *Violence Against Women*, 11(8), 1076-1107.

This research evaluated the **effectiveness of statutes mandating a presumption against custody to a perpetrator of domestic violence (DV) and judicial education about DV**. Across six states, the authors examined 393 custody and/or visitation orders where the father perpetrated DV against the mother and surveyed 60

judges who entered those orders. With the presumption, more orders gave legal and physical custody to the mother and imposed a structured schedule and restrictive conditions on fathers' visits, except where there was also a "friendly parent" provision and a presumption for joint custody. Thus it appears that a presumption against custody to a perpetrator of DV is effective only when part of a consistent statutory scheme.

**Polikoff, N. D. (1992). Why are mothers losing: A brief analysis of criteria used in child custody determinations. *Women's Rights Law Reporter*, 14, 175-184.**

**Finding that judges evidence a strong "paternal preference" in contested custody cases. When sole custody is awarded, it is awarded to the father in 50-63% of cases.**

**Saccuzzo, D. P., & Johnson, N. E. (2004). Child custody mediation's failure to protect: Why should the criminal justice system care? *National Institute of Justice Journal*, 251, 21-23.** Available at <http://ncjrs.org/pdffiles1/jr000251.pdf>

The researchers looked at mediations in which the parties could not reach a mutual agreement. They compared 200 mediations involving charges of DV with 200 non-DV mediations. Joint legal custody was awarded about 90% of the time, even when domestic violence was an issue. **Mothers alleging domestic violence only received primary physical custody 35% of the time.**

Attorneys who represented mothers at these proceedings said that they often advised their clients not to tell the mediator about domestic abuse. After looking at the results of such mediations, the researchers determined that the attorneys' advice may well be justified; **women who informed custody mediators that they were victims of domestic violence often received less favorable custody awards.**

**Stahly, G. B. (1990, April). Battered women's problems with child custody. In G. B. Stahly (Chair), *New directions in domestic violence research*. Symposium conducted at the annual meeting of the Western Psychological Association, Los Angeles.** [Cited in Liss, M. B., & Stahly, G. B. (1993). Domestic violence and child custody. In M. Hansen, & M. Harway (Eds.), *Battering and family therapy: A feminist perspective* (175-187). Thousand Oaks, CA : Sage.]

Sociologist Geraldine Stahly, PhD., surveyed battered women's shelters in order to gather information on extent of custodial problems encountered by women seeking shelter services. Of the more than 100,000 women reported on by the shelter staff, 34% reported the batterer threatened to kidnap their children; and 11% of batterers had actually kidnapped a child. In 23% of cases batterers had threatened legal custody action, and in 7% of the cases known to the shelter staff, such actions had already been filed.

In 24% of the cases, the battering man used court-ordered visitation as an occasion to continue verbal and emotional abuse of the woman, and in 10% of the cases, physical violence continued. Shelter staff reported Attorneys who represented mothers at these proceedings said that they often advised their clients not to tell the mediator about domestic abuse. After looking at the results of such mediations, the researchers determined that the attorneys' advice may well be justified; **women who informed custody mediators that they were victims of domestic violence often received less favorable custody awards.**

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In 24% of the cases, the battering man used court-ordered visitation as an occasion to continue verbal and emotional abuse of the woman, and in 10% of the cases, physical violence continued. Shelter staff reported numerous cases in which courts granted unsupervised visitation in spite of evidence of physical abuse of the child (12,401 reported cases) and child sexual abuse (6,970 reported cases).

**Stahly, G. B., Krajewski, L., Loya, B. Uppal, K., Farris, W., Stuebner, N., Evans, K., German, G., & Frias, F. (n.d.).**

#### **Family violence impacts child custody: A study of court records.**

Researchers at California State University, San Bernardino, examined the

relationship between custody disputes and allegations of family violence in 147 randomly selected family court files of divorce involving children. The cases examined occurred during 1998-2002 in four courts in three counties of Southern California. They found that violent fathers were less likely to seek sole custody than battered mothers. However, violent fathers were just as likely as nonviolent fathers to file for sole custody. **Surprisingly, in the cases where violent fathers did pursue sole custody they were more likely to prevail than were non-violent fathers.**

**Stahly, G. B., Krajewski, L., Loya, B. Uppal, K., German, G., Farris, W., Hilson, N., & Valentine, J. (2004). Protective Mothers in Child Custody Disputes: A Study of Judicial Abuse. In *Disorder in the Courts: Mothers and Their Allies Take on the Family Law System* (a collection of essays), electronic download available at [http://store.canow.org/products.php?prod\\_id=3](http://store.canow.org/products.php?prod_id=3)**

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To better understand the problems that protective parents face in the legal system, researchers at California State University, San Bernardino, are performing an on-going national survey. To date, over 100 self-identified protective parents have completed the 101-item questionnaire. **The study found that prior to divorce, 94% of the protective mothers surveyed were the primary caretaker and 87% had custody at the time of separation.**

**However, as a result of reporting child abuse, only 27% were left with custody after court proceedings. 97% of the mothers reported that court personnel ignored or minimized reports of abuse and that they were punished for trying to protect their children. 45% of the mothers say they were labeled as having Parental Alienation Syndrome (PAS). Most protective parents lost custody in emergency ex parte proceedings (where they were not notified or present) and where no court reporter was present. 65% reported that they were threatened with sanctions if the "talked publicly" about the case.**

The average cost of the court proceedings was over \$80,000 and over a quarter of the protective parents reported being forced to file bankruptcy as a result of filing for custody of their children. **87% of the protective parents believe that their children are still being abused; however, 63% have stopped reporting the abuse for fear that contact with their children will be terminated. Eleven percent of the children were reported to have attempted suicide.**

**Stahly, G .B., Oursler, A., & Takano, J. (1988, April). *Family violence and child custody: A survey of battered women's fear and experiences*. Paper presented at the annual meeting of the Western Psychological Association, San Francisco.** [Cited in Liss, M. B., & Stahly, G .B. (1993). Domestic violence and child custody. In M. Hansen, & M. Harway (Eds.), *Battering and family therapy: A feminist perspective* (175-187). Thousand Oaks, CA : Sage.]

**In this pilot study of battered women's experiences with child custody (n = 94), mothers reported that their batterer frequently used threats against the children in an attempt to keep the woman from leaving them. Twenty-five percent of battered women reported that their batterer threatened to hurt the children, 25% reported that he threatened to kidnap the children, and 35% reported that the batterer threatened to take the children away through a custody action.**

**Suchanek, J., & Stahly, G. B. (1991, April). *The relationship between domestic violence and paternal custody in divorce*. Paper presented at the annual meeting of the Western Psychological Association, San Francisco.**

Suchanek and Stahly examined 150 randomly selected files of marital dissolution from a Southern California district courthouse between 1980 and 1989. They found that dissolution cases in which violence toward the woman had been asserted (usually in support of a restraining order) were significantly more likely to include custody disputes. In fact, **when there were allegations of violence perpetrated by the father, he was twice as likely to seek sole physical and legal custody of the children and just as likely to win.** Thus, violence did not appear to make a difference in how courts determined custody. Fathers who were alleged to be violent were no less likely to win custody than fathers with no allegations of violence.

**Sutherland, T.J. (2004). High-conflict divorce or stalking by way of family court? The empowerment of a wealthy abuser in family court litigation. *Linda v. Lyle – A case study. Massachusetts Family Law Journal*, 22(1&2) 4-16. <http://www.mincava.umn.edu/reports/linda.asp>**

Virtually all coverage of high-conflict divorce assumes both parents are the source of the conflict. **This article argues that some high-conflict divorces are actually the manifestation of stalking behaviors by wealthy domestic abusers.** Provides a case analysis of *Linda v. Lyle* - Linda was married to Lyle for

22 years. He was a violent spousal and child abuser. Despite the fact that a volume of CPS reports had accumulated against Lyle, he obtained sole custody of their son. Linda was given visitation but Lyle frequently prevented her from seeing her child. To date, the case has litigated for approximately 6 years without respite. **Lyle is quite wealthy and Linda, who was a homemaker, has been left homeless and is a pro per litigant facing two attorneys. The court blamed her for the protracted litigation because she attempted to reestablish a relationship with her child.**

**Waits, K. (1998). Battered women and their children: Lessons from one woman's story. *Houston Law Review*, 35, 29-108.**  
<http://www.omsys.com/fivers/Rkw18349#Rkw18349>

Documents in detail the personal story of one battered woman's experience in the family court system. Shows how a man who had abused both his wife and kids ended up with full custody of his young son and unsupervised visitation of his other children. The nonabusive mother (who had previously been the children's primary caretaker) was given probationary custody of her daughter and other son.

The judge threatened the mother saying "If you do one thing to disrupt visitation, I'll take your daughter and give your ex-husband custody of her too."

The mother regained custody of her son only after her ex-husband's new girlfriend reported him to the police for physically abusing the boy. **Notes that many judges, psychologists and lawyers want to believe in a just world and thus allow themselves to be fooled by batterers.**

**Walker, L. & Edwall, G. (1987). Domestic violence and determination of visitation and custody in divorce. In D. J. Sonkin (Ed.), *Domestic violence on trial: Psychological and legal dimensions of family violence* (pp. 127-152). New York: Springer.**

### **GENDER BIAS REPORTS** **Official State Reports**

New Jersey was the first state to give prominence to the goal of raising awareness of gender bias in the court system. Since the establishment of their gender bias task force, forty-five states and a number of federal circuit courts have established gender bias task forces, including: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, District of Columbia, and Puerto Rico.



These task forces were initiated by a variety of institutions and organizations, including the state supreme court, judicial council, and bar association. Thirty-four have published reports.

**A number of state task forces collected and analyzed data on the experiences of women in family courts.**

### **California**

**Danforth, G., & Welling, B. (Eds.). (1996). *Achieving Equal Justice for Women and Men in the California Courts: Final Report*. Judicial Council of California Advisory Committee on Gender Bias in the Courts**  
<http://www.courtinfo.ca.gov/programs/access/documents/f-report.pdf>

Noting that negative stereotypes about women encourage judges to disbelieve women's allegations of child sexual abuse. Gender bias problems are particularly acute in family courts, and most problematic when sexual abuse of children is alleged in custody or visitation proceedings. Negative stereotypes about women encourage judges to disbelieve women's allegations of child sexual abuse. The report stated: "One striking example is the tendency to doubt the credibility of women who make these allegations, and to characterize them as hysterical or vindictive even when medical evidence corroborates a claim of child abuse." (p. 149-150).

Another major problem area involved child custody and visitation disputes between parents when there has been a history of domestic violence. The committee also found that custody and visitation orders frequently fail to include adequate provisions to prevent further abuse, giving batterers unrestricted access to their children and therefore unrestricted access to their abused spouse" (p. 12).

### **British Columbia**

**Law Society of British Columbia Gender Bias Committee (1992). *Gender equality in the justice system, Volume II* . Author.** [as cited in: Penfold, S.P. (1997). Questionable beliefs about child sexual abuse allegations during custody disputes. *Canadian Journal of Family Law*, 14 , 11-30.]

Noting that, although research indicates that false accusations of sexual abuse during child custody disputes are not a common occurrence, **lawyers tend to advise women not to raise allegations of sexual abuse because they will jeopardize their chances of receiving custody.**

### **Florida**

**Report of the Florida Supreme Court Gender Bias Study Commission Executive Summary (March 1990)**  
<http://www.flcourts.org/sct/sctdocs/bin/bias.pdf>

Noting that "**Many men file proceedings to contest custody as a way of forcing an advantageous property settlement. . . . Contrary to public perception, men are quite successful in obtaining residential custody of their children when they actually seek it.**" (p. 7)



### **Maryland**

**Wilson, T. *Domestic violence in Maryland : More from the gender bias report***

**(Available:**

**<http://www.voiceofwomen.com/articles/violence.html>)**

Summarizing the conclusions of the Maryland Gender Bias Report on domestic violence, Trish Wilson states:

"[T]he most pervasive and difficult problems facing victims of domestic violence are attitudes and lack of understanding of many judges and court employees about the nature of domestic violence. Too often judges and court employees deny the victim's experiences, accuse the victim of lying, trivialize the cases, blame the victim for getting beaten, and badger the victim for not leaving the batterer.

All this is due to a lack of understanding of the dynamics of domestic violence, including lack of knowledge of studies of batterers which show that the violence is not caused by the victim; that batterers do not give up control when the victim leaves; and that batterers try to manipulate victims to affect the judicial process. **This manipulation of the court process includes batterers and other abusers who misuse the court system in regards to divorce, custody, visitation, and child support as well as domestic violence."**

### **Massachusetts**

**Abrams, R., & Greaney, J. (1989). *Report of the Gender Bias Study of the Supreme Judicial Court [of Massachusetts]*, 62-63.**

***Gender Bias Study of the Court System in Massachusetts*, 24 New Eng. L. Rev. 745, 747, 825, 846 (1990).**  
**[http://www.amptoons.com/blog/files/Massachusetts\\_Gender\\_Bias\\_Study.htm](http://www.amptoons.com/blog/files/Massachusetts_Gender_Bias_Study.htm)**

Massachusetts was one of the first states to document the gender bias against women in family courts. **This court-initiated study expressly found that "our research contradicted [the] perception" that "there is a bias in favor of women in these decisions."**

Moreover, it found that **"in determining custody and visitation, many judges and family service officers do not consider violence toward women relevant."** The Court's study further found that "the courts are demanding more of mothers than fathers in custody disputes" and that **"many courts put the needs of noncustodial fathers above those of custodial mothers and children."**

### **Michigan**

**Final Report of the State Bar of Michigan Task Force on Race/Ethnic and Gender Issues in the Courts and the Legal Profession (January 23, 1998)**  
**[www.michbar.org/](http://www.michbar.org/)**

In 1993, Michigan passed an amendment to the "best interests of the child" statute which requires judges to consider certain factors in determining custody and visitation matters. MCL 722.23; MSA 25.312. However, research found a mixed picture when it assessed whether judges actually follow the statutory mandate. **Of the judges responding to the question about whether they consider violence or threatened violence when making custody and visitation decisions, only a little more than half of the judges (58%) indicated that they always considered it. Eleven percent said that they never considered it.**

In addition, **several women testified that custody of the children was given to the batterer, sometimes by an *ex parte* order. In one instance it was reported that an abusive husband was awarded custody because he had a "stable income."**

### ***Pennsylvania***

#### **Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System,**

<http://www.courts.state.pa.us/Index/supreme/BiasReport.htm>

Arizona study, 72% of the mothers said they were not given an adequate chance to tell the court their side of the story and 41% were ordered into mediation though the court knew there was violence. (p. 48)

**The survey found that courts awarded joint or sole custody to the alleged batterers 56-74% of the time** (depending on the county). Many of these cases involved documented child abuse or adult abuse.

The Arizona studies main findings were:

- a. In spite of evidence of violence against women and/or their children, (and with such violence documented in 63% of the cases) the courts consistently ordered sole or joint custody to perpetrators in 74% of the cases in Maricopa County and 56% of the cases in the other counties combined.
- b. **Income level, which was highly skewed towards father, seemed to have the most impact on the ultimate custody decision.**
- c. A mother represented by an attorney was more likely to win custody.
- d. Having a custody evaluator more likely resulted in the mother losing custody.
- e. By and large, **the systems of control the perpetrator established pre-divorce, including physical and sexual violence and child abuse, were maintained post-separation with the added ability to use the court system to abuse the victims.**
- f. Having an order of protection had no impact on the final custody decision; **contrary to Arizona law, the courts simply ignored the documented existence of domestic violence.**
- g. **The courts ignored well-known research and federal standards as 100% of the victims were ordered to go to mediation or a face-to-face meeting with the abuser.**
- h. A large number of perpetrators had weapons or used alcohol or drugs when with children.

**A large number of judges thought that since the parties were separated, domestic violence was not a concern.**

j. In a large number of cases, unsupervised visits were awarded or the supervisor was an untrained person such as a family member.

**Heim, S., Grieco, H., Di Paola, S., & Allen, R. (2002). *Family Court Report*. Sacramento, CA: California National Organization for Women. ([http://website.canow.org/documents/fam\\_report.pdf](http://website.canow.org/documents/fam_report.pdf))**

EXCERPT: After significant research, **CA NOW declares the present family court system in California to be crippled, incompetent, and corrupt. The bias in the system results in pathologizing, punishing, and discriminating against women.** The system leaves decisions, which should be made on facts in a courtroom, to extra-judicial public and private personnel. The system precludes the parties, particularly the mother, from her rights to due process, including a trial, long cause hearing, or adjudication, to which she is entitled, much less an appeal of these decisions. Mothers are coerced into stipulations through the rubber-stamping of definitive evaluations and reports, which become the court's ruling. The present family law system in California exists to enrich attorneys and allied mental health and mental health professionals. This system allows mothers to be taken to court time after time, challenging what is in "the best interests of the child," therefore subjecting them to a system that has no end for them or their children. **In the most egregious cases, perfectly fit mothers who were the primary caretakers of their children lose custody to the fathers who are motivated by evading support obligations, and are often known abusers.**

**Human Rights Tribunal on Domestic Violence and Child Custody sponsored by the Battered Mothers' Testimony Project based at the Wellesley Centers for Women in Massachusetts (2002) [3]**

A multi-year, four-phase study using qualitative and quantitative social science research methodologies by the Wellesley Centers for Women. Battered women reported having to participate in wrenching custody battles with their ex-spouse to keep their children. They noted that their problems were aggravated and sometimes prolonged in the courts or by social service agencies.

**The battered women testified that they have been wrongly perceived as hysterical and have been accused of lying. The research found widespread adoption of "parental alienation syndrome," and found "a consistent pattern of human rights abuses" by family courts, including failure to protect battered women and children from abuse, discriminating against and inflicting degrading treatment on battered women, and denying battered women due process. Histories of abuse of mother and children were routinely ignored or discounted.**

They also reported that evidence of abuse was often ignored, judges were insensitive, and guardians ad litem - the court-assigned advocates for children - made poor assessments. Domestic violence advocates reported that women who fear the family court process stay in abusive situations instead of seeking help.

**Slote, K. Y., Cuthbert, C., Mesh, C. J., Driggers, M. G., Bancroft, L., & Silverman, J. G. (2005). Battered mothers speak out: Participatory human rights documentation as a model for research and activism in the United States. *Violence Against Women*, 11(11), 1367-95.**

This article describes the work of the Battered Mothers' Testimony Project, **a multiyear effort that documented human rights violations against battered women and their children in the Massachusetts family court system.**

EXCERPT: Battered women with children often receive painfully ironic mixed messages from the government. On one hand, they are urged by state actors-such as the police, child welfare agencies, and district attorneys-to leave their batterers and flee to a confidentially located shelter to protect themselves and their children. On the other hand, once these women finally do take the courageous step to leave, they are often pressured by those working in the family court system to negotiate child custody and visitation with their batterers and to encourage an ongoing relationship between their batterers and their children, many of whom have been victimized by these same men. Battered mothers are often expected to yield to custody and visitation orders that may require them and their children to maintain long-term, unprotected contact with the batterers. **If they fail to comply with these court orders, they risk being held in contempt of court or even losing custody of their children to the batterers.**

**The Voices of Women Organizing Project (VOW). (2008). Justice Denied: How Family Courts in NYC Endanger Battered Women and Children. Brooklyn, NY: Battered Women's Resource Center. ([Executive Summary](#))**

EXCERPT: **80% of women said their abuser threatened to take away their children and used the court to follow through with that threat.** 10% of women said they stopped reporting abuse for fear of losing contact with their children.

Mothers were told by their lawyer, the law guardian or the judge not to oppose visitation, even when they felt it was unsafe or when their children protested.

Tracy, C., Fromson, T., & Miller, D. *Justice in the Domestic Relations Division of Philadelphia Family Court: A Report to the Community, Domestic Violence Report*, Vol. 8, No. 6 (Aug/Sept. 2003), p. 94. [http://www.friendsfw.org/Links/WLP\\_Report\\_language\\_access.pdf](http://www.friendsfw.org/Links/WLP_Report_language_access.pdf)

A study of the Domestic Relations Division of Philadelphia Family Court conducted by the Philadelphia Women's Law Project in cooperation with the court, **found that litigants are often denied due process, and that applicable legal standards** are "not always observed, particularly in the consideration of abuse in custody proceedings, leaving families at risk."

#### REPORTS BY PROFESSIONAL ORGANIZATIONS

American Bar Association Commission on Domestic Violence. (2006). **10 Myths About Custody and Domestic Violence and How to Counter Them.** Washington, DC: Author.

American Judges' Foundation. *Domestic Violence and the Court House: Understanding the Problem. Knowing the Victim*. Williamsburg, VA: Author. (see, Forms of Emotional Battering Section, Threats to Harm or Take Away Children Subsection: <http://aja.ncsc.dni.us/domviol/page5.html> )

Fathers are often awarded sole custody even when their sexual and physical abuse of the children is alleged and substantiated. According to the **American Judges Association, 70% of the time the abuser convinces the court to give him custody.**

American Psychological Association. (1996) . *Report of the American Psychological Association presidential task force on violence and the family.* Washington, DC : Author. Available at <http://www.apa.org/pi/pii/familyvio/issue5.html>

Noting that **custody and visitation disputes appear to occur more frequently when there is a history of domestic violence.** Family courts often do not consider the history of violence between the parents in making custody and visitation decisions. In this context, **the nonviolent parent may be at a disadvantage, and behavior that would seem reasonable as a protection from abuse may be misinterpreted as a sign of instability. Psychological evaluators not trained in domestic violence may contribute to this process by ignoring or minimizing the violence and by giving inappropriate pathological labels to women's responses to chronic victimization.** Terms such as 'parental alienation' may be used to blame the women for the children's reasonable fear or anger toward their violent father." (p. 100).

**"Studies of custody disputes indicate that fathers who battered the mother are twice as likely to seek sole physical custody of their children than are nonviolent fathers, and they are more likely to dispute custody if there are sons involved."**

**Goelman, D. M., Lehrman, F. L., & Valente, R. L. (Eds.). ((1996) . *The impact of domestic violence on your legal practice: A lawyer's handbook*. Washington, D.C.: ABA Commission on Domestic Violence.**

This book published by the American Bar Association includes guidelines on legal practices in the best interest of the child, stating:

**"Custody litigation frequently becomes a vehicle whereby batterers attempt to extend or maintain their control and authority over the abused parents after separation.. Be aware that many perpetrators of domestic violence are facile manipulators, presenting themselves as caring, cooperative parents and casting the abused parent as a diminished, conflict-inciting, impulsive or over-protective parent."**

**Lopatto, A. D., & Neely, J. C. (1995). *Lawyer's Manual on Domestic Violence: Representing the Victim*. Supreme Court of the State of New York Appellate Division, First Department Francis T. Murphy, Presiding Justice.**

**National Center for State Courts. (1997). *Domestic violence and child custody disputes: A resource handbook for judges and court managers*. Williamsburg, VA: author. [National Center for State Courts, 300 Newport Avenue, Williamsburg, VA23185].**

By Susan L. Keilitz, Courtenay V. Davis, Carol R. Flango, Ann M. Jones, Meredith Peterson and Dawn Marie Spinozza. National Center for State Courts. 1997.

The purpose of this handbook is to provide judges and court managers a concise guide to resources for:

Determining when Domestic Violence is occurring between the parties to a dispute over child custody or visitation; Coordinating the management of custody and visitation disputes involving Domestic Violence to maximize the safety and efficiency of court processes; and Using resources to ensure that resolutions to custody and visitation disputes effectively address the best interest of the child and the safety of Domestic Violence victims. Published by the National Center for State Courts under a joint grant from the State Justice Institute and National Institute of Justice.

**National Council of Juvenile and Family Court Judges. (1993). *Model code on domestic and family violence*. Reno, NV : NCJFCJ.** [National Council of Juvenile and Family Court Judges, University of Nevada, P.O. Box 8970, Reno, NV89507].

**National Council of Juvenile and Family Court Judges. (1995). *Custody and visitation decision-making when there are allegations of domestic violence*.**

**Reno, NV : NCJFCJ.** [National Council of Juvenile and Family Court Judges, University of Nevada, P.O. Box 8970, Reno, NV89507].

**National Council of Juvenile and Family Court Judges. Justice and Family Court Journal, Family Violence Issue, Spring 1999, Volume 50, No. 2, 86 pp.**

Articles developed by a number of authors encompassing such topics as child custody, supervised visitation, child support, managing the domestic violence court docket, adult fatality reviews, full faith and credit to protective orders, and the Uniform Child-Custody Jurisdiction and Enforcement Act. Published by the National Council of Juvenile and Family Court Judges, Family Violence Department.

**National Council of Juvenile and Family Court Judges. (2006). *Navigating Custody & Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide* (2nd edition). Reno, NV: NCJFCJ. ([download PDF](#))**

EXCERPT from page 19: "Children in contested custody cases may indeed express fear of, concern about, distaste for, or anger with one parent. And those feelings may sometimes have been fostered or encouraged by alienating behaviors on the part of the other parent. On the other hand, there are a variety of competing explanations that need to be explored-including the very real possibility that the children are responding to concerns based in their own experience with the parent from whom they feel estranged." [Read whole excerpt](#)

**Saunders, D. G., & Hamill, R. (2003). *Violence against women: Synthesis of research on offender interventions. Report to the National Institute of Justice, U.S. Department of Justice*. Available from National Criminal Justice Reference System, NCJ 201222. Available at <http://www.ncjrs.org/>**

**Testimony to the Truth Commission. (2007, Jan 13). Fourth Battered Mothers Custody Conference. Albany, NY.**

Sixteen women testified before the Truth Commission at the Fourth Battered Mothers Custody Conference about their family law cases, which covered eleven states.

The common theme that emerged from the testimony is that **there is a widespread problem of abusive parents being granted custody of children and protective parents having their custody limited or denied, and/or being otherwise punished.**

**There is a crisis in the custody court system, which has resulted in thousands of children being sent to live with abusers while safe, protective parents, primarily mothers, are denied any meaningful relationship with their children.** The court system has failed to respond appropriately to domestic violence and child abuse cases involving custody. The Commission found many common errors made by the courts and the professionals they rely upon which contribute to these tragedies. These same mistakes have negatively impacted battered women and children in other cases, with less extreme results.

***Jurisprudence Study on the Impact of PAS in Asturias Courts***  
*Institute Asturias of Women Lawyers for Equality*

First, when PAS is “diagnosed” coming from the father, the “therapy of menaces” is not applied, and no modification of custodial rights is applied nor is the “best interest of the child” considered. Additionally, visitation rights of the mother may be restricted in order to not “traumatize” the child who suffers the visits as something “terrible.”

Second: When PAS is diagnosed coming from the mother, there is an immediate change of custody, many times without any fore-warning, and a “therapy of de-programming” is applied. Restricting or removing visitation and communication with the mother, in the supposed well-being of the minors.



***OPPRESSION,  
VIOLENCE &  
DISCRIMINATION  
AGAINST WOMEN:***

***A Historical,  
Sociological,  
Psychological, and  
Anthropological  
Perspective***

## **The Natural Superiority of Women** **by Ashley Montagu**

Anyone who stands in the way of another's development, and compounds the wrong by denying or limiting their political or social rights, commits the greatest of all offenses against humanity. Yet this is the kind of malefaction that civilized peoples have committed not alone against other peoples, but have unrestrainedly felt free to commit against distinguishable groups within their own people.

This is precisely how civilized men have been behaving towards women for millennia with the aid of the myth of masculine superiority....Women have always been a convenient screen upon which men have projected their weaknesses and ambivalence. For many men today, attitudes toward women remain very much what they were during the nineteenth century...

Legal equality does not mean that the relationships between sexes will become automatically and harmoniously balanced. Such recognition is helping; but the basic age-old problems between the sexes can no more be solved by constitutional amendment than have the much younger racial and religious problems. These difficulties are all problem in human relations and until they are solved, human beings will in large numbers continue to behave unintelligently and ineffectually.

What, then is the solution? It lies in a revaluation of our values; in a complete revaluation and reorganization of what today passes for education, but represents nothing more than *instruction*, a very different thing.

...It should be clear that it is not in our genes for one sex to establish supremacy over the other. Our biology does not decree that one sex shall rule over the other. What determines that sort of thing is tradition, culture. The forms of behavior that characterize us as human beings are determined by the socialization process we undergo, the cultural conditioning in which we are molded, the custom by which we are all made.

And there's the rub, for we are the most educable of all the creatures on this earth. And since we possess no instincts, everything we come to be, to know, and to do as human beings we have to learn from other human beings.

And that is why to be human is to be in danger, for we can easily be taught many wrong and unsound things, or right and sound ones. And when the sound and the unsound are combined, the result is not intelligence but confusion. And that is the state in which the greater part of humanity has lived for a very long time.

This has been particularly true of the traditional views relating to the status and roles of the sexes. And especially of the appeal to biology as the justification for the subjection of women....

The division of labor between the sexes represents a cultural expression of what are believed to be biological differences. The variety of cultural forms that this expression may take in different societies is enormous; what may be considered women's work in one society may be deemed men's work in another.

In some cultures men and women may engage in common activities that in other cultures are strictly separated along gender lines. The important point to grasp is that the prescribed roles assigned to the sexes are not determined biologically but virtually entirely by culture.

As anthropologist Ralph Linton says,

*all societies prescribe different attitudes and activities to men and to women. Most of them try to rationalize these prescriptions in terms of the physiological differences between the sexes or their difference roles in reproduction. However, a comparative study of the status ascribed to women and men in different cultures seems to show that while such factors may have served as a starting point for the development of a division, the actual ascriptions are almost entirely determined by culture.*

...The striking egalitarianism and cooperation between sexes among the Agta is in keeping with modern anthropological findings that gatherer-hunting peoples are for the most part all egalitarian and that egalitarianism and cooperation was the rule among early humankind...

As among the Agta, men and women in early societies very probably had a partnership in marriage. There was no supremacy of one sex over the other. Women were characterized by several biological advantages which the male lacked; for example, women replenished the group by having babies; they breast-fed the babies for about four years or more and cared for them for years thereafter. Furthermore, a bond was created between mother and child, which constituted, as it still does, the basic family unit.

The general myth is that the male provides most of the food in gatherer-hunter societies, but the truth is that some 80 percent or more is provided in most societies by the female...

In some early societies what may have been some division of labor between the sexes based on such biological differences as greater male physical strength and women's ability to bear children...

Old Europe and Anatolia, as well as Minoan Crete, were gynantries, that is nonpatriarchal and nonmatriarchal balanced social systems that were egalitarian.... All of these reflect the continuity of a matrilineal system in which descent is reckoned through the female line, as in ancient Greece, Etruria, Rome, and among the Basque and other European societies...There were many societies (if not all) that were gynantic, where women and men shared an equal partnership...

It is Bimbutas who offers the clear and unequivocal answer. She writes,

*while European cultures pursued a peaceful existence and reached a true florescence and sophistication of art and architecture in the fifth millennium B.C., a very different Neolithic culture with the domesticated horse and lethal weapons emerged in the Volga basin of South Russia, and after the middle of the fifth millennium even west of the Black Sea. This new force inevitably changed the course of European prehistory. I call it the Kurgan culture (kurgan meaning barrow in Russian) since the dead were buried in round barrows that covered the mortuary houses of important males. It was by these kurgan invasions that gynanic societies were overturned and replaced by patriarchal dominator cultures in which women were subjugated by men....*

There is strong evidence that from the Near East came yet another powerful influence in replacing a gynanic with an androcratic culture.

...early societies were in most cases egalitarian, that this is also true of most indigenous societies that exist today, that the subjection of women has not always been the rule, but constitutes a late social phenomenon, and that it was roughshod invaders who conquered the egalitarian societies and imposed upon them government and rule by men, together with subjugation of women.

...Until 1914 women lived in a world in which they were forced to be totally dependent on men, and were deprived of all legal autonomy as human beings.

### **Patriarchy and Subordination of Women**

*Femininity, Sexuality and Culture: Patriarchy and Female Subordination in Zimbabwe* by Maureen Kambarami

Patriarchy as a social system in which men appropriate all social roles and keep women in subordinate positions. They further state that this social system has managed to survive for so long because its chief psychological weapon is its universality as well as its longevity (Charvet, 1982). Patriarchal attitudes are bred in the family through the socialization process.

The family, as a social institution, is a *brewery for patriarchal practices by socializing the young* to accept sexually differentiated roles. ...from a tender age, the socialization process differentiates the girl child from the boy child...males are socialized to view themselves as breadwinners and heads of households whilst females are taught to be obedient and submissive housekeepers. The cause of such differentiation and discrimination is the fact that society views women as sexual beings and not as human beings..

... women are not only constantly defined in relation to men, but are defined as dependent and subordinate to them as well. As a result, women are socialized to acquire those qualities, which fit them into a relationship of dependence on men. These qualities include gentleness, passivity, submission and striving to please men always....

...once a girl reaches puberty all teachings are directed towards pleasing one's future husband as well as being a gentle and obedient wife. Her sexuality is further defined for her, as she is taught how to use it for the benefit of the male race. Furthermore, these cultural teachings foster a dependence syndrome this is why most...women depend heavily on their husbands for support. As a result, once a husband dies, the woman quickly remarries so as to find another pillar of support to lean on.

In the family, the male child is preferred to the female child. In fact, males rule females by right of birth and even if the male child is not the first born in a family, he is automatically considered the head of the household who should protect and look after his sisters. The female child is further discriminated upon due to the fact that eventually she marries out and joins another family whilst the male child ensures the survival of the family name through bringing additional members into the family...

...The toys that parents buy for their children also aid the socialization process, for instance a girl child is given dolls or kitchen utensils to play with whilst the boy child is given toy cars, puzzle games and all toys that require physical energy or mental ability. As a result, the girl child is socialized to become a mother, soft, emotionally sensitive, and to have all motherhood features. Furthermore, boys who cry easily, are shy or avoid fights are often scolded by their parents for behaving like girls....

Upon reaching puberty, aunts, grandmothers and mothers play an active role in ensuring that the girl child understands her sexuality and the implications it brings upon her life. "Don't play with boys" is a favorite phrase that characterizes the puberty stage, however the ... culture is very conservative to the extent that sexual issues are not discussed openly. As a result the phrase becomes so confusing for girls who begin to treat their counterparts with a wary eye without full information on why they should do so. This state is so confusing also due to the fact that as one grows up, she is taught the merits of a good wife, so how does one get married if she is suddenly taught that males are to be treated with a wary eye?

Furthermore, as one grows up, biological instincts win the battle and the female enters into sexual relationships and there is always the ambivalent feeling that at one end it feels good to be in a relationship whilst at the other end one feels guilty because of culturally cultivated attitudes and norms. Along the process a lot of mistakes do happen like unwanted pregnancies or forced abortions and society does not spare such women as they are labeled as 'spoilt'...

The socialization process in the family which instills patriarchal practices into the young does not end within the family but infiltrates into the other social institutions like marriage, religion, education, politics and the economy.

In marriage, the husband...can have extra-marital affairs. When such a scenario happens, however, it is the wife who is blamed for failing to satisfy her husband or for failing to curb his desire to do so. "All men are the same" is a favourite phrase of older women as they try to make young women accept the inevitable (male infidelity)... However, if it so happens that a married woman engages in an extramarital affair, she is not spared, she is labeled as 'loose'.

Patriarchal attitudes are also found in Christianity and these have strengthened the traditional customs, which men use to control women's sexuality. To exemplify, Eve's alleged creation from Adam's rib has made women occupy a subordinate position in the Church as well as in the family. Women are therefore viewed merely as second-class citizens who were created as an afterthought.

This is to say that if God had seen it fit for Adam to stay alone, then Eve would never have been created and hence women would not exist in this world. Such patriarchal attitudes have seen women being forced to be submissive to males. To make matters worse, once Eve was created she wreaked havoc by giving in to the Devil's temptation and pulling Adam into the sin.

This portrayal of women as the weaker sex has made men to treat women as people who have to be kept under constant supervision lest they err. Patriarchal attitudes are also found in Christianity and these have strengthened the traditional customs, which men use to control women's sexuality (Human Rights Monitor, 2001).

The patriarchal nature of our society has shaped and perpetuated gender inequality to the extent of allowing male domination and female subordination. **This sad state of affairs has been fuelled by the socialization process, therefore to amend the situation this calls for resocialisation...The family is a major social institution and if this re-socialization starts in the family it will permeate into the other social institutions...**

While this study was about Zimbabwe society, the parallels between "advanced" societies and "under-developed" ones is obvious. **As the author notes the most effective manner to change social norms is within the family unit.**

### **Social Changes of the Family in the 1900's**

The patriarchal family was constructed to give sexual control of men over women to ensure progeny once male inheritance became established (Kimmel 2004).

In the 19<sup>th</sup> century biological arguments were used to justify women's exclusion from the labor force; they were too weak, lacked strength, their brains were too small. So those who could, stayed home and looked after the children accepting the role of homemaker and mother.

This was reinforced during the Great Depression when it was considered men should have the few available jobs. Although World War I had not lured many housewives into the labor market, World War II did...They proved they could work, keep house, and raise a family. (Kessler-Harris 1982; McDowell 1999; Hesse-Biber and Carter 2004).

When the men returned, the women were expected to return to their previous role of housewife and mother

Women resisted, enjoying their new-found economic freedom, so a campaign was launched to redomesticate women in the 1950s... (These) ideals...were to be indelibly fixed in many people's minds to the point of believing that domesticity was a natural, innate feature of women, with men conveniently inept at keeping house."

...This model of the traditional nuclear family with the male breadwinner and female stay at home nurturer became insinuated into the popular cultural imaginary where...it continues to hold strong today (Coltrane 1998)...

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

## **Understanding the Abuser a Psychological Profile**

As seen male patriarchy and prerogative within a society is socially inculcated into all members from a very young age, defining who men and women are as well as what their role in society will be. However, to understand the dynamics at work in their entirety we must examine the belief systems, psyches, and tactics used by those who maintain the entire structure; the abusive, narcissistic personality.

As previously seen women, as homemakers, play an important role in establishing social norms as they are the primary care-takers of the young and instrumental in perpetuating male-dominated societies. Therefore, while men are usually more physically violent, and socialized to be so, the same tactics of a male abuser is used by female abusers in any society.

As demonstrated male-patriarchy, unequal societies are not a “natural state of affairs” within the human species, but something that developed rather late in the history of homo sapiens. Therefore, it may be assumed that there are deep and adverse psychological effects on the mind and psyche as is the case with any animal “removed” from its natural habitat or state,

In this section not only the tactics and characteristics of the abuser are examined, but also the negative effects that abusers/abusees have on the society at large. These translate not only into psychological disorders and substance abuse, but high crime rates, particularly in societies which are transforming from patriarchal domination to egalitarianism.

If the human race is to survive, and as such our planet, mankind must at all costs return to one of equality between men and women, where both sexes work not only towards the common good of the community, but participate in raising their young.



# Duluth Model - Power and Control Wheel



Domestic Abuse Intervention Project  
202 East Superior Street  
Duluth, Minnesota 55802  
218-722-2781  
[www.duluth-model.org](http://www.duluth-model.org)

*"Battering is one form of domestic or intimate partner violence. It is characterized by the pattern of actions that an individual uses to intentionally control or dominate his intimate partner. That is why the words "power and control" are in the center of the wheel."*

# Duluth Model – Abuse of Children Wheel



Domestic Abuse Intervention Project  
202 East Superior Street  
Duluth, Minnesota 55802  
218-722-2781  
[www.duluth-model.org](http://www.duluth-model.org)

*"A batterer systematically uses threats, intimidation, and coercion to instill fear in his partner. These behaviors are the spokes of the wheel. Physical and sexual violence holds it all together—this violence is the rim of the wheel."*

### Effects of Abuse and Violence on the Victim

- Poor physical health.
- Difficulty concentrating.
- Emotional and/or mental impairment.
- Powerlessness/loss of control.
- Feelings of desperation and isolation.
- Self-blame or shame.
- Hypervigilance and overreactivity.
- Nightmares, difficulty falling asleep or staying awake.
- Avoidance of intimacy.
- Weight loss or gain.
- Poor work or school performance
- Substance abuse (legal, illegal, and pharmaceutical.)
- Suicidal thoughts and/or suicide attempts
- Children are more likely to experience behavior problems, and develop symptoms of anxiety, depression, and post-traumatic stress disorder

### The Abuser

- **is controlling**
- **is entitled**; he considers himself to have special rights and privileges not applicable to other family members
- **is disrespectful**; he considers his partner less competent, sensitive, and intelligent than he is, often treating her as though she were an inanimate object
- **has an attitude of ownership**: sees his partner as a personal possession commonly extending to his children, helping to explain the overlap between battering and child abuse...
- **is a learned behavior**, with its roots in attitudes and belief-systems that are reinforced by the batterer's social world... **the belief that battering is justified, and the presence of peers who support abusiveness**
- **desire for control intensifies as he senses the relationship slipping away from him.**
- **abuser (are) more frightening after separation than before, and increase(s) his manipulation and psychological abuse of the children**
- **abuser creates a pervasive atmosphere of crisis in his home, victims and children have difficulty naming or describing what is happening to them until they get respite from the fear and anxiety**

*UNDERSTANDING THE BATTERER IN CUSTODY  
AND VISITATION DISPUTES* by R. Lundy Bancroft,

***"Creating an atmosphere of crisis, chaos and anarchy is very important in the success of the abuser in controlling his victim. Of all factors in dealing with abuse, a continual and perpetual state of chaos is the most emotionally draining and stressful of all; and is what causes the psychological problems associated with domestic abuse."***

Quenby Wilcox

### **Terrorism as Large Scale Domestic Violence**

Susan Heitler, Ph.D.

Understanding batterers<sup>1</sup> who berate and beat loved ones can help us to clarify the patterns of behavior and mentality of terrorists whose hate rhetoric and violence terrorize a population...

Domestic abusers attack innocent spouses and children. Terrorists attack innocent citizens. The choice and number of victims differs, but in almost all other respects the mentality of domestic abusers shares much in common with the mentality of instigators of terrorist activity. The central feature of this mentality is the core belief that verbal assaults and physical violence are acceptable civilized behavior....

In the United States, state statutes define and criminalize domestic abuse as:

- (1) the infliction of bodily injury or harmful physical contact or the destruction of property or threat thereof
- (2) a method of coercion, control, revenge, or punishment upon a person with whom the actor is involved in an intimate relationship.

To be labeled a terrorist as defined by the US Department of Defense, similar criteria must be met:

- (1)"the unlawful use of—or threatened use of—force or violence against individuals or property
- (2) to coerce or intimidate governments or societies, often to achieve political, religious, or ideological objectives (Hoffman, 1998, p.221)"..

**1 Women also can be abusive, but because the preponderance of batterers and terrorists, and those who inflict the most damage, are men, I will use the male pronoun in this chapter.**

These two definitions are remarkably similar. The targets differ: family members versus citizens who in the terrorists' mind represent a government or society. Otherwise, however, the three defining elements are basically the same:

- 1) hurtful force against things or people
- 2) to establish fear-induced dominance in a relationship
- 3) over a targeted other.

In both cases a "political objective," that is, establishment of power over others, is a goal of the verbally or physically violent action. **This objective stems from the abuser/terrorist's belief that he is a victim, and therefore has a right to reverse the hierarchy, putting himself on top and victimizing the other...**

**...Batterers, bullies, tyrants, terrorists and criminals** all use violence to control others and get what they want. **There is significant overlap in mentality and behaviors amongst all of these purveyors of violence...**

...Tyrants who rule a country and terrorists who would like to rule both use unlawful violence against innocent citizens to obtain, wield, and maintain political power—as does a domestic abuser within his home.

The under-age batterers we call bullies target younger siblings or weaker peers at home and at school to play out power and dominance scenarios. Thugs and criminals, by contrast, use violence to prey on others for financial or other personal gain, but warlords and crime rings use violence both to control turf and for direct theft...

Verbally violent husbands are at risk for volatility and raging at employees in the workplace. Physically violent wife batterers have a considerable likelihood of abusing their children and also have high rates of crime (Dutton, 1995). Tyrants make war against neighboring countries; and aggressors who attack neighboring countries are the most likely to commit democide (mass murder of their own population) (Rummel, 1994)...

...Domestic abusers differ from healthy spouses in multiple ways. These characteristics clump into five arenas: **overt pathological behaviors, underlying beliefs and concerns, relationship patterns, cognitive patterns, and deficiencies in communication and conflict resolution.** The central feature of the first of these areas, overt behaviors, is harmful speech and physical injury to accomplish relationship objectives.

### **Verbal Abuse**

Battering begins with, and is sustained by, verbal abuse. Blaming rhetoric can include excessive criticism, trumped up accusations, angry shouting, intimidating threats, and name-calling. A batterer berates his wife so she will feel bad about

herself and be weakened with guilt and shame. In his verbal harangues the abuser builds a case to justify his anger, his urge to dominate and harm, and his forthcoming criminal violence.

Terrorism, similarly, begins with hate-drenched rhetoric. Hyperbolic language and recitations of exaggerated grievances about the group the terrorists hope to destroy stir up the terrorists and their followers, priming them for heinous acts...

### **Physical Violence**

In Western civilization coercive violence against innocents is considered immoral, uncivilized, and illegal<sup>4</sup>. A batterer however feels that these rules do not apply to him. He feels entitled to use violence when his spouse does not respond as he wish her to, that is, when "she deserves it." And he believes in its efficacy.

...belief in the rightness and efficacy of terrorist violence in an oft repeated statement that "You cannot defeat heretics with this book alone; you have to show them the fist!" (Bodansky, 1999, p. 387).

### **Creation of an Atmosphere of Fear**

Domestic abusers use a small number of harm-inducing acts to induce a general state of fearfulness and powerlessness. Lenore Walker (1979), who coined the term battered woman syndrome, notes that batterers control, intimidate, and terrorize women not only through violence directed specifically at them, but also by creating an atmosphere or environment of expected violence.

Batterers create this atmosphere of impending danger with intermittent harsh treatment of family members, fights with strangers, and visible irritability. Knowing that their occasional violence has frightened and subdued their targeted other, they can then spend much of their time in normal and quite affable states of interaction.

Other batterers...lock into a continuously negative stance. Virtually all of their interactions with the spouse, except perhaps those in public view, may be negative and nasty. Terrorists use hate rhetoric, threats, and intermittent attacks to create a similar environment of perpetual threat for the targeted group...**"Terror struck into the hearts of the enemies is not only a means, it is the end in itself. Once a condition of terror into the opponent's heart is obtained hardly anything is left to be achieved"**

### **Isolation of the Victim**

Abusive spouses typically threaten their partner, "Don't tell anyone what happened or I'll..." They also tend to block their partner from spending time with former friends and family. They "...isolate them from all social connection, both

past and present, ... to annihilate their wives' self-esteem, to enslave them psychologically" so that the batterer himself has a sense of total control over the woman's time, activities, social life, and information sources—i.e, total control over her life (Dutton, 1995, p. 12).

Terrorists isolate their victims by turning other nations against the population they are trying to subjugate (Heitler, 2001).

### **Escalation of Injuriousness Over Time**

Batterers gradually escalate their verbal and physical violence. The violence of one day must be stepped up the next to effect the same emotional potency. Batterers' rhetoric therefore becomes increasingly virulent, and their physical attacks become increasingly harmful. At some point each batterer sets a ceiling on escalation, but some do not set a ceiling until they reach the level of murder. Listed in order of increasing escalation level, battering actions may include:

- Criticism, blame and accusations
- Tone of nastiness with increasing voice volume
- Name-calling
- Verbal intimidation ("If you do that one more time I'll..")
- Threatening physical acts such as shaking a fist in front of the wife's face
- Throwing objects and breaking things
- Pushing
- Punching, slapping, choking, etc
- Sexual aggression
- Use of weapons such as a heavy object or knife
- Killing, the culmination of violent escalations.
- Terrorism typically begins with hate rhetoric, and escalates from there, beginning with smaller symbolic actions.

**The thrill of aggression, battle, and the kill can become addictive, stimulating an urge for ever greater danger and destruction.** At the same time, like domestic batterers, terrorists realize that increasingly dramatic and lethal deeds may be needed to achieve the same effect on their victim population over time. "To their [terrorists'] minds at least, the media and public become progressively inured or desensitized to the seemingly endless litany of successive terrorist incidents; thus a continuous upward ratcheting of the violence is required in order to retain media and public interest and attention" (Hoffman, 1998, p. 177).

### **Hypersensitivity to Humiliation and Shame**

Humiliation and shame play a central role in domestic abuse. As Dutton (1955) explains, "People who have



been exposed to shame will do anything to avoid it in the future. They blame others for their behavior... The shame-prone person feels the first flashes of humiliation at the slightest affront and responds quickly with open rage or humiliated fury. ... Both (shaming and blaming) are hallmarks of the abusive personality. ...**Externalizing blame protects the individual from having to re-experience the shame.**" (pp. 90-91)

Seeds of sensitivity to shame generally are sewn in painful shaming experiences growing up. **Shame may be powerfully evoked in childhood from abusive family interactions, abandonment, rejection, or distress** associated with a parent who was reputed to have shamed the family with financial failures or sexual infidelities. Shaming also may have occurred in school from bullies or harsh teachers who control their students with humiliation. Psychological theory posits that a pool of rage and shame may lie latent until adulthood when the feelings re-emerge and fuel verbal or physical battering to fend off potentially shameful feelings. (Dutton, 1955)

### Relationship Patterns

Psychologists focus on "attachment patterns" to understand individuals' behavior in relationships. That is, the type of bonds children experience in their relationships with their parents tend to be repeated in their adult intimate relationships. **Batterers tend to form relationships in which they feel attached and needy of the other, but experience anger to the point of rage when the other seems to frustrate and fail them.** They experience such frustration, however, in circumstances that most people would read as non-provocative or at best mildly irritating.

### Anger, Hate, and Victimology

What causes a batterer to hate his wife? Many factors within an individual who is prone to blame others for problems, to "externalize" as psychologists say, can lead from frustration to anger to hatred.

Psychologists use the word "transference" to describe the phenomenon of transferring onto figures of adult life feelings that first developed in response to parents or other important figures in the family of origin. **An adult who consciously or unconsciously resented his parents or a sibling is likely to development resentments toward his spouse.**

**Angry feelings at his spouse tend to well up in a batterer when the vicissitudes of his life are posing problems.** Life circumstances that produce anxiety such as difficulties with a boss or financial insecurities produce elevated emotional levels that quickly transmute into anger. Batterers may hate also in order to distract themselves and their victim from these distressing problems—especially if they feel ashamed of their problems and do not want to discuss them.



**Batterers tend to experience anger in place of vulnerable feelings like hurt, sad, shame or fright.** They create a narrative that explains why they should hate, and then fixate in a stance of anger, distrust, and revenge at the scapegoat. In this way **they flip vulnerable internal feelings outward so that they can feel empowered by anger instead of weakened with disappointment or fright.**

Terrorist leaders do the same. Terrorists identify scapegoats they can hate. **Having an enemy can be invigorating; hating brings coherence and purpose to one's life.**

Ironically, **both batterers and terrorists typically believe that they are not the instigators but rather the victims of wrongdoing.** They feel anger and hatred in response to something they regard as a wrong that was done to them. They believe that because they are victims, they have a right to be angry. Because they are victims, they have a right to hurt others. Ultimately, **this "victimology," the belief that because I am a victim I have a right to victimize others, lies at the heart of the self-justification for violence.**

### **Relationships Are Hierarchical and Oppressive**

As described above, the urge to dominate arises in part because a batterer sees all relationships as hierarchical. Either I dominate you or you are subjugating me. Batterers' vocabulary of relationships does not include cooperative egalitarian partnership.

Terrorists similarly assume that **relationships inevitably involve someone on top, maliciously controlling others, and someone below, exploited and humiliated.** They typically accuse their enemies of a this kind of hierarchical and oppressive mentality, assuming that the other acts the way they would in the dominant position.

### **Family Modeling**

**Most battering is learned behavior.** Domestic batterers may have grown up in a household where they observed their father interacting in a controlling, demanding, or abusive way toward their mother. The batterer as a child may have been treated abusively himself. In a healthy family the parents are firmly and authoritatively in charge.

In a battering family, by contrast, one or both parents is likely to be either overly controlling—intrusive, strict, harshly punitive, or verbally or physically abusive—or overly permissive. In the latter case the child himself may have learned to control the adults via anger and tantrums. Children who grow up in families where domination (by parents or children) lets you rule the roost are likely to carry on this tradition in their adult lives.

Cooperative problem-solving is not in their repertoire. Rather, **they learned from their families that the way to get what one wants in frustrating situations, and the way to stay safe, is to dominate the other.**

### **Chronic Stance of Distrust**

The abusive person tends to distrust information from the other whom he abuses. He develops beliefs about what she really thinks, and disregards anything she says that differs from his prior assumptions...

### **Obsession with the Other**

Paradoxically, **in spite of a batterer's distrust and anger at his spouse, he also tends to think of her obsessively**, getting stuck on the object of his pounding. The more anger he feels, the more bound he becomes to his victim in his inability to stop thinking about her. The anger can become like an addiction. Sadly, the batterer may sacrifice investment of his energies in healthier and more productive satisfactions to this obsession with controlling his wife.

**Terrorists obsessed with overpowering those they hate likewise may neglect healthier life projects.**

### **Zero Toleration of Difference in the Other**

The domestic batterer finds differences between himself and his spouse intolerable...Toleration of differences may be learned initially from parents' responses to their children. **Abusive parents have zero tolerance when their child does something other than what the parent wants them to do.**

**Harshly punitive parenting teaches the child to hate the parts of himself that differ from how the parent says he should be—and to be angry at others who do not act the way he thinks they should.**

The harshly overly-controlled child may develop an urge to wipe out those who are different in his society the way he was punished for what was different in himself.

Alternatively, intolerance can come from parenting that is overly permissive, with the child controlling his parent by raging and hitting. As mentioned above, **either excessively authoritarian or excessively permissive parenting—particularly coupled with witnessing violence between his parents— may train a child for abusiveness as an adult.**

### **Cognitive Patterns**

All of us, most of the time, rely on habitual patterns of behavior....Thinking patterns become similarly automated. The mental processing habits that batterers develop, however, tend to block smooth information flow and ignite conflict. The

essence of these provocative patterns is their underlying stance of “I’m okay, you’re not okay”. **Batterers perceive events with distortions that enable them to maintain the fiction that what they do is only virtuous and what the other person does is always wrong.**

### **Blame Instead of Insight**

To the batterer, problems are not for solving, they are for blaming. To the healthy individual, mishaps trigger a search for insight, for understanding, for learning, and for problem-solving. This forward-looking orientation assumes that mistakes and misunderstandings happen, and responds to them with a process of insight, self-correction and re-programming that prevents similar mishaps in the future....

A batterer... externalizes; that is, **he immediately looks outward. He assumes someone is at fault and wants to be certain that the stigma of blame gets pinned on someone other than himself.** He regards himself as a blameless victim of the other’s actions.

Blame the victim: after committing violent acts, the batterer immediately clarifies that his violence was the fault of the victim. “I only did it because she....”

Blame the messenger: **When someone tries to offer a perspective that implies the batterer himself could be part of the problem, the batterer attacks the conveyer of the message.** “You aren’t so innocent yourself you know; you....”

**A batterer’s wife may accept the blame, agreeing that she is at fault. Her self-blame quiets her husband, reassuring him that he will not be criticized, held responsibility for problems, or exposed to shame.** If the wife validates an abuser’s belief that problems have been her fault, they are in agreement, but at both of their expense.

**The wife’s excessive willingness to acknowledge her role in problems while exonerating her partner invites the depression of battered woman syndrome. And her excessive willingness to claim fault, in what psychologists call co-dependent behavior, enables and perpetuates her husband’s blame habit.**

**Terrorists, like batterers, blame their violence on the victim.**

### **Projection**

Projection refers to the cognitive habit of accusing the other of what a person himself is doing. **Projection occurs when a person reads his own thoughts, feelings, or actions as transpiring in another person**—in the manner of a movie projector that projects the film that is inside itself onto a screen on the

other end of a theater. For example, **rather than acknowledge his own urge to dominate, the abuser will insist that the other is bent on dominating him.**

Dutton explains this "primitive defense" as a way to avoid feeling bad about oneself, "a safety valve ...rather than take responsibility for unpleasant feelings, we relocate them in others" (Dutton, 1995, pp. 104-105).

### **Scapegoating**

Scapegoating is an on-going pattern of attributing blame for a wide variety of problems to one particular person or group. **The motivation for scapegoating may be distraction. A batterer scapegoats his wife to divert attention from actual problems elsewhere.** Picking fights with his wife, for instance, enabled one batterer to prevent his wife from finding out about his increasing gambling debts.

terrorists join in scapegoating... Their rationales for choosing these scapegoats vary from event to event and speaker to speaker, but the targets remain fixed.... Whatever their rationale for picking ....as targets, however, **the purpose of focusing on scapegoats is to distract their people from potentially focusing on the very real social and economic problems caused by their own rulers.**

### **No Responsibility-Taking**

Blame, projection, and scapegoating enable a batterer to avoid taking responsibility. **Rather than suffer feelings of shame for socially unacceptable impulses, mistakes, or dishonorable acts, the batterer quickly shifts responsibility on to others.**

### **Minimizing**

The domestic violence offender feels justified in using violence, yet at some level of consciousness knows that violence is wrong... Similar minimizing is evident in terrorists' preferred terms for describing their actions

### **Exaggeration, Denial and Lying**

**When minimizing does not look like it will suffice to prevent repercussions from violence, a batterer may resort to exaggerating the faults of his victim, denial of his role in problems, and blatant lies.**

...These fabrications may go well beyond what could be accounted for by differences in the couple's narrative due to different perspectives or perhaps misunderstandings.

**The batterer significantly distorts the facts to make his case—and can be a very convincing spokesperson for an imagined or quite twisted version of events. Unfortunately, because the batterer begins to believe his own lies, he then feels he has strong justification for his anger at his spouse and for subsequent aggressive episodes.**

### **Turning Upside-Down**

**Batterers stun their victim with statements that are diametrically opposite to the truth.** One batterer, for instance, often said proudly, “I think of myself as a truly righteous man.” His family by contrast told the therapist, “He is truly an evil man.”

**Turning upside-down is closely related to projection.** That is, upside-down accusations tend to include descriptions that sound remarkably like a portrait of the accuser. Terrorism analyst Hoffman (1998) calls this process of turning upside-down and accusing the other of one’s own crimes “obfuscation-projection.”

This terrorist accusation that terrorism’s victims are the real terrorists is a particularly common terrorist obfuscation projection. **If it were not for their oppression, the terrorist asserts, he would not have felt the need to defend the population he claims to represent** (Hoffman, 1998, p. 30) (Dorsey, 2001).

### **Justifying Means by Ends**

**A batterer believes that his violence is justified because of the vital importance (to him) of his goal.** He must be violent to get his wife to do what she should—that is, what he wants her to do. Terrorists similarly justify their violent means by the importance they attribute to their end goals.

### **Simplistic Either/Or Thinking**

Healthy mature thinking includes complex information processing (thinking) patterns. Complex thinking involves mental capabilities such as the ability to:

- analyze problems into multiple component parts consider seemingly contradictory or paradoxical facets of situations
- evaluate solutions on a continuum rather than as all good or all bad
- modulate emotional intensity so thinking can proceed and excessive emotion does not threaten the other integrate one’s own perspectives with those of others using ‘Yes, and...’ additive thinking.

**Batterers, by contrast, tend to view situations simplistically as all-good or all-bad, black or white, who’s right and who’s wrong.** Particularly when they are angry, batterers see what they see, and are unable to incorporate also into their understanding the dimensions that others see. My way or the highway is the rule.

Able to see only one point of view, batterers quickly believe that if an alternative viewpoint is expressed, one side is right and the other wrong. They adamantly defend themselves lest they be seen as the one who is wrong. They have little or no interest in hearing what might be right also in what the other is saying.

**Attempts to discuss contested issues with someone with a batterer mentality therefore become extremely frustrating. Batterers' and terrorists' mouths keep opening, spewing their angry viewpoint, while their ears stay consistently closed.**

### **Resistance to Change**

...Battered women, when asked why they stayed so long, often say sadly, "I thought he might change." The reality, however, is that abusive personalities tend to be highly resistant to change, and many if not most will never change.

**Abusers who are able to acknowledge and take responsibility for their battering have potential for growth; but for most batterers, what you see is what you will continue to get, escalating in frequency and severity over time...**

### **Communication and Conflict Resolution Patterns**

Emotional health and marital success both correlate with ability to conduct problem-solving dialogue in which participants quietly verbalize their concerns, seek to understand each other's perspectives, generate options, and conclude with solutions (Heitler, 1993). **Batterers, by contrast, assume that negotiation is a process of dominating over the other's perspective.** Demands and ultimatums, blame and criticism, exaggeration and denial, attack and defense are their battle tactics. In the heat of the adrenaline and animosity batterers whip up in themselves with these tactics, inflicting injury may replace problem-solving as the battle objective.

**Terrorists** similarly eschew dialogue. **Dominating and destroying are their methods of dispute resolution.**

### **Inflammatory Language and Exaggerated Claims**

**The batterer builds his case for how terrible his wife is with hyper-emotional language that over-states her wrongs.** Pejorative words, demeaning name-calling, over-generalizations, curses and hyperbole are meant to convince her—and himself—of how terrible she is, has been, and always will be.

Inflammatory language cycles synergistically with inflamed emotions. The more angry a batterer feels the more pejorative the words he uses to label his wife; these incendiary labels in turn inflame his anger. These escalating

reciprocal interactions—negative labels for his wife’s actions produce more intense angry feelings which in turn produce increasingly negative name-calling—ratchet up emotional intensity and increase the likelihood of injury.

### **Complaints and Criticisms Rather Than Requests or Solution Suggestions**

**Batterers express what they don’t like, but they have difficulty saying what they would like.** Unfortunately, complaints inhibit effective dialogue, creating defensiveness instead of empathy and solution-building in the receiver.

## **What is the Role of Third Parties (in Stopping the Abuse)?**

**To end domestic abuse, third parties such as family, friends, police, the criminal justice system, religious leaders, and therapists almost always must actively intervene.**

In most cases the abuse victim herself can do very little to stop verbal and physical harassment.

**There is no such thing as a neutral response from third parties. Every third party response influences the abuse one way or the other. Passivity (doing nothing, staying silent as if nothing is wrong) gives the message that abusive behavior is acceptable...**

**To bring about change, third party interveners must clarify that violence is the batterer’s responsibility, that violence is not the responsibility of the victim he blames, and that further violence will not be tolerated...**

### **Can Cultures that Breed Relationship Violence be Changed?**

If the world is to become safe from violence, families must become more reliable incubators. Children need to grow up in emotional safety and with modeling of collaborative marital partnership. “Much of what is specific to cruelty in the modern...

**world is traceable to violence against women,”** Kanan Makira writes in *Cruelty and Silence* (1993, p.299). Makira paints a shocking insiders’ view of violence... According to Makiya, an **emphasis on honor and shame, much of which centers on women’s virginity and its violation, feeds a culture of cruelty to women, as does a gender-based hierarchical social system.** “Traditional cruelty toward women always originated in their powerlessness and diminished status in the culture” (Makiya, 1993, p. 298).

**Changes in parenting skills also would make a massive difference. Kindly but firm parental authorities, as opposed to harshly punitive and shaming parental dictators, are necessary to produce children who tolerate differences in themselves and in others, who take responsibility for their mistakes, and who problem-solve in the face of challenges rather than devolving into blame.**

**Parents can be taught authoritative skills to replace overly permissive or authoritarian parenting techniques. Along with conflict resolution skills and education for egalitarian marriage partnership, parent education can make a significant increase in a society’s ability to produce humane citizens and violence-free democracies.**

*Terrorism as Large Scale Domestic Violence*  
Susan Heitler, Ph.D.



## **Bush on the Couch**

by Justin A. Frank, MD

### **The Sadistic Personality**

Endorphins modify anxiety and increase cerebral levels of dopamine, which facilitates communication between nerves in the brain. Dopamine is involved in the "sensation of reward we experience from something we enjoy." ...

On a conscious level the sadist may experience his drive as vindictiveness, or as a desire to assert his power over the weak and defenseless (which is often vindictiveness directed at a more vulnerable target). He may also see his motives as greedy destructiveness, a wish to possess everything for the self and destroy it for others. Of course, some of these motives are more socially accepted than others...

Lurking beneath the conscious justifications for sadistic behavior, however, is a dangerous perversion that holds the sadist in its grip. Despite the telltale smirk and the delight he sometimes demonstrates when speaking of the harm he has inflicted, Bush likely remains in denial about his sadistic tendencies and their pervasive influence on his actions...

What were we thinking? Bush has presided over a great catastrophe, led the nation (world) into two unfinished wars, divided its people more than ever, turned his back on education, the environment, and women, and created huge federal deficit. And yet, when history writes its chapter on the presidency of George W. Bush, the question of his appeal may prove as vital as the questions surrounding his character. After all, America put Bush in the White House, or at least came close, and America will have to live with the rewards and repercussions of his presidency long after he has left office. The task of understanding President's Bush psychology is thus somewhat incomplete without attempting to least a partial understanding of the psychology being his appeal to voters who made him relevant...A truly exhaustive exploration of Bush's popularity would also require the perspectives of history, sociology, political science, and other disciplines, which will no doubt be focusing their considerable resources on the of Bush's appeal for many years to come.

## ¿What is a Psychopath?

Proyecto de Investigación Especial del Grupo del Futuro Cuántico (Quantum Future Group)

<http://quantumfuture.net/sp/pages/psicopatia.html>

The terms "sociopath" or "psychopath" brings up the image of sadistic, violent individuals, like Ted Bundy or the fictitious person Dr. Hannibal "El Canibal" Lecter in the book and film *Silence of Lambs*. But, I believe that the underlying characteristics that define the sociopath cover a much wider spectrum of individuals of which the majority of us cannot even begin to imagine.

The sociopath is the individual that is truly absorbed in himself without conscience nor sentiments towards others and for whom the rules do not have any significance. I believe that the large majority of us have been in contact with sociopathic individuals without even knowing it. [[Wendy Koenigsmann](#)]

### What is a Psychopath?

One cannot understand a psychopath in terms of antisocial development. They are simply individuals morally depraved that represent the "monsters" in our society. They are **unstoppably depraved and impossible to treat** and in whom the violence is planned, decided and free from emotion. This violence continues until it reaches the top at around 50 years old, and then it decreases.

The lack of emotions reflects a state of detachment, of audacity, and possibly disassociation caused by a low autonomic nervous system and a lack of anxiety. It is difficult to say what motives them – possibly control and domination – given that the history of their lives do not show ties with others nor rhyme to their reason (except in planning violence).

They have a tendency to operate with a grandiose conduct, a pretentious attitude, an insatiable appetite, and a tendency towards sadism. Their lack of fear is probably the characteristic prototype... One must think of them as vehicles at high speed with defective breaks.

There is a certain organic disorder (of the brain) and hormonal disequilibrium imitating the animated state of the psychopath.

There are 4 subtypes of different psychopaths. The first distinction between the first and second type was realized by Cleckley in 1941.

The FIRST PSYCHOPATH does not respond to punishment, apprehension, tension, nor disapproval. They seem to be incapable of inhibiting their antisocial impulses almost all of the time, not because a lack of conscience but because it satisfies their wants and needs at the moment. The words do not appear to have the same significance for them as they do for others. In reality, they do not know how to understand the significance of their words, a condition that Cleckley called "semantic aphasia". They do not follow any project in life, and appears that they are incapable of feeling any type of genuine emotion.

The **SECONDARY PSYCHOPATH** are risk takers, but almost likely to react to a stressful situation, warriors, and have a propensity towards culpability. They expose themselves to more stress than the average person, but are more vulnerable to stress than the average person. (this suggest that the are not "completely psychopaths". Which can be caused by various genetic factors).

They are audacious, adventuresome and unconventional that start to establish their own rules very early in age. They are highly motivated for a desire to escape or avoid pain, but also are incapable of resisting temptation. As their anxiety augments towards something, their attraction towards it also augments. The live their lives being led by temptations. Also the first and second group of psychopaths are divided into sub-groups:

The **DISCONTROLLED PSYCHOPATHS**: are the type of psychopaths that get angry and loss control easier than and more often than other sub-groups. There frenzy resembles attacks of epilepsy. In general they are also men with incredibly strong sex impulses during most of their lives. They also seem to be characterized by high anxiety, like in the drug addiction, kleptomania, pedophilia, or other type of illicit or illegal indulgence. They like the "high" and "accelerated" endorphins of enthusiasm and often take risks. The serial rapist and assassin like the Boston Strangler were psychopaths of this type.

The **CHARASMATIC PSYCHOPATHS**: are wonderful liars and attractive. In general the are have a special talent of some kind, and use it to manipulate others. They are generally compulsive buyers and have a almost demoniac capacity to persuade others to abandon everything that they possess, at times including their lives. Leaders of sects or religious cults, for example, can be psychopaths if they drive their followers to take their own lives. This sub-type often convinces themselves of their own fiction. They are irresistible.

The sociopaths have always existed in one form or another and to varying degrees. They have been studied using various techniques, and over the years have various causes for the illness. But, one thing never varies; all of the sociopaths possess three characteristics in common: they are individuals very egocentrics, without empathy for other and incapable of feeling remorse o guilt. [*El Sociopath - (The Sociopath) Rebecca Horton (April 1999)*].

In spite of the fact that the psychopath have tastes and preferences, and enjoy the company of others, analysis shows a total egocentricity, and that value other because it only increases their own pleasure and betters their status. While they are incapable of feeling any real love, they are capable of inspiring love in others at times fanatically so.

They are generally superficially charming and give the impression of possessing the most noble of human qualities ver. noble. They make friends easily, are very good with words in order to obtain what they want. And many psychopaths love being loved and want to be worshiped by others.

In spite of the fact that psychopaths have tastes and preferences, and enjoy all of the pleasures that human interaction provides, careful analysis shows that they are totally egocentric, and only value the company of others because it fulfills their own pleasures or raises their status. While he is incapable of true love, he is capable of inspiring love, at times fanatically so in other people.

He is generally superficially charming and gives the impression to possess the most noble of human qualities. He makes friends easily, and is very manipulating, with well developed speaking skills that enables him to obtain whatever he wishes. Many psychopaths love to be admired and are delighted when others worship them.

The lack of love also brings a lack of empathy. The psychopath is incapable of feeling sorry for others in less fortunate situations or to put themselves in the place of others, with no concern for any hurt or damage done. [[Gordon Banks](#)]

### **How Does the Psychopath See the World**

Not only do they covet possessions and power, and also feel pleasure in usurping or taking from others (from a symbolic brother, for example); that which he can plagiarize, defraud, or obtain through extortion provides much more satisfaction than from honest work.

And, once they have dried up one well, they start exploiting and sucking the blood elsewhere; there pleasure to cause misfortune is insatiable. They use people in order to obtain their ends; subordinating and degrading others in a way that justifies their actions....

The causes of the psychopathic disorder has been reduced to various factors through investigations. It is believed that one of the principle causes of sociopathic behaviour are neurological abnormalities, principally in the front lobal section of the brain. This area also relates with the conditioning of fear. Abnormal anatomical or chemical activity inside the brain can be caused by much investigation using abnormal growth, a cerebral illness or lesion. This theory has been verified by Positron emission tomography (PET) that shows in a visual manner the metabolic activity of the neurons inside the brain (Sabbatini, 1998).

It has been known for quite some time that the amigdales, two small regions located under the base of the brain, affects aggression, sexuality and imprudence. Recently, it has also been demonstrated that it affects the manner that people interpret the emotions of others. A small damage in the amigdale can explain many of the characteristics of the psychopath – including difficulty in emotional communication with others. It might simply be that they cannot “see” emotions in others. [¿Está Usted Casado con un psicópata? – [Are You Married to a Psychopath?](#)]

The psychopath is a manipulator, that knows exactly what moves us and how to manipulate and influence others sentiments. They possess a talent in finding partners that are “friendly and loving”.

Imitation of normal behaviour is often used to convince others that the psychopath is a normal human being. They do this in order to create a false empathy with their victim. The psychopath tries to make others think that they have normal emotions, telling sad stories or profession profound and moving experiences....

**This is the way that the psychopath operates. Negating the reality of his victims until his victim suffers a nervous crisis. Very often, the psychopath turns to his victim and affirms that he "is dreaming" and possesses a mental disorder.**

The psychopath is distracted and characterized by his ostentatious representation of himself, which leads him to involuntarily say things that will expose his true self. He often forget the lies that he has told and will tell contradictory stories, leading those who listen to him to ask themselves if the psychopath is not crazy, which in this case he is not – only that he has forgotten the lies he has told.

The most frightening, however, is the selective memory. The psychopath will not remember the promises he made yesterday, but remembers something from the past if it satisfies his needs. They will often rely on this selective memory if they are confronted with their lies.

The majority of psychopaths are very arrogant and conceited. However, when they are trying to charm their potential victims, they say the "correct" thing at the "right" moment and make others believe that they are good and generous people; not always but often enough. The truth is that the psychopath are not altruistic and really are not concerned with friendships or connections. Guggenbuhl-Craig declared that "they are very talented in appearing more humble than the average person, but in reality are not".

Some might show a preoccupation for lower social status and say that they are on the side of the weak and poor. A psychopath can affirm, for example, (if they are of a lower social status) that rich people degrade them, but at the same time they long for and are jealous what they have. It is like the narcissist, desiring to reflect a false image of himself through his possessions. Amongst his possessions are human beings: girl-friends, wives and children.

Some psychopaths can be seen as very loving with animals (contrary to popular opinion), but continue to see them as objects and possessions.

In general, the majority of psychopaths brag about their achievements and the "bad" things that they have done (this should be an alert call), but much more frequently and to the contrary women are fascinated and do not listen to reason, even when everyone warns them about past behaviour.

Why? Once again, why does the psychopath feel so "special."

"Please, women, if you are engaged to a man like this, you must accept the fact that HE IS NOT A REAL PERSON. He is only playing ROLE for you."

Dr. Black affirms that the most obvious signs of the psychopath is bragging about his experiences, giving no importance to "however disagreeable they are...the ease with which the break rules, coinciding with the PPD (Psychopath Personality Disorder)."[Black, 68]

**The psychopath is filled with greed, and relates with the world in terms of power, although he will say that he is on the side of the unfortunate or the oppressed. I know one who liked to repeat sentences such as "I need to stop oppressing my brothers" but this does not mean anything to them. The psychopath identifies himself as a revolutionary.**

On the other hand, the psychopath presents an *image of himself as a depressed antihero ( the type that is his own worst enemy)* and some see themselves as lone wolves. The psychopath can also affirm that he is sensitive and profound, but inside he is nothing more than empty and greedy....

**What is very worrisome about psychopaths, apart from their feeling of power and rights, is the complete lack of empathy towards normal people, the "(psychopaths) antisocial behaviour lack a moral consciousness, feeling little or no empathy for the lives of the people whose lives they affect... the antisociales are not bound by any rules, incapable of seeing farther than their own personal interests and justify their actions through rationalization."** [Black, XIII]...

In a recent article, "Construct Validity of Psychopathy in a Community Sample. A Nomological Net Approach, Salekin, Trobst, Krioukova, Journal of Personality Disorders (Review on Personality Disorders), 15(5) 425-441, 2001), the author affirms that:

"The psychopath, as originally defined by Cleckley (1941), does not limit himself to participation in illegal activities, but also are adept manipulators, lack any sincerity, are egocentric, and lack feelings of guilt – **characteristics clearly present amongst criminals as well as partners, fathers, bosses, lawyers, politicians, and executive directors to name just a few. (Bursten, 1973; Stewart, 1991).**

Our examination of the prevalence of psychopaths within a university population showed that perhaps 5% or more are estimated to be psychopaths, with most being men ( more than 1/10 men versus 1/100 in women).

"As such the psychopath can be characterized.... As possessing tendencies towards both domination and fragility. Wiggins (1995), resumes various previous discoveries... indicating these individuals are easily enraged and molested, and ready to exploit others.

They are arrogant, manipulators, cynics, exhibitionists, Machiavellian, vengeful, sensationalists and always looking for personal benefits.

With respect to their social interacting guidelines (Foa & Foa, 1974), they attribute to themselves an elevated social status and respectability, but do not recognize any love or social status of others, seeing them as unworthy and insignificant. This characteristic is clearly the essence of the psychopath and commonly described.

"The investigation actually seeks to respond to some basic questions about the psychological characteristics of the psychopath outside of a forensic context.... And, here we have returned to the original premise of Cleckley (1941) about the psychopath as a personality style and not only present within criminals, but also successful people within a society.

**"What is clear in our research is that: (a) the measurements of the psychopath have converted in a prototype that implies a combination of cold and dominant interpersonal characteristics, (b) the psychopath exists within society at a higher degree than believed; and (c) the psychopath does not appear to coincide with other personality disorders except those of the Antisocial Personality Disorders...."**

**"It is clear that while more work is called for in understanding the different factors that drives a psychopath (although not the morality) that breaks the law; said investigation needs much more empirical research."**

**Without regard to race, social class, or occupation, the psychopath is without a doubt the most dangerous element of society, because "the nature of the psychopath implicates more chaos in society than any other mental illness, given the disorder caused in the social environment drags everyone else down with them... the desperation and anxiety caused by antisocial (psychopaths) tragically affect families and communities, leaving profound physical and emotional scars...." [Black, 5]**

**Pamela Jayne, M.A., wrote that "30% of the men are sociopaths." [el GFC notes that she does not use the term "psychopath"]. If about 3 in 10 men are considered psychopaths, I assume that cannot be taken lightly. In agreement with statistics, this means that three out of each man and one out of each women.**

**[Note of GFC: Hare says that the Psychopathology is MORE frequent than depression, schizophrenia, and LPD (limited personality disorders). After all that we know, many depressed people become schizophrenics or develop LPD, and is a result of their interaction with psychopaths. The psychoplogist Andrew Lobaczewski says the same thing in his book "Political Ponerology"]**

### **The list of points of Hare**

1. GIFT OF GAB AND SUPERFICIAL CHARM -- a tendency to be suave, con, charm, and verbally skillful. The charming psychopath is not at all timid, prudent or fearful to say anything. The psychopath never keeps silent. For example, he does not respect the social convention of letting people speak in turn.
2. OSTENTATIOUS SELF-ESTIME – an extremely high vision of his own capacities and what their value; sure of themselves, stubborn, conceited, boastful. The psychopaths are arrogant people that believe themselves to be superior.
3. NEED FOR STIMULATION OR PROPENSITY TO BOREDOM – a necessity of new emotional and passionate excessive stimulus, thereby running risks. The psychopaths have little auto discipline in order to complete tasks because they easily become bored. They are unable to keep a job for a certain time, for example, they do not finish work that they find dull or routine.
4. PATHOLOGICAL LYING – moderate and high. The moderate forms are perspicacious, finicky, astute and clever; in the extreme forms they are con-artists, secretive, unscrupulous, manipulators and dishonest.
5. MANIPULATION AND DECEPTION -- the use of deception in order to entrap, swindle and defraud others for their own personal gain; distinguishing 4 points, the exploitation and insensible cruelty is present, reflecting a lack of preoccupation for the feelings and suffering of others.
6. LACK OF GUILT OR CONSCIENCE – the lack of feelings or preoccupation for the loss, pain and suffering of the victims. Tendency to be indifferent, cold, uncaring and lack of empathy. This point is generally demonstrated by his disdain for the victim.
7. SUPERFICIAL EFFECTS – lack of emotions or a limited range of profound emotions; cold interpersonal skills, in spite of appearing to be open and gregarious.
8. INSENSIBILITY AND LACK OF EMPATHY – a lack of feelings towards other people in general; is cold, disparaging, inconsiderate and without any tact.
9. A PARASITIC STYLE OF LIFE – an intentional financial dependence, manipulator, egoist, and exploiter of others, as reflected in a lack of motivation, little auto discipline, and the inability to assume responsibilities.
10. POOR CONTROL OVER THEIR BEHAVIOUR – expression of irritability, molestation, impatience, threats, aggression, and verbal abuse; inadequate control of anger and character; acting without thinking.



11. SEXUALLY PROMISCUOUS BEHAVIOR – a series of brief, superficial relations and indiscriminate sexual companions; various relationships maintained at the same time; a history of sexually imposing themselves upon others, or great pride in telling about the sexual prowess or conquests.
12. BEHAVIOURAL PROBLEMS AT A YOUNG AGE -- a variety of behavioural problems before the age of 13, including lying, stealing, swindling, vandalism, sexual activity, lighting fires, glue sniffing, consuming alcohol, and running away from home.
13. A LACK OF REALISTIC AND LONG-TERM OBJECTIVES – inability or permanent failure in developing and executing plans and objectives over a long-term. A nomadic existence, without objectives, lacking direction in life.
14. IMPULSIVITY -- unpremeditated , recurring behaviour and lack of reflection or plans; inability to resist temptation, frustration and impulses; a lack of reflection about the consequences of his actions; is bold, precipitating, unforeseeable, erratic and imprudent.
15. IRRESPONSIBILITY – repeated failures in realizing or executing obligations and commitments, for example not paying bills or loans, doing jobs sloppily, not abiding by contractual agreements.
16. FAILURE IN ACCEPTING RESPONSIBILITY FOR ONE'S OWN ACTIONS -- failure to accept responsibility for one's actions, reflecting a low level of conscience, lack of scruples, manipulation and negation of responsibility, and the efforts to manipulate others through negation.
17. MANY SHORT-TERM MATRIMONIAL RELATIONS – they do not become involved in long-term relationships, that are reflected by inconsistent and informal commitments and not reliable, including within the matrimony.
18. JUVENILE DELINQUENCY – behavioral problems between 13 and 18 years old, especially crimes or antagonism, exploitation, aggression, manipulation, or senseless savagery.
19. REVOCATION OF CONDITIONAL LIBERTY -- a revocation of conditional liberty and probation due to technical violations, for example not to show up when summoned.
20. CRIMINAL VERSATILITY – a big diversity of criminal offenses, without that the person has been detained or condemned; showing a great deal of pride in not being held accountable.

## **TERRORISM AROUND THE WORLD: THE WAR WITHIN**

**by Quenby Wilcox – 2006**

*"Poor Brutus, with himself at war, Forgets the shows of love to other men" (1.2.46) Julius Ceasar*

If you listen to some of the "politically correct" rhetoric within western societies these days, you may be led to believe that the Muslim religion is somehow "responsible" for terrorism. However, there are two major flaws to this theory. The first is that there are many terrorist groups, ETA, IRA, FARC to name a few, that have absolutely nothing to do with the Muslim religion, and the second is that there are millions and millions and millions of Muslims in this world who are not terrorist and have no connection what-so-ever to terrorist groups. Therefore, these arguments seem to be mutually exclusive and from a purely logically standpoint have no basis or veracity.

And, if you really listen closely to the rambling of these people, as well as comments made about them and their followers, a certain type of "personality" appears. These people lack any kind of empathy or conscience, become easily enraged, and are obsessed with controlling and manipulating others. Almost a text book definition of a psychopath. And, as it has been repeatedly shown that psychopaths and psychopathic type people are produced by *"prolonged absence of attunement between parents and child (and that it) takes a tremendous toll on the child (when) parent consistently fails to show any empathy with a particular range of emotion in the child...and the child begins to avoid expressing, and perhaps even feeling those same emotions"* (Emotional Intelligence by Daniel Goleman.)

Therefore, would not a more viable "reason" for violence in all it's forms be our faulty educational systems and methods, which are all too often based on "spare the rod, spoil the child," that are at the root of producing the psychopathic-type members of our societies.

Then, take these people and put them into situations where they are continually discriminated against and generally treated as inferiors, is it really that incredible to believe that they may be inflamed to homicidal and suicidal behavior?

I remember as a child in the '70's when the USA passed through its "buckle-up/drive safe" period (which is going on today in southern Europe) a study showed that many of the most dangerous drivers on our roads actually had suicidal tendencies, and that many of the accidents were not so accidental after all. And, what is even more amazing is that these people "terrorizing" the roads, were and are, transporting their family and friends and not total strangers. Maybe if we could understand what propels this kind of behavior by "normal" people we would have a better insight into what "demons within" produce terrorists and suicide bombers.

If you really listen to the dialogues of all perpetrators of violence, whether it be rioting students in Paris, extremist Muslim leaders like Anjem Choudary, guerrilla warriors of the FARC, separatist ETA groups, gang-members in any of our streets and school yards; the list is unending. What they all want and are asking for is one thing; RESPECT.

I myself have repeatedly been on the receiving end of degradation and discrimination, as a woman and as an American, and while I certainly can not understand or condone the actions of terrorists, I can at least empathize with the anger and desire for "justice" that provoke these people. If we could only raise our children to be respectful of others as well as teach them that differences of opinion may be resolved without resorting to physical or verbal violence, we would no longer need domestic violence hotlines, riot police, anti-terrorist laws, or even a nuclear non-proliferation treaty.

In "A Brief History of the Human Race" Michael Cook states "*Man is the only animal that possessed enough cultural agility and enough aggressiveness to have been able to successfully migrate to every continent (except Antarctica) of the earth. Therefore, it may be assumed that humans possess an inherent sense of aggression and competition, and that while this trait appears to have been necessary in the development of civilizations it also appears to be the one trait that may produce our extinction.*"

If we go back to the hypothesis that the Muslim religion is somehow responsible for violence, could not the same thing be said about Judeo-Christian religions?

If you examine the different religious documents you will find them very similar in content, they all try to instill a sort of moral justice and provide a "blue-print" for a unified morality, upon which all our legal codes are based. They are filled with statements that incite both violence and peace, and since all were written at more or less the same time in the history of humankind as well as in the same geographical region may we not consider that there could be some sort of historical reasons for their appearance?

They all appeared in what is commonly referred to the cross-roads of civilization and at a point in time where the populations and civilizations of the human species had developed in size and quantities to a point where commerce, and the desire to control and profit from this commerce, often through military domination, had reached such an extent that perhaps the necessity of some sort of basic rules was created. After all is "necessity not the mother of invention?" Now whether these "rules" come from a divine source or not, is a question for theologians and not the purpose of this article.

James Prescott in his article *Body Pleasure and the Origins of Violence* wrote "It is clear that the world has only limited time to change its custom of resolving conflicts violently. It is uncertain whether we have the time to undo the damage done by countless previous generations, nor do we know how many future generations it will take to transform our psychobiology of violence into one of peace."

Unfortunately, this was written in 1975 and it appears that we have made little to no progress in changing the way we educate and raise our children.

Passions may lead to great success, but in order to do so they must be given direction and reason.

by Quenby Wilcox    [www.global-expats.com](http://www.global-expats.com) - 2006

Most experts report that it is difficult if not impossible to change a batterer/abuser's behavior and abuse. And, as long as social norms and customs encourage abuse, reforming and changing the behavior of abusers will remain impossible.

As we have seen in reports by Amnesty International, and others presented in this study, the social norms and response of law enforcement officials, judicial actors, and even psycho-social professionals sustain, encourage and perpetuate violence and abuse through their validation of the patriarchal, autocratic family unit.

An additional theme that Dr. Heitler touches on is the lack of cognitive, problem-solving skills of abusive, psychopathic personalities. This is extremely important in understanding the far-reaching economical consequences of these personality types, as well as why universal education (higher education included) does not translate into a productive, well-functioning society, but rather one riddled with corruption and economic dysfunctions.

Not only are these personality-types ineffective managers, reeking havoc and expensive unproductiveness within an organization, it is clearly demonstrated that abusers are often involved in criminal activity. How much of white-collar crime is perpetrated by abusers from the higher socio-economic levels? How much of our present global economic crisis is due to the widespread "rogue trading", pyramid "ponzi" schemes, etc. of the past 20+ within our banking systems? With the complicity of high-level politicians and businessmen as well as extensive negligence of regulatory agencies, it should be added. Further study of the abuser, corruption, its effect on micro and macro economics and crisis, is clearly warranted, but evidence as to high correlations is extremely strong.

As she states:

*"Healthy mature thinking includes complex information processing (thinking) patterns. Complex thinking involves mental capabilities such as the ability to:*

- *analyze problems into multiple component parts consider seemingly contradictory or paradoxical facets of situations*
- *evaluate solutions on a continuum rather than as all good or all bad*

- *modulate emotional intensity so thinking can proceed and excessive emotion does not threaten the other integrate one's own perspectives with those of others using 'Yes, and...' additive thinking.*

*Batterers, by contrast, tend to view situations simplistically as all-good or all-bad, black or white, who's right and who's wrong ..."*

Dr. Justin A. Frank further delves into this psyche in *Bush on the Couch*, with the global consequences quite obvious.

*"The infant's un-integrated split between good and bad will appear in similarly divided adult perspectives, such as a reliance on black-and-white thinking, a tendency to view other people as either allies or enemies, or the cultivation of a fantasy world dominated by the struggle between good and evil.....He shows a rigid inability to consider the idea that anything in his own behavior might qualify as destructive; instead he projects such impulses onto his many perceived persecutors, to maintain his sense of self... The individual who attributes his faults and missteps to others deprives himself of the opportunity to grow, to add to his arsenal of thinking skills – from recognizing and solving problems to anticipating the potential consequences of his actions..."*

The modern world is becoming increasingly complex and complicated, not only at a technological level, but at an inter-personal, relationship level. In order to meet the challenge of this world, the "education" of our young must encompass positive and functional socio-psychological skills as well as academic acumen.

As we are seeing in the most "advance" of our societies proven academic success, does not translate into professional, personal or inter-personal success.

While large-scale education of a society is necessary for sustainable economic growth and the success of a democracy, alone it does not assure that its members will be able to effectively and successfully utilize their academic knowledge. In order for a society to fully profit from the knowledge and education of its members these members must have the inter-personal, problem-solving, cognitive, and behavioral skills that will allow optimization of that knowledge and those skills.

Companies spend billions of dollars (and euros) each year trying to teach the organizational, cognitive, problem-solving, etc. skills that are needed by management. These skills and techniques should, and can be taught and developed during childhood, adolescence and early adult-hood, translating into savings of untold billions in operating costs for companies around the world.

It is only during the 20<sup>th</sup> century that widespread literacy and universal education have become common place in developed societies and goals for developing ones. For thousand of years economies around the world relied on manual labor with little need, or desire, for an educated population. In the past, education and nurturing systems were designed to produce obedient, submissive masses whose labor sustained a life of luxury and leisure of a very few. Universal education and literacy were not only unnecessary they were undesirable.

While in the past 50+ years educational technique of our children within the home and school have moved towards more human, nurturing methods. However, the majority of children worldwide still grow up under the antiquated norms of the past based on abusive parental and child-parent relationships.

Not only have these antiquated norms and educational techniques of our young produced populations of dysfunctional/abusive personalities who are ill-prepared to effectively and prodigiously contribute to modern societies and their economic prosperity, their inability to do so result in massive health care costs as well as expensive government and non-government social programs.

## CROSS-CULTURAL MARRIAGE

Generalizations and conclusions about cross-cultural marriages are difficult because the combinations cover such a wide range of possibilities. However, if I had to identify my marriages biggest cross-cultural challenge I would say it was due to my husband's and my differences in definition of gender roles and women's rights. And, unfortunately my husband is deep into the "macho" zone on the spectrum, and I am deep into the "feminist" zone, but I think that this "war of the sexes" is being waged all over the world; some in more peaceful, and some in more hostile zones than my own.

There are two other factors that complicate our situation, however. First, my husband is culturally Spanish with a bit of French while I am culturally American, and second our marriage developed in various different countries and against different cultural backdrops. For example, the "stance" of women's rights in the host country had an large effect on what was "correct" behavior for my husband, his Spanish "macho-ism" is decidedly more apparent when we are in Spain than other countries, or even when we are amongst Spaniards in other countries.

Both of his grandfathers fought on the losing side of the Spanish Civil War; one an anarchist, the other a communists, and both ended up in Morocco where my husband grew up. When he was 12 they moved to France where he lived until 1990, when we first started moving around. His family is definitely what one would consider "left" on the political side in Spain and "traditional" in terms of women's rights and roles.

On the other hand, I am from a conservative, upper-middle class, American background with many of the same basic beliefs as my husband about women's roles, but not rights. My husband and I have the same perception of what my tasks and responsibilities are, however, he sees the wife and mother as someone who exists exclusively to serve her family, and I see her more as a guide or manager. And, the difference in my husband's and my education are aggravated by our cultural reference of what is appropriate not only in terms of what my role is, but also in what his role is.

Women's rights have advanced enormously in Spain since the death of Franco, however, they are still far behind northern Europe, the US and Canada. Therefore, what is culturally "normal" in Spain is not necessarily so for me, as a liberal (and perhaps terribly liberal) American. For example, I constantly hear men saying "callate tonta!" (shut-up stupid) to their wives; personally I find it offensive, but the Spanish attitude is "oh, it doesn't mean anything, it's just an expression." Or worse the example of "joder, coño...." (I am trying to keep profanity out of this website, but can I swear in Spanish in an English text, and remain politically correct?)

Normally, Mediterranean, vociferous, large extended families are portrayed as ultimately loving, caring families, but after many years of living in the middle of such turmoil, I would rephrase and call them "warm and welcoming," but not loving.



Because, if you really listen to the dialogue of all the shouting, it's a non-stop barrage of insults and provocations designed to establish the "pecking order" within. But what offends me the most, is that this vulgarity becomes an integral part of life and children are brought up in a dialogue of total disrespect for themselves and others. Unfortunately, I fear that what I have observed in "mi familia politica," is all too often the case in "matriarch/patriarch, power-struggle" families, whether they be Christian, Jewish, Muslim, or atheist, and this environment teaches and perpetuates egotistical "survival of the fittest" techniques and not self-fulfilment or self-actualisation ones.

And, herein lies the problem as I re-read the last paragraph; for me, their shouts and insults resemble a war zone, but for them it is normality!

Unfortunately, for those of us who marry products of this environment, and find ourselves with totally egotistical husbands (I assume that I am not alone,) living in the hope that we may somehow change them into loving-caring human beings; beauty and the beast type deal! Unfortunately, I fear that our efforts are in vain.

My marriage counsellor's advice was "Los hombres son como piedras, no se pueden romper, pero con tiempo se pueden pulir, como las olas del mar." (men are like stone, they are hard to be broken, but over time can be polished as with the waves of the sea) my response was "that sounds like becoming a nag, and I don't want to become a nag." (the advice was as Latino as my response was American.) Culturally, for him things "take time," especially change (and expressed in a very romantic way,) and for me the more practical side prevailed. My conclusion after all of these years is that we cannot change these men.

Or, maybe I shouldn't have chosen a macho-male, marriage counsellor. "¿No?"

I guess the best advice I could give after many years in a cross-cultural marriage is the same as for any marriage; if there is not a respect for the other's cultural traditions and beliefs, and respect for one's partner as a person and as an equal, friction and havoc are bound to prevail.

by Quenby Wilcox – 2006  
[www.global-expats.com](http://www.global-expats.com)

## **Psychiatrists and Psychologists Role in Sustaining Domestic Abuse and Violence**

This brings us to to another element in the social norms and institutions that work together to sustain the prevalence of domestic abuse within our societies.

Conventional wisdom contends that psychologists and psychiatrists are trained and instrumental in treating abusers and their victims. However, they have the opportunity to become a part of the problem as easily as they can become a part of the solution.

As we saw in the section *Social Norms Which Encourage, Support & Sustain Violence Against Women & Discrimination Against Women* mental health care professionals who work within judicial systems are rarely trained in detecting domestic abuse, are not properly licensed or regulated, with an excessively high propensity of discrimination against women in their custodial recommendations.

In this section we will examine the role of psychiatrists and psychologists who should be instrumental in changing the behavior and beliefs of the abuser, the victim, and other family members. These professionals are on the “front line” in the battle against domestic abuse, but once again traditions and norms inherent within psychiatry and psychology as well as gender bias of therapists are omni-present.

## **History of Psychiatry**

2003 Dr. Hans Pols, Prof. of Psychiatry University of Sydney

Psychiatry, the medical specialty dealing with disorders of the mind, has been controversial from its inception.

First, the role of psychiatry within society has often been topic of controversy. Psychiatrists themselves have seen themselves as humanitarian physicians who provided care and treatment for individuals who were least able to take care of themselves.

Critics have argued that psychiatrists merely provide medical explanations for the behaviour of unusual, eccentric, or bothersome individuals, thereby robbing them of the opportunity to be themselves and forcing them to conform to arbitrary social standards.

Second, psychiatry has always been an internally divided discipline. Psychiatrists disagree among themselves about whether mental illness and mental disorders are caused by physiological, psychological, or environmental factors.

Schizophrenia, one of the most severe and persistent forms of mental illness, has been explained as a genetically inherited disease, a defensive reaction against emotionally abusive family relationships, and as a way of dealing with adverse early childhood experiences. In the decades after World War II, psychoanalytic explanations were predominant within psychiatry.

During the 1980s, after the development and introduction of psychopharmacological drugs, somatic explanations have become more popular.

Third, psychiatrists have articulated a wide range of ideas on the nature of society and how it should be organized to reduce the incidence of mental illness and increase the mental health of the population. Critics, however, have argued that psychiatrists should limit themselves to what they do best: the care and treatment of those with mental afflictions.

As Dr. Pols states psychiatric disorders have traditionally been considered a dysfunction of or chemical imbalance in the brain of the “weak” or “abnormal” members of a society. However, in the past few decades, as research into the effects of abuse and traumatic experiences on the human mind has grown, long-standing ideas about psychiatric and psychological disorders have begun to change.

The works and writings of Daniel Goleman have been perhaps the most influential in changing the way that societies view and perceive dysfunctional behavior and its consequences.

For example in *Social Intelligence*, Daniel Goleman states that “*under stress the adrenal glands release cortisol, one of the hormones the body mobilizes in an emergency....But, if our cortisol levels remain too high for prolonged periods, the body pays a price in ill health....The combined neural impact of too much cortisol is threefold: The impaired hippocampus learns rather sloppily over generalizing fearfulness to details of the moment that are irrelevant... The result: the amygdale runs rampant, driving fear, while the hippocampus mistakenly perceives too many triggers for that fear. In humans that condition of vigilance and over reactivity has been called post-trauma stress disorder....*”

An American soldier who served in Iraq, Kristoffer Goldsmith, who suffers post-trauma stress disorder, stated “*It’s a sane reaction to an insane situation!*”

It is well documented that long term stress and abuse have negative effectives on the psychological well-being of human beings as well as creating substance abuse and pathological behavior.

However, if we examine the widespread prescription and consumption of pharmaceutical drugs in the USA, sales revenue from anti-psychotics drugs of at least \$14.6bn dollars a year, with Americans consuming 66% of the world's production. While it is much easier, and more profitable, to prescribe medication for psychological “disorders” rather than confronting the root cause, it is obviously not beneficial for a society.

This situation creates conflict of interest for mental healthcare providers. Not only do pharmaceutical companies profit from large populations who dependent on their drugs, but mental healthcare professionals and facilities also depend on the populations of the mentally impaired people

Further, as we have seen throughout the history psychiatric institutions and professionals have been complicit in governments efforts to suppress and silence political dissent, as was the case in the USSR and China. In previous centuries religious entities used similar “witch-hunt” tactics and arguments in their efforts to silence dissent as well maintain the status quo based oppression and domination.

Fortunately there exists a “movement” within the mental healthcare industry (reflected in the work of Daniel Goleman, Dr. Robert Hare, Dr. Justin A. Frank, Dr. Piedad Rojas Gil, the Dr. Phil Show, to name a few) to promote and produce societies of healthy, functional and self-actualized citizens.

However, the antiquated beliefs and traditions amongst mental healthcare professionals that concentrate on the “dysfunctional” behavior or mental “disorders” of the victims of abuse, rather than confronting the abuser (or abusive situation) are still widespread and omni-present.

Additionally, problematic are antiquated beliefs of mental healthcare professionals that support and encourage “patriarchal prerogatives”, and thereby discrimination as well as violence against women. These appear to be particularly prevalent, elevated and common amongst psycho-social teams of family courts, and may be responsible for the common use of Parental Alienation Syndrome (PAS) in the “defense” of sexually and physically abusive fathers.

In the case of Sylvina Bassani (see [worldpulse.com/node/13171](http://worldpulse.com/node/13171) ) the psychologist’s support of patriarchal prerogative ended in the death of Ms. Bassani at the hands of her estranged ex-husband.

It should be noted that PAS is not recognized by the American Psychiatric Association's or listed in the International Statistical Classification of Diseases and Related Health Problems of the WHO, but never-the-less is widely used and accepted by psychologists in custody decisions.

The use of an “undocumented” syndrome by psychologists in their “diagnosis” and opinions bring us to another problem within family courts, that of the competence, training, experience and practices of psycho-social teams whose opinions are heavily relied upon in custodial decisions.

As stated in *Jurisprudence on the Impact of PAS in Asturian*:

*“We have only found “procedural actions” or “good practice guides” in different CCAA, but never any specific norms, nor reference to professional qualifications of these technical teams, nor specific knowledge of psychology or social work.*

*Additionally, the Ombudsman of Andalusia states in the 2008 report “we have knowledge of cases where the rights of women victims of domestic violence have been violated...These violations were produced in the majority of cases, in the judicial procedure... or on occasions in the expert decisions (psycho-social teams...) carried out for professionals, that with certain frequency, lacked adequate training in gender violence, or who did not have sufficient or appropriate resources to carry out even the minimum of investigation in order to arrive at the origin of the conflict between the partners.*

Additionally stated in the *Jurisprudence on the Impact of PAS in Asturian* is the necessity to **“record the interviews”**.

*Second, When PAS is diagnosed coming from the mother, there is an immediate change of custody, many times without any fore-warning, and a “therapy of de-programming” is applied. Restricting or removing visitation and communication with the mother, in the supposed well-being of the minors.”*

*“The court appointed psychologists Juan Ignacio Alonso and María Isabel Tagle who examined Sylvina in her divorce proceeding within the “specialized” domestic violence court of Torrejón de Ardoz declared “from a psychological view-point one cannot talk about maltreatment within the home. **We do not believe the woman, she demonstrates contradictions and incoherence and we recommend psychological treatment to adequately work out her conflicts with her husband and learn to open herself up to paternofilial.”** (Obstinada realidad, derechos pendientes: Tres años de la Ley de Medidas de Protección contra la Violencia de Género. July 2008 by Amnesty International).*

Additionally, these psychologists stated that:

*“Javier Lacasa, who had attempted to commit suicide the day that the guardia civil arrest him and admitted to having thrown a television set on the floor because his wife wanted to travel to Boston, was found to be “normal.” (Obstinada realidad, derechos pendientes: Tres años de la Ley de Medidas de Protección contra la Violencia de Género. July 2008 by Amnesty International).*

The Asturian Institute of Women Lawyers for Equality in their study *Jurisprudence on the Impact of PAS in Asturian Courts* further documents discriminatory practices against women and favoritism for men within family courts:

*“First, when PAS is “diagnosed” coming from the father, the “therapy of menaces” is not applied, and no modification of custodial rights is applied, nor is the “best interest of the child” considered. Additionally, visitation rights of the mother may be restricted in order to not “traumatize” the child who suffers the visits as something “terrible.”*

**This last recommendation by the Asturian Institute of Women Lawyers for Equality cannot be stressed enough for the following reasons:**

1. Under due process the right to legal representation during court proceedings, and the right that the “all proceedings will be recorded” is assured under due process. **The fact that interviews**

**with court psychologists are not recorded, nor occur in the presence of legal counsel renders these testimonies and opinions unconstitutional under art. 24 of the Spanish Constitution.**

2. Due to well-documented gender bias and discrimination against women within family courts, **the Spanish government is under a clear obligation to take “positive action” (art. 10 of the Equality Act) to reverse discriminatory conditions and practices.** This obligation is further supported by the Spanish Constitution, CEDAW and the Equality Act in its entirety.

The systematic recording of psycho-social interviews is a relatively simple measure that would help to bring accountability and transparency into court proceedings.

Last, but not least, in examining the problems amongst mental healthcare professional’s role and responsibilities in the eradication of domestic violence in our societies one must examine the responsibility of government regulatory agencies; in this case psychiatric and psychological agencies entrusted with regulating the education and licensing of these individuals as well as disciplinary action in cases of professional misconduct.

The lack of specific norms, professional qualifications, and specific training, particularly in regards to domestic violence of psycho-social teams, as well as the common use of diagnosis of an “undocumented” syndrome (PAS) begs the question of the role that regulatory agencies play in the licensing and disciplinary action of said professionals.

Once again the Spanish government has a clear obligation **to take “positive action” to reverse discriminatory conditions and practices,** and assure that regulatory agencies develop clear protocol for psycho-social teams in their evaluations as well as in the licensing and disciplinary actions in case of professional negligence.



***PROFILE OF THE  
ABUSER  
IN THE HOME  
VS. WORK-PLACE  
Abuses of Power  
are About  
Power and Control***

## **Abuses of Power in Our Homes, Communities, and Societies**

In order to effectively combat discrimination, in this case discrimination against women, one must consider the following:

- The parallels between the various forms of abuses of power in a society
- Their sociological significance
- The importance of eradicating corruption in judicial systems in eradicating abuses of power in the home and communities.

In all of the literature surrounding domestic abuse and violence it is commonly agreed that abuse is not about violence, but rather power and control. It is important to add, however, that it is about abusing one's power and control rather than simply having power and control.

In almost all human relationships and situations one person will have a certain power/control over another person. The problem arises when that person abuses that power or control.

Within the home this may take the form of one partner/parent restricting the other's access to money for basic necessities. Within a work setting this may take the form of one employee/boss withholding necessary information or tools in the execution of their duties. Within a community this may take the form of ostracizing a member for his/her "deviant" behavior. And, within a country this may take the form of a government's appropriation of assets or incarceration of a citizen for expression of "unacceptable" ideas, opinions or religion.

In examining the various forms of abuses of power within a society, we may turn to the Duluth Model. While this model concentrates on abuses of power of one partner over another within the home, the same principles, strategies and tactics apply to the work-place, community or nation and its institutions, by the same individuals. As we have previously seen abusers have a distinct way of thinking and relating to others.

If one examines the dynamics of the situation from a sociological perspective, the parallels and similarities between abuses of power in the various sectors become obvious.

## Duluth Model - Power and Control Wheel



Domestic Abuse Intervention Project  
202 East Superior Street  
Duluth, Minnesota 55802  
218-722-2781  
[www.duluth-model.org](http://www.duluth-model.org)

# **Abuses of Power: Strategies & Tactics**

## **Economic Control**

- Restriction of access to labor markets – Within the family this takes the form of one spouse forbidding or otherwise hindering the other spouse to work out-side the home or start a business. Within a work-place/community/society this takes the form of limiting upward mobility to employees.
- Financial control – Within the home this takes the form of one spouse limiting the other spouse's access to money or decisions in the management of the families income and savings. Within the work-place this takes the form of refusal to pay an employee for services rendered, or threats to do so. Within the community/society this takes the form of punitive tax rates, a tribunals ability to appropriate citizens assets in a punitive manner, or refusal to accord financial or social services to a member/group that are offered to other members/groups.
- Financial dependence – Within the home this takes the form of one spouse sabotaging or otherwise hindering employment or advancement opportunities of the other spouse, as well as educational opportunities. Within the work-place this takes the form of denying financial advancement to an employee. Within a community/society this takes the form of limiting entrepreneurial, employment, or educational opportunities of citizens

## **Coercion, Intimidation and Threats**

- Threats of violence – Within the home and work place this takes the form of threats of physical, sexual or psychological abuse. Within the community/society it takes the form of sanctioning of the three forms of abuse either directly or by failure of “authorities” to prevent the abuse.
- Threats of abandonment – Within the home, work-place, community or society this takes the form of threats to abandon or ostracize a partner, children, employee or citizen.

- Threats of defamation – With the home, work-place, community, or society this takes the form of threats to denounce member for actions, ideas or beliefs that are contrary to certain established norms. In the most extreme case, and when the threats are carried out, this can turn into a “campaign” to pit one person, or group of people, against the victim; commonly referred to as a “witch hunt”.
- Coercion to participate in illegal activity – Within the home this takes the form of participation or being accessory to a wide range of illegal activity; from armed robbery to tax evasion, etc. Within the work-place it takes the form of failure to adhere to government regulations, controls or laws; tax evasion; over-billing or embezzlement of clients; failure to conform to contractual agreements; etc. Within the community or society this takes the form of coercion of citizens or persons of authority/law enforcement to commit civil, constitutional or human rights violations of citizens.
- Destruction of property – Within the home, work-place, community, or society this takes the form of destruction of personal objects or property, and/or the failure to prevent the destruction of objects or property of others.
- Harassment of or violence against family, friends or pets – Within the home, work-place, community or society this takes the form of active harassment or violence, and/or the failure to prevent said harassment or violence.
- Display of weapons – Within the home, work-place, community or society the display of weapons has always been a well utilized threat. The present situation of nuclear arsenals around the globe and their place in international negotiations and balance-of-power is testament to this widely used tactic.

### **Using male/authority privilege**

- Treating others like servants - Within the home, work-place, community and society this takes the form of delivering orders in a violent, disrespectful or demeaning way, or demanding that one member or group are over burdened within the division of labor.
- Denying participation in decision-making – Within the home, work-place, community, and society this takes the form of unilateral decision-making with no room for discussion, debate or dissent.

- Acting like the master of the castle – Within the home, work-place, community or societies there are always narcissistic members who feel that others exist to serve their interests, needs, and wants. In autocratic societies this dynamics is considered normal, and maintained as much by the “masters” as by the “servants” by agreeing to serve. The revolutions and “democratization” of the planet in the past few centuries has been due to the masses refusal to continue to “serve their masters”.
- Defining men’s and women’s roles - Within the home, work-place, community and societies the definition of women’s and men’s roles has been an issue of debate within philosophical, religious, political, legal etc. arenas for thousands of years. It is only in the past 100 years or so that gender-roles have been questioned, along with mores on sex, sexual-orientation, personal lives, and socio-economic roles.

### **Using Children**

- Threats to remove or harm children – Within the home, work-place, community, and society this is a widely used tactic and particularly effective on mothers.

If one examines the history of mankind it is filled with example after example of how men (and women) have used abuses of power for centuries. In fact, civilizations, their rises and falls, have been based on extensive and all encompassing abuses of power within their social, economic, religious, and political institutions.

The rise and spread of the ideas and principles of human and civil rights in conjunction with the formation of governments based on democratic principles and Constitutions in the past few centuries have been largely a back-lash to long-standing traditions and customs of abuses of power at all levels of societies.

Therefore, it might be assumed that the success of democracy depends on a society’s ability to eradicate its dependence on abuses of power in its efforts to maintain a social and economic “equilibrium”, albeit a dysfunctional one. This “equilibrium” was based on a small elite who lived a life of leisure and privilege at the expense of the masses who lived a life of toil and misery, and which is still the case in all too many countries around the world.

It is consistently shown in studies and reports that domestic abuse is prevalent in all socio-economic levels with abusers showing a high level of psychopathologies and narcissistic personalities, as well as the fact that these personality types are a product of long-standing abuse during childhood.

In *Social Intelligence*, Daniel Goleman also indicates that psychopaths are over represented in money-making businesses, amongst politicians and amongst actors. They also seek situations in which they can wield power and control over others.

In light of the enormous amount of power judicial actors are accorded in family courts with little effective accountability and transparency, the potential for abuses of power, discrimination, and corruption within these courts is over-whelming. In order to understand the consequences, it is necessary to examine the dynamics of judicial corruption.

### ***Corruption and the Justice Sector, Jan. 2003*** **Management Systems International**

by Mary Noel Pepys

Why should a democratic country be concerned that corruption pervades its justice system?

In a democracy based on the rule of law, the role of the judiciary, as an independent and equal branch of government, is to protect human rights and civil liberties by ensuring the right to a fair trial by a competent and impartial tribunal.

All citizens expect equal access to the courts and equal treatment by the investigative bodies, prosecutorial authorities, and the courts, regardless of their position in society. Yet, under most corrupt judicial systems, the powerful and wealthy can escape prosecution and conviction, while large segments of society are excluded from their rightful access to fair and effective judicial services...

...In an increasingly global arena with highly competitive markets, the economic growth of countries with corrupt judiciaries, real and perceived, will be severely retarded...

Until corruption within the judicial sector is severely controlled or eradicated, most legal and programmatic mechanisms put forth to reduce corruption in other sectors of society will be significantly undermined."

...It is critical to understand the vulnerabilities to corruption, that is, the factors, forms, levels and location of corruption in the justice system, to effectively design a response to the problem...

...Governmental leaders are viewed cynically by citizens as serving their own self-interests rather than the interests of the public. Given the fact that in many countries around the world, the role of government is to promote the State's rights over citizens' rights, citizens have traditionally observed with skepticism the legitimacy of their own governmental leaders. Rather than view the judicial branch as a separate and equal branch of government with a democratic check on the other two branches, citizens often view the judicial branch, particularly judges, as being part of the problem rather than part of the solution...

investigations that would allow a departure from the procedures to be identified...

...court employees are willing to circumvent the administrative process for their private benefit. Due to their vast responsibilities, which receive little oversight by court administrators, court personnel are in a position to manipulate the rules and procedures. They may accelerate or delay a case without detection. They may "lose" the case file and then "find" it for a fee. They may allow or deny access to a judge for a fee. They may influence the assignment of cases for a fee...And lawyers do not hesitate to single out those court employees who knowingly and expertly engage in corrupt, unsupervised administrative tasks in exchange for an illicit fee, as they know there is a low risk of being detected...

...One of the most common forms of corruption within the police and judiciary is the payment of a bribe, either sought after by the police or magistrate (prosecutor or judge) or offered by the accused, the litigant or lawyer as an inducement to make certain decisions...

...An insidious form of corruption emanates from within the justice system itself. Chief police officers, prosecutors or judges can exert significant administrative authority over their subordinates...

...Often magistrates succumb to pressure because their knowledge of the law and its application is faulty and unsound...

...Rather than being motivated to receive a tangible benefit from making certain decisions, police and magistrates are often cowed into making decisions out of fear of retribution...

...Civil or criminal lawsuits that have emerged unscathed from the judicial process can still be subject to corruption during the enforcement phase...

**.... An independent assessment of corruption involving all stakeholders to corruption, i.e. parties to a civil dispute, the accused, the victim, police, prosecutor, defense counsel, private bar, judges, court personnel, and**



**court decision enforcement agencies, including penal institutions, is essential before any systematic response to eradicating corruption can be developed and implemented. Evidence of corruption, and not just suspicions or popular belief, is required in order to effectively assess corruption and develop a framework of anti-corruption policies...**

Reform-minded and respected leadership of the police and magistracy within the justice system must not only be involved in the assessment of corruption, but also, and more important, in determining the priorities and sequencing of reforms. Corruption within the justice system is multi-faceted and multi-layered and to be effectively combated must have committed leadership at each level of corruption. more important, in determining the priorities and sequencing of reforms.

...As with the factors of corruption, the responses to corruption can be grouped into two categories, institutional and attitudinal...

...The autonomous role of the public prosecutor in fighting corruption must be strengthened in order to effectively investigate governmental officials, including judges, and well known businessmen. Additionally, the criminal code must allow for prosecution and conviction not only with direct evidence of bribery, but also with circumstantial evidence,...

...Until the public observes that corrupt behavior by governmental leaders and private individuals is not tolerated within the justice system, corruption within other sectors of society will continue...

...The system for appointments, promotions and dismissals must be transparent and based on due process procedures in order to reduce nepotism and political patronage within the employment process.

In order to strengthen the integrity of magistrates and police, a code of ethical conduct, one that is rigorously enforced, is crucial. Codes of ethical conduct oblige magistrates and police to become accountable for their actions and decisions. If magistrates are seen to prosecute their own for inappropriate behavior, the public's respect for prosecutors and judges will increase.

...In numerous countries, often civil law countries, judicial decisions are not traditionally published, nor are there verbatim court transcripts. Thus, where there are inconsistent applications of the law, or where there is an indefensible ruling, it is difficult for the public to ascertain and establish such facts...publication of judicial decisions that are well-reasoned and that properly apply the applicable law to the facts can protect the innocent judges while exposing the guilty ones...

This intricate environment entices not only court staff to seek illegal payment for services, but also a willingness on the part of the court user to pay them. Court administrative procedures must be streamlined and easily understood by all so that arbitrary decision-making by court staff is reduced...The personal

...accountability of court staff requires them to perform their roles and responsibilities in compliance with all applicable rules and regulations and standards of ethical conduct... Further, the use of tamper-proof software can prevent documents or case files from being "lost"...

...Frequently overlooked is a recognition by the bar that it contributes to the corruption of the judiciary by acting as a conduit between the litigant and the magistrate. Bar associations have the responsibility to expose and reduce bribery within the justice system by imposing strict sanctions against any of its members who engage in corrupt judicial practices...

...Non-governmental organizations can play an important role in reducing corruption within the justice system by enhancing public awareness of judicial procedures and citizens' rights, while also creating pressure on the government for reform...NGO's can be useful in ferreting out corruption by engaging in court monitoring...

...Those reporters who routinely cover the courts must be educated in the law and about court procedures, and must recognize their responsibility to be factually correct...must have access to court records and court press officers...

...Most anti-corruption vulnerabilities and responses are institutional, and indeed, essential to eradicating corruption within the judiciary. But the ultimate response, without which corruption will never be eradicated, is societal.

Clearly, one's behavior is shaped by the threat of apprehension, conviction and punishment, but one's personal ethics and moral values are the fundamental incentives for behavior.

Reforms must focus on one's personal ethics, and the societal attitude towards ethical behavior. There must be a common belief in society that ethics matter. Ethical behavior must be rewarded, and the rewards must exceed the risks of engaging in corrupt behavior. While unethical behavior benefits individuals and companies, the country always suffers.

**There must be a societal awakening to the deleterious effects corruption has on the economic and political growth of a country. In this regard, public leaders who are reform-minded must lead public campaigns exhorting anti-corruption reforms. corrupt judicial practices...**

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As we have seen not only are abuses of power prevalent in our societies at all socio-economic levels, in the home, work-place, communities and societies but they are self-perpetuating and ultimately have a detrimental impact on the economic and political growth and success of a country.

**How much of the present global economic crisis is due to rampant and long-standing corruption and irresponsible business practices, wide-spread corruption and greed within banking systems, coupled with the failure of government agencies to effectively regulate that system.?**

However, ultimately the responsibility in any democracy for wide-spread corruption and incompetence within a society and its institutions, public and private, lie with the people.

One of the basic principles of any democracy is that power emanates from the people and that governments exist to serve those people, as opposed to people existing to serve their governments as well as the wealthy and powerful.

**This is the basic difference between democracies and autocracies.**

Until, and unless, the people within any country or society who have been afforded the privilege of living with a democracy realize that with this privilege comes a responsibility. They have a responsibility to assure that all agencies and persons working within legislative, executive and judicial branches of their governments realize that they have an irrevocable responsibility to execute their jobs with the utmost competence, integrity and highest level of ethics.

**The widespread incompetence and corruption within family courts, and people's apathy towards this corruption and its consequence is just symptomatic of a much greater problem amongst our societies and the future of mankind.**

**The fact that such extensive and flagrant incompetence and corruption within judicial systems in Europe, the USA, Canada, and Australia, systems which are suppose to be an example to the rest of the world, are ignored and disregarded by the press and the average citizen, as well as government agencies, is a sad testament to the integrity of mankind and the future of democracy.**

***OPPRESSION,  
VIOLENCE &  
DISCRIMINATION  
AGAINST WOMEN:***

***Legislative Solutions -  
Examining  
Implementations and  
Effectiveness***

## Legislative Solutions in Combating Domestic Abuse in Spain

### ***Organic Act 1/2004 of 28 December on Integrated Protection Measures Against Gender Violence***

One of the most important initiatives of the Spanish government in its efforts to combat violence against women and domestic abuse was passage of the *Organic Act 1/2004 of 28 December on Integrated Protection Measures Against Gender Violence*.

Within this “organic act” Spain clearly recognize that domestic abuse is in violation of art. 15 of the Spanish Constitution, and furthermore defines it as “torture and inhumane and degrading punishment and treatment”.

It further recognizes the States’ responsibility to protect victims.

*“The public authorities cannot remain indifferent to gender violence, which stands as one of the most flagrant attacks on the basic rights such as freedom, equality, life, integrity and non discrimination defended by our Constitution.*

*These same public authorities are obliged under the terms of article 9.2 of the Constitution, to deploy positive action measures to make these rights real and effective, removing any obstacles which prevent or impede their full enjoyment..”*

This act provides not only for a clear defined blue-print in protecting the rights of victims as well as preventative measures for the perpetuation of domestic abuse.

However, as Amnesty International clearly demonstrates this law, **has not, cannot and will not be effective due to rampant negligence of State and non-State actors in executing their duties, obligations and responsibilities.**

Additionally, while there exists a **clear recognition of domestic abuse as “torture”** Additionally, while there exists a **clear recognition of domestic abuse as “torture”**

as well as **the necessity for provisions of reparations for victims of said torture** within national tribunals, Spanish judicial systems are once again consistently negligent in their duties, obligations, and responsibilities under national and international law.

### ***More Rights, The Same Obstacles***

By Amnesty International 2006

**The effective protection of human rights of women one year after the entrance of the Ley de Medidas de Protección Integral contra la Violencia de Género,**

#### **5.4 Lack of diligence in the defense of the rights of the victims in judicial procedures**

“Now the one who has not arrived is the court appointed lawyer specialized in Domestic Violence. The truth is that we can’t really say anything as there is only one who covers this court of Violence and of boarding jurisdiction, as well as the presiding courts of both parties. Yesterday it was the same. Additionally the lawyer told me that he had not received any special training and does not know if 24 hour legal assistance is available.”

Fragment of the presentation “The day in the life a judge of violence against women...” 170 Amnesty International is concerned that **the right to legal counsel and defense of victims rights in legal process, recognized in the Ley Integral, are faced with obstacles preventing them to from being real and effective.** On November 25, 2005 the Spanish government confirmed that they “guarantee free legal assistance for victims of domestic violence, with the modification of the rules pertaining to free legal counsel.”<sup>171</sup>

However, this regulatory development has not been sufficient in order to guarantee all victims the right to specialized assistance related to the domestic violence they have suffered.

Marta <sup>172</sup> saw her lawyer 15 minutes before the trial. She had solicited to be assisted by a court appointed lawyer when she had filed her complaint with the police.

They spoke in the hall of the court house about her case, but in the moment to enter into the court appearance to decide whether to continue with the process or

to archive the complaint, the judge instructed that only the lawyer enter and when he met with Marta again told her that the judge has instructed him to represent her husband, who did not have a lawyer and that the State Prosecutor would defend her.

In the court appearance, **the State Prosecutor without having interviewed the victim, asked that the complaint be denied as "the facts could not be considered a crime."**

Marta recounts what happened: "the face of the lawyer when he came out from speaking with the judge...the poor thing, his face was white. I am no longer your lawyer, he told me, now I will defend him, because by law it is he who needs a lawyer, that the Prosecutor will defend you, ....and I said, **if the Prosecutor is going to defend me, better that no one does it."**

Sonia 173 was subjected to brutal physical aggressions and constant humiliation from her husband for 8 years, until in 2004 she separated from him and obtained a protection order: "I had black and blue marks all over my body, and could no longer wear my hair long like I do now because he would pull it."

In front of the judge, the court appointed lawyer of Sonia, who she **did not have the opportunity to meet with before the trial, negotiated without her consent a reduction in penalty with her husband's lawyer in exchange for a guilty plead.**

"When I came to into the court room my court appointed lawyer and my husband's lawyer (private -fee paid) had arrived at an agreement...they had made a deal that he would plead guilty and instead of one year prison term it would be reduced to six months in his house, **he had to hand over his guns, knives and whatever else he had, but he would be free, no big deal (....)**

I said to the sir, well isn't this nice. **What are you favor of him or me? Because this is not right... I said to the lawyer "I don't like this." And, I said in front of the judge "I don't like this one bit, you have surrendered and it shouldn't be like this..."**

Amnesty International is preoccupied by the lack of communication of some lawyers and court appointed lawyers specialized in defending women victims, scarcity of information about the legal process that the victims of domestic abuse receive from these professionals.

The organization insists in recommending, **in addition to incrementing the number of staff of specialized court appointed lawyers, rigorous training and sensibility regarding gender questions and the necessity of the victims by these professionals...**



Other obstacles that those who defend the rights of victims in legal procedures find is relating to their role as the accuser. **Amnesty International has become aware that some judges do not allow lawyers to accompany victims in the declarations from judges decide whether to accord protection orders or not.**

These judges show a defect in their form: the lack of assigning a court appointed procurador, and since no she was not assisted by a lawyer or court appointed lawyer that would defender her rights.

When she was interviewed by Amnesty International, 2 months after filing her complaint, still not having received an answer from the courts and finding herself totally misinformed about future procedures: "I was without a lawyer (...) and his lawyer (of course lawyers are there to defend you) went at me, asking and asking questions, and

I said to the judge **"Madam, it is all well and good to ask one time, but I am not going to answer the same question twice"** and she said **"Oh, have you already answered?"**

...In respect to the intervention of the Domestic Violence Prosecutor, Amnesty International has been able to know about the functioning of different sections, and while there exists professionals of enormous dedication and sensibility towards the situation of victims, there are still many cases that **show lack of training and rigorous application in protecting rights of victims of domestic violence in these types of crimes.**

In May 2004, Eva 177 filed a complaint for psychological abuse, threats, coercions and insults, against the man with whom she had maintained a relation for 2 years and that was employed as a forensic doctor in the jurisdiction where he resided. "He forced me to accompany him to autopsies, and this was terrible (...) one day I received 470 calls from him in 4 hours, it left me destroyed." ....Also, there exists **cases where judges let lawyers enter the court room, but do not allow them to intervene and ask questions.**

The coordinator of the court appointed lawyer of domestic violence of the Bar Association that qualified this practice was "formulizing the obstruction of defense of women's rights," **adverting that if the judge had the power to surpass procedure he will do it, as "the prosecutor follows the next day signing off that the defect was excusable."** 174

**(...) I felt as if the judge was in favor of the lawyer, it was as if I was there...abandoned, without protection (...) He left with his lawyer, with the papers, and to me they did not even give me my declaration..."** 176

Amnesty International **considers this judicial practice totally contrary to duties in protecting the rights of victims in the judicial process, provided for in the Ley Integral**, as it is impeding victims of being previously informed and advised being perhaps **"the procedure most important.. in regards to the protection order,** and is precisely what is going to leave the woman alone.

And, why is it the procedure the most important? Because it is the procedure which removal from the home. In the majority of cases plaintiffs ask for a protection order and leave the house with protection because it means there will be an increment in violence. And in these procedures will be in the majority of cases unassisted." 175

In March 2006, Sonia filed a complaint against the continual phone calls, threats and stalking from her husband even though she had a restraining order and prohibition to communicate with her, and in this procedure defendant worked as a forensic doctor in the court house where the complaint was filed, four judges refused to preside over the case, alleging relations with the defendant and a nearby jurisdiction had to take the case.

**Eva found her lawyers (male and female) lacked in presenting her defense, and had to go through 3 different lawyers.** Even though the legally a protection order must be handed down in 72 hours, Eva had to wait 2 months in order to receive hers. More than 2 years after filing the complaint, the trial has still not taken place and her feelings of total abandonment by the justice system. **Eva is waiting for the trial and that the process ends, so that she can finish what she qualifies as her "nightmare."**

**Considering that the entrance of the Ley Integral has not resolved her situation and has complained about the lack of diligence of the Prosecutor, who has now been named the Prosecutor charged with the domestic abuse in the office of Prosecutor of the Superior Courts.**

**In spite of a report by the public mental health service deposed by the victim and demonstrating abuse, the existence of various witnesses, and proof of threatening and abusive telephone calls, the Prosecutor formulated accusations only for "unjust vexations,"** without putting and witness as proof and without asking that the victim be examined by a forensic doctor. After fleeing from her town, Eva had to declare short term disability for psychological reasons, and live for 22 months in a center for abused women in the locality where she lives now. She continues under outpatient psychological treatment.

Amnesty International is **preoccupied that the lack of attention and assessment that psychological violence receives in the judicial arena, especially where the Prosecutor is concerned and the consequences of this lack of attention can be very serious**

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**Amnesty International is preoccupied that the lack of attention and assessment that psychological violence receives in the judicial arena, especially where the Prosecutor is concerned and the consequences of rights, including truthful and rigorous information, and initiation and follow up of judicial procedures guaranteeing that this type of crimes are punished in proportion with the abuse and infringement of human rights committed.**

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...

#### **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.<sup>51</sup> 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.

## **Constitutional Act 3/2007**

### **Effective Equality Between Women and Men**

There is perhaps no legislative initiative within the context of a democratic legal system and Constitution, which better provides for the elimination of discrimination against women.

In order to understand this importance one must first examine the primary difference between Spanish legal systems; (European) Civil Law vs. (Anglo-Saxon) Common Law.

**Civil Law System** – A type of legal system also referred to as European continental law, is derived mainly from the Roman *Corpus Juris Civilis*, (Body of Civil Law), a collection of laws and legal interpretations compiled under the East Roman (Byzantine) Emperor Justinian I between A.D. 528 and 565. The major feature of civil law systems is that the laws are organized into systematic written codes. In civil law the sources recognized as authoritative are principally legislation - especially codifications in constitutions or statutes enacted by governments - and secondarily, custom.

**Common Law** - A type of legal system, often synonymous with "English common law," which is the system of England and Wales in the UK, and is also in force in approximately 80 countries formerly part of or influenced by the former British Empire. English common law reflects Biblical influences as well as remnants of law systems imposed by early conquerors including the Romans, Anglo-Saxons, and Normans...The foundation of English common law is "legal precedent" - referred to as *stare decisis*, meaning "to stand by things decided." In the English common law system, court judges are bound in their decisions in large part by the rules and other doctrines developed - and supplemented over time - by the judges of earlier English courts.

[www.cia.gov/library/publications/the-world-factbook/fields/2100.html](http://www.cia.gov/library/publications/the-world-factbook/fields/2100.html)

The fact that under Spanish/Civil law judicial decisions are based on written law, rather than past judicial decisions have obvious implications in integrating new laws into legal rules, procedures and decisions as well as into *jurisprudence*. Additionally, Spain's legal system is based on a hierarchy with the Constitution and Spanish Civil Code at the top followed by "Organic law", "Law", "Decree Law", "Legislative decree", "Regulation", and international treaties becoming internal law (Constitutional law) once they have been ratified.

In effect laws, and articles therein, can be introduced and applied to judicial procedures and decisions as the occasion arises, in conformity with changing social norms without the necessity of defying “judicial precedence” based on antiquated norms and customs.

Therefore, in the spirit and principle of Spanish Civil law, the Constitutional Equality Act 3/2007 provides a unique opportunity to challenge antiquated norms which support and encourage discriminatory policies, procedures and decisions within family courts as well cases of domestic abuse.

It should be noted at the onset that critics of the *Organic Law on Protection Measures Against Gender Violence* **contention of anti-Constitutionality due to lack of presumption of innocence is totally unfounded.**

First, if one examines the various articles of the law there are no provision which provides for the removal of “presumption of innocence of the accused”.

Second if one examines statistics in Spain regarding complaints for domestic violence not only is the presumption of innocence respected, but favoritism is accorded the abuser in judicial decisions.

According to the *Observatorio Contra la Violencia de Genero* in 2011 there were 102,261 complaints for domestic violence filed in Spain with only 11,252 or 11.77% found guilty. In terms of protection orders in 2011, 27,236 were solicited with only 66% accorded, 26% of total complaints filed. In this same year 67 women lost their lives at the hand of their partner or ex-partner, with a large portion having previously filed a complaint.

These statistics clearly indicate that victims are not favored in judicial decisions, nor are they favored in judicial procedures. Particularly, in light of the fact that only a very small percentage of victims of domestic abuse ever file a complaint, and that only after years and years of abuse.

As we have seen in reports from Amnesty International victims are often discouraged by family, friends and even law enforcement officials

from reporting the abuse, and once inside the judicial system are simply not believed and often re-victimized by this system.

This brings us to another common argument used by critics of gender-based laws against domestic violence, claiming that “false accusations” are common place and used by women in order to receive preferential treatment in divorce and custodial decisions.

Again, this contention must be examined from a “logical, evidence-based” perspective rather than “conventional wisdom” based on nothing more than “rumors”. Extensive and well-documented reports demonstrate that women who file complaints of domestic abuse (violence against themselves or their children) are treated unfavorably; evidence is ruled inadmissible or not introduced at all, and at times they are threatened with loss of custodial rights or incarceration if they file complaints against on-going abuse.

Another common fallacy of “conventional wisdom” contends that “women always get custody of their children”. While this is true within the general population, due to agreements of divorcing parents that the woman will continue to be the primary care-taker. In cases where custody is contested and fathers seek custody of their children women are openly and flagrantly discriminated against by the courts.

Therefore, if women in fact did receive preferential treatment from the courts as contended in the “false accusation argument”, **why would they file a complaint for abuse in courts where their “winning” is a *fait accompli*? The truth of the matter is, they file complaints in efforts to protect their own lives as well as that of their children at great risks to their security and safety.**

The fact of the matter is, that women are highly and blatantly discriminated against in divorce courts, particularly in cases of domestic abuse, due to long-standing tradition, customs and beliefs about women in general and homemakers in particular.

I cite studies of the *New England Law Review*, *Women and Gender Rights Unit of the High Commission on Human Rights*, and the *Asturias Institute of Women Lawyers for Equality* (endnote #1) as testimony to the discriminatory norms, which translate into a 70%+ discrimination rate in divorce courts.

**New England Law Review:**  
**Gender Bias Study of the Court System in Massachusetts**  
Volume 24, Spring 1990

...We found gender bias to be in operation when decisions made or actions taken were based on preconceived or stereotypical notions about the nature, role, or capacity of men and women. We observed the effect of myths and misconceptions about the economic and social realities of men's and women's lives and about the relative value of their work. Throughout this report the workings of bias are illustrated in statistical data, expert testimony, and first-hand accounts of people using the court system...

...Gender bias was not born in the court system. Rather, it reflects the prevailing attitudes and conditions of our society. Regardless of its genesis, the cost of gender bias is great. **The court system must examine its role in continuing and contributing to gender bias, and it must work to correct the problems that exist...**

**...The common theme that emerged from the testimony is that there is a widespread problem of abusive parents being granted custody of children and protective parents having their custody limited or denied, and/or being otherwise punished.**

**There is a crisis in the custody court system, which has resulted in thousands of children being sent to live with abusers while safe, protective parents, primarily mothers, are denied any meaningful relationship with their children.**

**The court system has failed to respond appropriately to domestic violence and child abuse cases involving custody. The Commission found many common errors made by the courts and the professionals they rely upon which contribute to these tragedies. These same mistakes have negatively impacted battered women and children in other cases, with less extreme results.**



The reports, statistics and testimonies are unending, but governments, the media and the general public all too often have a tendency to turn a blind-eye, which in effect sustains the violence even encouraging its escalation.

**This is why the Spanish Constitutional Equality Act 3/2007 is such an important instrument in advancing the rights of women within the courts. It contains important provisions not only for the rights of women victims of violence, but important provisions for establishing rights for homemakers.**

**The four important threads to examine and establish are as follows:**

- 1. Rights of the homemaker**
- 2. Domestic violence and discrimination**
- 3. Discriminatory policies and practices, *de jure* and *de facto*, in judicial systems**
- 4. Rights of reparations for victims of abuses of power (at the hands of their spouse or judicial actors)**

***THE RIGHTS OF THE  
HOMEMAKER IN  
ELIMINATION OF  
DISCRIMINATION  
AGAINST WOMEN***

***The Equality Act 3/2007 and Its  
Significance in Recognizing  
The Homemaker's  
Work and Contribution to Society***

## RIGHTS OF THE HOMEMAKER

Within every society of the world, whether East or West, homemakers are not afforded rights or recognition for their work or contributions to the society.

Homemakers are housekeepers, cooks, accountants, personal shoppers, sports trainers, educators, nurses, chauffeurs, entertainment coordinators, party organizers, managers, mediators, companions, therapists, etc., etc. They are on call 24 hours a day, 7 days a week with no paid vacation or days off.

They do all of this work for no pay, no unemployment insurance, no healthcare insurance, no pension, no assurance of a work play free from violence and abuse, and little to no recognition for the hard work they do. Then to “add insult to injury” due to antiquated norms they are often considered “parasites” who live off of their husbands money and hard work, by other members of the community. In addition, at the whim of their spouse they can be denied all access to their assets, with no recourse under the law.

In case of divorce, due to unbridled lack of due process within divorce courts, they are not afforded any effective protection in safe-guarding family property or assets, equitable division of said assets, seeking “severance pay/alimony” for past years of labor, and may be denied all and any contact with their children.

According to the New England Law Review: Gender Bias Study of the Court System in Massachusetts Vol. 24, Spring 1990 “...*In the area of alimony, the Committee found that **very few women receive alimony awards**, while even fewer women receive awards that are adequate. While **many alimony awards undervalue the contributions of the homemaker to the family, they also overvalue the earning potential of homemakers who have long been out of the labor market**...only a minority of the alimony awards ordered ever get collected... women who have postponed their careers to raise children or to work in the family business are often economically disadvantaged, both at the time of their divorce and for many years to come....”*

Statistics and reports consistently show that it is these homemakers who are the key to the success of a family's social functioning. That the emotional stability, strong coping and problem-solving skills, and cultural agility of the homemaker translates into a well-adjusted and productive family; in the work-place, school, and community.

(Corporate Leadership Council 2002; Linehan 2002; Takeuchi, Yun et al. 2002; Bhaskar-Shrinivas, Harrison et al. 2005; Tung 1981; Harvey 1985; Briody and Chrisman 1991; Harvey 1995; Adler 2002; Abe and Wiseman 1983; Copeland and Griggs 1985; Black, Gregersen et al. 1992; Black, Gregersen et al. 1999; Simmons 2002).

While men should be encourage in every way to participation in child-rearing and are increasingly doing so, the reality of our world is that mothers, even mothers who work outside of the home carry the bulk of the burden of child-rearing and maintenance of the home.

While feminist movements in the past century have been dedicated to "liberating" women by promoting equal opportunities in education and employment, the right to family-planning, as well as the belief that women do not necessarily find fulfillment in child-care or maintaining a home.

Unfortunately, this has created a "back-lash" for the "modern" woman. Not only are they expected to assume the same roles and duties in the home as past generations, but to perform at par, or better, than their male counter-parts in the work-place. This has resulted in a situation that excessively surcharges "working women's" time, energy, and resources.

In part due to these pressures, many highly-educated, professional women are agreeing, and at times embracing the opportunity, to sacrifice their own careers in deference to their husbands' in the general interest of their families. This phenomenon is most highly visible amongst expatriates couples, in which case the homemaker/"trailing spouse" cannot maintain a career abroad, primarily due to work permit restrictions.

It is in recognition of this phenomenon, the problems that it causes for these spouses as well as my appreciation of the important and vital role that homemakers, female or male, play in developing healthy, productive, peaceful, socially-conscious, ethical, moral, societies, that I am developing an organization, Global Expats, that will provide homemakers with the opportunities, means and tools to effectively fulfill these roles while at the same time the opportunity to pursue and fulfill their own personal social and economic needs.

Additionally, Global Expats will be promoting the social, economical, and legal rights of homemakers, and promote the recognition of their labors by governments and their institutions, as well as societies as a whole.

The lack of appreciation for homemakers and their work, particularly in cases of divorce is a sad testament to where societies place their priorities, values and mores. The education of our children and future generations is without a doubt THE most important job with which anyone is ever entrusted.

It is in light of these principles that I call on the application of provisions of The Equality Act, in defense of the rights of all women in Spain, and in promotion of the rights of homemakers, whether they be female or male.

*The Equality Act* recalls the principles of the Spanish Constitution and international treaties which provide for the equality of men and women, and the importance of **effectively** reversing direct and indirect discrimination within societies and its institutions, providing particular protection to the most vulnerable women within a society.

Article 14.2 of *the Equality Act* specifically calls for, and obligates, the actions of “public authorities” to promote policies and practices that Discriminatory practice within divorce courts (see Gonzalez de Alcala vs. Wilcox) not only fail to recognize the work of homemakers, but also the importance of that work, and is in direct violation to art. 14.2 of the *Equality Act*.

Further, **the failure of any legal counsel in divorce proceedings to contest (“positive action”), discriminatory customs and practices within divorce courts**, including custodial decisions and financial settlements, **which fail to recognize the contribution the homemaker have made during the marriage**, calling attention to art. 97 of the Spanish Civil Code “*The spouse to whom the separation or divorce produces an economic imbalance in relation to the position of the other, which involves a worsening of the situation he or she had during the marriage, has a right to maintenance which shall be fixed*” **revalue women’s work including housework**” as well as **“eliminate difference in remuneration”** and **“fuel female entrepreneurial growth”**.

**Art. 14.2 – “Reevaluate women’s  
work including housework”**

Furthering calling attention to Art. 35.1 of the Spanish Constitution “All Spaniards (and aliens under art. 13.1) **have...the right to employment, to free choice of profession or trade, to advancement through their work, and to sufficient remuneration for the satisfaction of their needs and those of their families;** moreover, **under no circumstances may they be discriminated against on account of their gender,**” in the judicial decree, taking into account, among other, the following circumstances:

- The agreements that the spouses may have reached.
- Their age and state of health.
- Professional qualifications and the probabilities of gaining employment.
- Past and future dedication to the family.
- Collaboration, by his or her own labour, with the commercial, industrial, or professional activities of the other spouse.
- The duration of the marriage and their marital life.
- The eventual loss of a right to a pension
- The wealth and economic means and necessities of both spouses”

**is in violation of the afore mentioned articles, inter alia, their duty to protect the rights and interests and rights of their clients. And, while said violations may not be carried out by State actors, in the case of private legal counsel, the State may be held liable for said violations under the principles of due diligence.**

Under the reasonable person principle do **States not have an obligation of due diligence in assuring that legal counsel are properly educated and formed in effectively defending the interests of their clients?** And, further **do government regulatory agencies (ie. *El colegio de abogados*) not have an obligation to assure that practicing, licensed legal counsel adhere to the highest standards of professionalism and ethics, as well as defend the Constitution, its principles, and all other legal documents and principles, in the execution of their duties?**

### ***Art. 14.2 - "Eliminate difference in remuneration"***

As previously stated homemakers are housekeepers, cooks, accountants, personal shoppers, sports trainers, educators, nurses, chauffeurs, entertainment coordinators, party organizers, managers, mediators, companions, therapists, etc., etc. They are on call 24 hours a day, 7 days a week with no paid vacation or days off. They do all of this work for no pay, no unemployment insurance, no healthcare insurance, no pension, no assurance of working conditions free from violence and abuse, and little to no recognition for the hard work they do.

Additionally, report after report (Corporate\_Leadership\_Council 2002; Linehan 2002; Takeuchi, Yun et al. 2002; Bhaskar-Shrinivas, Harrison et al. 2005; Tung 1981; Harvey 1985; Briody and Chrisman 1991; Harvey 1995; Adler 2002; Abe and Wiseman 1983; Copeland and Griggs 1985; Black, Gregersen et al. 1992; Black, Gregersen et al. 1999; Simmons 2002). demonstrate that well-adjusted, emotionally stable homemakers translate into well-adjusted children and productive spouses in the work place.

In every profession, whether it be white or blue collar, are employees not afforded severance pay and generous benefits upon termination of employment, with consideration given to the longevity of their employment?

Homemakers have the right to reclaim the same considerations as any other laborer. It is clear that they not only work long hours, make an invaluable contribute to their family and community, playing an important role in the economic prosperity of their family and society.

Gone are the days where women were destined to a life of "drudgery and toil" for the poor, or one of "obligations and tedium" for the wealthy, each filling the role that society and destiny had metered out for them.

While the industrial revolution has provided the homemaker with a myriad of home appliances that have facilitated their lives and allowed for greater participation in remunerated work, the growth of the middle-class means that few women lead a life of luxury with a myriad of servants at their disposal (or in abject poverty at the other extreme).

It is estimated that the work of homemakers, if paid fair market value for all activities, would translate into salaries of hundreds of thousands of dollars (or euros) per year. Yet, these homemakers work tireless for no pay what-so-ever.

Under the reasonable person principle, should the work of these homemakers and their contributions to the family during years of non-remunerated labor not be given consideration in financial settlements upon divorce?

**Art. 14.2 “Fuel female  
entrepreneurial growth”**

One of the most effective ways to assure remunerated employment opportunities as well as a work-family balance is the promotion of female entrepreneurial growth.

“Conventional wisdom” and antiquated, discriminatory beliefs and norms believe that women “just don’t have a head for business”. However, this is a fallacy with no more foundation or veracity than any other discriminatory notions towards women in our societies.

Managing a home, particularly within “modern” societies entails an enormous amount of skills that are vital to the success of any business, large or small.

Studies consistently show that most new business fail within the first year. This is for one very important reason; successfully running a business depends on good organizational, multi-tasking and innovative cognitive skills, logic and problem-solving capabilities, the abilities to perceive the strengths and weakness in others and bring them together towards a common goal, and good budgeting.

All of these are used on a daily basis by homemakers around the world, no matter what their socio-economic level or nationality.

By promoting the entrepreneurial efforts of women, not only are these women permitted to utilize and financially profit from skills in which they are proficient and experienced, but they are able to organize their work day around family obligations and time-tables.



While feminist movements of the past decades have liberated women in many arenas, one of the most important being family planning, and the ability to feel free not to have children if one so desires.

However, if societies really wishes to promote equality of the sexes and the liberation of women (and men) from traditions and norms of the past which shackled them into predetermined and well-defined roles and positions, then the desire to have children and dedicate oneself with joy and fulfillment to ones family in deference to financial gain or professional advancement should be afforded the same respect and recognition as any other job.

And, if mankind wishes to further our world to one of peace, harmony and a unified humanity, then the role of the homemaker, or any “educator” of our children should be afford MORE respect and recognition than any other profession.

***POLICE BRUTALITY,  
CORRUPTION,  
& ORGANIZED CRIME***

***Lack of Due Diligence  
by the Government  
to Assure Security  
within its Borders***

## **Police Brutality and Government Indifference**

### **Spain: Adding Insult to Injury**

Police Impunity Two Years On  
by Amnesty International 2009

Amnesty International does not believe that torture is carried out systematically in Spain but the organization's investigations have indicated that **cases of torture and other ill-treatment in Spain are not isolated incidents but examples of structural failings that affect all aspects of the prevention, investigation and punishment of such acts...**

...One of the cases which failed to reach trial stage in Spain has been submitted to the European Court of Human Rights on the grounds of violation of a right to fair trial, as well as violation of the prohibition of torture and non-discrimination. In the last case, it was found at trial that torture had taken place but the **accused officers were all acquitted on the grounds that it was not possible to identify which of them had personally participated in the assault....**

Despite the repeated recommendations of Amnesty International and the Council of Europe Committee for the Prevention of Torture, **the Spanish authorities have still not taken appropriate steps towards reforming the current system of investigating allegations of serious human rights violations by law enforcement officials to bring it into line with international standards of independence, impartiality and thoroughness.**

### **Spain: Briefing to the Human Rights Committee**

*by Amnesty International June 2008*

Police trade union representatives interviewed by Amnesty International considered that police officers would not attempt to cover up wrong-doing by colleagues, but some of them also reported that **ill-treatment was tolerated to a certain degree by those in authority "turning a blind eye" to less severe incidents and as a result of a misguided "esprit de corps".**

Amnesty International considers it to be of key importance that investigations into cases of alleged police ill-treatment be investigated by personnel who are independent from the rest of the police force. In the course of its research, Amnesty International noted a **recurring pattern of investigating judges favouring police testimony against that of alleged victims of ill-treatment and other witnesses**, and despite the existence of other contradictory evidence, resulting in the dismissal of cases without further investigation purely on the basis of police statements...

Lack, or perceived lack, of impartiality is inconsistent with Spain's obligations under the ICCPR and other international human rights treaties, which place an **obligation on states parties to conduct prompt and impartial**

**investigations into all credible allegations of ill treatment.<sup>19</sup>**

In 1996, the UN Human Rights Committee stated in its concluding observations on Spain's report that it was concerned that **"investigations [into suspected acts of ill-treatment] are not always systematically carried out by the public authorities and that when members of the security forces are found guilty of such acts and sentenced to deprivation of liberty, they are often pardoned or released early, or simply do not serve the sentence."**<sup>28...</sup>

**The response of the Spanish authorities to allegations of torture and other ill-treatment is a consistent denial that such incidents take place and that such allegations are made in bad faith in order to discredit the law enforcement services and Spanish government. When an act of torture or ill-treatment is acknowledged, it is labelled as an isolated incident....**

**...the UN Committee against Torture expressed concern about "the dichotomy between the assertion of the State party that, isolated cases apart, torture and ill-treatment do not occur in Spain ... and the information received from non-governmental sources which reveals continued instances of torture and ill-treatment by the State security and police forces."** <sup>33</sup>

**Furthermore, Amnesty International has reminded the Spanish authorities that labelling all allegations of torture or other ill-treatment as part of an organized criminal strategy to discredit the state, without investigating their substance, is a violation of their international obligations to prevent and punish torture and other ill-treatment.<sup>40</sup>**

## **Correlations Between Domestic Abuse in Law Enforcement Families, Organized Crime and Corruption**

Reports by Amnesty International regarding widespread impunity for police brutality in Spain presents further complications in effectively protecting victims of domestic violence.

1. There is a higher rate of domestic violence amongst families of police officers than within the general population. While no statistics exist in Spain, in the USA studies have found that it *“is 2-4 times more common among police families than American families in general”* ([womenandpolicing.com/violenceFS.asp](http://womenandpolicing.com/violenceFS.asp)) This means that amongst police families the rate of domestic abuse is 5-10%, or more, (based on statistics of Mas Alla de Papel by Amnesty International of 2 million abused women in Spain, and 2.5% of families in the general population)
2. The same “culture of impunity” seen in cases of police brutality appears to exist in cases of law enforcement and domestic violence, perhaps even to a greater degree than in police brutality due to the view that this is a “private” matter, whereas police brutality is a “professional infraction”. Once again no statistics, or reports in Spain exist regarding this phenomenon, but in countries where they do exist there exists a clear “culture of impunity” of police officers who abuse their spouses. (see [policedomesticviolence.com/](http://policedomesticviolence.com/))
3. Reports by Amnesty International, inter alia, demonstrate a general culture of indifference by law enforcement official in regards to victims of domestic violence, at times leading to the death of these women, with no effective recourse against said officials in terms of reparations or disciplinary actions for their lack of due diligence.

**Once again under art. 11 of the Equality Act, inter alia, the Spanish government is under a clear obligation to take “positive action” in ensuring that victims of domestic violence are protected as well as reversing any and all direct and indirect discriminatory traditions which support and sustain said violence.**

Another theme related to the role of law enforcement (and judicial actors) in the violations of the rights of victims of domestic violence and lack of due process, is the pervasiveness of organized crime within a country or region.

The report *Examining the Links Between Organized Crime and Corruption* clearly details the members involved in “cultures of corruption”. Since there is a clear correlation between perpetrators of domestic violence and criminal/“marginal” activity, judicial irregularities in cases of domestic violence should be carefully scrutinized in efforts to fight corruption and organized crime in countries around the world.

As we shall see in this section organized crime and corruption are closely linked and pervasive at all levels, and within all sectors of a society. Organized crime involves not only human-trafficking, prostitution, drug-trafficking, and protectionist/extortion rings, but money-laundering, corruption of officials within the judicial, legislative and executive branches at all levels, tax-evasion and fraud, promotes bribery, extortion and unfair trade practices, and is increasingly linked with the financing of terrorism around the world.

As with all cases of abuses of power within societies whether it be domestic abuse, police brutality, corruption within judicial procedures and decisions, corruption of political figures, State sanctioned torture and genocides, etc., etc. social norms and traditions ensure that these “indiscretions” will be covered-up. The unspoken law within all professions that colleagues will turn a blind eye, or even suppress evidence of illegal activity of any member is so ingrained in our value system, that few will view “cover-up” activity as illegal.

Unfortunately, this scenario only perpetuates “cultures of corruption”, which as more and more international agencies, such as the United Nations, International Monetary Fund, World Bank, inter alia, are realizing must be eradicated in order to promote global economic stability and in turn world peace.

## **Examining the Links Between Organised Crime and Corruption The Center for the Study of Democracy**

The report concludes that prostitution and illegal drugs markets exert the most corruptive effect in the EU....

The prostitution market provides a good example of the wide-range of corruption tactics used by organised crime.

The present research shows that members of police forces throughout the EU engage in corrupt exchanges with prostitution networks, even extorting bribes or even directly running brothels. Such criminal networks use corruption to obtain information on investigations, ensure continuity of operations, or even to develop monopolies in local markets.

Immigration authorities, including embassy or border guards, have also been targeted to ensure legal entries or stays of prostitutes. In Member States with legalised prostitution (e.g. Germany and the Netherlands) criminal groups have corrupted some local administrative authorities in order to avoid brothel regulations. Finally, criminal networks also use prostitutes to lure law enforcement officers, magistrates and politicians into inappropriate behaviour, later using evidence of the behaviour to blackmail the officials for protection or information....

In other countries **politicians, magistrates, and white-collar criminals form closed corruption networks that are not systematic in nature. White-collar crime at the middle level of government bureaucrats is common (at various degrees of intensity) to almost all member states...** The most widespread and **systematic forms of corruption targeted by organised crime is associated with the low-ranking employees of police and public administration.** Organised crime also targets tax administrations, financial regulators and any other regulatory body that might impact criminal activities, 4 but in a less systematic and significant way....

In addition to public institution, **criminal networks have a special interest in the private sector by targeting company employees they have great opportunities to extract significant revenues, avoid anti-money-laundering regulations, or facilitate operations of in illegal markets.** Often times, **the efforts of organised crime to influence private sector employees fall outside the priorities of law enforcement and judicial institutions.**

FIGURE 1. INSTITUTIONS AND LEVELS TARGETED BY ORGANISED AND WHITE-COLLAR CRIMINALS

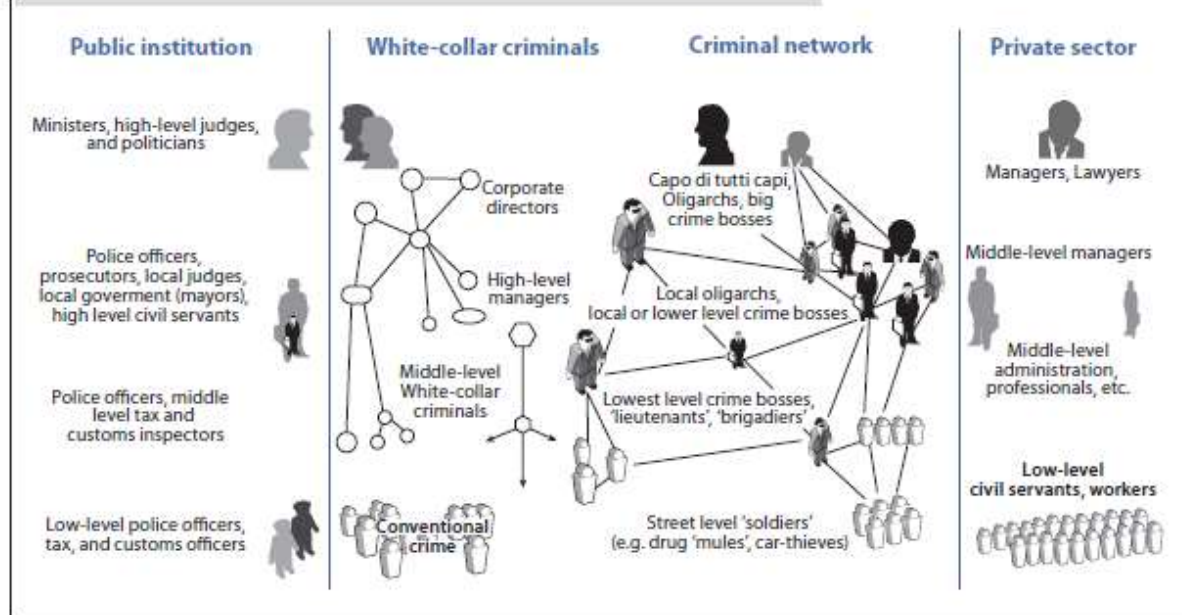
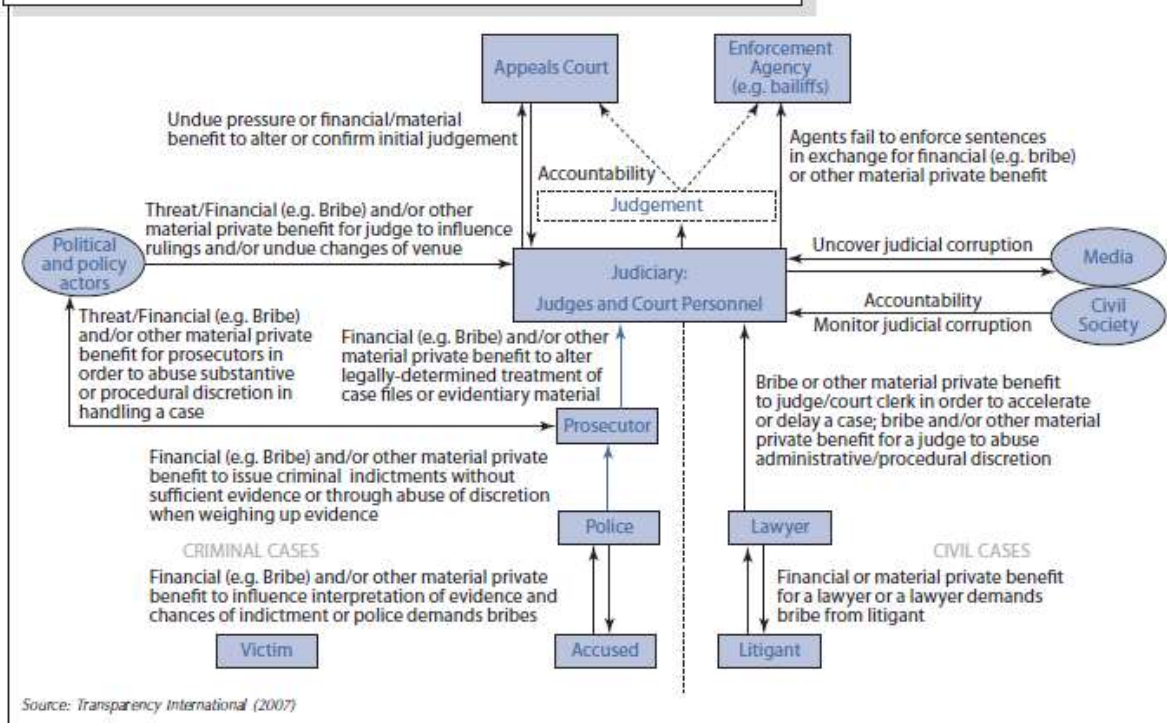


FIGURE 3. JUDICIAL CORRUPTION



Source: Transparency International (2007)



### Political Corruption

**Political corruption is organised crime's most powerful tool...** Local level administrative and political corruption was more commonly observed across the EU. Examples of mayors or city councillors convicted for associations with organised and white-collar criminals were found throughout the EU. **Local political corruption was especially observed in regions economically dependent on illegal markets** (e.g. along EU's eastern land borders), the grey economy (**tourist areas / booming real estate areas** such as Costa del Sol in Spain) and areas with a strong presence of organised-crime controlled businesses....

### Police Corruption

**Police have the most direct exposure and frequent contacts with organised crime and, as such, organised crime most often targets them...** Occasionally, corrupt officers become directly engaged in criminal activities, running drug distribution rings or prostitution rings.

Both institutional and external factors make the police vulnerable to corruption. In EU-10E countries, the low prestige level of police leads to **organised crime's recruitment of officers with low educations and problematic behaviour. The closed nature of the police and their relative isolation from other institutions leads to a high level of loyalty between officers and protection of their colleagues....**

Political and judicial influences on police can facilitate corruption. In some MS, local government officials under the influence of criminal networks exercise pressure or even influence the appointment of high-level police officers... **This type of influence can reach national levels, where large criminal entrepreneurs control appointments of staff in police forces and special services. Pressure from prosecutors and magistrates can obstruct police investigations of influential businessmen who are part of criminal networks.** Intermediaries, such as former police officers or special service agents, lawyers and informants can facilitate corrupt exchanges with criminal groups. **Clientele list networks can also facilitate direct contacts between criminals and police officers....**

### Judicial Corruption

In the majority of Member States, organised crime targets the judiciary, particularly the courts, much less than the police or politicians. **White-collar criminals exert more pressure on the judiciary, as they have easier access to social networks that facilitate corruption...Political influence over the courts is a key factor of judicial corruption, especially in countries with high levels of political corruption.**

Criminal groups corrupt the judiciary by accessing magistrates via social, political, professional and family networks. Elite social networks allow criminals to enjoy direct contact with members of the judiciary. **Professional networks also**

facilitate such contacts, where defence lawyers (often former prosecutors) intermediate between organised crime and the judiciary..

**Attorneys have a significant competitive advantage over all other intermediaries** – they can provide services through the whole institutional chain, starting with police and going all the way to prosecutors and even judges. Furthermore, in some of the old Member States, attorneys are middlemen for organised criminal structures consisting of immigrants. Unlike local criminal groups that have some kind of direct access to law-enforcement officers, immigrants typically lack any access and have to rely on intermediaries. (p.90)...

**...lawyers across the EU are considered to be the most direct intermediaries in judicial corruption.** This is understandable as they usually have the same educational and social background, and in many cases the same professional background (e.g. they may have been former prosecutors or judges). **Litigation departments of top law firms in many countries try to attract people with such backgrounds. In some of the cases described, this is purposely done with the intention of being able to influence judicial decisions.** In other countries interviewees described a number of well-known criminal defence lawyers or law-firms as having the access or means to influence investigations... (p. 109).

#### **Private sector corruption**

**'Collusion' is often a more appropriate way of describing professionals' corrupt behaviour, including that of lawyers, accountants, doctors and real-estate surveyors who provide services to organised crime...**

**Money laundering was identified as one of the key reasons to use corruption in the financial, gambling and real estate industries...** The private security industry, where security firms are often instrumental in regulating the distribution of drugs in clubs, and **the construction industry also cover up illicit cartels...**

White-collar-crime-related corruption has a special characteristic in EU- 10E countries (and also in Greece, Italy and Spain). **In the 1990s, international corporations set up local offices, hiring local managers. In many cases, these local managers represented local criminal elites that facilitated the market entry of the multinationals. Still, at present they continue to use their clientelistic networks against the interest of the parent company, passively and actively using corruption....**

industry, where security firms are often instrumental in regulating the distribution of drugs in clubs, and **the construction industry also cover up illicit cartels...**

White-collar-crime-related corruption has a special characteristic in EU- 10E countries (and also in Greece, Italy and Spain). **In the 1990s, international corporations set up local offices, hiring local managers. In many cases,**

### **Country Case Study**

The case of **Spain** was of interest, as it involves a unique mix of historic, socio-economic and criminogenic factors, such as: strong pressures from drugs smugglers (cocaine and hashish); a big prostitution market; the largest recent increase in immigration in the EU; a terrorist problem with ETA, which is a police priority; a coastline that has attracted for years not only tourists but also criminals and money-launderers; and a culture where informal and family relations are of significant importance....

### ***Report About Judicial Corruption 2007***

by Transparency International

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

As demonstrated in these reports perpetrators of domestic abuse, particularly those involved in criminal activity (including “white collar” crimes) are well connected to the corrupt elements in a judicial system. Therefore, perpetrators within this network can easily continue to abuse victims within the courts.

**Unfortunately, domestic violence association and human rights watch groups are all too silent about the rampant negligence and lack of due process within family courts, with media interest and coverage non-existent.**

If anti-corruption agencies actively prosecuted those involved in corruption and systematic negligence within the family courts, then not only would the rights of victims of violence be protected, but governments would be much more effective in identifying those who are involved in organized crime and corruption within a particular industry/professional sphere.

**The tendency of governments and their agencies to turn a blind-eye to the “indiscretions” of judicial actors, supports and sustains “cultures of corruption” in their countries, and consequential economical problems.**

## Corrupcion en Espana 1982 – Presente

[http://es.wikipedia.org/wiki/Corrupci%C3%B3n\\_en\\_Espa%C3%B1a](http://es.wikipedia.org/wiki/Corrupci%C3%B3n_en_Espa%C3%B1a)

### Gobierno de Felipe González (1982-1996)

Durante los últimos años del gobierno de Felipe González (especialmente en la IV y V Legislaturas de España), se sucedieron diversos escándalos de corrupción:

Caso Flick: trama española de un gran caso de financiación ilegal de partidos y evasión de impuestos en la RFA, por parte del multimillonario ultraderechista Friedrich Karl Flick. La Fundación Friedrich Ebert, próxima al SPD, destinó donaciones de Flick por valor de millón de marcos para financiar al PSOE.<sup>[6]</sup>

Caso KIO: suspensión de pagos por valor de 300.000 millones de pesetas (1.803 millones de euros). El gerente de esta sociedad en España, Javier de la Rosa, y sus colaboradores habrían robado, según la acusación particular, 30.000 millones de pesetas (180 millones de euros).<sup>[7]</sup>

Caso Wardbase, una causa separada del anterior, referida a un pago fraudulento realizado por Javier de la Rosa a Manuel Prado y Colon de Carvajal por importe de 1.900 millones de pesetas.<sup>[8]</sup>

Caso de los fondos reservados: desvío de partidas destinadas a la lucha contra el terrorismo y el narcotráfico por valor de 5 millones de euros entre los años 1987 y 1993 para uso privado, enriquecimiento personal y pago de sobresueldos y gratificaciones a siete altos funcionarios del ministerio del Interior.<sup>[9]</sup>

Caso Rumasa: expropiación, venta y liquidación de este *holding* en una operación que supuso su quiebra total, debido a las irregularidades en su gestión por parte de la familia Ruiza-Mateos.<sup>[10]</sup>

Caso Filesa: financiación ilegal del PSOE a través de las empresas tapadera Filesa, Malesa y Time-Export, que entre 1988 y 1990 cobraron importantes cantidades de dinero en concepto de estudios de asesoramiento para destacados bancos y empresas de primera línea que nunca llegaron a realizarse. Entre las personas vinculadas a estas operaciones se encontraban el diputado socialista por Barcelona, Carlos Navarro, y el responsable de finanzas del PSOE, Guillermo Galeote.<sup>[11]</sup> Posteriormente fue desglosado en:

Caso Ave, cohecho y falsedad en relación con las supuestas comisiones ilegales obtenidas por la adjudicación del proyecto del tren de alta velocidad Madrid-Sevilla;<sup>[12]</sup> a su vez desglosado en:

Caso Seat: pago de 175 millones de pesetas por parte del PSOE a directivos de SEAT, para la recalificación irregular de terrenos de esta empresa, con el objetivo de financiar ilegalmente al PSOE. Aunque en la Sentencia consideró probados los hechos, abolsó a los acusados por haber prescrito el delito.<sup>[13]</sup>  
Otros 3 sumarios.

Caso Osakidetza: en las oposiciones al Servicio Vasco de Salud de 1990 se detectó un "cambiao" masivo de exámenes que obligó a repetir gran parte de las pruebas, a las que se habían presentado cerca de 50.000 aspirantes. Por su presunta relación con este caso fueron detenidos Pedro Pérez, director de gestión económica de Osakidetza, y otras tres personas militantes del PSOE, acusadas de fraude con objeto de beneficiar a miembros del PSOE y UGT e instalar un grupo de personas afines en posiciones de responsabilidad. [14]

Caso Cesid: escuchas ilegales practicadas por los servicios secretos españoles en la sede de Herri Batasuna en Vitoria. [15]

Operación Mengele: presunto secuestro y experimentación ilegal con tres mendigos, unos de los cuales murió, por parte del Cesid y el cardiólogo Diego Figuera, con objeto de probar un sedante que debía administrarse al dirigente etarra José Antonio Urrutikoetxea Bengoetxea, al que se planeaba secuestrar. La causa procesal, instruida por el juez Garzón, fue sobreesida en 1999 a petición de la Fiscalía General. [16]

Caso Guerra: llamado así por Juan Guerra, hermano del vicepresidente Alfonso Guerra, condenado por los delitos de cohecho, fraude fiscal, tráfico de influencias, prevaricación, malversación de fondos y usurpación de funciones. [17]

Caso Casinos: desvío de unos 3.000 millones de pesetas de la sociedad Casinos-Inverama por parte de su presidente, Artur Suqué, mil de los cuales habrían sido destinados a la financiación ilegal de Convergencia i Unió. [18]

Caso Ibercorp: especulación bursátil con valores bancarios por parte de Mariano Rubio, entonces gobernador del Banco de España. [19]

Caso Urbanor: una serie de irregularidades en las transacciones para la construcción de las famosas torres KIO, cuando la sociedad Urbanor vendió los terrenos de la Plaza Castilla de Madrid, al grupo kuwaití KIO. Reconociendo los hechos delictivos, el Tribunal Supremo absolvió a los acusados por las prescripción de los mismos. Sin embargo, la Audiencia de Madrid dictó en 2010 pena de cárcel, ratificada por el propio Supremo, por falsedad documental en su defensa. [20]

Caso Sarasola: gestión irregular por parte de este empresario guipuzcoano del Hipódromo de La Zarzuela y la concesión de la quiniela hípica; presuntos delitos de estafa y alzamiento de bienes en la Sociedad Española de Banca de Negocios. [21]

Caso Urralburu: Los negocios irregulares del presidente socialista de Navarra, Gabriel Urralburu, fue procesado junto al ex consejero Antonio Aragón por delitos de prevaricación y cohecho por el cobro de comisiones ilegales por obras públicas realizadas durante su segundo mandato, de 1987 a 1991. [22]

Caso Bardellino: la liberación bajo fianza y huida del dirigente de la camorra napolitana Antonio Tonino Bardellino.<sup>[23]</sup>

Caso Godó: escuchas ilegales o espionaje telefónico realizadas en 1992 por ex agentes del CESID a personal del periódico La Vanguardia, por encargo del empresario Javier Godó, el cual fue finalmente exculpado. El informe policial acusaba al propio CESID de controlar la red.<sup>[24]</sup>

Caso BFP: en 1992 se descubrió un delito de estafa cometido a través de una red de pagarés de empresa falsos de BFP Gestión y Asesoramiento Financiero, por valor de 4.000 millones de pesetas. En 1994 fueron procesados y encarcelados Jordi Planasdemunt, alto cargo de CiU y director general del Institut Català de Finances, y otras 10 personas, entre ellas Salvador Forcadell, Caries Vila y Joan Basols.<sup>[25]</sup>

Caso Gran Tibidabo: causa contra el empresario Javier de la Rosa y otras siete personas, entre ellas Manuel Prado y Colón de Carvajal y la esposa de la Rosa, Mercedes Misol, por la descapitalización de la compañía Grand Tibidabo presuntamente en beneficio propio, bajo la acusación de delitos de estafa, apropiación indebida, falsedad documental y contra la Hacienda Pública.<sup>[26]</sup>

Caso Estevill, trama de corrupción judicial en torno al ex juez y ex vocal del Consejo General del Poder Judicial, Luis Pascual Estevill, condenado por delitos de cohecho y prevaricación.<sup>[27]</sup>

Caso Turiben: una presunta red de facturas falsas utilizada por miles de militares y agentes de policía para estafar al Estado justificando dietas.<sup>[28]</sup>

Caso Salanueva: Detención de la ex directora del BOE, Carmen Salanueva, por una presunta malversación de fondos el 29 de noviembre de 1993. Se estima que pudo cometer un fraude al adquirir papel prensa por un valor total de 2.385 millones de pesetas, precio muy superior al del mercado, causando un perjuicio de más de 653 millones para el BOE y Hacienda. Fue puesta en libertad el 1 de diciembre. En 1994 fue denunciada por imitar por teléfono la voz de Carmen Romero y de la Reina para quedarse con cuadros de un pintor famoso con falsas promesas.<sup>[29]</sup>

Caso Expo'92: cohecho, prevaricación y un agujero de más de 210 millones de euros. Fue archivada por juez Garzón tras siete años de instrucción.<sup>[30]</sup>

Caso Roldán: llamado así por Luis Roldán, director de la Guardia Civil entre 1986 y 1993, enriquecido ilícitamente con el robo de 400 millones de pesetas de fondos reservados y 1.800 millones más en comisiones de obras del Instituto Armado.<sup>[31]</sup>  
Caso Paesa, vinculado al anterior.<sup>[32]</sup>

Caso Banesto: un agujero patrimonial de 3.636 millones de euros (605.000 millones de pesetas) que dejó en la estacada a siete millones de clientes, medio millón de accionistas, 15.000 trabajadores y 50 empresas en las que la entidad participaba. <sup>[33]</sup>

Caso Palomino: el cuñado de Felipe González, Francisco Palomino, ganó 346 millones de pesetas gracias a la venta de su empresa, en quiebra técnica, por 310 millones a CAE, (luego comprada por Dragados), cuya cartera de obras para el MOPU se multiplicó. Posteriormente, una investigación le vinculó con la mala calidad de las rejas de la cárcel de Sevilla 1. <sup>[34]</sup>

Caso GAL: creación y financiación ilegal de una organización terrorista que asesinó a 27 personas del entorno de ETA entre 1982 y 1987, con implicación de policías, guardias civiles y altos cargos del gobierno socialista, entre ellos el ministro del Interior José Barrionuevo, el secretario de Estado de seguridad Rafael Vera, el gobernador civil de Vizcaya, Julián Sancristóbal, el secretario general del PSOE en Vizcaya, Ricardo García Damborenea y el General de la Guardia Civil Enrique Rodríguez Galindo. El propio González fue acusado de ser el "señor X", el dirigente del entramado GAL.

Caso Naseiro: financiación ilegal del Partido Popular a través de la exigencia de pagos a empresas inmobiliarias.

Caso PSV: fraude y apropiación indebida de 18.588 millones de pesetas, para enriquecimiento personal y financiación ilegal de la UGT a través de esta cooperativa de viviendas y de su gestora, IGS.

Caso Hormaechea: prevaricación y malversación de caudales públicos por parte del popular Juan Hormaechea, ex alcalde de Santander y ex presidente de Cantabria, condenado en octubre de 1994 a seis años de prisión mayor y 14 de inhabilitación.

Caso de la minería: subvención ilegal de compañías mineras por parte de Miguel Angel Pérez Villar, ex senador por el PP y consejero de Economía de Castilla y León, condenado por el Tribunal Supremo a ocho años de inhabilitación por prevaricación continuada. <sup>[35]</sup>

Caso Sóller: prevaricación y cohecho en la adjudicación de las obras del túnel de Sóller por parte del ex presidente de Baleares por el PP, Gabriel Cañellas. Absuelto de prevaricación en los tribunales, se dio por prescrito el probado delito de cohecho. <sup>[36]</sup>

### **Gobierno de José María Aznar (1996-2004)**

Durante el gobierno de José María Aznar (VI y VII Legislatura de España) trascendieron los siguientes:

Caso Zamora: iniciado en 1997 para investigar la presunta financiación ilegal del Partido Popular en Zamora a través del cobro de un "impuesto" de dos millones



Caso Pallerols: en 1997 salió a la luz pública esta presunta operación de financiación irregular de Unió Democràtica a través del desvío de las subvenciones recibidas por las empresas controladas por el empresario Fidel Pallerols y su esposa para realizar cursos de formación laboral. Sobreseído provisionalmente en diciembre de 2005, fue reabierto por la Sección Décima de la Audiencia Provincial de Barcelona en noviembre de 2006.<sup>[38]</sup>

Caso del Lino: en 1999 la Junta de Castilla-La Mancha denunció un presunto caso de ayudas irregulares al cultivo lino y desvío de fondos en favor de altos cargos del gobierno popular, entre ellos la ministra de Agricultura Loyola de Palacio. En julio de ese mismo año, la Comisión de Investigación constituida a solicitud del Grupo Parlamentario Popular en el Congreso de los Diputados, no halló ninguna irregularidad. No obstante, el Fiscal anticorrupción Carlos Jiménez Villarejo redactó un informe denunciando la existencia de un "*fraude generalizado*". Tras una instrucción de 6 años a cargo de Baltasar Garzón, el 23 de abril de 2007 la sección cuarta de la Sala de lo Penal de la Audiencia Nacional absolvió por completo a los 18 imputados, no hallando ninguna prueba de fraude o falsedad, y confirmando las conclusiones de la Comisión de Investigación. Finalmente, el Tribunal de Justicia de la Unión Europea halló en 2009 deficiencias en el sistema de control de las ayudas al lino, y condenó a España a devolver 129 de los 134 millones de euros cobrados.<sup>[39]</sup>

Caso Villalonga: presunto tráfico de influencias del presidente de la CNMV, Juan Villalonga, que se enriqueció mediante información privilegiada en la compra de opciones sobre acciones de Telefónica.<sup>[40]</sup>

Caso Tabacalera: presunto enriquecimiento ilícito a través de la compraventa de acciones con información privilegiada por parte de César Alierta, entonces presidente de Tabacalera, su mujer y un sobrino, en concreto entre 1997 y 1998. En 2010 fue absuelto al considerarse prescrito el delito.<sup>[41]</sup>

Caso Forcem: presunto fraude en la Fundación para la Formación Continua (FORCEM), constituida en 1992 por CCOO, UGT, CEOE, CIG y CEPYME para la gestión de las subvenciones para la formación de los trabajadores concedidas por el INEM con fondos de la Unión Europea. Algunas de las empresas receptoras de fondos realmente carecían de actividad, empleados y alumnos. La Fiscalía pidió el procesamiento de 6 cargos de UGT por el fraude de 100 millones de euros, y el informe del Tribunal de Cuentas remitido al Congreso detectó responsabilidades penales y civiles en dos de sus máximos responsables.<sup>[42]</sup>

Caso Gescartera: un agujero patrimonial de 50 millones de euros en esta sociedad de inversión.<sup>[43]</sup>

### **Gobierno de José Luis Rodríguez Zapatero (2004-2011)**

Durante el gobierno de José Luis Rodríguez Zapatero (VIII y IX Legislatura de España), han trascendido los siguientes:

GIL Andalucía Caso Malaya (desde 1991 hasta 2006)

- 'Caso Malaya': El saqueo a Marbella es de 500 millones La red de testaferros del 'caso Malaya' blanqueó más de 671 millones a Roca 500 M€ robados, 671,4 M€ blanqueados

GIL Andalucía, Deudas con Hacienda y la Seguridad Social

- Los antiguos ayuntamientos del GIL acumulan más de la mitad de la deuda de los municipios con la Seguridad Social 383,4 M€

PSOE Andalucía, EREs falsos, Junta de Andalucía eleva a 146 las irregularidades en los ERE

PSOE, 17 ayuntamientos, Tramas urbanísticas, Varios municipios del PSOE, investigados por tramas urbanísticas

PSOE, Andalucía, Casos de corrupción según el PP: 54 cargos públicos imputados en casos judiciales abiertos y 33 ex cargos públicos imputados en casos abiertos, Mapa de corrupción del PSOE en Andalucía

PP Madrid, Valencia

Caso Gürtel La 'Gürtel' costó 120 millones al erario público

120 M€ recaudados por la trama 48,1 M€ blanqueados PP Balears Gobierno de Jaume Matas La corrupción balear tiene a 40 ex cargos del PP imputados 46,9 M€ sólo en 8 casos de los investigados

PP Diversos ayuntamientos Recalificaciones y adjudicaciones presuntamente irregulares. Los casos de 'ladrillazo' en las listas del PP CIU (CDC) Cataluña Caso Palau Millet desvió 35,1 millones de euros del Palau de la Música 35,1 M€ solamente de F.Millet, posiblemente cerca de 50 entre todos los saqueadores

PSC(PSOE)+CIU Cataluña Caso Pretoria El 'caso Pretoria' dejaba una media de 10 millones de euros en cada "pelotazo" 44 M€

PP Salamanca Constructores con trato de favor El Ayuntamiento de Salamanca deja prescribir una deuda a un constructor amigo del alcalde 1.160.000€ PP

Salamanca Constructores con trato de favor El Ayuntamiento de Salamanca perdona 20 millones de euros a los constructores 20 M€

PSOE Principado de Asturias Cobro de comisiones ilegales

Adjudicaciones de concursos irregulares Especial: Caso Renedo De momento, 5,3 M€

PSOE+PP+BNG Lugo Caso Campeón Última hora «Caso Campeón»

Caso Riopedre o Renedo: en enero de 2011 el ex consejero de Educación y Ciencia del Principado de Asturias durante el gobierno Vicente Álvarez Areces, el socialista José Luis Iglesia Riopedre, es acusado de prevaricación, cohecho, tráfico de influencias, fraudes y exacciones ilegales y negociaciones prohibidas para funcionarios por una supuesta trama de adjudicaciones ilegales.<sup>[44]</sup>

### **Gobierno de Mariano Rajoy (2011-...)**

Durante el gobierno de Mariano Rajoy (X Legislatura de España) han trascendido los siguientes:

Caso Berzosa: presuntas irregularidades detectadas por la Cámara de Cuentas en la gestión del ex-rector de la Universidad Complutense de Madrid, Carlos Berzosa: un sobrecoste de 11,5 millones de euros en un residencial en Somosaguas y facturas imposibles (como 57 viajes en coche a Atenas). Por ello la Asamblea de Madrid ha reclamado la comparecencia tanto de Berzosa como de su sucesor, José Carrillo, ante la posibilidad de un delito de prevaricación, malversación de caudales públicos e, incluso, tráfico de influencias. La Fundación de la UCM ha defendido la gestión de Berzosa y prometido aclarar los problemas detectados.<sup>[45]</sup>

Caso Garzón: este juez es condenado por el Tribunal Supremo de España a 11 años de inhabilitación por un delito de prevaricación, al ordenar la escucha ilegal de los abogados defensores de Francisco Correa durante la instrucción judicial de otra trama de corrupción, el caso Gürtel.<sup>[46]</sup>

## Crimen Organizado en Madrid

**La mafia madrileña quería comprar el aeropuerto de Ciudad Real para traer coca**

<http://www.elmundo.es/elmundo/2011/11/10/madrid/1320913082.html>

La Policía Nacional ha culminado la 'operación Edén', en la que ha conseguido **acabar con los clanes mafiosos que controlaban la noche madrileña**, según ha informado el Ministerio del Interior. La red criminal introducía en España **grandes cantidades de droga** procedente de Sudamérica, que posteriormente distribuía a menor escala, y contaba con una **cobertura empresarial** para blanquear los beneficios ilícitos.

Lo más surrealista fue que dos de los detenidos **quisieron comprar la terminal de carga del aeropuerto de Ciudad Real** para introducir entre ocho y 10 toneladas de cocaína al mes. La **Policía abortó la compraventa** cuando estaba a punto de realizarse. Según la Dirección General de la Policía y de la Guardia Civil, el golpe asestado al conocido como 'clan de los búlgaros' ha culminado con el **arresto de 27 personas** relacionadas con la seguridad en locales de ocio nocturno y el narcotráfico, principalmente de la Comunidad de Madrid.

También se ha desmantelado en esta última fase la actividad de la 'oficina de cobros', **22 detenidos del 'clan de los boxeadores'** dedicados al ejercicio de la violencia contra grupos rivales y al cobro de deudas o imposición de multas por impagos en la venta de estupefacientes. La investigación, en la que ha colaborado la Agencia Tributaria, ha contado además con el apoyo de las autoridades policiales y judiciales norteamericanas, colombianas y holandesas, según Interior.

En la última fase de la operación se han llevado a cabo **32 registros** en los que se han intervenido más de cinco kilos de cocaína, sustancias anabolizantes y esteroides, armas de fuego largas y cortas y **más de 125.000 euros** en efectivo.

También se han bloqueado **inmuebles** valorados en cinco millones de euros y **vehículos** por un importe de 170.000.

**Más de una década de entramado delictivo** Así la Policía ha terminado de desentrañar un entramado delictivo que operaba en España, y especialmente en Madrid, desde hace más de una década y que estaba integrado por **españoles, búlgaros y sudamericanos**. La operación comenzó en 2009 **tras la muerte de un portero de discoteca búlgaro**, Catalin Stefan Cracion, a las puertas del local Heaven de Madrid, y se ha prolongado durante tres años. En este tiempo la Policía ha llevado a cabo numerosas pesquisas e intervenciones que se han saldado con **un total de 150 detenidos** pertenecientes a diferentes clanes -los llamados "búlgaros", "Miami", "iranés" y "boxeadores"-, algunos de ellos condenados por asesinato. En total se han intervenido **27 millones de euros en efectivo**, bienes por valor de 75 millones de euros y **300 kilos de cocaína...**

### **El crimen organizado se recrudece**

En la Comunidad de Madrid operan buena parte de las más de 400 bandas de crimen organizado que están contabilizadas en España. En las últimas semanas se ha recrudecido su actividad en la capital.

La crónica negra madrileña ha dejado en las últimas semanas tres capítulos de lo más sangrientos: el asesinato de un abogado en el barrio de Chamartín, el de un capo de la mafia colombiana en pleno Hospital Doce de Octubre y el tiroteo que acabó con la vida de un portero de discoteca del clan mafioso de «Los Rompecostillas» y de un relaciones públicas de otro local. Todo, en tres semanas.

Pero esta situación no sólo está afectando a los clanes mafiosos que campan por Madrid y su área metropolitana. La espiral de violencia sacudió también a un ciudadano de a pie, el joven Álvaro Ussía Caballero, de 18 años, muerto el 15 de noviembre en la discoteca El Balcón de Rosales, a manos, presuntamente, de tres porteros del local. Lo ocurrido aquella madrugada ha levantado una polvareda incluso política, que ha provocado, entre otros asuntos, que se regule desde la Comunidad de Madrid el sector de los porteros.

Aun así, la clave de todo, la seguridad en el interior de los locales -donde se originaron los sucesos tanto del Balcón de Rosales como de la discoteca Palace Heaven- sigue siendo una cuestión que nadie toca, más allá de los esfuerzos por parte de la Policía -especialmente, de la Udyco- por luchar contra el crimen organizado.

### **Corrupción de Construcción y Bienes Raíces Bajo el Jurisdicción de Mostoles**

#### **El ladrillazo: los ayuntamientos con urbanismo polémico**

<http://www.20minutos.es/noticia/165247/0/corruptelas/urbanisticas/ediles/>

Cada día hay nuevos casos de ladrillazo, y ningún color ni formación política se salva del urbanismo desaforado, las recalificaciones dudosas o las sombras en contratos y adjudicaciones.

A continuación, una lista por comunidades autónomas y provincias de los ayuntamientos que son sospechosos de participar del ya famoso ladrillazo. Por comunidades autónomas: Andalucía, Aragón, Canarias, Cantabria, Castilla la Mancha, Castilla y León, Comunidad Valenciana, Galicia, La Rioja, Madrid, Murcia, Navarra.

## MADRID

**Madrid:** Diecisiete detenidos en la "Operación Guateque", que dismanteló una red de funcionarios municipales que cobraban comisiones ilegales a cambio de agilizar la concesiones de licencias o retrasar expedientes sancionadores en locales.

Seis de las personas implicadas en esta supuesta red de cobro de comisiones ilegales, entre ellos Victoriano Ceballos, jefe de División de Impacto y Análisis Ambiental de la Concejalía de Medio Ambiente, permanecen en prisión por delitos de prevaricación, cohecho, tráfico de influencias y falsedad. Un total de 35 personas son investigadas por el juez, entre las que figuran los 17 funcionarios detenidos, otros empleados municipales y varios empresarios.

**Brunete:** El director general de Urbanismo de la Comunidad de Madrid, Enrique Porto (PP), dimitió después de que el PSOE le acusara de tener intereses personales en el desarrollo del Plan General de Urbanismo de Brunete (Madrid).

**Bustarviejo:** Julio De Mateo, el alcalde independiente de esta localidad, está acusado de permitir la construcción de 400 chalés en suelo protegido.

**Ciempozuelos:** Otro caso que cobró notoriedad fue el que afectó a Pedro Torrejón y Joaquín Tejeiro, ex alcaldes del PSOE de Ciempozuelos (Madrid), quienes están en libertad bajo fianza por el supuesto cobro de comisiones para la recalificación de unos terrenos y por haber ingresado elevadas sumas de dinero en un banco de Andorra.

**Colmenarejo:** El Tribunal Supremo ha condenado a Julio García Elvira, ex alcalde por el PP, por adjudicarse una finca municipal en subasta pública mientras ejercía el cargo.

**Quijorna:** La recalificación de todo un corredor de cinco kilómetros de largo entre el pueblo y la M-501 con suelo para edificar al menos 10.000 viviendas, ha puesto a la alcaldesa, Mercedes García, del PP, y a su equipo en solfa.

**Ciempozuelos:** El alcalde socialista de Ciempozuelos (Madrid), Pedro Torrejón, fue obligado a dimitir al saberse que ingresó 800.000 euros en Andorra y que planeó una gran recalificación de terrenos. Un juzgado de Valdemoro abrió diligencias contra él y contra el ex edil, Joaquín Tejeiro (PSOE). Un juez ordenó el día 3 de noviembre prisión para ambos, eludible bajo fianza.

**Torrelodones:** El Alcalde Carlos Galbeño, del PP, está siendo investigado por la Fiscalía Anticorrupción tras una recalificación de terreno y una expropiación para construir un aparcamiento, así como por cobros ilegales a empresarios.

Dos concejales del PP en ese municipio, Jesús María Pacios y Reyes Tintó han denunciado la actuación de Galbeño y por ello fueron destituidos. Tanto Galbeño como el presidente del PP de Torrelodones, y diputado nacional,

Mario Mingo, se querellarán contra los ex concejales de su propio partido, según informa *El Mundo*.

**Tres Cantos:** Unas grabaciones de el ex concejal del PP, Antonio Reino Cortés - aparecidas en el diario *El País* - desvelaban la supuesta existencia de comisiones millonarias ante la aprobación por el municipio del Plan Urbanístico de la localidad en 2004.

**Villanueva de la Cañada:** El alcalde, Luis Partida (PP), ordenó en 1997 la compra de una finca de los constructores Francisco Bravo y Francisco Bravos Vázquez, que apoyaron al 'tránsfuga' Eduardo Tamayo cuando en 2003 impidió la formación de un gobierno del PSOE en Madrid junto a María Teresa Sáez. Los constructores compraron la parcela en 268.674 euros, y meses después, el ayuntamiento en 963.349 euros. Los Bravo recibieron a cambio suelo municipal tasado en 965.899 euros, que vendieron en tres meses por 2,5 millones, [según \*El País\*](#).

**Navalcarnero:** El edil de Urbanismo de la localidad, Miguel Ángel Fernández Colomo tiene terrenos e intereses en 10 de los 22 sectores en los que está dividido el municipio, gobernado por el PP, y acumula posesiones de 31.987 metros. Su familia tiene un total de 286.994 metros cuadrados, y a través de sociedades, el padre acumula hasta 175 propiedades en la localidad, [según \*El Mundo\*](#).

**Níjar:** Según denuncia *ABC*, el alcalde socialista de Níjar, Joaquín García, permitió a un ex concejal construir cuatro veces más de lo permitido.

## Los 10 principales escándalos financieros desde la Transición

<http://ecodiario.eleconomista.es/espana/noticias/1280345/05/09/Los-10-principales-escandalos-financieros-desde-la-Transicion.html>

La trama Gürtel ha sido el último escándalo político-financiero de la corta historia de la democracia española. En nuestra memoria quedan el caso Ibercorp, Gescartera o Rumasa y todavía otros que están pendientes de resolver, como el escándalo filatélico de Fórum y Afinsa.

### 1. Caso Fidecaya

Fidecaya, entidad de ahorro creada en 1952, originó uno de los escándalos más sonados de la Transición: fue **intervenida en 1980**, con 250.000 afectados y unos 100 millones de euros depositados, de los que el Gobierno se hizo cargo en una cuarta parte.

### 2. Expropiación de Rumasa

Rumasa era un holding de empresas español propiedad del empresario José María Ruiz Mateos, su fundador. Rumasa fue expropiada por el gobierno español del PSOE **el 23 de febrero de 1983**, en virtud del Decreto-Ley 2/1983.

El grupo Rumasa, en el momento de publicarse la disposición, estaba constituido por 700 empresas con una plantilla que alcanzaba las 65.000 personas, y facturaba unos 350.000 millones de pesetas (más de 2.000 millones de euros) anuales. Tras la expropiación fue reprivatizada por partes.

### 3. Caso KIO

El gran fondo estatal kuwaití presentó suspensión de pagos por valor de 300.000 millones de pesetas (**1.803 millones de euros**). El gerente de esta sociedad en España, Javier de la Rosa, y sus colaboradores habrían robado, según la acusación particular, 30.000 millones de pesetas (180 millones de euros).

### 4. Caso Roldán

El caso Roldán salió a la luz en noviembre de 1993, provocando la destitución del entonces director general del instituto armado Luis Roldán, quien estuvo al frente de la Benemérita, **entre octubre de 1986 y diciembre de 1993**. El ex director de la Guardia Civil aprovechó su cargo para enriquecerse de manera totalmente ilícita y delictiva mediante el cobro de comisiones de obras, la estafa a los constructores y la malversación de los fondos reservados de Interior.

Asimismo, Roldán recibió, a partir de 1990, sobresueldos de cinco millones de pesetas al mes por parte de la Secretaría de Estado para la Seguridad y con cargo a los fondos reservados. Esa cantidad se elevó a 10 millones desde 1991 hasta su destitución. Rafael Vera era entonces el secretario de Estado de Interior y quien manejaba los fondos reservados.



### **5. Caso Urralburu**

El presidente socialista de Navarra, Gabriel Urralburu, fue procesado junto al ex consejero Antonio Aragón por delitos de prevaricación y cohecho por el cobro de comisiones ilegales por obras públicas realizadas durante su segundo mandato, **de 1987 a 1991**. Ambos tuvieron que dimitir de sus cargos y terminaron en prisión.

### **6. Caso Ibercorp: la caída de Mariano Rubio**

**Desde 1992 a 1995** estuvo en candelero una irregular operación especulativa que arrastró a la entonces denominada 'beautiful people', formada por adinerados financieros. Mariano Rubio, gobernador del Banco de España, apareció involucrado en aquellos manejos, lo que provocó su dimisión y posterior entrada en prisión.

### **7. Caso Filesa**

Fue un escándalo de financiación ilegal del PSOE a través de las empresas tapadera Filesa, Malesa y Time-Export, que **entre 1988 y 1990** cobraron importantes cantidades de dinero en concepto de estudios de asesoramiento para destacados bancos y empresas de primera línea que nunca llegaron a realizarse.

Entre las personas vinculadas a estas operaciones se encontraban el diputado socialista por Barcelona, Carlos Navarro, y el responsable de finanzas del PSOE, Guillermo Galeote. De él derivó el "Caso Ave", de cohecho y falsedad en relación con las supuestas comisiones ilegales obtenidas por la adjudicación del proyecto del tren de alta velocidad Madrid-Sevilla.

### **8. Estafa filatélica: Afinsa y Fórum Filatélico**

**El 9 de mayo de 2006**, tuvo lugar la intervención gubernamental de Afinsa y Fórum Filatélico, las dos mayores compañías de filatelia del país, por presunta estafa, insolvencia punible y administración desleal. Con toda evidencia, se trataba de una estafa del tipo piramidal. 460.000 afectados han perdido sus ahorros como consecuencia de la intervención.

### **9. Caso Gescartera**

Gescartera, una agencia de valores propiedad de Antonio Camacho, estafó unos 100 millones de euros a sus 2.000 clientes, entre ellos una treintena de órdenes e instituciones ligadas a la iglesia. Fue intervenida **en el verano de 2001** por la CNMV y originó una agria polémica política que provocó, incluso, la dimisión de la entonces presidenta del organismo supervisor, Pilar Valiente.

### **10. Caso Gürtel**

Una trama de traficantes de influencias dirigida por Francisco Correa ha corrompido a numerosos políticos municipales y autonómicos del PP en Madrid y en Valencia. La investigación permanece **actualmente** en los juzgados.

### **Santander tiene atrapados 2.330 millones en el escándalo Madoff**

<http://www.bolsageneral.es/noticias/santander-tiene-atrapados-2330-millones-en-el-escandalo-madoff/>

La estafa multimillonaria generada por Bernard L. Madoff, cifrada en un primer momento en 50.000 millones de dólares, también llega a España. Este domingo, el Grupo Santander reconoció una exposición de 2.330 millones de euros en el escándalo de inversiones piramidales creado por quien, hasta ahora, era una de las personalidades más reconocidas de Wall Street. Según fuentes del banco presidido por Emilio Botín, el número de clientes afectados podría rondar el millar. Perjudicados que serían sobre todo grandes patrimonios, fortunas familiares e inversores institucionales internacionales, a los que el Santander se ha comprometido a defender al afirmar que «ejercitará las acciones legales que procedan».

En una nota enviada a la Comisión Nacional del Mercado de Valores (CNMV), el banco explica que Madoff Securities era el encargado de ejecutar las inversiones de un subfondo de la gestora del Santander especializada en la instituciones ligadas la iglesia. Fue intervenida **en el verano de 2001** por la CNMV y originó una agria polémica política que provocó, incluso, la dimisión de la entonces presidenta del organismo supervisor, Pilar Valiente.

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gestión de fondos e instituciones de inversión alternativas (Optimal). En concreto, del denominado Optimal Strategic US Equity, dependiente a su vez de Optimal Multiadvisors Ireland plc, sociedad constituida en Irlanda y autorizada por la Irish Financial Services Regulatory Authority (IFSRA)....

### **La familia silenció el escándalo de las cuentas al Consejo de Administración**

<http://www.elconfidencial.com/en-exclusiva/2011/familia-silencio-fraude-fiscal-consejo-administracion-20110617-80220.html>

**La familia Botín** no comunicó oficialmente al Consejo de Administración que había cometido un delito fiscal por el que Hacienda le reclamaba **la repatriación de 200 millones de euros**. Al menos no consta en el informe de gobierno corporativo que fue remitido a la Comisión Nacional del Mercado de Valores (CNMV), en el que sí aparece la sentencia en firme del **Tribunal Supremo contra Alfredo Sáenz**.

Es decir, el caso más importante de fraude fiscal cometido en España no afectaba "negativamente al funcionamiento del consejo o al crédito y reputación de la sociedad", que así reza **el artículo 23 del Reglamento del Consejo de Administración** de la primera entidad financiera de España y de una de las más grandes de Europa por Capitalización. **El artículo 30** de dicho documento añade que "los consejeros deberán comunicar al consejo cuanto antes, aquellas circunstancias que les afecten y que puedan **perjudicar al crédito y reputación de la sociedad** y, en particular, las causas penales en las que aparezcan como imputados"...

### **LAVADO DE DINERO EN EL SECTOR DEL FÚTBOL FAFT-GAFI financial Action Task Force GAFISUD – Grupo de Acción Financiera de Sudamérica**

#### **RESUMEN EJECUTIVO**

1. Los delincuentes han demostrado su capacidad de adaptación al hallar nuevos canales para el lavado de las ganancias obtenidas por medio de actividades ilegales, y el deporte es uno de los muchos sectores que se exponen al riesgo de verse afectados dinero mal habido.

2. Debido a la creciente importancia del deporte en materia económica durante las últimas dos décadas, el dinero gradualmente comenzó a ejercer una fuerte influencia sobre el mundo de los deportes. Esta afluencia de dinero ha tenido efectos positivos, al igual que consecuencias negativas.

3. Para una mayor comprensión, este estudio identifica aquellas vulnerabilidades

que hacen que el sector del fútbol sea atractivo para la delincuencia. Estas vulnerabilidades se relacionan principalmente con la estructura, el financiamiento y la cultura de este sector.

4. Este estudio analiza varios casos que ilustran el uso del sector futbolístico como vehículo para blanquear las ganancias provenientes de actividades delictivas. A continuación de este análisis, queda en evidencia que el lavado de activos constituye un problema más profundo y complejo que lo que se creía anteriormente. En efecto, este análisis parece revelar que existen pruebas, además de las de índole anecdótica, que indica que diversos flujos de dinero y/o transacciones financieras pueden incrementar el riesgo del lavado de dinero a través del fútbol. Estas operaciones se relacionan con la propiedad de clubes de fútbol o de jugadores, el mercado de transferencias, las apuestas, los derechos de imagen y los convenios de sponsoreo o publicidad. Otros casos demuestran que también se emplea el sector del fútbol para cometer otras actividades delictivas, tales como trata de personas, corrupción, tráfico de estupefacientes (doping) y delitos impositivos.

5. Las técnicas de lavado de dinero que se utilizan varían de básicas a complejas, e incluyen el uso de dinero en efectivo, transferencias transnacionales, paraísos fiscales, compañías pantalla, profesionales no financieros y personas políticamente expuestas.

6. En muchos casos, se identificaron conexiones con otras tipologías de lavado de dinero ampliamente reconocidas, tales como el lavado de dinero basado en el sector del comercio exterior, el uso de profesionales no financieros y organizaciones sin fines de lucro, legitimación de activos a través del mercado de títulos valores, del sector inmobiliario y de la industria de juegos de azar.

### **Preocupan los casos de lavado de activos en España**

<http://www.iprofesional.com/index.php?p=nota&idx=40489&cookie>

### **Especialistas advierten que ya circulan unos 78 M de euros en billetes de 500. Los paraísos fiscales ya son considerados críticos. Piden reformas penales**

Fuentes oficiales de España calculan que circulan en este país unos 78 millones de euros (unos 100 millones de dólares) en billetes de 500, o sea **una cuarta parte del total emitidos en la zona de esta moneda en la Unión Europea.**

El euro es moneda oficial en Alemania, Austria, Bélgica, España, Eslovenia, Francia, Finlandia Grecia, Holanda, Irlanda, Italia, Luxemburgo y Portugal.

Armando Fernández Steinko, sociólogo y profesor en la Universidad Complutense de Madrid, comentó que, "cuando el dinero ya no pesa y puede circular a la velocidad de la luz, es cuando se hace realmente dinero".

Para lograr esa velocidad, **"la técnica consiste en hacerlo circular por el sistema financiero internacional con el fin de borrar toda conexión económica** con su propietario y con el turbio proceso de acumulación del que es hijo", añadió.

### **Zona crítica**

La circulación del dinero sucio no es fácil y para lograrla los propietarios de esos fondos **necesitan la colaboración de bancos, gobiernos de países con secreto bancario, como** en Suiza o Austria. También de los llamados **"paraísos fiscales"**, entre los que se cuentan Andorra, enclavado entre España y Francia, así como Gibraltar, la colonia británica ubicada a la entrada del estrecho del mismo nombre y cuya soberanía reclama España con el apoyo de la Organización de las Naciones Unidas.

La situación es alarmante y ante ella el gobierno quiere responder con una **reforma del Código Penal** ya que en la actualidad los encarcelados por ese delito, según lo expresa una frase muy popular, "entran por una puerta y salen por la otra".

El propio Fiscal Anticorrupción de España, Antonio Salinas, reconoce que este **es un país elegido por los grandes grupos internacionales para lavar dinero.**

Eso se hace, explicó Salinas en declaraciones a la prensa, con el concurso de testaferros locales y otras personas de confianza, con quienes "han abierto aquí sus sucursales y creado amplias redes **de sociedades pantalla**, que les permiten ocultar a los verdaderos propietarios de los edificios, terrenos o empresas que adquieren en España"

### **Repaso al crimen organizado en España Rubalcaba, en su condición de ministro del Interior, revela que 561 bandas fueron desmanteladas en 2009**

<http://www.publico.es/espana/344560/repaso-al-crimen-organizado-en-espana>

El ministro del Interior, Alfredo Pérez Rubalcaba, informó este martes de que las Fuerzas de Seguridad del Estado han detectado la presencia durante el año pasado en España de **17 organizaciones dedicadas a la trata** de seres humanos con fines de explotación sexual.

En su comparecencia ante la Comisión de Interior del Congreso en la que dio cuenta del **balance de la lucha contra el crimen organizado en 2009**, Rubalcaba explicó que la mayoría de las **mujeres explotadas sexualmente proceden de Brasil y Rumanía.**

Según los datos de Interior, las mafias de la trata actúan con especial virulencia

en **Barcelona, la Comunidad Valenciana y Madrid**. Además de la explotación sexual, las Fuerzas de Seguridad han detectado otras cuatro organizaciones que se dedicaban a la explotación laboral.

Por contra, Rubalcaba aseguró que, por el momento, **no se ha advertido la presencia de ningún grupo de sicarios**, especializados en los asesinatos por encargo, **asentados de forma permanente en España**, más allá de los "ajustes de cuentas" que se producen entre delincuentes rivales.

#### **Poco tiempo en España**

Durante todo el año pasado, las Fuerzas de Seguridad **desmantelaron un total de 561 organizaciones del crimen organizado**, la mayoría de las cuales actuaba desde hacía menos de tres años, en unas operaciones policiales en las que fueron **detenidas casi 6.000 personas** y se incautaron bienes por valor de 270 millones de euros.

De las organizaciones investigadas, la mayoría —un 86%— llevaba actuando menos de tres años en España, lo que demuestra, según Rubalcaba que **los grupos son desmantelados en muy poco tiempo**, fruto de la eficacia policial contra este tipo de delitos. De hecho, el 90% de las redes del crimen organizado que fueron investigadas durante el año pasado quedaron desmanteladas totalmente o sufrieron duros golpes policiales que minaron su capacidad de recuperación.

#### **Naciones Unidas afirma que la lucha contra la esclavitud sexual y laboral es "ineficaz"**

<http://www.mujaresenred.net/spip.php?article563>

Por Charo Nogueira 30 de abril de 2006

España figura entre los principales destinos del tráfico de personas, según la ONU

España figura entre los principales países de destino del tráfico de seres humanos, sobre todo mujeres dedicadas a la prostitución. Así consta en el primer informe sobre trata de personas a nivel mundial que ha realizado la Oficina sobre Droga y Delito de Naciones Unidas. Según el trabajo, la mayoría de los "millones" de víctimas son mujeres y niñas. La ONU advierte de que "las redes de tráfico [sobre todo para prostitución pero también a la esclavitud laboral] se extienden por todo el planeta", lo que requiere una "respuesta global" frente a la "ineficaz" lucha actual. Naciones Unidas afirma que la lucha contra la esclavitud sexual y laboral es "ineficaz"...

## Corrupción de la Policía en el Región de Madrid

### Un jefe policial detenido por traficante

#### Mostoles

LUIS F. DURÁN

Planeaba montar un prostíbulo, extorsionaba a bares y les informaba de las redadas. El detenido llevaba destinado en esa comisaría desde hace al menos media década. Desde hace un año estaba siendo seguido por los agentes de Asuntos Internos

El departamento de Asuntos Internos del Cuerpo Nacional de Policía detuvo el pasado fin de semana al jefe de Estupefacientes de la comisaría de Móstoles bajo la acusación de tráfico de drogas, según fuentes jurídicas. También se le imputan otros delitos como falsedad documental y omisión del deber de perseguir el delito.

Asimismo se ha descubierto que **planeaba montar un prostíbulo** en la zona sur de la región, que **extorsionaba a dueños de bares** de Móstoles y que **avisaba** a varios locales **antes de producirse las redadas** a cambio de dinero.

El agente fue arrestado en las dependencias policiales y más tarde era trasladado a Madrid donde **se le interrogó durante más de cinco horas**. Posteriormente, el juez autorizó el registro de su taquilla y de su piso donde se hallaron pequeñas cantidades de droga, armas de fuego y más pruebas que le relacionan con el tráfico de drogas a pequeña escala.

Junto al agente han sido **detenidas otras cuatro personas** acusadas también de tráfico de droga y de colaborar con el funcionario. Uno de estos arrestados ha sido declarado testigo protegido ya que ha colaborado con la policía en esclarecer el caso.

Dos días después de la detención, el juez de guardia de la localidad de Móstoles ordenó su ingreso en prisión provisional y sin fianza. Se encuentra recluso en la cárcel de Alcalá Meco.

Este es el **quinto agente detenido en la comisaría de Móstoles en los últimos cuatro años**. Precisamente, el Jefe Superior de Policía de Madrid ha designado en los último días un nuevo comisario para estas instalaciones. Se trata de Alfonso de María que ocupaba el puesto de comisario jefe en la localidad de Getafe.

Fuentes sindicales indicaron que en la comisaría corría el rumor de que este agente tenía negocios "fraudulentos" y que **"actuaba al margen de la ley" pese a que era una buena persona y buen compañero**. "No entendemos como no se ha actuado con anterioridad con lo que se sabía. Sus formas no eran nada buenas", añadieron las mismas fuentes.

### **Investigado por Asuntos Internos**

El agente detenido tiene 40 años y llevaba destinado en esta comisaría desde hace al menos media década. En 2004 fue designado responsable del Grupo de Estupefacientes de la comisaría de Móstoles. Desde hacía al menos un año estaba siendo seguido por los agentes de Asuntos Internos, la unidad de la policía que se encarga de investigar a los policías. **Estas pesquisas se iniciaron a raíz de que desapareciesen ciertas cantidades de droga** tras varias intervenciones policiales.

En varios casos se descubrió que la cantidad de **droga incautada** no era la misma que finalmente había llegado a la comisaría, de acuerdo con las fuentes judiciales.

En la investigación policial también se ha seguido a varios agentes ante la sospecha de que hubiese más funcionarios implicados. Finalmente, solamente se ha inculcado al responsable del grupo de Estupefacientes.

La Dirección General de la Policía ha abierto un expediente al agente y le ha separado del servicio. Ya el pasado año, concretamente en junio, era detenido en la comisaría de Móstoles **un agente acusado de colaborar con un colombiano** que había pertenecido a una banda de peligrosos narcotraficantes.

En diciembre de 2006 en las mismas dependencias de Móstoles se arrestó a dos agentes implicados en una trama de tráfico de explosivos y droga. Y en noviembre de 2003 el departamento de Asuntos Internos del Cuerpo Nacional de Policía descubrió que **un inspector y un agente se dedicaban presuntamente a robar en casas de pequeños delincuentes falsificando órdenes de registro**. A los detenidos se les imputó al menos una decena de robos en localidades del sur de Madrid como Móstoles y Fuenlabrada y en los distritos de la capital de Carabanchel y Usera.



### **Torrejón de Ardoz Policía local colaboraba con una banda de narcotraficantes**

<http://www.tribunadeeuropa.com/?p=6260>

Policía local de Torrejón de Ardoz colaboraba con una banda de narcotraficantes. La Policía Nacional ha desarticulado una banda de narcotraficantes que se dedicaba a gestionar contenedores cargados de cocaína que llegaban desde Sudamérica.

Ha habido ocho detenidos en la operación, entre ellos un policía local de Torrejón de Ardoz (Madrid) que se encargaba de garantizar la seguridad de del grupo de cara a una posible intervención policial.

El grupo estaba formado por españoles, y se asentaba en Madrid, Torrejón de Ardoz y Alcalá de Henares. En la capital utilizaban un locutorio como centro de operaciones, donde también entregaban las sustancias estupefacientes a sus distintos clientes.

En total, la policía ha intervenido 50 kilos de cocaína camuflados en un cargamento de gambas congeladas, 150.000 euros en efectivo, tres pistolas, seis vehículos, varios teléfonos móviles y abundante documentación.

La droga llegaba hasta las costas españolas -en especial a los puertos de Algeciras (Cádiz) y Marín (Pontevedra)- camuflada entre otras mercancías legales. Las investigaciones de la policía para desarticular la banda llevaban más de un año en marcha.

### **Redes de Corrupción con la policía y crimen organizados**

#### **Los policías presuntamente corruptos de Coslada actuaban como una banda criminal**

FERNANDO LÁZARO | PABLO HERRAIZ

Arrestados casi 30 agentes de la policía municipal, dirigida por Ginés Jiménez. Se les acusa además de extorsionar a bares de copas, comercios y prostitutas. La Comunidad de Madrid pide explicaciones al alcalde, Ángel Viveros.

MADRID.- La Policía Nacional ha puesto en marcha una amplia operación en la localidad madrileña de Coslada para dismantelar una gran trama de corrupción policial.

Según explicaron fuentes de la investigación, la actuación se está desarrollando este jueves y en ella han sido detenidos casi una treintena de agentes de la Policía Local de Coslada, **entre ellos el oficial del Cuerpo, que es su máximo responsable, [Ginés Jiménez Buendía](#).**

En el operativo -denominado 'operación Bloque', en el que se ha registrado la comisaría del municipio y el domicilio de Ginés Jiménez, han participado cuatro furgonetas de la Unidad de Intervención Policial (antidisturbios).

Durante la operación, que comenzó a las 8.00 horas, también han sido registradas las viviendas del resto de detenidos, **uno de los cuales es el guardaespaldas y chófer del alcalde de Coslada, Ángel Viveros Gutiérrez.**

#### EN EL CLUB DE MÓSTOLES

Esta persona denunció que estaba siendo víctima de una red de compatriotas que la obligaban a ejercer la prostitución en un club de Móstoles. Los dos principales responsables serían ciudadanos armenios y tenían retenidas a las chicas en un piso de Fuenlabrada. Desde aquí, en una furgoneta roja, un rumano las trasladaba a diario al club.

Las relaciones sexuales que mantenían las mujeres, por indicación expresa de los responsables, se prolongaban no más de 20 a 30 minutos y el precio oscilaría de 53 a 63 euros, respectivamente. Los responsables del club se quedaban con 13 euros por servicio, y el resto sería el beneficio de las chicas. Pero todo el dinero que ganaban se lo retiraban los armenios. Éstos contaban con la colaboración del dueño y los encargados del local para conocer el número de servicios que había realizado cada chica y, por ende, el dinero que les debían entregar.

Con todos estos datos, agentes de policía diseñaron un dispositivo para la entrada en el club que se saldó con la detención de los responsables de la organización, del dueño y encargados del club y la identificación de 12 chicas, todas en situación irregular en nuestro país, procedentes de Países del Este, concretamente Rumanía y Armenia. En las próximas horas, al término de las diligencias policiales, los detenidos pasarán a disposición judicial.

#### Redes de Prostitución en Mostoles

##### **Detenidas seis personas que formaban una red de explotación sexual de mujeres armenias y rumanas**

MADRID, 21 (EUROPA PRESS)

Dos hombres armenios fueron detenidos por agentes de la Policía Nacional por ser considerados los máximos responsables de una red de explotación sexual a compatriotas. Se trata de Havhannes H. y Arkadi M., ambos de 28 años, que contaban con la colaboración de un tercer ciudadano rumano, Mihai Valentín G., de 27 años, quien se encargaba de controlar y trasladar a las chicas desde el domicilio hasta el club de alterne. El dueño del prostíbulo, Manuel G.L., de 57, y los encargados, Ramona de la C., de 33, y Francisco Javier R.G., de 40, también prestaron su colaboración a esta red y han sido igualmente detenidos.

En el momento de la intervención policial, los agentes encontraron en el interior de un local ubicado en Móstoles a 12 chicas, que se encontraban en Madrid, todas ellas armenias y rumanas y en situación irregular.

La detención se efectuó por la actuación conjunta de agentes de la Brigada de Extranjería, de la Comisaría de Fuenlabrada y los conocidos como "Centauros", pertenecientes a Seguridad Ciudadana. Fueron los primeros los que iniciaron las investigaciones a raíz de la denuncia de una mujer que estaba siendo explotada sexualmente y que se acogió a la Ley de Testigos Protegidos.

La Policía lleva varios meses siguiendo los pasos de los ahora detenidos. De hecho, el operativo llevado a cabo hoy corresponde a la segunda fase de una operación que se inició con la investigación **de una mafia de origen rumano relacionada con la prostitución.**

Entre otras actuaciones, los detenidos son **sospechos** de extorsionar a comercios, bares de copas y prostitutas.

Según fuentes policiales, este grupo de policías actuaban presuntamente como una banda, dirigida por Ginés Jiménez. Aparte de extorsión, los arrestados serán acusados de cohecho, amenazas, robos, delitos contra la libertad sexual y delitos contra la salud pública -tráfico de drogas-.

El jefe de la policía Ginés Jiménez, en una imagen de 1996.

Estas fuentes precisaron que hay numerosos datos que avalan las sospechas, **incluidas grabaciones telefónicas.** Los investigadores tratan también de aclarar si las actuaciones policiales delictivas han contado con la **connivencia de responsables municipales del Ayuntamiento de Coslada.**

El concejal de Seguridad del Ayuntamiento, Antonio Murillo, está reunido con responsables del Consistorio para ver cómo se reorganiza el Cuerpo, que cuenta con 159 agentes, tras este suceso.

Entretanto, el Gobierno de Madrid ha acordado dar instrucciones a los servicios jurídicos de la Comunidad para que se personen en las actuaciones judiciales que se llevan a cabo, informa Efe.

Así lo ha anunciado el vicepresidente primero de la Comunidad, Ignacio González, en la rueda de prensa posterior al Consejo de Gobierno, donde ha exigido asimismo a las autoridades **locales de Coslada una "explicación urgente" de los hechos** que han provocado estas detenciones, dado que, ha dicho, la policía local es un asunto de "responsabilidad y competencia exclusiva del alcalde", el socialista Angel Viveros.

### **Drug trafficking and the financing of terrorism United Nations Office on Drug and Crime**

[www.unodc.org/unodc/en/frontpage/drug-trafficking-and-the-financing-of-terrorism.html](http://www.unodc.org/unodc/en/frontpage/drug-trafficking-and-the-financing-of-terrorism.html)

Although the link between terrorism and other related crimes, such as drug trafficking, is evident and has been recognized by the United Nations Security Council, **a thorough understanding is needed in order to develop solid strategies to prevent and disrupt these crimes...**

According to the UNODC's World Drug Report 2007, the total potential value of Afghanistan's 2006 opium harvest accruing to farmers, laboratory owners and Afghan traffickers reached about **\$US3.1 billion**. In addition, it is reported that in 2004, some 400 tons of cocaine was exported from one Latin American country, with an estimated domestic value of **US\$ 2 billion**. How much of this money is used for perpetrating acts of terrorism? Estimates vary. But even a small percentage would be more than sufficient for some individuals or groups to plan, finance and carry out terrorist acts.

Indeed drug trafficking has provided funding for insurgency and those who use terrorist violence in various regions throughout the world, including in transit regions. In some cases, drugs have even been **the currency used in the commission of terrorist attacks, as was the case in the Madrid bombings....**

### **Terrorismo en España, una larga historia**

por: Agencias/Noticieros Televisa

[www.esmas.com](http://www.esmas.com)

Los ataques terroristas en España no son cosa nueva, la organización terrorista vasca, ETA, ha dejado una ola de muerte en las últimas décadas

MADRID, España, mar. 11, 2004.- Los atentados cometidos este jueves en Madrid se han convertido en los más trágicos de la historia de España al causar la muerte de al menos 190 personas y heridas a más de mil 200. El gobierno español señaló en un principio, a la organización separatista vasca, ETA, como la autora de los ataques, sin embargo algunos indicios muestran que la red terrorista de Osama Bin Laden, Al Qaeda, podría estar detrás de ellos.

Los ataques perpetrados en tres estaciones de trenes procedentes de la periferia de la capital española causaron la conmoción y la condena mundial.

Ahora las autoridades y el mundo entero buscan a los responsables de la masacre cometida en territorio español.

La banda terrorista ETA en tres décadas de actividad armada ha matado a más de 800 personas en España.

### **UN VISTAZO ATRÁS**

Hasta el día de hoy, el atentado que había producido más muertes era el que afectó al supermercado "Hipercor", en Barcelona, donde 21 personas murieron y más de cuarenta resultaron heridas el 19 de junio de 1987, al explotar un coche-bomba en el estacionamiento de esos almacenes.

En septiembre de 1974, el día 14, una bomba estalló en la cafetería "Rolando" de la calle del Correo de Madrid y mató a 14 personas. La Policía atribuyó esa explosión a ETA, aunque nunca fue reivindicada por dicha banda criminal.

El 1 de febrero de 1980 un comando de ETA atacó con granadas y fuego cruzado de metralleta un convoy de la Guardia Civil en las proximidades de Gernika (País Vasco) y mató a seis agentes. En el tiroteo murieron dos etarras.

El 3 de noviembre de 1980 una bomba colocada en un bar de Zarauz (País Vasco) mató a cinco personas, cuatro de ellas guardias civiles.

Doce guardias civiles murieron el 14 de julio de 1986 por la explosión de un coche-bomba que además causó heridas graves a más de 30 personas en la plaza madrileña de la República Dominicana.

El 25 de abril de 1986 cinco guardias civiles perdieron su vida al estallar un coche-bomba en Madrid.

El 11 de diciembre de 1987 ETA hizo explotar otro coche bomba contra la casa-cuartel de la Guardia Civil de Zaragoza y acabó con la vida de once personas, cinco de ellas niñas de entre tres y doce años.

El 8 de diciembre de 1990 murieron seis policías nacionales y diez civiles más resultaron heridos en Sabadell (noreste), al explotar otro vehículo-bomba al paso de una furgoneta policial.

Nueve personas (dos guardias civiles y siete civiles, entre ellos cuatro niñas), murieron el 29 de mayo de 1991 por la explosión de un vehículo bomba que fue lanzado contra la Casa Cuartel de la Guardia Civil en la localidad barcelonesa de Vic (noreste), que quedó completamente destruida.

Tres oficiales del Ejército, el soldado conductor y un funcionario civil murieron el 6 de febrero de 1992 en la explosión de un coche-bomba al paso de una furgoneta de transporte militar en la céntrica plaza de la Cruz Verde de Madrid.

El 21 de junio de 1993 otro coche bomba explotó en una céntrica calle de Madrid al paso de un vehículo militar camuflado y causó la muerte de seis oficiales y la del conductor, un civil.

El 11 de diciembre de 1995, la banda terrorista asesinó en un barrio del sur de Madrid a seis civiles que trabajaban para la Armada, al hacer estallar por control remoto un coche-bomba cargado con 55 kilos de amosal al paso de la furgoneta militar camuflada.

El 29 de julio de 1997 seis personas resultaron muertas y un centenar heridas al estallar sendas bombas colocadas por ETA en las consignas de las estaciones madrileñas de ferrocarril de Atocha y Chamartín y en la del aeropuerto de Barajas.

30 de octubre de 2000, una bomba colada por ETA en Madrid acaba con la vida del magistrado del Tribunal Supremo, Francisco Querol Lombardero, su chofer y su escolta, mientras que otras 64 personas resultaron heridas.

### **MALAS NOTICIAS**

A las tres de la madrugada del 28 de noviembre de 1999, el presidente del gobierno español, José María Aznar, era despertado por uno de sus colaboradores. En el Palacio de La Moncloa se acababa de recibir ese domingo una noticia alarmante: La organización separatista vasca ETA había anunciado, tras 14 meses, el final de su tregua y amenazaba al mismo tiempo con nuevos atentados a partir del viernes siguiente, el 3 de diciembre.

ETA reanudó sus acciones terroristas a principios de 2000 tras la tregua y desde entonces ha matado a más de 44 personas.

### **Terrorismo en España**

<http://trabajoterrorismo.wordpress.com/2009/06/08/terrorismo-en-espana/>

### **AÑO 2005**

- **8 de enero:** tres bombas de escasa potencia causaron desperfectos de poca importancia en un concesionario de coches del barrio bilbaíno de Deusto, en una empresa de grúas de Ordizia (Guipúzcoa) y en un camión de la empresa Transportes DHL, en la localidad guipuzcoana de Añorga.

Otro artefacto similar fue colocado en un concesionario de Barakaldo (Vizcaya), aunque se descubrió cuatro días después y no causó daños.

- **18 de enero:** estalla un coche bomba cargado con 40 kilos de explosivo en Getxo (Vizcaya), quince minutos después de avisar de su colocación y sin que diera tiempo a acordonar la zona. Causó heridas leves a un ertzaina.

**-30 de enero:** la explosión de una bomba en el Hotel Port Denia, en Denia (Alicante), causó dos heridos leves y daños materiales cuantiosos. Una llamada telefónica en nombre de ETA a la DYA de Bilbao alertó de la colocación del artefacto media hora antes de su explosión, lo que permitió desalojar a las 200 personas que estaban en el establecimiento.

**-9 de febrero:** un coche-bomba, cargado con entre 20 y 30 kilos de cloratita estalló en el Campo de las Naciones de Madrid, tras una aviso en nombre de ETA al diario Gara, causó 43 heridos leves y daños materiales en los edificios y vehículos cercanos.

**-27 de febrero:** un artefacto de poca potencia explotó en los jardines de la residencia de descanso para empleados del BBVA de la localidad alicantina de Villajoyosa, después de que una llamada telefónica alerta al diario Gara en nombre de ETA de su colocación.

**-15 de mayo:** cuatro artefactos explotaron en Guipúzcoa en las empresas 'Eun' de Beasain, 'Félix Gabilondo' de Bergara, 'Bernardo Ecenarro' de Elgoibar y 'Goi' de Sorluze.

**-22 de mayo:** ETA colocó dos bombas en Zarauz (Guipúzcoa) compuestas por uno o dos kilos de cloratita, en la empresa "Gráficas Otzarreta" y en el parque Muntxio. La primera estalló y produjo daños materiales y la segunda fue desactivada por la Ertzaintza.

**-25 de mayo:** en Madrid, explotó otro coche-bomba colocado por ETA en la calle de Rufino González, cargado con entre 18 y 20 kilos de cloratita, lo que causó heridas leves a tres personas y crisis de ansiedad a otras cincuenta, además de destrozos materiales.

**-10 de junio,** la banda terrorista había atentado contra el aeropuerto de Zaragoza con el lanzamiento de dos granadas que impactaron en sus inmediaciones y no causaron daños personales, aunque obligaron al cierre de las instalaciones.

**-25 de junio,** explosión de un coche bomba en el aparcamiento del Estadio de la Peineta, en el distrito madrileño de San Blas, en el que tampoco hubo víctimas.

**-12 de julio** explotaron cuatro artefactos junto a la central eléctrica de ciclo combinado de Amorebieta (Vizcaya) que no causaron víctimas.

**-22 de julio.** Una bomba colocada por ETA hizo explosión en las oficinas de la empresa Construcciones Intxausti, de Gernika provocando un pequeño incendio y escasos daños materiales. El artefacto afectó también a un inmueble de viviendas, pero nadie resultó herido.

**-23 de julio** explotó una olla con tres kilos de explosivos colocada en el cajero automático de la Oficina principal de la Caixa Galicia en Santiago de Compostela, ocasionando daños materiales pero no heridos.

**-29 de julio** dos artefactos de escasa potencia hicieron explosión en los arcones de la Nacional V y la IV, a su paso por las provincias de Toledo y Ciudad Real, después de que un comunicante anónimo, alertase al diario vasco 'Gara' de la colocación de las dos bombas. En ambas explosiones no hubo que lamentar víctimas y los daños materiales fueron escasos.

**-24 de septiembre** ETA hace estallar una furgoneta-bomba en un polígono industrial de Ávila, sin causar heridos. El objetivo no estaba claro, pero los edificios más cercanos eran una planta de impresión y una sucursal de la empresa DHL.

**-29 de septiembre:** Un bomba de escasa potencia estalla en una central eléctrica abandonada en Añón del Moncayo (Zaragoza).

**-6 de diciembre:** Cinco artefactos de **escasa potencia** estallaron pasadas las 15 horas en distintos puntos de carreteras de circunvalación o radiales de Madrid, en plena operación salida del puente de la Constitución, sin causar víctimas ni importantes daños materiales.

**-18 de diciembre:** Explota un artefacto en una empresa conservera en Irura, Guipúzcoa

**-21 de diciembre:** Explota una bomba en la localidad navarra de Santesteban, junto a la discoteca Bordatxo, que se encontraba cerrada.

### **AÑO 2006**

**-5 de enero:** Dos artefactos explotan en el Parador de Sos del Rey Católico (Zaragoza), cerrado por reformas.

**-26 de enero:** Sendos artefactos estallan en Zuya (Álava) y Balmaseda (Vizcaya)

**29 de enero:** Un ertzaina herido leve por una explosión en Bilbao **-1 de febrero:** Explota un artefacto en un polígono industrial de Bilbao

**-2 de febrero:** Un artefacto estalla en una oficina de Correos de Vizcaya

**-14 de febrero:** Estalla una furgoneta junto a una discoteca en la localidad Navarra de Urdax

**-16 de febrero:** Un artefacto estalla en una antigua empresa de construcción cerca de Barakaldo

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**-22 de febrero:** Una mochila bomba explota en las inmediaciones de la empresa Barrenetxea, Goiri y Cia, ubicada en un polígono industrial del barrio bilbaíno de Bolueta.



**-26 de febrero:** Dos personas, cuya identidad no fue facilitada, resultaron heridas como consecuencia de la explosión de un artefacto incendiario ocurrida en una sucursal del BBVA, situada en la plaza de Gregorio Altube de Vitoria

**-27 de febrero:** Un ertzaina resulta herido leve por la explosión de un paquete bomba en un juzgado de paz de la localidad vizcaína de Munguía.

**-28 de febrero:** Estalla un artefacto en el Instituto Social de la Marina en Mutriku (Guipúzcoa), poco después de que se recibiera una llamada en el diario Gara en nombre de ETA. No hubo heridos.

**-8 de marzo:** Un artefacto en la sede de Falange Española en Santoña, Cantabria, causa daños materiales.

**-9 de marzo: ETA** coloca cuatro artefactos en carreteras entre País Vasco, Cantabria y Navarra, el mismo día de una huelga en Euskadi convocada por Batasuna por la muerte de etarras presos

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**-30 de diciembre:** La banda rompe sin previo aviso la tregua que anunció el 22 de marzo con una furgoneta bomba en la T4 del madrileño aeropuerto de Barajas. Murieron dos personas.

## **AÑO 2007**

**-25 de julio:** La banda terrorista coloca dos pequeñas bombas de “escasísima potencia”, según Interior, en la carretera por donde iban a pasar los ciclistas del Tour de Francia, en el puerto de Belagua (Navarra).

**-24 de agosto:** Un coche bomba explota ante el cuartel de la Guardia Civil en Durango (Vizcaya) y causa heridas leves a dos agentes.

**-27 de agosto:** Un ejemplo de atentado fallido: la Policía encontró en Castellón una furgoneta habilitada como caravana, cargada con 80 kilos de explosivos. El secretario de Seguridad afirma que ETA pretendía atacar ese fin de semana.

**-2 de septiembre:** ETA avisa de la colocación de varios artefactos en las carreteras españolas y estalla uno en Fuenmayor (La Rioja) sin causar daños.

**-10 de septiembre:** Atentado fallido en Logroño. El detonador de un coche-bomba con más de sesenta kilos de explosivos falla y evita una tragedia en la capital riojana.

**-9 de octubre:** Un escolta del concejal socialista Juan Carlos Domingo, Gabriel Ginés, resulta herido después de que el coche donde viajaba explotara por la colocación de una bomba lapa.

- **1 de diciembre:** Varios etarras mataron a un guardia civil e hirieron de gravedad a otro en el aparcamiento de un centro comercial de la localidad francesa de Capbreton.

### **AÑO 2008**

- **7 de marzo:** El ex concejal del PSE en la localidad guipuzcoana de Mondragón, Isaías Carrasco, es asesinado por un presunto etarra. Recibió tres tiros por la espalda.

- **21 de marzo:** Estalla un coche bomba cargado con 70 kilos de explosivos junto al cuartel de la Guardia Civil de Calahorra (La Rioja) que causó contusiones a un agente, heridas leves a cuatro personas e importantes daños materiales.

- **30 de marzo:** Explota un artefacto en un repetidor del monte Izarraitz de la localidad guipuzcoana de Azpeitia.

- **12 de abril:** Explota otro artefacto junto a la subestación de telefonía y televisión de Lapoblación (Navarra).

- **17 de abril:** Una bomba de ETA estalla en una sede del PSOE en Bilbao y hiere a siete ertzainas en la sede socialista del barrio bilbaíno de La Peña.

***EFFECTS OF  
DOMESTIC ABUSE  
&  
VIOLENCE ON  
SPANISH SOCIETY :***

***Drug Consumption  
(legal, illegal, and pharmaceutical),  
Mental Disorders and  
Psychopathologies***

## Long Term Effects of Domestic Violence

<http://www.aardvarc.org/dv/effects.shtml>

Domestic violence has wide ranging and sometimes long-term effects on victims. The effects can be both physical and psychological and can impact the direct victim as well as any children who witness parental violence.

### Physical Effects

The physical health effects of domestic violence are varied, but victims are known to **suffer physical and mental problems as a result of domestic violence**. Battering is the single major cause of injury to women, more significant than auto accidents, rapes, or muggings. (O'Reilly, 1983).

Many of the physical injuries sustained by women seem to cause medical difficulties as women grow older. **Arthritis, hypertension and heart disease** have been identified by battered women as directly caused by aggravated by domestic violence early in their adult lives. Medical disorders such as **diabetes or hypertension** may be aggravated in victims of domestic violence because the abuser may not allow them access to medications or adequate medical care. (Perrone, 1992).

Victims may experience **physical injury (lacerations, bruises, broken bones, head injuries, internal bleeding), chronic pelvic pain, abdominal and gastrointestinal complaints, frequent vaginal and urinary tract infections, sexually transmitted diseases, and HIV**. (Jones & Horan, 1997 and Bohn & Holz, 1996).

Victims may also experience pregnancy-related problems. Women who are battered **during pregnancy are at higher risk for poor weight gain, pre-term labor, miscarriage, low infant birth weight, and injury to or death of the fetus**.

### Psychological Effects

While the primary and immediate focus for many people is the physical injury suffered by victims, **the emotional and psychological abuse inflicted by batterers likely has longer term impacts and may be more costly to treat in the short-run than physical injury**. (Straus, 1986, 1988, 1990).

**Depression remains the foremost response**, with 60% of battered women reporting depression (Barnett, 2000).

In addition, battered women are at **greater risk for suicide attempts**, with 25% of suicide attempts by Caucasian women and 50% of suicide attempts by African American women preceded by abuse (Fischbach & Herbert, 1997).

Along with depression, domestic violence victims may also experience **Posttraumatic Stress Disorder (PTSD)**, which is characterized by symptoms

such as flashbacks, intrusive imagery, nightmares, anxiety, emotional numbing, insomnia, hyper-vigilance, and avoidance of traumatic triggers. Several empirical studies have explored the relationship between experiencing domestic violence and developing PTSD. Vitanza, Vogel, and Marshall (1995) interviewed 93 women reporting to be in long-term, stressful relationships...

### **Impacts on Children**

One-third of the children who witness the battering of their mother demonstrate significant behavioral and/or emotional problems, including **psychosomatic disorders, stuttering, anxiety and fears, sleep disruption, excessive crying and school problems**. (Jaffe et al, 1990; Hilberman & Munson, 1977-78)

Those boys who witness abuse of their mother by their father are more likely to **inflict severe violence as adults**. Data suggest that girls who witness maternal abuse may tolerate abuse as adults more than girls who do not. (Hotelling & Sugarman, 1986)

These negative effects may be diminished if the child benefits from intervention by the law and domestic violence programs. (Giles-Sims, 1985)

The **long-term effects of child sexual abuse include depression and self-destructive behavior, anger and hostility, poor self-esteem, feelings of isolation and stigma, difficulty in trusting others (especially men), and marital and relationship problems, and a tendency toward revictimization**. (Finkelhor & Brown, 1988)

Other effects identified include **runaway behavior, hysterical seizures, compulsive rituals, drug and school problems**. (Conte, 1988 & 1990)

## **SITUACIÓN ACTUAL DEL CONSUMO DE DROGAS (EN ESPAÑA)**

### **Ministerio de la Sanidad, Servicios Sociales, y Igualdad**

En la actualidad, el consumo de sustancias ilegales en España es un fenómeno asociado al ocio, que afecta especialmente a jóvenes que toman por diversión sustancias psicoactivas, cuyos riesgos no perciben. Cannabis, cocaína y éxtasis son por este orden las sustancias ilegales más ingeridas. Frente a este incremento, se constata un descenso del consumo de heroína y las muertes asociadas al uso de este opiáceo. En cuanto a las drogas legales, el alcohol y el tabaco siguen siendo las sustancias psicoactivas de mayor consumo. El empleo de cannabis y cocaína se ha incrementado sobre todo en el sector más joven de la población.

Según los últimos datos, el consumo de cannabis y de cocaína ha aumentado en nuestro país en un 50% en la población de entre 15 a 64 años. El incremento del

consumo de cocaína es especialmente llamativo en el caso de los estudiantes de Enseñanzas Secundarias , siendo más elevado entre los hombres que en las mujeres y se incrementa conforme aumenta la edad de los escolares.

Los datos de la Encuesta Domiciliaria sobre abuso de Drogas en España, entre los años 1995 y 2003 nos indican que ha aumentado en mayor o menor medida la proporción de personas que consume, hipnosedantes sin receta médica, cocaína y cannabis. Se mantienen en proporciones similares a las de la década anterior los consumos de tabaco, bebidas alcohólicas, éxtasis, anfetaminas, alucinógenos e inhalables volátiles, mientras que continua descendiendo el número de consumidores de heroína, sobre todo el de los que la consumen por vía inyectada.

Según los últimos Informes del Observatorio Español sobre Drogas (OED) , este incremento es especialmente notable en el caso del cannabis y de la cocaína, cuyos consumos, al igual que sucede en la mayor parte de los países europeos, han aumentando considerablemente en nuestro país en los últimos años, sobre todo en el sector más joven de la población.

En muchos casos, estas sustancias se consumen en combinación con otro tipo de drogas (alcohol, tabaco o éxtasis) o mezcladas entre sí, con fines recreativos y socializantes, durante los fines de semana y épocas de ocio. Se trata de un consumo intenso pero intermitente, que al concentrarse durante determinados días de la semana, confiere a los consumidores la sensación falsa de que su conducta carece de riesgos.

Las últimas encuestas a población general y escolar confirman las características de este fenómeno. En la actualidad, el cannabis es la droga ilegal más consumida en España. Desde 1995, este consumo se ha multiplicado por 1,5 aproximadamente, según revelan todos los indicadores de las distintas encuestas. En ese año, la prevalencia de consumo de cannabis en los últimos doce meses se situaba en un 7,5% de la población entre los 15 y los 64 años, mientras que en 2003 esta proporción se sitúa en un 11,3%.

La encuesta domiciliaria de 2003 indica asimismo que un 7,6% de los españoles de entre 15 y 64 años asegura haber consumido cannabis en los últimos 30 días y un 1,5% a diario. La extensión del consumo de esta sustancia se ha producido en todos los grupos de edad y sexo, aunque en los últimos años ha sido más intenso entre los hombres, sobre todo entre los más jóvenes.

Como sucede con otras drogas, la prevalencia del consumo de cannabis aumenta considerablemente entre los 14 y los 18 años, según se recoge en la Encuesta sobre Uso de Drogas en Centros de Enseñanzas Secundarias en 2004 .

En 1994, el 18,2% de la población escolar entre 14 y 18 años decía haber consumido cannabis durante los últimos doce meses, mientras que en 2004 esta proporción se ha incrementado hasta un 36,6%. Este dato supone que en los últimos 10 años se ha duplicado el número de escolares que ha consumido esta droga en los últimos doce meses.

La encuesta de 2004 revela asimismo que el 10% de los estudiantes de 14 años asegura haber consumido cannabis en los últimos 30 días. Para el mismo periodo de tiempo, la prevalencia del consumo de cannabis entre los jóvenes de 18 años se eleva al 35,7%

El consumo de cocaína también ha aumentado en nuestro país en los últimos años. Entre 1995 y 2003 el consumo de esta sustancia se ha multiplicado por 1,5 entre la población de entre 15 y 64 años.

En 2003, un 2,7% de este sector de la población ( 15-64 años) había consumido cocaína en los últimos doce meses, frente al 1,8% que se registraba en 1995. En la actualidad, esta sustancia es la segunda droga de consumo ilegal más extendida en España, después del cannabis.

Según la encuesta domiciliaria de 2003, entre la población general, las mayores prevalencias de consumo de cocaína se encuentran en los hombres de 15-34 años, de los cuáles el 7,5% aseguraba haber consumido esta droga en los últimos doce meses, mientras que en 1995 este porcentaje se situaba en un 3,1% para el mismo periodo de tiempo.

El incremento del consumo de cocaína es especialmente significativo en el caso de los estudiantes de Enseñanzas Secundarias. En la última década, la prevalencia de consumo en este sector de la población se ha multiplicado por cuatro.

Así, en 1994 un 1,8% de jóvenes entre 14 y 18 años decía haber consumido cocaína en los doce meses anteriores a la realización de la encuesta. En 2004 esta proporción se ha incrementado hasta un 7,2%.

El consumo es más elevado entre los hombres ( 9,4% la habían consumido en los últimos doce meses), que en las mujeres (5,1% para el mismo periodo) y se incrementa conforme aumenta la edad de los escolares. El 18,5% de los jóvenes de 18 años afirma haber consumido cocaína en los últimos doce meses, frente al 0,9% de los jóvenes de 14 años.

Asimismo, la encuesta a población escolar 2004 señala que una proporción importante de los estudiantes asegura haber sufrido alguna vez en la vida consecuencias negativas atribuibles al consumo de cannabis y de cocaína.

En el caso del cannabis, las más frecuentes son pérdidas de memoria (24%), dificultades para trabajar o estudiar (15,8%), tristeza, ganas de no hacer nada y depresión (14,3%) y faltar a clase (10%). En el caso de los consumidores de cocaína, las consecuencias negativas más frecuentes son problemas para dormir (44,1%), pérdida de memoria(14%), tristeza o depresión (12,6%) y problemas económicos (11,8%).

## Ministerio de la Sanidad, Servicios Sociales, y Igualdad

Datos de recetas facturadas del Sistema Nacional de Salud - Diciembre 2011

COMUNIDAD AUTÓNOMA	RECETAS FACTURADAS DEL SISTEMA NACIONAL DE SALUD					
	DATOS MENSUALES			ACUMULADO ENERO - DICIEMBRE		
	2011	2010	% 11/10	2011	2010	% 11/10
<b>NACIONAL</b>	81.577.538	82.183.350	-0,74	973.232.805	957.694.628	1,62

Datos de gasto farmacéutico a través de receta oficial del Sistema Nacional de Salud - Diciembre 2011

COMUNIDAD AUTÓNOMA	GASTO FARMACÉUTICO A TRAVÉS DE RECETA OFICIAL DEL SISTEMA NACIONAL DE SALUD					
	DATOS MENSUALES			ACUMULADO ENERO - DICIEMBRE		
	2011	2010	% 11/10	2011	2010	% 11/10
<b>NACIONAL</b>	888.491.162	984.398.542	-9,74	11.136.386.997	12.207.683.146	-8,78

### Enfermedades mentales. La aportación de los medicamentos al tratamiento de la depresión

**Farmaindustria** Health Outcomes Research Europe -por Xavier Badía.

#### La depresión en España

Se estima que en torno a un 20% de los pacientes que consultan a médicos de atención primaria en España padece trastornos mentales bien definidos y esta población se incrementa hasta un 40% cuando se incluyen los trastornos mentales menores<sup>29-30</sup>.

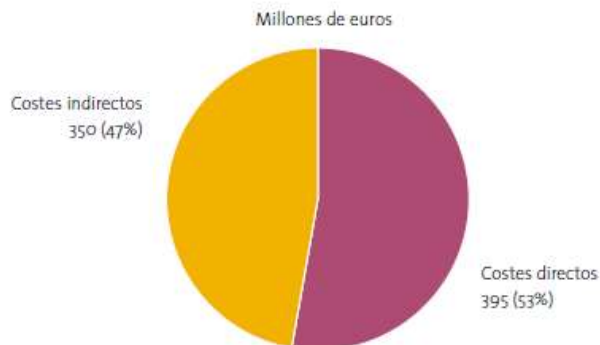
En España, la depresión es un problema de salud pública; es el trastorno mental más frecuente. Se estima una prevalencia de entre el 5% y el 10% de la población general española a lo largo de su vida<sup>13</sup>.

Algunas estimaciones sitúan la prevalencia de la depresión en España en el 10,4% de la población (cuando se incluye tanto la depresión diagnosticada como la no detectada)<sup>31</sup>. Otros estudios la sitúan en torno a un 15% ó un 20% de las personas adultas<sup>32</sup>.



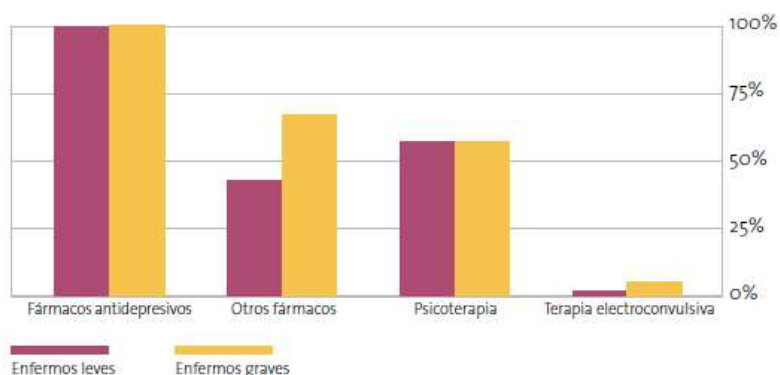
Gráfica 3  
Costes directos e indirectos producidos por la depresión en España.  
Fuente: Ofisalud.  
*El coste social de los trastornos de salud mental en España, 1998.*

## Costes producidos por la depresión en España



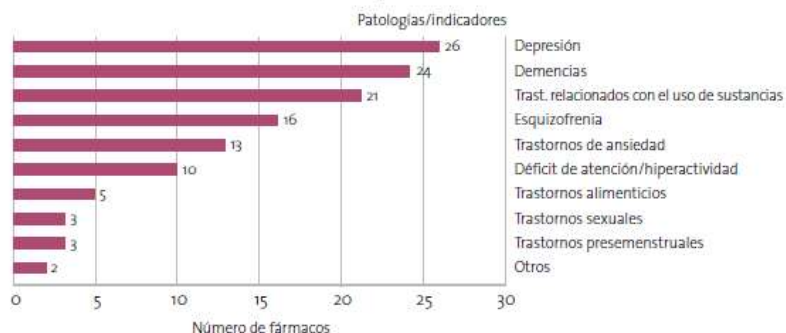
Gráfica 5  
Tipo de terapia aplicada en pacientes con depresión.  
Fuente: Ofisalud.  
*El coste social de los trastornos de salud mental en España, 1998.*

## Terapia en pacientes con depresión



Gráfica 8  
Nuevos medicamentos en desarrollo para los trastornos mentales.  
Fuente: PhRMA 2001.

## Medicamentos en desarrollo para los trastornos mentales



## **Bullying en los colegios**

<http://www.guiainfantil.com/educacion/escuela/acosoescolar/index.htm>

En España, se estima que un 1,6 por ciento de los niños y jóvenes estudiantes sufren por este fenómeno de manera constante y que un 5,7 por ciento lo vive esporádicamente. Los datos varían en función de la fuente de la que procedan y del enfoque a la hora de estudiar el fenómeno.

Una encuesta del Instituto de la Juventud (INJUVE) eleva el porcentaje de víctimas de violencia física o psicológica habitual a un 3 por ciento de los alumnos. Y afirma que un 16 por ciento de los niños y jóvenes encuestados reconoce que ha participado en exclusiones de compañeros o en agresiones psicológicas.

El Defensor del Pueblo señala que el 5 por ciento de los alumnos reconoce que algún compañero le pega, mientras el Instituto de Evaluación y Asesoramiento Educativo (IDEA) indica que un 49 por ciento de los estudiantes dice ser insultado o criticado en el colegio, y que un 13,4 por ciento confiesa haber pegado a sus compañeros.

## **El fracaso escolar se combate en Primaria**

SUSANA PÉREZ DE PABLOS 2 MAR 2010

[http://elpais.com/diario/2010/03/02/sociedad/1267484401\\_850215.html](http://elpais.com/diario/2010/03/02/sociedad/1267484401_850215.html)

La falta de prevención en edades tempranas condena a miles de alumnos de Secundaria - Ya existen vías en 4º, pero no hay recursos - Las diferencias entre autonomías son abismales

Lo que está pasando con la educación no es tan difícil de entender. Ocurre como en la sanidad. Si al enfermo no lo atiendes a tiempo, empeora, te cuesta más caro su tratamiento y además su enfermedad se puede volver crónica. El enfermo es el alumno que en Primaria empieza a tener problemas de aprendizaje, algo bastante común. En casi todas las clases hay alguno....

...Una gran parte del 30% de los estudiantes que fracasa (no obtiene el título de la ESO, el mínimo que existe) ha pasado por esto. Los expertos no paran de repetirlo. El problema que más afecta al fracaso escolar está antes de la ESO. Y, si se le suman las dificultades de la adolescencia, la ESO (que se cursa entre los 12 y los 16 años) es la que paga el pato.

## Pandemia de obesidad

[http://elpais.com/diario/2010/09/25/sociedad/1285365602\\_850215.html](http://elpais.com/diario/2010/09/25/sociedad/1285365602_850215.html)

La OCDE, que agrupa a los países desarrollados, habla de ella como "enemigo público número uno". La Organización Mundial de la Salud (OMS) sostiene que ha alcanzado cotas de pandemia (no infecciosa) y que afecta a casi todos los países occidentales.

La obesidad se ha convertido en uno de los principales problemas sanitarios de los países industrializados. Un informe de la Organización para la Cooperación y el Desarrollo Económicos (OCDE) revela que más del 50% de la población de sus países miembros padece sobrepeso, y que uno de cada seis es obeso....

En España hay un dato especialmente preocupante: uno de cada tres menores de entre 13 y 14 años está por encima de su peso, un dato que ha convertido a este país en el tercero de la OCDE con mayor sobrepeso infantil.

**Es alarmante, porque un niño gordo se convertirá, con toda probabilidad, en un adulto enfermo de obesidad. Y de momento, nada de lo que se está haciendo parece atajar el problema. Las consecuencias serían muy graves económica y socialmente...**

Esta enfermedad está muchas veces acompañada de otras evitables como la diabetes, los problemas cardiovasculares o incluso algunos tipos de cáncer. Además, apunta la OCDE, la obesidad es una enfermedad cara.

**Los gastos de atención médica para personas obesas son, al menos, un 25% mayores que para gente de peso normal.** En España, por ejemplo, esta enfermedad representa, según el Ministerio de Sanidad, el 7% del gasto sanitario español, unos 2.500 millones de euros. Una cifra nada desdeñable....

En España, el 63% de los hombres y el 45% de las mujeres tiene sobrepeso. Pero más alarmante aún es que el 33% de los niños padecen esta enfermedad. Un problema que, afirma Sabrido, va más allá de lo estético, sino que afecta gravemente a la salud

## Sida en España e inmigración: análisis epidemiológico

por María Paz-Bermúdez, Ángel Castro, Gualberto,  
Buela-Casal Universidad de Granada, España

Dentro de Europa Occidental, España es el país con mayor tasa de incidencia y con mayor número de casos de sida diagnosticados desde el año 1994 (Bermúdez, Sánchez & Buela-Casal, 1999; Bermúdez & Teva, 2004a; Bermúdez & Teva-Álvarez, 2003).

### **La hipertensión en España**

**<http://www.larazon.es/noticia/la-hipertension-en-espana-2>**

En España, su incidencia entre la población general adulta es de aproximadamente un 35 por ciento, llegando hasta el 40 por ciento en edades medias y a más del 60 en las personas mayores de 60 años. Así, **«afecta en total a más 12 millones de individuos adultos** y, por tanto, se considera un problema de salud pública», explica Pedro Aranda, presidente de la **Sociedad Española de Hipertensión – Liga Española para la Lucha contra la Hipertensión Arterial (SEH-Lelha)**. En el mundo, se estima que más de 1.500 millones de personas tienen las cifras de presión arterial elevadas....

**.... Los expertos prevén que en 2025 la hipertensión arterial habrá aumentado un 24 por ciento en los países desarrollados y hasta un 80 por ciento en aquéllos en vías de desarrollo.** Aranda apuntó que «el 33 por ciento de los fallecimientos en España se debe a una enfermedad cardiovascular». Casi la mitad están relacionados con la hipertensión arterial, que se cobra 45.000 vidas cada año en España.....

### **Las enfermedades del corazón causan más de 125.000 muertes al año en España**

**<http://www.madridpress.com/noticia/88823/enfermedades-corazon-causan-muertes-ano-espana.html>**

Las enfermedades cardiovasculares siguen siendo la principal causa de muerte en nuestro país. Se calcula que en España se producen más de 125.000 muertes y más de 5 millones de estancias hospitalarias por enfermedades cardiovasculares al año, apunta el Dr. Esteban López de Sá, secretario general de la Sociedad Española de Cardiología (SEC)....

### **Cada año se dan 20.000 nuevos casos de artritis reumatoide en España**

**<http://www.noticiasmedicas.es/medicina/noticias/4632/1/Cada-ano-se-dan-20000-nuevos-casos-de-artritis-reumatoide-en-Espana-/Page1.html>**

Más de 250.000 personas padecen artritis reumatoide (AR) en España, según el estudio EPISER, una enfermedad reumática, autoinmune y crónica que provoca inflamación en las articulaciones, mermando considerablemente la calidad de vida de quien la padece, y que afecta mayoritariamente a la población femenina.

“La incidencia es de un 0,5% de la población, y cada año se dan alrededor de 20.000 nuevos casos”, apunta la Dra. Ana Urruticoechea, miembro del Comité Científico del VI Simposio de artritis reumatoide de la SER y reumatóloga del Servicio de Reumatología en el Hospital Can Misses, de Ibiza.

***EFFECTS ON  
INTERNATIONAL  
RELATIONS:***

***The Hague  
Convention on  
International  
Child Abduction***

# **International Divorce & The Hague Convention**

## **Implications for International Relations**

In large part due to press coverage of international custody battles and widespread networking and “chats” on the Internet, victimization of judicial corruption and violations of the rights of citizens within divorce courts is better documented than a decade ago.

In Spain the most well known case of this corruption is the on-going case of Maria Jose Carrascosa vs. Peter Innes within New Jersey courts. While in the USA the case of Sean and Daniel Goldman, involving the Brazilian judicial system have received widespread media coverage.

While the press coverage these cases (as well as Amanda Knox in Italy and Madeleine McCann in Portugal) have enjoyed is helping to bring to light the growing problem of judicial corruption, they are also creating problems in international relations between governments, and are a political time bomb as these problems grow in numbers and severity.

As the United Nations Division for the Advancement of Women in *Good Practices in Combating and Eliminating Violence Against Women* states that *“the fact that violence against women occurs in cross-border contexts also invites the development of cross-border cooperation..”*

Thanks to the efforts of many activist groups around the world, the plight of victims of domestic abuse and violence and the socio-economic consequences it causes, is a growing concern in our societies.

However, by increasing cross-cultural and cross-border cooperation and activism finding solutions to the issues and problems that communities are confronting in their efforts to protect DV victims and promote the rights of women and children will be facilitated.

Contact between activist groups at local, national and international levels can provide the communication of ideas and development of comprehensive and effective solutions.

In order for legislative solutions to become effective community involvement and grass-root political activism is absolutely essential.

While the Hague Convention on International Child Abduction was in large part a reaction to Betty Mahmoody's story and originally designed to prevent abusive fathers from illegally abducting their children across international borders, it is all too often used by abusive fathers in perpetuating abuse and harassment of their victims.

The Hague Domestic Violence Project, [www.haguedv.org](http://www.haguedv.org), has done extensive research on this phenomenon. The amicus brief on Supreme Court case Abbott vs. Abbott as well as other information can be found on their website.

The American Overseas Domestic Violence Crisis Center identifies the following problems that Americans living overseas are faced with in cases of abuse. However, it should be noted that these problems are experienced by all expatriated women, regardless of nationality.

### **Barriers to American Survivors Living Abroad**

- No access to travel documents
- Abusers at times hide or destroy passports, visas, birth certificates and other necessary documents
- No permission to leave country
- In some countries, travel bans can be legally filed on survivors/children, barring them from leaving the country.
- Abuser may be high ranking in the American Embassy, local government or corporation
- Does not speak the language
- Unfamiliarity with resources and legal system
- No domestic violence laws
- Local services may not be accessible to non-citizens
- Undocumented legal status

## Obstacles Facing Survivors After Returning

- May be homeless, penniless and will probably not be able to recover any personal possessions or assets.
- Protracted international custody cases
- Locating and paying for an international family law attorney
- Reverse culture shock
- Lack of support network
- Does not qualify for services such as shelter transitional housing
- Difficulty finding employment due to a gap in work history
- Credit history does not transfer from abroad
- Abuser might have contacts in US looking for the survivor and children
- Difficulty enforcing US alimony and child support orders in foreign countries.

It should be noted here that **unemployed, expatriated women** face many of the same challenges as those of undocumented migrant women. Not only do they face discrimination as women, but added discrimination as foreigners.

Their residency status and eligibility for work permits are contingent upon their marital status. Upon legal separation or divorce they risk expulsion or deportation, while their children are legally obligated to remain in the country of habitual residence during and after divorce.

Even if they are able to remain in the country in question, in their quest for employment they are faced with language barriers, discriminatory attitudes, norms, and policies towards women and foreigners, as well as lacking local contacts within their field or profession.



Additionally, even though article 5 of the Vienna Convention on Consular Affairs clearly provides for assistance in “preservation of the rights and interests of nationals”, and “interest of minors”, Consulates have consistently failed and refused to assume these responsibilities, under the contention that these are “private matters” and “civil disputes”.

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At the same time the Hague Domestic Violence Project and Abbott vs. Abbott ([www.haguedv.org](http://www.haguedv.org)) clearly demonstrate that:

- A large portion of mothers charged with international child abduction under the Hague Convention are victims of domestic violence, fleeing their abusers,
- Abusive fathers are using the Hague Convention and legal procedures against battered women to perpetuate their abuse.

**This presents yet another situation of *de facto* discrimination against women by governments and government agencies.**

Women in case of divorce under a foreign jurisdiction are by habitual

practice, if not policy, are categorically refused assistance from government agencies (Consulates) in defending their and their children's rights during divorce proceeding and custodial decisions within courts where practices of human, civil and constitutional rights violations are well documented. Under this scenario "State actors" claim that they are not bound by international law, nor under an obligation to protect the rights of their citizens.

However, in the case of international child abduction "State actors" claim that they are bound by international law (the Hague Convention) even when said decisions sustain and encourage cases of *de jure* and/or *de facto* discrimination and human rights violations within the "other" country.

As stated *In Good Practices in Combating and Eliminating Violence Against Women* by the United Nations Division for the Advancement of Women

*"Legal strategies with respect to violence against women need to take account of the explicit and implicit ways law and its implementation has failed women, leaving them unprotected and with no route to redress and justice...."*

*"Discrimination is a cause of, and makes women more vulnerable to, violence. A form of protection, therefore, is the repeal of all types of discriminatory laws including those relating to divorce,...."*

The importance of carefully examining *de jure* and *de facto* discrimination within judicial systems cannot be stressed enough in defending the rights of victims of domestic abuse; which under international law has clearly been defined as human rights violations.

It has also clearly been determined by international tribunals that States have an obligation under the principle of due diligence to protect the rights of victims of domestic violence, and can be held responsible, and liable, for said failure.

**Can this responsibility be expanded to include State actors, namely Consular Affairs civil servants, when said violations are committed against their citizens under a foreign jurisdiction?**

## **Maria José Carrascosa, una vida detrás de los barrotes**

<http://www.abc.es/20100103/internacional-estados-unidos/maria-jose-carrascosa-vida-201001030137.html>

Ésta sido la cuarta Navidad que María José Carrascosa ha pasado en prisión. Por delante tiene, en principio, otras catorce. El pasado 23 de diciembre, víspera de Nochebuena, el juez estadounidense Donald Venezia le impuso una pena de catorce años de cárcel después de que un jurado popular la hallara culpable de nueve delitos: uno por desacato de una orden judicial y ocho por interferencia en la custodia de su hija Victoria, nacida en 2000 fruto de su matrimonio con el estadounidense Peter Innes.

La sentencia cayó como una losa sobre María José y sus familiares, quienes confiesan haber pasado la peor Navidad de sus vidas. Pero lo que más dolió a María José y los suyos fueron las palabras del juez tras dar a conocer la condena: «El suyo es un caso de odio y venganza que ha creado usted, que ha considerado a su hija una mera propiedad, una pieza en el tablero de ajedrez.

Entérese, el juego se ha acabado». María José, quien escuchó la condena encadenada y enfundada en un mono verde de reclusa, no pudo reprimir las lágrimas cuando Venezia le espetó que la sentencia era lo que se merecía por «arrancar» a su hija de los brazos de su padre y de los suyos.

Las siguientes 72 horas las vivió en una celda de aislamiento de la prisión de Hakensack, en Nueva Jersey. Consumió la Nochebuena tirada sobre un catre formado por una fría plancha de acero, dándole vueltas a las palabras del juez y pensando en recurrir la sentencia. No le permitieron dormir en una cama «por si se autolesionaba». Tampoco pudo hablar por teléfono ni con su hija ni con su familia para felicitarles las fiestas. La única concesión fue una manta para protegerse del frío.

Desde que ingresó en prisión, en noviembre de 2006, la española llama siempre que puede a casa para hablar con su hija Victoria, quien vive en Valencia con sus abuelos maternos, aunque la tutela es de la Generalitat Valenciana. El ministro de Exteriores, Miguel Ángel Moratinos, prometió a sus familiares que pondría una línea para facilitar las llamadas. Sin embargo, la promesa sigue sin materializarse. Cada vez que se le permite hacer una llamada —ha habido periodos de hasta cuatro meses en los que no se le ha consentido contactar con sus familiares— María José llama a un amigo estadounidense que desvía la llamada a España.

El afán de su familia actualmente es convencerla para que no recurra la sentencia. Su hermana, Victoria Carrascosa, está convencida de que la Justicia estadounidense nunca le dará la razón ya que, aunque recurriera, no podría aportar nuevas pruebas. Además, es imprescindible contar con una sentencia firme para que María José pueda cumplir su condena en España y un recurso dilataría todavía más el proceso.</CW>

después de que se le extirpara el bazo y parte del órgano afectado. El «cistoadenoma mucinoso de páncreas» que padecía es una alteración «extraordinariamente poco frecuente», según reconocieron los facultativos que atendieron a la española en una clínica de Valencia. Sin evidencias científicas que demostraran las causas naturales de esa patología, los galenos concluyeron en un informe que lo más probable es que la enfermedad hubiera sido causada por factores externos, de forma que recomendaban la realización de estudios toxicológicos complementarios que determinaran si había estado expuesta a alguna sustancia química.

Maruja, su madre, está convencida que sí. Asegura haber visto cómo Peter Innes, ex marido de María José, manipulaba su comida con el propósito de envenenarla. Tres años más tarde, le ha sido detectado un tumor en la pelvis. Su familia cree que podría estar relacionado con las causas del primero, pues no existen precedentes familiares. Sin embargo, a pesar de la insistencia del cónsul español en Estados Unidos para que se le realice una biopsia fuera de prisión, el juez no se lo permite. Tampoco recibe los medicamentos que sus familiares le envían desde España, que son retenidos en prisión tras pasar por el Ministerio de Exteriores y el Consulado. Su único tratamiento son los «genéricos» que le administran en la cárcel, según su hermana Victoria.

### **Encerrona judicial**

Maruja se esfuerza por no perder definitivamente la confianza en la Justicia. Con una mezcla de impotencia y rabia, repite una y otra vez que su nieta no es víctima de ningún secuestro y que cuando la niña salió de Estados Unidos para viajar con sus abuelos a España, hacía más de un mes que Innes, quien nunca se ha preocupado por la manutención de Victoria, había abandonado el hogar familiar en Estados Unidos. «La única secuestrada en toda esta historia es mi hija», asegura.

Posteriormente, la Justicia española otorgó a la madre la custodia de Victoria y le retiró el pasaporte para evitar su salida de España. Innes, a quien los tribunales estadounidenses concedieron la custodia en 2006, perdió sendos recursos presentados ante la Audiencia Provincial y el Constitucional en los que pedía que la niña volviera a Estados Unidos.

La familia de la condenada denuncia que, cuando impuso los catorce años de cárcel, el juez Venezia «chantajeó» a María José al plantearle una reducción de condena si permitía a su hija viajar a Estados Unidos. Sin embargo, Victoria considera que su hermana es víctima de un conflicto entre jurisdicciones y que el Gobierno español, del que afirma no haber recibido el apoyo esperado, debería defender las sentencias dictadas por los tribunales españoles.

«Nos están matando en vida», afirma Maruja para resumir el sentimiento de su familia, centrada en hacer feliz a su nieta Victoria mientras llega el día en el que pueda reunirse con su madre.

**Writ Of Certiorari To The United States Court Of Appeals For  
The Fifth Circuit  
Abbott vs. Abbott**

**Brief of the Domestic Violence Legal Empowerment & Appeals Project (DV Leap,) The Battered Women's Justice Project – Domestic Abuse Intervention Programs, Inc. The National Coalition Against Domestic Violence, Legal Momentum, and the National Network to End Domestic Violence as Amici Curiae Cited Interviews with Domestic Violence Victims Involved in U.S. Hague Cases<sup>1</sup>**

**Interview 3 – Heather and David**

... returned to northern Europe two months later. Heather returned with her children but did not have anywhere to go... Heather received public assistance as, not being a citizen, she could not work...

After several months, immigration served her and her children with a deportation notice to return to the U.S. They have been living in the U.S. since then.

A year later, the interviewee obtained sole physical custody of the children but still has joint legal custody with her abusive ex-husband who lives in northern Europe...

**Interview 4 – Catherine and Jack**

... She had no money, and nowhere to live. She spoke with her **local attorney and U.S. embassy staff, both of whom said they thought Christine should return to the U.S...**

Three months after that, Jack was granted custody of the children, saying that Christine had violated the custody agreement by leaving the country.

Jack filed a Hague petition against Christine six months later. The U.S. court ruled that Christine's children had to return to Jack, and her appeal failed.

After being in the U.S. for a year, Christine's children were returned to her abusive husband. They have experienced physical abuse from him since their return. Christine has returned to Europe and is continuing her efforts to win back custody....

Three months after that, Jack was granted custody of the children, saying that Christine had violated the custody agreement by leaving the country.

Jack filed a Hague petition against Christine six months later. The U.S. court ruled that Christine's children had to return to Jack, and her appeal failed. After being in the U.S. for a year, Christine's children were returned to her abusive husband. They have experienced physical abuse from him since their return. Christine has returned to Europe and is continuing her efforts to win back custody....

### **Interview 6 – Sarah and Miguel**

... A year after leaving, Sarah was served with Hague papers. The case went to trial several months later, and the children were returned to Miguel. Sarah then learned that Miguel had filed criminal kidnapping charges against her for leaving with her children.

In the Hague case, the federal judge ruled that those charges should be dropped.

Sarah returned to the Latin American country to be with her children and began to have some limited, supervised visitation with her sons. A few months later, Sarah learned that the kidnapping charges had not been dropped. She began battling custody and property issues in family court and kidnapping charges in criminal court. Six months later, Sarah was awarded custody of the boys again, but the order was reversed one month later due to a "legal technicality." ...Sarah continued to fight for Miguel to have no visitation rights to the children because she was deeply concerned for their well-being...Sarah is now in hiding with her sons in the U.S., and Miguel has posted her children as "missing" even though he has their email addresses and has not made contact with them.

### **Interview 7 – Diane and Philippe**

... Diane also became increasingly aware of how isolated she and the children were in their life abroad. For example, Philippe would not let Diane go out except to go to work, and he had insisted that the family move to a very remote area of the country. One day, Diane's mother took her to social services where she saw a brochure entitled, "It Shouldn't Hurt to Go Home." Diane saw her own relationship in the description of abuse, which was the first time she really understood that she was in a domestic violence situation.

At this time, Diane was planning to return abroad, and she began to try to contact social services there for support, including a women's aid domestic violence shelter. They originally said they would help her, but then later refused and said they needed to prioritize assisting local women. During this time, Diane also learned that Philippe had not completed Diane's immigration paperwork accurately so she could no longer get back into the country...

### **Interview 9 – Janet and Marco**

... Once they were abroad, Janet was very isolated. She was not allowed to drive or do anything on her own, and Marco controlled all of the family finances. Marco would also consistently call Janet derogatory names. Two years later, Janet got a job outside the home. At this point, the jealousy, resentment, and name-calling by Marco increased...

...from a school psychologist that there was possible sexual abuse of the daughter by Marco. However, the judge insisted that this was not a "grave" as the children were not going to a war zone... A month after filing the Hague petition, local courts in the other country gave Marco sole custody of the children and Janet had no contact with her children for six months. ...She still is not able to have regular

phone contact with her children who are still living in the other country with her abusive ex-husband.

### **Interview 12 – Claudia and Raul**

... Claudia went to the police, who told her to go to the Red Cross, who told her to come back in two days when the bruises were visible, only to turn her away two days later, saying they couldn't help her after the fact. Claudia had no one to defend her, and Raul was well-connected, both to powerful politicians and to drug dealers... Eight months after she came to the U.S., Raul filed a Hague petition and had the police remove the children from her custody...

### **Interview 13 – Rita and David**

... Rita also sought help from a government agency for family development, but David behaved more violently after the agency became involved, and the agency was ultimately not helpful. ...The judge noted that domestic violence was not relevant to the determination. The children returned, but Rita could not immediately return, because David had filed criminal kidnapping charges against her. Rita sought help in the U.S. and was able to find a lawyer in the other country who obtained temporary "immunity" for her... Rita works, and earns enough to help her afford a small house and car...

..During the court case, there was information presented oldest daughter, now 14 years old is in the U.S. living with Rita's parents. Rita does not have enough money to go and see her, and is uncertain if she would be able to obtain a visa for the travel. They communicate via the internet. Rita's children in the other country are having psychological difficulties, including showing aggressive behaviors at school.

### **Interview 14 – Carmen and Rafael**

... Rafael threatened Carmen twice with weapons. The first time, he held an ice pick to her stomach while holding her jaw so tightly he dislocated it. Another time, he held a gun to her head and pulled the trigger. Carmen thought it was loaded and that he was going to kill her. After that, Carmen says she decided to obey everything Rafael said because she was afraid. Rafael hit all the children, sometimes with a belt and left marks.

After they fled to the U.S., her oldest daughter reported that Rafael touched both girls sexually, although he did not rape them. He raped Carmen. She sought help from family services in the other country, but they did nothing. Carmen went repeatedly to the police, but Rafael was a former police officer, and they also did nothing. After Carmen's youngest child was born, she asked for a divorce, in part because her oldest daughter had started standing up to Rafael when he hit her. Rafael refused to divorce Carmen.

The following year, Rafael moved out for a year but came back to the house frequently and was abusive. He found a therapist and asked Carmen to attend with him. The therapist told Carmen that she needed to go back to Rafael. A year later, Rafael's behavior changed,...

She filed another police report, but the police would not pursue it. Rafael pushed her down the stairs while her son watched. He was three years old. Rafael's mother told Carmen to forget about the past and focus on being his wife. It is unclear what finally motivated her to leave.

Carmen had a brother in the U.S., so she came to be with him. Carmen and her oldest daughter had visas and came legally, but her two younger children were smuggled across the border by a coyote. She sought help at an immigrant women's program and was told to file for asylum....

### **Interview 17 – Lindsey and Michael**

... Once in the other country, Michael told Lindsey that he did not want to return to the U.S. Lindsey felt she had been "tricked" and "trapped," especially after she had her first son...

Michael ripped up her passport and the passport of one of her sons. Michael told Lindsey she would never leave again. According to local law, both parents have to agree to get a passport for a child.

Michael did not allow Lindsey to have a bank account, credit card, or money. He monitored Lindsey's phone calls to her family... telling her ways (he could) kill her.

Lindsey felt very afraid of him at this point... She had been told by others in the other country that a person could be detained in a psychiatric hospital if a spouse and a psychiatrist agreed they were mentally ill. Lindsey feared that her husband was trying to have her hospitalized and trying to win the support of the psychiatrist...

Six months after returning to the US, Lindsey received a Hague petition in the mail from Michael. She had no proof of the abusive situation she had lived through in the other country. She says that he was rarely physically abusive to her, and never hurt the children, just neglected them or did bizarre things like taking all of their schoolbooks and burning them in a bonfire.

After losing her appeal, she was ordered to return the children to the other country... Lindsey found the only international attorney in her area of the U.S., and this was who she hired to represent her in the Hague petition. Lindsey had another attorney in the other country who is appointed by the state... but has not worked while living there, in part because the other country restricts the ability of non-residents to work.

### **Interview 20 – Jennifer and Lawrence**

... While there, Jennifer has not been able to work because of her citizenship status and is not fluent in the language... On one occasion, she called the police to intervene in a violent incident. The police told Jennifer that she was crazy and they cautioned Lawrence to "guard the son's paper since he was married to an American woman."...



Jennifer was also asked to return with the child because the judge was not confident that Lawrence could care adequately for the child. Jennifer and her son are currently living in the other country on a tourist visa, which means she cannot work to support them. They are awaiting a judgment from the local courts about custody and visitation arrangements and child support payments.

### **Interview 21 – Amy and Raymond**

.. Amy said “we became prisoners,” because they were isolated in the country, with no money and no help from the police. Amy found pictures taken by Raymond of the children naked with their genitals exposed. She talked to the U.S. consulate staff who advised her that she could go home to the U.S. for a visit with the children. Amy took her sons to the U.S., and tried to get an operation for her younger son who had a severe medical problem.

Raymond filed a Hague petition a few months later.. Amy flew back to the other country at the same time as her children and tried to get the local judge to enforce the undertakings that the U.S. judge required – namely, that criminal kidnapping charges against her be dropped, that the children receive counseling, that the father allow visitation, and that her son receive the operation for his medical problem.

As far as Amy knows, none of these undertakings have been enforced in the other country.... Has been living in various shelters in the U.S. since, she says because Raymond is continuing to harass her by tapping her parents’ phone and having her followed when she lived in an apartment.

She found a new attorney through an international battered women organization and she is continuing to pursue her legal case in the other country....

***Corruption and  
Human Rights:  
Making the  
Connection***

***by the International  
Council on Human Rights  
& Transparency  
International***

## ***Corruption and Human Right: Making the Connection***

### **International Council on Human Rights Policy Transparency International**

The commitments that states have made to combat corruption have run parallel with their commitments to promote and respect human rights. However, international anti-corruption conventions rarely refer to human rights; and major human rights instruments rarely mention corruption. The absence in international law of direct references to the links between corruption and human rights mirrors the way these two issues are discussed politically, but is at odds with experience: in reality many links are evident. P. 19

#### **Why it is relevant to link human rights to corruption**

This report explores the links between corruption and human rights on the assumption that, if corruption occurs where there is inclination and opportunity, a human rights approach may help to minimise opportunities for corrupt behaviour and make it more likely that those who are corrupt are caught and appropriately sanctioned. A human rights approach also focuses attention on people who are particularly at risk, provides a gender perspective, and offers elements of guidance for the design and implementation of anti-corruption policies.

If corruption is shown to violate human rights, this will influence public attitudes. When people become more aware of the damage corruption does to public and individual interests, and the harm that even minor corruption can cause, they are more likely to support campaigns and programmes to prevent it.

This is important because, despite strong rhetoric, the political impact of most anticorruption programmes has been low. Identifying the specific links between corruption and human rights may persuade key actors – public officials, parliamentarians, judges, prosecutors, lawyers, business people, bankers, accountants, the media and the public in general – to take a stronger stand against corruption. This may be so even in countries where reference to human rights is sensitive.

Human rights standards, as established in major international treaties and domestic legislation, impose obligations on states. Focusing on specific human rights will help to identify who is entitled to make claims when acts of corruption occur and who has a duty to take action against corruption and protect those harmed by it.

A clear understanding of the practical connections between acts of corruption and human rights may empower those who have legitimate claims to demand their rights in relation to corruption, and may assist states and other public authorities to respect, protect and fulfil their human rights responsibilities at every level.

Connecting acts of corruption to violations of human rights also creates new possibilities for action, especially if, as we will argue, acts of corruption can be challenged using the different national, regional and international mechanisms that exist to monitor compliance with human rights.

In the last sixty years, following the adoption of the Universal Declaration of Human Rights (UDHR), many mechanisms have been created to hold states and individuals accountable for human rights violations. In addition to judicial accountability, parliamentary reporting plays an important role in many countries, while monitoring by civil society has become more extensive. Intergovernmental institutions have also developed, and the main UN mechanisms are now supported by regional mechanisms such as the European Court of Human Rights (ECtHR), the African Court on Human and Peoples' Rights (ACtHPR) and the Inter-American

Court of Human Rights (I/A Court H.R.). The evolution of national human rights institutions is equally significant. When acts of corruption are linked to violations of human rights, all these institutions could act to force accountability and so create disincentives for corruption. While they do not replace traditional anti-corruption mechanisms – primarily the criminal law – they can give cases prominence, may force a state to take preventive action, or may deter corrupt officials from misusing their powers. They can therefore both raise awareness and have a deterrent effect.

In chapter VI, we examine how human rights mechanisms can be employed to enhance accountability. Taking a human rights approach is critically about empowering groups that are exposed to particular risks. The human rights framework emphasises explicitly that vulnerable and disadvantaged groups must be protected from abuse.

It does so by applying cross-cutting principles – in particular principles that focus on non-discrimination, participation and accountability – that have the effect of empowering people who are disadvantaged. Human rights law requires states to take these principles seriously.

Populations should not be consulted in a superficial manner, for example; they should be allowed and encouraged to participate actively in efforts to fight corruption. A human rights perspective requires policy-makers to ask how the design or implementation of anticorruption programmes will affect people who are marginalised or impoverished, subject to social discrimination, or disadvantaged in other ways.

Adhering to human rights principles implies identifying and overcoming obstacles (such as language differences, cultural beliefs, racism and gender discrimination) that make such people vulnerable to corruption.

While there seems to be agreement that corruption has specific impacts on vulnerable and disadvantaged groups, the incorporation of vulnerability and

gender in the design of anti-corruption programmes is still limited and exceptional. Making fuller use of human rights would help to strengthen these dimensions of policy. The principle of nondiscrimination could be particularly useful as a guide to attain this objective.

Under international treaties against corruption, anti-corruption measures must be compatible with human rights principles and should not adversely affect the rights of those involved.

However, the treaties give little guidance on how officials are to reconcile their commitment to fight corruption with their obligation to promote and protect human rights. Analysing anti corruption programmes from a human rights perspective may assist states to comply with human rights standards when they draft and implement laws and procedures to detect, investigate and adjudicate corruption cases...

### **Vulnerability and disadvantage**

While corruption violates the rights of all those affected by it, it has a disproportionate impact on people that belong to groups that are exposed to particular risks (such as minorities, indigenous peoples, migrant workers, disabled people, those with HIV/AIDS, refugees, prisoners and those who are poor). It also disproportionately affects women and children.

Those who commit corrupt acts will attempt to protect themselves from detection and maintain their positions of power. In doing so, they are likely to further oppress people who are not in positions of power, including most members of the groups listed above. The latter tend both to be more exploited, and less able to defend themselves: in this sense, corruption reinforces their exclusion and the discrimination to which they are exposed.

### **Women**

**Corruption impacts men and women differently and reinforces and perpetuates existing gender inequalities...**Corruption in the legislative and executive branches can allow discriminatory laws to stand, **while corruption in the judicial branch can discriminate against women who do not have the means to pay bribes to gain access to the justice system...**

### **People living in poverty**

Corruption has a severely detrimental impact on the lives of people living in poverty when compared with higher income groups. Corruption not only affects economic growth and discourages foreign investment, thereby indirectly affecting the poor, but reduces the net income of those living in poverty, distorts policies, programmes and strategies that aim to meet their basic needs, and diverts public resources from investments in infrastructure that are crucial elements of strategies to lift them out of poverty.

Where corruption is generalised for example, poor people are as exposed as others to the small-scale bribery of public officials (notably in the healthcare, law

enforcement and judicial sectors) but the effect on their purse will be heavier. Large-scale corruption, meanwhile, damages the quality of public services on which the poor depend particularly, to meet basic needs. Here again they are disproportionately affected.

### **Human rights as preventive measures**

If weak human rights protection may create opportunities for corruption, policies that promote human rights may prevent corruption. This section briefly describes human rights principles that are relevant to the prevention of corruption.<sup>10</sup>.

***The right to freedom of expression, assembly and association.*** These rights enable participation and are vital to efforts to combat corruption. Where governments permit information to flow freely, it should become easier to identify and denounce cases of corruption....

***Political rights.*** Where political rights are not effectively protected, opportunities for corruption increase. Low political participation creates conditions for impunity and corruption.

***The right to information.*** Until recently this right was interpreted as an obligation on states not to obstruct the flow of information. In 2002, however, the African Commission on Human and Peoples' Rights introduced explicitly the notion of a positive obligation to have access to information, and in 2006 the Inter-American Court of Human Rights (I/A Court H.R.) ruled unambiguously in favour of a right to access to public information...

***The right to participate.*** Human rights organisations may also help to promote active participation of people at every level of society and enable them to monitor how well government officials and other actors carry out their responsibilities.

### **Definitions**

The term "corruption" comes from the Latin word *corruptio* which means "moral decay, wicked behaviour, putridity or rottenness".<sup>11</sup> The concept may have a physical reference, as in "[t]he destruction or spoiling of anything, especially by disintegration or by decomposition with its attendant unwholesomeness and loathsomeness; putrefaction"; or moral significance, as in "moral deterioration or decay... [the] [p]erversion or destruction of integrity in the discharge of public duties by bribery or favour...".<sup>12</sup>

These definitions are representative of two common shortcomings: they define corruption only in terms of bribery, or in terms that are very general. As a result, corruption definitions tend either to be too restrictive or excessively broad. In fact, this is not as contradictory as it may seem. Corruption has indeed broad causes and consequences. As Michael Johnston, a Professor at Colgate University, has stated: "In rapidly changing societies the limit between what is corrupt and what is not is not always clear and the term corruption may be applied broadly."<sup>13</sup>

Corruption demands a multidisciplinary approach, and many fields of study, from political science to economics, have addressed the issue. Each has a different perception of the problem and therefore generates different policies: operational definitions tend therefore to start broad and become more specific as they try to render corruption measurable....

*Institutionalised corruption names the behaviour of those who exploit institutional positions to influence institutional processes and actions, such as law enforcement personnel and members of the judiciary;*

According to the United States Agency for International Development (USAID) *Handbook for Fighting Corruption (1999)*, *corruption can assume various forms: "It encompasses unilateral abuses by government officials such as embezzlement and nepotism, as well as abuses linking public and private actors such as bribery, extortion, influence peddling and fraud. Corruption arises in both political and bureaucratic offices and can be petty or grand, organized or disorganized."*

Development banks and other national and international organisations have also variously defined corruption. Probably the most used definition is the one adopted by TI: "corruption is the abuse of entrusted power for private gain".<sup>21</sup>

However, to link corruption with human rights, a definition of corruption based on law is necessary. In the legal field, the term corruption is usually used to group certain criminal acts which correspond to the general notion of an abuse of entrusted power. International conventions against corruption reflect this, since they do not define and criminalise corruption but instead enumerate criminal acts that amount to corruption. the Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union (EU),<sup>23</sup>

#### *Article 2 Passive corruption*

*1. For the purposes of this Convention, the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties shall constitute passive corruption."*...

*...An appropriate legal definition of corruption would therefore be: "corruption is the list of acts criminalised by law under the heading 'Corruption'." It is therefore essential to identify the different acts that fall under the general heading of corruption...*

**Embezzlement** - May be defined as the misappropriation or other diversion by a public official, for purposes unrelated to those for which the assets were intended, for his benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the

public official by virtue of his position. The embezzlement of property can also occur in the private sector in the course of economic, financial or commercial activities.

**Trading in influence** - May be defined as the promise, offering or giving to a public official or any other person, or the solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his real or supposed influence with a view to obtaining from an administration or public authority an undue advantage for the original instigator of the act or for any other person.

For some it is irrelevant whether or not the influence is ultimately exerted and whether or not it leads to the intended result. Trading in influence is also commonly divided into its active form (giving an advantage in exchange for influence) and its passive form (requesting or accepting an advantage in exchange for influence).

**Abuse of functions or position** - May be defined as the performance of, or failure to perform, an act, in violation of the law, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

**Illicit enrichment** - May be defined as a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.



**•It should be noted that due to the enormous quantity of money that is required to defend one's rights and that of one's children during a divorce (\$80,000/€61,000 on average) leaving all to many bankrupt, particularly in cases of domestic abuse, it appears that illicit enrichment applies, even though many involved are within the private sector.**

**Also, related to this problem is the difficulty women have in accessing and acquiring their rightful assets, having to pay 25% of these assets plus hourly fees of (\$300-\$800 (€230-600/hour) to lawyers in order to recuperate them.**

### **Corruption as a violation of human rights**

An analysis of corruption that draws on human rights will emphasise the harm to individuals that corruption causes. From this perspective, it is often taken for granted that corruption "violates" human rights. When people make this claim, they have a range of issues in mind. They mean that, when corruption is widespread, people do not have access to justice, are not secure and cannot protect their livelihoods.... corruption encourages discrimination, deprives vulnerable people of income, and prevents people from fulfilling their political, civil, social, cultural and economic rights...

...UN treaty bodies and UN special procedures have concluded that, where corruption is widespread, states cannot comply with their human rights obligations.<sup>33</sup> Some international documents have even considered corruption to be a "crime against humanity", a category of crimes that includes genocide and torture.<sup>34</sup>

it is necessary to distinguish corrupt practices that directly violate a human right from corrupt practices that lead to violation of a human right (but do not themselves violate a right), and from corrupt practices where a causal link with a specific violation of rights cannot practically be established.

A state is responsible for a human rights violation when it can be shown that its actions (or failure to act) do not conform with the requirements of international or domestic human rights norms. To determine whether a particular corrupt practice violates a human right, therefore, it is first necessary to establish the scope and content of the human right's obligation in question and whether it derives from domestic law, international treaty, custom, or general principles of law.

In this report we focus on obligations that states have voluntarily assumed because they have ratified international human rights treaties....

## Determining when human rights are violated

...Human rights obligations apply to all branches of government (executive, legislative and judicial) at all levels (national, regional and local). According to human rights jurisprudence, an act (or omission) is attributable to the state when committed, instigated, incited, encouraged or acquiesced in by any public authority or any other person acting in an official capacity. From an anti-corruption perspective, it is interesting to note that the UNCAC has a broad understanding of "public official" which includes "any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party" (UNCAC, Article 2) (see textbox 5).

### Three levels of state obligation

It is now commonly understood that states have three levels of obligation in relation to human rights: the obligations "to respect", "to protect" and "to fulfil".

***The obligation to respect*** requires the state to refrain from any measure that may deprive individuals of the enjoyment of their rights or their ability to satisfy those rights by their efforts.

This type of obligation is often associated with civil and political rights (e.g. refraining from committing torture) but it applies to economic, social and cultural rights too. With regard to the right to adequate housing, for example, states have a duty to refrain from forced or arbitrary eviction.

***The obligation to protect*** requires the state to prevent violations of human rights by third parties. The obligation to protect is normally taken to be a central function of states, which have to prevent irreparable harm from being inflicted upon members of society.

This requires states: (a) to prevent violations of rights by individuals or other non-state actors; (b) to avoid and eliminate incentives to violate rights by third parties; and (c) to provide access to legal remedies when violations have occurred, in order to prevent further deprivations.

Non-compliance with this level of obligation may be a vital determinant of state responsibility in corruption cases. By failing to act, states may infringe rights. If they do not criminalise particular practices or fail to enforce certain criminal provisions, for example, they may not prevent, suppress or punish forms of corruption that cause or lead to violations of rights.

The obligation to protect may also provide the link required to show that corrupt behaviour by a private actor triggers state responsibility....

*The obligation to fulfil requires the state to take measures to ensure that people under its jurisdiction can satisfy basic needs (as recognised in human rights instruments) that they cannot secure by their own efforts.*

Although this is the key state obligation in relation to economic, social and cultural rights, the duty to fulfil also arises in respect to civil and political rights. It is clear, for instance, that enforcing the prohibition of torture (which requires states to investigate and prosecute perpetrators, pass laws to punish them and take preventive measures such as police training), or providing the rights to a fair trial (which requires investment in courts and judges), to free and fair elections, and to legal assistance, all require considerable costs and investments.

A violation of a human right therefore occurs when a state's acts, or failure to act, do not conform with that state's obligation to respect, protect or fulfil recognised human rights of persons under its jurisdiction. To assess a given state's behaviour in practice, however, it is necessary to determine in addition what specific conduct is required of the state in relation to each right.

This will depend on the terms of the state's human rights obligations, as well as their interpretation and application; and this in turn should take into account the object and purpose of each obligation and the facts of each case. The term "violation" should only be used formally when a legal obligation exists.

The use of this tripartite typology is a practical analytical tool to better understand the complexities of real situations. They are guidelines that assist us to approach the complex interconnections and interdependencies of the duties that must be complied with in order to achieve protection of human rights. In this regard, it is crucial to keep in mind that other obligations must be considered as well, at all three levels, such as the duty to establish norms, procedures and institutional machinery essential to the realisation of rights; and the duty to comply with human rights principles such as non-discrimination, transparency, participation and accountability.

### **The causal link**

#### *Direct violations*

Corruption may be linked directly to a violation when a corrupt act is deliberately used as a means to violate a right. For example, a bribe offered to a judge directly affects the independence and impartiality of that judge and hence violates the right to a fair trial. When an official has not deliberately caused the harm in question, due diligence becomes the test. If a violation of human right was foreseeable, did officials exercise reasonable diligence (all the means at their disposal) to prevent it? In such cases, the responsibility of the state depends both on the specific circumstances and the right violated.

Corruption may also directly violate a human right when a state (or somebody acting in an official capacity) acts or fails to act in a way that prevents individuals from having access to that right.

### *Indirect violations (corruption as a necessary condition)*

In other situations, corruption will be an essential factor contributing to a chain of events that eventually leads to violation of a right. In this case the right is violated by an act that derives from a corrupt act and the act of corruption is a necessary condition for the violation.....

Corruption may also be an indirect cause where corrupt authorities seek to prevent the exposure of corruption. When a whistleblower (someone investigating or reporting a corruption case) is silenced by harassment, threats or imprisonment, or killed, the rights to liberty, freedom of expression, life, and freedom from torture or cruel, inhuman or degrading treatment may all be violated. In such a case, in addition to the original act of corruption that the whistleblower was trying to denounce, it is highly probable that the acts that subsequently infringed his or her rights would also have corruption as a cause (for example, corruption at the level of law enforcement). Again, acts of corruption will then be essential factors in the violation.

## **6. Summary Review of a Human Rights Violation**

Identify the corrupt practice.

- Establish what corrupt act is involved (bribery, embezzlement, etc.).
- Identify perpetrator(s):
  - ❖ A state actor (e.g. a government official) or someone acting in partnership with a government official (e.g. if a private party commits the violation, but government officials are significantly involved in ordering, furthering or allowing the violation; or, if government officials commit the violation, private parties are significantly involved in furthering it);
  - ❖ A private party through the failure of the state to prevent it.

Identify the state's human rights obligations.

- Study the scope and content of the human right in question;
- Establish what were the acts or omissions of the state required by the right in question.

Identify the victim(s).

- Identify who is the rights-holder of the human right in question;
- Identify the harm;
- Establish if the harm suffered by the victim reflects the failure of the state to respect, protect, or fulfil the human rights in question.

Evaluate the causal link between the corrupt practice and the harm.

- Establish how direct the connection is between the corrupt act and harm suffered by the victim on the one hand, and the content of the human right and the

obligation required from the state on the other hand:

- ❖ Direct: the corrupt act itself goes against the content of the human right;
- ❖ Indirect: the corrupt act is an essential factor in the chain of events that led to the infringement of human rights;
- ❖ Remote: the corrupt act itself does not violate human rights.

Evaluate the responsibility of the state for the damage caused.

- Determine if the state has undertaken an effective investigation and prosecuted those found responsible;
- Determine which forms of reparation would be adequate for the given case (e.g. restitution, compensation, satisfaction, etc.).

### **Linking acts of corruption with specific human rights**

This chapter provides an analytical tool that should assist in determining when and how violations of human rights and acts of corruption can be connected. It begins with a description of the scope and content of different human rights that have been developed by international human rights bodies. It goes on to provide specific examples of how the content of specific rights can be violated by acts of corruption, as the latter have been defined by the UNCAC.

This is one of the several stages necessary to determine the links between acts of corruption and violations of human rights that we identified in the previous chapter....

While we address each right separately, the interdependency of human rights should be kept in mind. In practice, corruption is likely to affect the enjoyment of several rights simultaneously.

### **When corruption may violate the principles of equality and non-discrimination**

The principles of equality and non-discrimination are fundamental principles of human rights. The principle that every individual is equal before the law and has the right to be protected by law on an equal basis is affirmed in all the main human rights treaties..

Four features of this definition are relevant with respect to corruption.

First, acts of discrimination are defined widely ("any distinction, exclusion, restriction or preference"), and corrupt acts intrinsically distinguish, exclude or prefer.

Second, the definition lists a number of "grounds" for discrimination (race, religion, colour, sex, etc.) but those grounds are not exclusive; inclusion of the term "or other status" shows this. As a result, discrimination on *any ground is prohibited*.

Third, the definition of discrimination prohibits acts that have a discriminatory "purpose or effect". By definition, corruption has both a discriminatory purpose and a discriminatory effect. Fourth, discrimination must bring about the specific result of nullifying or impairing the equal recognition, enjoyment or exercise of a human right, such as the right to life, right to education or right to health. Many corruption cases have such effects; they create distinctions, or exclude, restrict or prefer, in ways that impede individuals from exercising one or more rights.

At the same time, discrimination can take place even if no specific right (apart from the right to equality) is affected. Article 26 of the ICCPR prohibits discrimination in law or in fact in any field regulated and protected by public authorities, and its application is not limited to those rights which are provided for in the ICCPR.

### **When acts of corruption may violate the rights to a fair trial and to an effective remedy**

**The right to a fair trial is established in several human rights treaties as well as domestic legislation (e.g. ICCPR, Article 14; ECHR, Articles 6 and 7; ACHR, Articles 8 and 9; and ACHPR, Article 7). It is composed of a broad range of standards that provide for the fair, effective and efficient administration of justice.**

These standards address the administration of justice including the rights of the parties involved, the efficiency of procedure and effectiveness. We address each below. Again, it should be noted that, when referring to the scope and content of the right to due process, we are applying standards that human rights supervisory bodies have developed on the basis of treaties that are binding on states that have ratified them.....some important "soft law" standards are also relevant – like the Bangalore Principles of Judicial Conduct established by the Judicial Integrity Group. "Soft law" standards do not have the same binding authority as treaties....

**Bangalore Principles:** *1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.*

*1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.*

### **IMPARTIALITY**

*Principle:*

*Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.*

*Application:*

*2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.*

*2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.*

### **INTEGRITY**

*Principle:*

*Integrity is essential to the proper discharge of the judicial office.*

*Application:*

*3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.*

*3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.*

### **EQUALITY**

*Principle:*

*Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.*

*Application:*

*5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").*

*5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.*

*5.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.*

*5.4 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.*

*5.5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.*

### **COMPETENCE AND DILIGENCE**

*Principle:*

*Competence and diligence are prerequisites to the due performance of judicial office.*

*Application:*

*6.1 The judicial duties of a judge take precedence over all other activities.*

*6.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.*

*6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.*

*6.4 A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.*

*6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.*

*6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.*

*6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.*

In the context of the judicial system, corruption may be defined as "acts or omissions that constitute the use of public authority for the private benefit of court personnel, and result in the improper and unfair delivery of judicial decisions. Such acts and omissions include bribery, extortion, intimidation, influence peddling and the abuse of court procedures for personal gain".<sup>36</sup> "Private benefit" includes both financial or material gain, and non-material gain...This definition of judicial corruption covers a wide range of acts carried out by actors at different points in the judicial system (the judiciary, the police and prosecutors).

**...such acts imply a direct violation of the right to due process.**

**It may be that public perceptions of judicial corruption are incorrect or exaggerated. However, the judiciary cannot afford to ignore such perceptions: the causes need to be identified and remedied, because judicial authority finally depends on public acceptance of the moral integrity of judicial officials.**

**Standards relating to the administration of justice**

These standards require compliance with several principles, including the independence, competence and impartiality of tribunals. Corruption may jeopardise judicial independence in several ways.



...In addition, corruption affects the administration of justice and the right to a fair trial when corrupt acts take place before a case reaches court, often at the investigation level.

**Standards related to the rights of the parties involved** - Other standards protect the rights of parties to a trial. Individual rights and principles related to the right to a fair trial include: the right to a public hearing and pronouncement of judgement; equality of arms; presumption of innocence; freedom from compulsory self-incrimination; the right to know the accusation; adequate time and facilities to prepare a defence; the right to legal assistance; the right to examine witnesses; the right to an interpreter; the right to appeal in criminal matters; the rights of juvenile offenders; no punishment without law; *ne bis in idem* (not to be punished twice for the same act); *ex post facto* (law that makes illegal an act that was not illegal when committed); **and the right to compensation for miscarriage of justice.**

These are basic rights to procedural guarantees to which all human beings are entitled. If acts of corruption impair any of these elements, there would be a violation of the right to a fair trial. Acts of corruption might take the form of a bribe for a favourable judgement, **or a more subtle infringement of the principle of equality during the trial process (such as impeding some parties from being in a procedurally equal position during a trial).**

#### **Standards related to efficiency of the procedure**

**Standards that refer to efficiency require that hearings take place “within reasonable time”.** According to human rights bodies, the determination of the meaning of “undue delay” or “expeditious procedure” depends on the circumstances and complexity of the case as well as the conduct of the parties involved...

**Vulnerable groups and the right to a fair trial** - Several factors prevent vulnerable and disadvantaged people from gaining access to courts and tribunals: they include economic costs, lack of information, complex and bureaucratic procedures, barriers of language and geographical distance.... Because they are generally poorer than men, **women tend to bear the brunt of such injustice.**

According to human rights standards, states should adopt appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice. In addition, to prevent corruption at judicial level, states must put in place appropriate procedures that make access possible for groups at particular risk, including provision of information about their legal entitlements, legal aid, facilities that enable them to communicate in a language they understand, and mechanisms for reporting abuses and corruption....

While anti-corruption organisations have analysed these problems at length, **human rights organisations have not yet engaged deeply with judicial**

ensure that this can occur. Ending an ongoing violation is also an essential element of the right to an effective remedy.<sup>37</sup> A state that fails to investigate allegations of violations or bring perpetrators to justice is in breach of the ICCPR. Effective administration of justice is essential to enjoyment of this right. To achieve this, states must ensure that equality before the courts is established by law and guaranteed in practice. **Corruption in the administration of justice infringes both the right to a fair trial and the right to an effective remedy.**

In sum, from a human rights perspective a good system of fair trial requires compliance with numerous international human rights standards and norms. **States are required to organise their judicial system in a manner that respects the requirements of due process. If states do not take measures to organise their judicial systems effectively and to give judges, court staff, prosecutors, attorneys and police officers sufficient capacity to deal with cases, they may create the conditions for corruption.**

If there is corruption in the justice system, it is probable that some of these standards are not respected. This may provide opportunities to challenge the process or specific decisions even in cases where a supposed act of corruption cannot be proven.

### **The three levels of state obligations**

As mentioned, states have an obligation to respect, protect and fulfil human rights. Regarding economic, social and cultural rights (ESC rights), the *obligation to respect requires states to refrain from interfering directly or indirectly with these rights*. The *obligation to protect requires states to prevent third parties from interfering in any way with the enjoyment of ESC rights*. **The obligation to fulfil requires states to take positive measures to assist individuals and communities to enjoy their rights.**

**The obligation to fulfil requires special attention.**

**Ensuring that social programmes are properly regulated and accountable is the most effective way to reduce corruption. If accountability is to be sustained, moreover, it will be important to ensure that the beneficiaries of such programmes, including disadvantaged and marginalised populations, are consulted and involved in decisions about their design, implementation and monitoring.**

**Participation needs to be authentic; members of the public need to have good access to information, and have opportunities to express their opinions, and have their opinions heard....**

**Threats to human rights that anti-corruption advocates face** - Those who campaign against corruption and call for transparent government often themselves become victims of human rights violations. Risks and threats take many forms.

Journalists and anti-corruption defenders are often harassed, threatened and sometimes killed to prevent them from making corruption cases public.<sup>48</sup> Whistleblowers are silenced by imprisonment, threats or violence. Sometimes those who investigate or report instances of corruption find themselves facing criminal charges that have been fabricated or applied inappropriately (laws against dishonouring the government or subversion, for example, or national security laws).

**While governments are entitled in law to deprive individuals of their liberty, they cannot do so in an illegal or arbitrary manner and use of that power must comply with legal standards of due process** that are designed to prevent its abuse and misuse.<sup>49</sup> Criminal procedure must be fair, and should comply with established legal standards. If these standards are not met, the human rights of those accused are violated.

**Human rights mechanisms that protect anti corruption advocates and prevent abuses** - Those who campaign against corruption or call for transparent government do not necessarily think of themselves as human rights advocates and may not use the term “human rights” when describing their work. When they expose corruption cases they are nevertheless seeking to make institutions accountable, end impunity and improve the quality of government, and these activities are also human rights objectives.

Journalists too, may be acting as human rights defenders when they investigate and report on corruption cases. All such people need and deserve protection because of the work they do.

The most useful “special procedures” are the UN Special Rapporteur on the situation of human rights defenders; the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on Arbitrary Detention; and the UN Special Rapporteur on extrajudicial, summary or arbitrary execution.

When the rights of an anti-corruption advocate are violated or threatened, it is possible to send a “communication” (a letter, fax or cable) to these bodies, documenting the violation in question. They can make concerns public and, where an advocate is in serious danger, can write to the authorities for clarification or request action that will guarantee the rights of the person at risk. Anti-corruption advocates and organisations should be encouraged to use these mechanisms systematically.<sup>50</sup>

## **15. UN Human Rights Reporting and Accountability Mechanisms**

The UN has developed two distinctive types of human rights procedures. The main *Charter-based mechanisms* are the *Universal Periodic Review (UPR)* and the *Special Procedures* (Special Rapporteurs, Independent Experts and Working Groups) of the Human Rights Council. The *Treaty-based mechanisms* are *committees created under* the terms of international human rights treaties to

supervise and monitor compliance with those treaties. They include the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, and the Committee on the Rights of the Child.

There are four kinds of treaty-based mechanisms: (a) a reporting procedure; (b) an inter-state procedure; (c) an inquiry procedure; and (d) a complaints procedure. *Reporting procedure. Most human rights treaties include a system of periodic reporting.*

A State Party (that is, a state that has ratified the treaty in question) is obliged to report periodically to a supervisory body on measures it has adopted to implement the treaty's provisions.

Its report is analysed by a committee, which comments and may request further information. In general, treaty reporting procedures are meant to facilitate a "dialogue" between the supervisory body and the state. At the end, the committee usually publishes "Concluding Observations".

In these statements, several treaty monitoring bodies have explicitly affirmed that corruption violates human rights, though they have done so in broad terms.

For example, the Committee on Economic, Social and Cultural Rights has noted that "States face serious problems of corruption, which have negative effects on the full exercise of rights covered by the Covenant [ICESCR]" (E/C.12/1/ADD.91), while the Committee on the Rights of the Child has said that it **"remains concerned at the negative impact corruption may have on the allocation of already limited resources to effectively improve the promotion and protection of children's rights, including their right to education and health"** (CRC/C/ COG/CO/1, para. 14).

*Inter-state procedure. Under some human rights instruments (for example ICCPR, Article 41; Committee against Torture (CAT), Article 21; and European Court of Human Rights (ECtHR), Article 33), a state may initiate a procedure against another state that is considered not to be fulfilling its obligations under the instrument. In general, such a complaint may only be submitted if both states have recognised the competence of the supervisory body to receive this type of complaint.*

*Inquiry procedure. This mechanism allows the supervisory body to investigate particularly severe or systemic violations of human rights in a country, at its own initiative or on the basis of reliable information.*

*Complaints procedure. Several international conventions make it possible for individuals or groups of individuals to bring a complaint to an international monitoring body alleging a violation of human rights. The procedure can be brought to a body of experts for quasi-judicial adjudication*

or for a binding decision to an international court such as the European Court of Human Rights (ECtHR), the Inter-American Court of Human rights (I/A Court H.R.), or the African Court on Human and Peoples' Rights (ACtHPR). Some other regional courts may also be useful such as the Court of Justice of the Economic Community of West African States, the Southern Africa Development Community Tribunal, and the East Africa Court of Justice.

It should be added that, although the above mechanisms have potential to assist victims of corruption, both by providing redress and drawing attention to abuses, they have been poorly utilised.

### **Opportunities for collaboration**

Collaboration may nevertheless not be easy to achieve. One obstacle is that anti-corruption specialists often find the language and concepts of human rights alien and abstract. They generally do not use human rights mechanisms and complain that human rights violations and corruption. Sensitising the media to corruption, and linking it to human rights violations, has enormous educational and advocacy potential.

To combat corruption in the long-term, it will be essential to change the attitudes towards corruption of younger people. If the next generation grows up perceiving corruption to be normal, the battle has already been lost. The media have a great capacity to influence the development of anti-corruption awareness among young people.

**Working beyond borders** - Much corruption is international; it involves the jurisdiction of two or more states. It may be associated with transnational organised crime (money laundering, drug trafficking); foreign states may be implicated; transnational companies may use corruption to obtain contracts. NHRIs and human rights organisations should develop alliances and working methods that enable them to address acts of corruption outside the jurisdiction of one state.

**CONCLUSION:**

***The Inter-relation  
of Domestic Abuse  
as a Human Rights  
Violation,  
Discrimination Against  
Women, and  
Judicial Corruption***

In conclusion we turn to the model provided in *Corruption and Human Rights: Making the Connection* in evaluating the failure of family courts to protect and defend the rights of victims of domestic abuse as well as prevent discrimination against women within the courts as a human rights violation and within the context of corruption.

*Identify the corrupt practice*

- *Establish what corrupt act is involved (bribery, embezzlement, etc.).*
- *Identify perpetrator(s):*
  - ❖ *A state actor (e.g. a government official) or someone acting in partnership with a government official (e.g. if a private party commits the violation, but government officials are significantly involved in ordering, furthering or allowing the violation; or, if government officials commit the violation, private parties are significantly involved in furthering it);*
  - ❖ *A private party through the failure of the state to prevent it.*

*Identify the state's human rights obligations.*

- *Study the scope and content of the human right in question;*
- *Establish what were the acts or omissions of the state required by the right in question.*

*Identify the victim(s).*

- *Identify who is the rights-holder of the human right in question;*
- *Identify the harm;*
- *Establish if the harm suffered by the victim reflects the failure of the state to respect, protect, or fulfil the human rights in question.*

*Evaluate the causal link between the corrupt practice and the harm.*

- *Establish how direct the connection is between the corrupt act and harm suffered by the victim on the one hand, and the content of the human right and the obligation required from the state on the other hand:*
  - ❖ *Direct: the corrupt act itself goes against the content of the human right;*
  - ❖ *Indirect: the corrupt act is an essential factor in the chain of events that led to the infringement of human rights;*
  - ❖ *Remote: the corrupt act itself does not violate human rights.*

*Evaluate the responsibility of the state for the damage caused.*

- *Determine if the state has undertaken an effective investigation and prosecuted those found responsible;*
- *Determine which forms of reparation would be adequate for the given case (e.g. restitution, compensation, satisfaction, etc.).*

### Identify the corrupt practice

There exists a systematic lack of due process and discriminatory practices against women within family courts, and criminal courts in cases of domestic abuse and violence.

In examining the **corrupt practices involved** we see a myriad of techniques involved which are as follows:

**Bribery** – *“the promise, offer or gift, to a public official, or the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or another person or entity, in order that the official act or refrain from acting in the exercise of his official duties.”*

While bribery of lawyers, judges, psico-social teams, law enforcement officials, etc. appears to be relatively infrequent, the phenomenon does exist and should not be categorically discounted in individual cases and merits more attention in research.

**Embezzlement** – *“the misappropriation or other diversion by a public official, for purposes unrelated to those for which the assets were intended, for his benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his position.”*

The unfair division of assets seems to be such a common occurrence in divorce courts that it is not even considered embezzlement. However, due to the widespread lack of due diligence during the process of discovery, and judicial decisions which fail to recognize assets under common property law, the defraud of assets of one party or another falls under the definition of embezzlement.

**Trading in influence** – *“the promise, offering or giving to a public official or any other person, or the solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his real or supposed influence with a view to obtaining from an administration or public authority **an undue advantage for the original instigator***



***of the act or for any other person.”***

Patriarchal prerogative and priority as well as bias against women is so integrated into the beliefs of judicial actors that favoritism for men and discrimination against women is not even considered corruption. However, under art. 14 and section 9 of the Spanish Constitution

### **Section 9**

- 1. Citizens and public authorities are bound by the Constitution and all other legal provisions.*
- 2. It is the responsibility of the public authorities to promote conditions ensuring that freedom and equality of individuals and of the groups to which they belong are real and effective, to remove the obstacles preventing or hindering their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life.*
- 3. The Constitution guarantees the principle of legality, the hierarchy of legal provisions, the publicity of legal statutes, the non-retroactivity of punitive provisions that are not favourable to or restrictive of individual rights, the certainty that the rule of law shall prevail, the accountability of public authorities, and the prohibition of arbitrary action of public authorities.*

### **Section 14**

*Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.*

In *Integrating Human Rights in the Anti-Corruption Agenda Challenges, Possibilities and Opportunities* by the International Council of Human Rights Policy this type of influence is referred to as “Invisible power—“Invisible power” is even more insidious.<sup>17</sup> It occurs when people fail to recognise their real interests because they have internalised values that in fact benefit others. This form of power is exemplified in gender relations.... ensure that in their own actions and judgements they do not, themselves, reproduce or legitimise forms of invisible power that are discriminatory.”

**Abuse of functions or position** – “May be defined as the performance

*of, or failure to perform, an act, in violation of the law, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.”*

This type of corruption is the one most commonly found in family courts and responsible for the majority of lack of due process and violations of rights during all levels of the judicial process. This may begin with a law enforcement's efforts to dissuade victims of abuse from filing a formal complaint and their low prosecution rates. It can also be seen in the failure of lawyers to effectively act in the interests of clients due to their own personal biases, prejudice, or abusive personality disorder.

Perhaps the most widespread and well-documented form of this corruption can be found amongst psycho-social teams whose bias towards male prerogative and “diagnosis” of a “syndrome” (PAS) that is lacking in scientifically established protocol as well as a clear defined and officially recognized definition is clearly an abuse of power, further compounded by judges' reliance on these discriminatory recommendations.

Of additional importance is the failure of social service organizations (government funded or NGO's) to assist victims of domestic abuse. As seen in reports, the most important element in protecting the rights of victims is competent legal counsel who are trained in the defense of victims of domestic abuse. However, the associations in Spain are totally deficient in providing this fundamental service, as well as other necessary services.

In terms of discriminatory traditions and customs / *“invisible power”* within judicial systems are double standards in different areas of law.

For example, while marriage is a contract it is not considered under the same principle and standards as other contractual agreements. Secondly, while homemakers work, their work is not accorded the same principles or standards as all other employment. Thirdly, crimes committed by spouses or parents against another family member are not held at the same level of gravity or standards as those committed

in the work-place, school or general public. Closely, related is male and patriarchal prerogative which considers the rights and interest of fathers above others within the family unit.

Another area which merits consideration is the fact that the same standards used in judging under-developed and/or Muslim societies in their treatment of women is not applied to western/developed societies. For example, a divorced woman in a Muslim country who is not accorded any claim on her children or any family assets is “proof” as to Muslim’s oppression of women, but the same situation in western courts is considered “bad luck” or worse the fault of the woman for not having hired a competent lawyer.

No fault is accorded to the incompetent lawyer, the State agencies who license and regulate lawyers who fail to act in the interest of their clients, negligence of psico-social teams, or judges who hand down discriminatory decisions.

Along the same lines horrific, violent crimes against women in Muslim countries are denounced as human rights violations and proof as to the savagery of Muslims but the same crime in western countries is an “isolated incident”. Perhaps, the cases which struck me the most in my research were 2 incidents where a judge (in the USA and another in Spain) decided that “we cannot consider this abuse as the husband only doused his wife with a flammable liquid, threatening her with a lighter, but did not actually set her on fire....”

The fact that Spanish (and western) government agencies are not taking positive action in examining and reversing the discriminatory customs and decisions that result in the violations of rights and lack of due process within Spanish family courts indicates a clear lack of diligence on the part of the Spanish State.

### **A States human rights obligation**

The Declaration of Independence 1776, Declaration of the rights of Man and the Citizen 1789, Spanish Constitution 1978 clearly establish a democratic States’ obligation to protect, defend and promote the interests of its citizen.

*A vs. UK, Velazquez vs. Honduras and Gonzales vs. USA* clearly defines domestic abuse and violence as human right violations with a State obligated to assure due diligence of State and non-State actors in protecting victims. This obligation exists at various levels:

- Existence of public services and environment which contributes to the **prevention of domestic abuse and violence**
- Existence of public services, including judicial systems, which through positive action, effectively **protect and defend the rights, liberties, and interests of domestic abuse and violence,** including but not limited to **due process under the law**
- Existence of public services, including judicial systems, which through positive action, effectively **reverse practices and traditions which contribute to the discrimination of women and minority groups** within the private and public sector as well as the general public
- Effective and real mechanisms and procedures which provide for **reparations to victims of domestic abuse and violence at the hands of their abusers as well as all State and non-State actors who have failed to exhibit due diligence in the prevention of said abuse, the protection of the rights and interest of victims (including due process) and the reversal of any and all discriminatory practices.**

In examining the **scope and content of human rights violations** it is important to evaluate not only situations which are created by the lack of due diligence, but also the role government regulatory agencies play in directly or indirectly allowing those situations to develop.

As demonstrated in reports herein, lawyer incompetence is estimated at 75%, reliance on psico-social teams who demonstrate clear bias in favor of men is at 85-88%, biases against women in custodial and financial decisions is around 70%, while competence rates of judges is not even studied.

In light of the growing divorce rates (40-75%) within our societies, as well as the far-reaching consequences of their decisions, the lack of competence of family courts is of increasing concern as a public policy issues. The failure of governments to recognize and assume

responsibility for their failure to address the problems created by negligence, incompetence and corruption within child protection services as well as family courts goes beyond just a lack of due diligence; it amounts to State sanctioned human and civil rights violations.

The contention of governments that “they are doing the best they can given their limited resources”, “the enormity of the problem is beyond their control”, “but, it has always been done this way”, etc. is COMPLETELY UNACCEPTABLE.

First, government agencies lackadaisical attitude towards professional misconduct and failure to impose strict sanctions on the industries that they regulate is directly responsible for the lack of accountability. This is mainly due to conflict of interest/nepotism situations amongst many high and middle level civil servants and those they are suppose to be regulating.

Second, the enormous, bureaucracy and lack of efficiency of civil servants is directly responsible for these organizations inability to fulfill government’s obligations to protect and defend its citizens rights, freedoms and liberties. These organizations are often managed by upper-level management who close personal, professional or nepotistic ties with those they are regulating create conflict of interest and the opportunity for favoritism and corruption, while all too many low-level support staff are primarily interested in life-long job security, with little incentive to be productive or efficient.

However, perhaps the greatest problem are the de-motivating factors within these cumbersome agencies. The rigid-hierarchal structures, where antiquated managerial methods are pervasive stifle motivation, initiative, and enthusiasm. Since these organizations by definition lack competition, (which would naturally promote “efficiencies within the markets”) office politics become the dominating factor, rather than efficient productivity.

Most government agencies are still run under the same principles, methods and structures of a 100 years ago, and the fundamentals upon which they are based and managed have completely changed while the organizations have failed to adapt.

At the same time citizens in western societies have become increasingly complacent in their sense of duty to their communities, where an attitude of “that’s the government job” prevails. Creating an over-burden of responsibility for the public sector, as well as an environment of *laissez-faire* in terms of accountability for public officials and civil servants.

In the end we have a situation where those who espouse less government, fail to assume comprehensive social responsibility by private sector actors where less government would be feasible. And, those who promote expansion of government support social services which by design promote an ever expanding “generation after generation” society dependent on welfare. It is a “snow-ball” effect which becomes a bigger and bigger problem as the societies advances.

Unfortunately, in order to rectify this situation politicians, citizens and all of its institutions will need to completely reform not only the way they function, but the archaic way in which they think. The greatest problem is the prevalent attitude of *ordinatio prerogative & privilege* within the public sector which is completely contrary to their obligations under democratic principles.

The **causal link between the corrupt act and the harm inflicted** is both direct and indirect. Any and all actions by law enforcement officials, court personnel or judges that infringes upon a citizens right to due process or any articles of the constitution, civil code, law or international treaties is a direct violation. While the lack of due diligence of State actors and non-State actors (including legal counsel) to defend the rights of a citizen, or foreign national, or promote their interests is an indirect or remote violation.

While the most obvious harm suffered by victims of said violations is loss of life in case of murder or suicide, physical and/or emotional pain and suffering in case of physical, sexual or psychological abuse, and financial loss and emotional suffering in case of long legal battles or embezzlement of rightful assets.

However, it is also important to examine how these violations harm and damage a society at large.

1. It sends a message to the abuser, and other abusers, that abuse and violence will be condoned and encouraged
2. Many abusers are engaged in illegal activity (white-collar crimes, corruption of officials in the private and public sector, money-laundering, embezzlement, organized crime, violent crimes, etc.) and failure of the courts to uphold laws and sanction their abuse sends them a message that illegal activity is acceptable and even encouraged.
3. Corruption in the judicial system damages the image of a society in the international arena as well as confidence of foreign investors and reticence to invest in the country in question.
4. Abusive and violent behavior is learned and passed on from one generation to another, and by according custody of children to abusive parents, and sanctioning that abuse, it assures that sexual, physical and psychological abuse and violence will survive and flourish within a society.
5. Abusers are often involved in neo-Nazi movements and perpetrators of hate crimes contributing to social unrest as well as an erosion of democratic principles. These personality types also end up in other extremist groups such as religious sects.
6. Victims of abuse develop emotional problems, psychological disorders, substance abuse problems, and general health problems which are directly responsible for unsustainable health care costs within all of our societies.
7. Victims of abuse fail to develop personalities and skills which contribute to a healthy economy. The worst cases develop into perpetual welfare recipients, often reproducing off-spring who also become perpetual welfare recipients draining financial resources from the society. The "lighter" cases fail to develop the cognitive and organizational skills that allow them to optimally contribute to the organizations in which they work (private and public sector), as well as erratic and irresponsible consumer spending habits which contribute to economic instability in a society.

In **evaluating the responsibility of the State for the damage caused** we may first establish that since a government's powers emanate from the people, that these people possess a number of inalienable rights (defined and enumerated in international treaties on human and civil rights), governments possess a responsibility to protect and defend the rights and liberties of their citizens and those residing within their borders.



Therefore, since domestic abuse has clearly been recognized by international tribunals (*A vs. UK*, *Velasquez vs. Honduras*, and *Gonzales vs. USA*) as a human rights violation with governments obligated to protect these victims under the principle of due diligence, States are responsible for all and any damage that their negligence causes to the victim(s) as indirect/residual damage enumerated above.

In light of the extensive reports and statistical data presented in this study, calling particular attention to the reports by Amnesty International, as well as extensive news coverage of the domestic violence and deaths in Spain each year, the lackadaisical response in investigating, prosecuting and/or sanctioning violations by State and non-State actors within individual cases creates an environment where future widespread violations are assured.

Not only is the Spanish State (as are other States) negligent in their duties to assure that State and non-State actors within judicial systems execute their jobs with due diligence, if not the highest integrity, they are furthering compounding their negligence by denying to international bodies as well as the general public that the violations are occurring, and failing to take positive action that future violations will not occur.

**In terms of adequate reparations & actions, the only acceptable possibility is an AN IMMEDIATE INVESTIGATION by governments & international organization into the various aspects of the problems presented in this study as well as a comprehensive, exhaustive investigation into individual case by impartial commissions, with STRICT SANCTIONS & PENALTIES FOR GUILTY PARTIES.**

Within in my own case, Gonzalez de Alcala vs. Wilcox, I was perfectly clear that every single violation the transpired was being documented and that every single legal avenue would be pursue. The response on every occasion was **“Lady we do this all the time! Who ya gonna tell?!?”**

And effectively, since

- Regulatory agencies are refusing and failing to investigate the negligence and malpractice of the various implicated judicial actors
- Legislative branches are failing to investigate the negligence and inaction of regulatory agencies
- Politicians are justifying their inaction with empty excuses of ‘judicial independence’, ‘sovereignty rights’, and ‘private law’

**Judicial actors are at total liberty to violate the rights of citizens during judicial proceedings with total impunity & ‘no one listening’.**



# Breaking the Cycle of Domestic Violence with International Conventions

