

Family Courts in Crisis
Newsletter
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Amnesty International
What Specialized Justice?



Violence Against Women is a Human Rights Violation:
Whenever and Wherever it Occurs

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Ingrid Betancourt

Abuse and Torture Go Far Beyond Broken Bones, It Breaks the Heart & Spirit & Is So Designed

by Quenby Wilcox – September 2009

In 2001 I attended the inauguration of the Spanish version of Ingrid's Betancourt's book *La Rage au Coeur*, in Bogota, Colombia, and her ensuing presidential campaign speeches. While I was impressed with her convictions, enthusiasm, and desire for peace and change for her country, I felt that she could never achieve in Colombia what is unattainable in the United States and Europe. I followed her 6 years of captivity in the Colombian, Spanish, French and American press closely and admired Astrid and her family's never ending persistent, to liberate Ingrid. I know enough about the dynamics and political backdrop of her liberation to know that without the efforts of Ingrid's family, she, and those freed with her, would have been left to die in the jungles of Colombia by the "important" people of this world.

However, it was upon reading the following passage in her book *Letter to My Mother* that was published during her captivity, that I thought to myself; ***"This is exactly the torment and fear that I have lived for the past 3 years, and that all too many women and children around the world live for an entire lifetime. And, no one really cares, as I have learned the hard way!"***

This is where the true battle lies for peace and democracies, not in political campaigns and politically correct rhetoric!

I owe an enormous amount of gratitude to Ingrid and Astrid. At the end of 2007 I realized that my children would end up under the custody of their emotionally unstable father, and his and his family's influence and mercy. In my desperation, I contacted every association whose mission is to help women in my situation and anyone and everyone I have known during my life-time, who have any kind of "power," asking for their assistance. THE ONLY person who provided any assistance was Astrid Betancourt.

The amount of people who provided me with empty rhetoric and promises, ignored me, or slammed the proverbial door in my face was amazing. The apathy and indifference of people over the life of a woman and her children stunned and disillusioned me more than I had even been in my entire life, and is precisely why what happened to me and my children occurs everyday, everywhere.

Additionally, for the first time in my life I was presented with a problem that I did not know how to handle or confront, and had no one to turn to for advice. It was in re-reading Ingrid's book *La Rage au Coeur* that she gave me the advice and answer that I needed.

I will be indebted to these two women for the rest of my life, not only did they assist me in a practical way, but they have given me the strength to continue fighting day after day, by observing the courage and force that they had shown in face of horrifying challenges and

adversities. After 6 years of living in Colombia with security concerns of my own children and family, witnessing kidnappings, homicide and terrorist attacks, I can appreciate the emotional strain that Ingrid's captivity was for the entire family.

The entire world would do well to look to these two women, their mother, their children and family to see where true values lay, whether it be of a family or nation. True values, morals and integrity are not to be found on a slip of paper, whether they be on marriage certificates, birth certificates, constitutions, declarations of rights, or legal codes, but rather through love, honor and dignity. And, I have observed Ingrid and Astrid demonstrate all three of these on various occasions over very many years.

LETTER TO MY MOTHER
by Ingrid Betancourt

This is a very dense jungle where sunlight scarcely ever penetrates, and it is barren of affection, sympathy, or tenderness. They separated me from the people with whom I had a good rapport and affection and put me in with a very difficult group. I am tired, Mamita, tired of suffering. I have been, or tried to be, strong. These nearly six years of captivity have proven that I am not as resistant, not as brave, not as intelligent, not as strong as I thought.

I have put up many battles, have tried to escape several times, have tried to keep up hope like one keeps one's head above water. But, Mamita darling, I give up. I would like to think that one day I will get out of here, but I realize that what happened to the congressmen which affected me so deeply-could happen to me at any moment. I believe it would be a relief for everybody.

I keep thinking that at last I am going to cry no more, that it has now healed over. But the pain starts up again and attacks me like a vicious dog, and I again feel my heart breaking into pieces. I am tired of suffering, of bearing it all inside me all the time, of lying to myself, of believing that this will soon end and finding that every new day is the same hell as the one before. I think of my children...

We have gone through so much together, have lived our lives so intensely that terra firma seems to have disappeared in the distance. They are the same, and yet they have changed, and with every second of absence, of my inability to be there for them, to assuage their pain, to be able to advise them or give them strength and patience and humility in the face of life's blows, all the lost opportunities to be their Mama, poison these moments of infinite loneliness for me, as if I were given an intravenous injection of cyanide.

Mamita darling, this is a very difficult moment for me. They demand a proof of life and here I am pouring my heart out to you on this sheet of paper, I am in poor physical condition. I haven't been eating; my appetite has shut down; my heart is falling out in clumps; I have no desire for anything. And I think the latter is the only thing that is right-having no desire for anything. Because here in this jungle the only answer to everything is "No." It is better not to want anything so as to be free, at least, of desires....

I would like to ask you, Mamita darling, to tell the children that I want them to send me three messages a week, on Mondays, Wednesdays, and Fridays. Ask them to send you a couple of lines to your e-mail address so that you can read them to me. Nothing world-shaking, just whatever

they can think of to write, such as "Mamita, today is a marvelous day" or "I'm having lunch with Maria; I love her very much and I know you are going to be pleased with her" or "I am exhausted but I learned a lot today in class about new filming techniques that I'm excited about." I don't need anything more, but I do need to be in contact with them. In fact, everyday I wait anxiously to see if you are going to mention them or if you talked with them. That is what makes me happy, the only thing I care about knowing, the only vital, significant, indispensable information. All the rest doesn't matter to me.....

Well as I was telling you, life here is no life; it is a gruesome waste of time. I live, or survive, in a hammock strung between two poles, covered with mosquito netting and a canvas that acts as a roof, which to keep my belongings, that is to say, the knapsack with my clothes and a bible my only luxury. Everything is prepared for leaving on the run. Here, nothing is one's own, nothing lasts; uncertainty and precariousness are the only constant.....

Everyday less and less of myself remains..... Everything is hard. That's the reality. It is important that I dedicate these lines to those who are my oxygen, my life-to those who keep my head above water, who do not let me drown into oblivion, emptiness, and despair. They are you my children.....Tell them that they have never ceased to be my source of joy in this harsh, captivity. Everything here has two sides, joy comes with pain, happiness is sad, love cures and opens new wounds; to remember is to live and to die anew.....

I was telling you that for years I was unable to think of the children because of the dreadful pain it cause me not being with them. Now I can hear them and feel more joy than pain. I seek them in my remembrances and sustain myself with the images I keep in my memory of the ages of each. I sing "Happy birthday" to them on every birthday I celebrate their birthdays in my heart.... And, if I were to die today, I would go satisfied with life, thanking God for my children.....

For a long time, we have been the lepers that mar the Ball, we captives are not a politically correct topic..... We must think of where we come from, who we are, and where we want to go. I aspire to our having that thirst for greatness one day that makes people rise up from nothingness to the sun. When we are unconditional vis-avis the defense of the life and liberty of our own, that is, when we are less individualistic and more committed to the common good, less indifferent and more involved, less intolerant and more compassionate, then at that time we will be the great nation (world) that all of us would like to be. That greatness is there asleep in our hearts. But hearts have hardened and weigh so heavily that no elevated sentiments are permitted....

...The wars waged against the freedom of a handful of forgotten ones are like a hurricane seeking to bring down everything. It is of no interest. His intelligence, his nobility, and his devotion have given pause to many, and here, more than the freedom of some poor crackpots chained up in the jungle, it is a matter of taking stock of what it means to defend human dignity.
Ingrid Betancourt

Until dignity, honor and peace exist within our homes, it will never exist within our communities, societies and this world.

Quenby Wilcox



What Specialized Justice?

After 7 years of the Integrated Law on Violence Against Women;
Obstacles to accessing and obtaining justice and protection

By Amnesty International



INTRODUCTION

"We cannot help them if they do not file a complaint. We cannot help them, it is not only the government but the entire society at stake here, if these women do not denounce the aggressors".

Ana Mato, Ministra de Sanidad, Servicios Sociales e Igualdad. Press conference, June 25, 2012.

"He can hit me, he can beat me, but I am not going to file another complaint against him".

Dominican woman whose protection order was denied
and case closed for her two complaints for gender violence in 2012.

According to officials, since the Law for Protection Orders for Victims of Gender Violence was passed (and later the Integrated law) from January 2005 to November 8, 2012, 503 women have lost their lives at the hands of their partner or ex-partner in Spain...

It is estimated that in all of the Spanish territory more than two million women have suffered abuse at the hands of their partner or ex partner at one time in their lives. Close to 600,000 in the last 12 months. While in the first years of the development and application of the integrated law, specifically between 2006 and 2007, there was a high level of complaints filed for domestic violence (a 150,000 increase over the previous year), in the last four years (2008-2011), the number of complaints have declined.

The hidden violence, meaning, non-denounced violence but detected through statistical studies represent 73% of all abuse.

The factors which prevent women from filing complaints for domestic abuse are varied. When an aggressor is the partner or ex-partner, the capacity and ability of the women to defend herself against the violence is all the more impaired. The continual insistence of officials that it is women who “must” denounce said violence so that they might be protected and receive support, shows to what extent officials do not understand the dynamics of the situation. As well as being ignorant to the problems created by deep-rooted discrimination....

Instead of justifying the inaction of institutions by contending that it is the “obligation” of the woman to denounce the violence, authorities should verify the effectiveness of the legal protection available and identify the obstacles that, in the law and its application, impede women from accessing and obtaining justice and protection.

Along these lines, the focus of attention should be **the response of the State in relation to its obligations to respect and uphold the rights of the victims of domestic violence by providing them with effective remedies in order to obtain justice and protection under procedural guarantees that assure that they are not discriminated against.**

The experience of the women who file complaints can shed light on the response of the system and whether they correspond **with international norms that obligate the Spanish State to exercise due diligence in the persecution of crimes, in the investigation of the facts, and the protection of those who have filed the complaints and who are at risk.**

FOCUS ATTENTION ON JUDICIAL ACTIONS

The integral law established the creation of the courts on the Violence of Women (JVM) as specialized organs and with the competence to understand and instruct criminal procedures on crimes of domestic violence. Also, established are provisions that determine criminal courts and sections of the specialized regional courts.

... Since the first years of the creation of the JVM, the organization was alerted by various reports about **the persistence of obstacles that existed before the passage of the integral law and that inhibited women from accessing protection and justice, for example, obstacles in legal representation or in the negation of protection orders for women.**

Along these lines, the organization insists the government and Consejo General del Poder Judicial (Judicial Review Board) evaluate the functioning of the JVM, in conjunction with the

women who have filed complaints, in order to comply with objectives guarantee in newly created laws.

Seven years after having been passed there has not been **an evaluation of the law, even though there are worrisome numbers that should call for an in-depth analysis of the judicial organs**. These numbers highlight elevated number of judicial dismissals (closed cases and provisional dismissals for domestic violence), that started to increase from the very first year of the existence of the JVMs. The dismissal implies a lack of access to protection, to justice and reparations... According to information obtained, **the majority of acquittals were handed down for lack of evidence**.

BEHIND THE NUMBERS: THE ADVERSITY EXPERIENCED BY PLAINTIFFS IN ACCESSING JUSTICE

The elevated number of acquittals, amongst other worrisome numbers, as well as frustrating experiences of plaintiffs in their efforts to obtain justice, has prompted Amnesty International to conduct an investigation in 2012 examining cases that illustrate the obstacles that the victims are facing. The investigation includes documentation of cases, interviews of professionals and representatives of women's organizations that are in the first line of contact with victims of domestic violence.

From the information obtained, the organization has identified six areas of special preoccupation which show a serious lack of protection and/or lack of due diligence. In particular, the organization has identified a lack of due diligence in the obligation to provide information to the victims, to assure assistance of quality legal representation, to encourage an investigation that clarifies the facts of the situation, and guarantees adequate, respectful and non-discriminatory treatment towards the plaintiff during the entire process.

1. THE RIGHT TO BE INFORMED ABOUT YOUR RIGHTS: NOT FOR ALL WOMEN

In spite of the fact that the integrated law establishes the right of the victim of domestic violence to **dispose of information about her rights**, the organization continues to document cases of women without effective access to these basic rights, that must be assured from the beginning. It is preoccupying that these obstacles are even greater for some women with less understanding of the language and/or their rights and the functioning of the criminal system.

2. LEGAL ASSISTANCE: DEFICTS IN THE AVAILABILITY AND QUALITY

The integrated law established the rights of the victim of domestic violence to be assisted by a lawyer from the first moment of filing their complaint and solicit, if necessary, a protection order... In the documented cases of recent complaints (filed in 2011-2012), **the majority of women met with their lawyers a few minutes before the court hearing....**

It is preoccupying that the **quality of legal representation is not guaranteed for all women and that it depends, in large part, on the interests and sensibilities of each professional.** The organization has documented cases that reflect a preoccupying lack of training of lawyers and a low level of diligence in the exercise of their important function. This includes serious negligence such as not appealing the acquittal handed down by the judge, or not introducing evidence which the victim has given them.

"The lawyer did not do anything, absolutely nothing. They brought in their witnesses and my lawyer did nothing. I do not know if they requested a protection order or not. And, they even said: 'Do you know that you are lying to this court?' Accusing me of having lying in the complaint".

Victim of a serious physical aggression with a complaint filed in August 2012 without an official investigation and without the lawyer having introduced a declaration of witnesses, who could have corroborated the facts of the plaintiff.

The witnesses of the victim noted the **total inaction of the lawyers**, in contrast to the major action by the lawyer of the defendant... The organization also has received testimonies from cases where women had been **coerced by their lawyers to restrict their stories to events regarding the last aggression. This decreasing the quality of their defense, as it reduced proof as to their suffering as "habitual violence"**. Also, they have documented cases that show a lack of preparation between the woman and her lawyer, including the failure to assist during judicial hearings, including verbal hearings.

ELENA decided to denounce her ex-husband after five years of psychological and sexual violence and his continual threats after the separation. When she received the judicial citation, she called her court-appointed lawyer and asked for a meeting to prepare for the hearing, to which the lawyer responded that they would meet one hour before the hearing. The day of the hearing, she and her daughter (an adult and direct witness to the majority of aggressions) arrived at the court one hour before, but the lawyer was not there. After a half hour of waiting, Elena call the lawyer who said that another case had come up and a colleague would be assisting her. Ten minutes before entering the hearing a lawyer arrived, and after telling her that he was not a specialist in domestic violence, he told her not to worry. Elena remembers entering in the waiting room; a moment for which no one is prepared. *"I saw a series of people seated, which no one presented to me when I entered, and I did not know who they were"*. She remembered that she was not well treated during the interrogation in which, she as well as her daughter, were asked questions which were made in order to discredit her testimony. Her lawyer remained silent during the entire interrogation and did not ask any questions. Upon leaving the court, Elena remembers having felt terrible. Days later she received an acquittal for lack of sufficient evidence. The principle argument [for the acquittal] was that during the hearing Elena and her daughter had shown antagonism towards the accused.

3. LACK OF DILIGENCE IN THE JUDICIAL INVESTIGATION

Domestic violence is particularly difficult to prove as it is generally happens in the privacy of one's home. Additionally, victims are often in an extreme state of confusion when they arrive at court, a day or two after having filed the complaint. In spite of difficulties, and the fact that legally the responsibility of an investigation of the case falls upon the presiding judge (or on the JVM in case of domestic violence), it is worrisome that, **if the victim does not supply the proof necessary to corroborate the facts, the case is dismissed without even a minimum of official investigation.**

The lack of diligence in the official investigation creates a situation where the victims, in spite of being in a difficult emotional situation, are obligated to **initiate the process, deliver the evidence, and file motions, so that the investigation moves forward and that the case is not dismissed for lack of evidence.**

LOURDES (22 years) told her boyfriend that she wanted to break off the relationship, after almost 3 years of continual threats and aggressions. He did not accept the break-up and started to harass her. One afternoon, after his insistence, Lourdes accepted that he come over so that she could explain her decision, but her ex-boyfriend, far from wanting to talk with her, threatened to kill her, locked the door of the house, kept the keys and beat her for around a half an hour. He hit and kicked her entire body, concentrating on the head, grabbed her neck and bit her. Lourdes told Amnesty International *"that day, I thought he was going to kill me. (...) when tired of beating me, he broke some of the furniture in the house, took my money and other things, threw my cel. phone on the floor and left. I did not know where I was. My head ached like it was going to explode."* The neighbors who had heard the screaming, went to help her when he had left. They saw him leave. When she recomposed herself, Lourdes went to the commissary, where the agents took her to the hospital and afterwards to her house. The next day they were notified of the complaint. After she was in the court, she met with her attending lawyer who did not introduce any evidence from any of her witnesses that she had told him about. On the other hand, the defendant used the testimony of two people as an alibi. People who testified that in the moment of the aggression, he was in another city. The judge did not accept any type of evidence and, after doubting the story of Lourdes, and considering that she had waited several hours before filing her complaint, decided that there was no evidence that the person responsible for her wounds was her ex-boyfriend. The judge denied the protection order, and dictated a provisional acquittal.

At present, Lourdes has been able to re-open the case after an appeal that was written on her behalf by a women's rights association and supported by the District Attorney, that had opposed the dismissal. The lawyer of the association solicited the gathering of evidence, which proved the facts of the case.

Also, Amnesty International has documented cases in which the victim, through her lawyer, **proposed testing which are then refused by the courts because they consider them "unnecessary". Then, in the same resolutions the courts accord an acquittal because "there is not enough evidence that a crime was committed."**

ANA, 6 years old, began from a very young age to reject her father saying he "hurt her". When she was four she started to present physical signs of sexual abuse (after returning from visits with her father she was diagnosed with vaginitis).

In the hours before visits with her father she suffered insomnia, nightmares, eating disorders, serious panic attacks and inflicted wounds on herself. At five years old, Ana told her mother and a professional about the sexual abuse suffered at the hands of her father during her visits with him. The mother of Ana denounced the abuse and presented evidence to the courts, also presented were the medical reports and psychological exams of the girl, and other related documents from services that had treated Ana (child psychiatric hospital, emergency rooms). After filing the complaint, Ana was ordered to submit to an interview with the judge, the District Attorney, her lawyer, and a forensic expert. During said interview she once more told about the sexual abuse she had suffered, and asked for protection from the judge.

Before finishing the interview, Ana was asked to repeat with gestures, using her own body parts, where and how her father had aggressed her. Upon this request, the girl became paralyzed and refused to continue and hid her face in her coat. This reaction and mature words of Ana were interpreted by the judge as a lack of credibility of her testimony. After the interview, the judge dictated a provisional dismissal for *“lack of indication of a crime”*, in which he contended that *“the testimony of the girl is not credible. In addition, her testimony appears totally induced by her mother, with whom she lives. The girl has made improper declarations for a child of her age, and in moments when not asked to make comments said she preferred to die rather than be with her father.”*

In the same ruling the judge decided to refuse expert exams and the introduction of testimonies from the girl's lawyer, both of which could have clarified the facts of the case but ruled them “unnecessary”. The acquittal resulted in the family court's immediate re-instatement of visitation rights of the father, under the threat of changing custody of the child to the father and a fine of €500/month to the mother, if the girl did not resume visits with the father.

In respect to the intervention of the **District Attorney who has the responsibility for assuring that justice is served and, that the criminal process is followed with appropriate investigation of the evidence, a different responses has been observed.** In general, the organization has noted that in cases of physical violence, and cases involving recent incidents with medical exams documenting the violence, the District Attorney is fulfilling his duty in the criminal process, formulating accusations and opposing acquittals. However, in cases where the violence is not evident and providing proof of said violence needs verification and investigation, **it is noted an inaction and the lack of diligence by the District Attorney in assuring proper diligence in the investigation and clarification of the facts.** Also noted is an inaction in assuring that the rights of the victim are respected during the criminal process, including effective access to information.

4. WITHOUT “PHYSICAL WOUNDS”, THE OBSTACLES MULTIPLY

The deficiencies in official investigations increase when the violence is not physical, nor recent, nor documented with wounds. Amnesty International has noted that in case of habitual psychological and/or sexual abuse or violence, without recent wounds, there exists even more difficulties that the complaints of the victim are taken seriously. In spite of the fact that **violence towards women is usually habitual violence, courts usually only consider the most recent episode** (punctual aggressions and isolated threats), and only the most visible and that which require no investigation. This causes an **underestimation of the behavior, taking it out of the context of the control, fear and power that it produces.**

Of all of the cases documented by Amnesty International, the victims of physical, emotional, and sexual violence at the hands of their partner or ex-partner over many years are not considered, but are only judging these as isolated incidents.

It is preoccupying **the lack of investigation into cases of psychological abuse; threats and other forms of psychological violence.** Amnesty International has documented cases in which this type of conduct, which has a huge impact on the psychological integrity of women, is not duly investigated and ends with impunity of the aggressor.

MARTA considered her passage through the courts as “absolute defenselessness”. In October 2011, after re-affirming her desire to separate, her husband started a campaign of abuse, humiliation, control of her movements, and death threats, that had such a detrimental impact that she fell into a profound depression, to the point that she even had suicidal thoughts. During more than six months, the ex-husband of Marta, serigraph by profession, with the tools of his trade and posted insults and humiliating messages on the walls of her home, children’s playground, medical center, their child’s school, and other places that she frequently went to in the neighborhood. The day that the insults were posted on the walls of her parent’s home, Marta felt even more guilt and decided to file a complaint against her ex-husband. She was well received by the police who compiled evidence, took photos, and took testimonies that were sent to the courts. Once in the JVM, the complaint of Marta was treated as acts lacking injuries, forgetting the psychological impact of the continuing abuse, with the judge absolving her aggressor for lack of proof. In the following complaint, Marta presented, with a notary act, the various death threats that she had recorded on a tape recorder, but they were not taken into account and the court once again handed down a absolution for lack of proof.

Marta related what she felt after the judicial resolution: *“The second complaint, was all a show with notary acts of the recordings, but why? For what? I ask for a protection order which they did not give me; here there is no protection if a knife has not been stuck in you. I told the judge that the day he comes after me with a knife it will be too late... It was something like ‘I am sitting here in my chair, and if you bring me the proof’ (...). The notary acts, I don’t believe the judge even read them”.*

5. THE COUNTER-COMPLAINT AS A STRATEGY OF IMPUNITY

Amnesty International is very preoccupied about the practice, documented through case studies, of the filing of counter-complaints against victims by aggressors, regarding wounds inflicted by women trying to defend themselves, and in some cases where no wounds have been inflicted. As a consequence of this strategy hundreds of women each year can be condemned to sentences similar to those of their aggressors, **resulting in extreme re-victimization.** Also, the information collected, including the testimonies of women victims, have documented that the double standard used against victims who have filed complaints, is being used by some aggressors in negotiations with victims so they do not present themselves at the hearing, and thereby both are absolved of wrong-doing.

It is preoccupying that **mandatory specialization established in the integral law has not assured the necessary training so that the judges act with diligence** in differentiating between domestic violence and “conflict of couple,” or mutual violence.

According to reports (published in 2011) about victims of domestic violence who have been murdered the Consejo General del Poder Judicial (Judicial Review Board), three of the women killed in 2010 had had complaints filed against them by their murders.

The day that Amnesty International interviewed Elena, she said she was psychologically crushed. None of her complaints for domestic violence had ended in condemnation of her aggressor. However, she had just found out that the presiding judge had accepted a complaint presented against her by her aggressor for the crime of “false complaint”.

She related what she felt to have received an accusation from the District Attorney, requesting the opening of a verbal hearing and fining her 3,000 euros: *“I went to the court, that was handling my case, and I thought: but what is this? I thought it was a summary trial, but they took me to criminal court! All of my complaints against him had been closed with him absolved of all guilt. And a totally false accusation against me, they accept in order to continue destroying me, and they give him cause!”*.

6. PREJUDICE AND DISRESPECTFUL TREATMENT IN OBTAINING TESTIMONY OF THE VICTIMS

Contrary to what occurs in other types of crimes, the victims of domestic violence customarily face prejudices that put in doubt the credibility of their testimonies, which place a very heavy burden of proof on them to demonstrate the veracity of their stories. In respect to the principle of the presumption of innocence, it must be accompanied by a diligent investigation by the courts, as no one can be condemned without proof. But the courts are not complying with their obligation when they close a case or absolve an alleged aggressor without ever having carried out an investigation, basing their decision exclusively on the lack of credibility of the testimony of the victim.

These prejudices appear to be held not only by judges, district attorneys, and other judicial actors, but also the lawyers of these women. Cases of women who face comments and suspicion regarding the falseness of complaints is well documented...

The lack of diligence in the investigation and the existence of prejudices regarding the veracity of the victim's story means that, except for medical reports and/or expert opinions (with the majority of acts happening in privacy), the testimony of the woman is the main (or only) proof that the courts have. This means that in the key moment of the investigation the declaration of the victims, puts her in a situation of extreme pressure. Cases have been documented that shows tough interrogation of the victims in the courts. In the absence of other proof that documents the aggressions, it appear that the courts look for reasons to “discredit” the testimony of the victim.

This judicial practice is contrary to what is recommended by international organizations which have emphasized the importance of utilizing all the means of investigation, including the most advanced techniques, in order to document the facts, always preserving the integrity and intimacy of the victims.

MARÍA is a woman of 29 years old who had survived physical, psychological, and sexual violence. She suffered wounds that prevented her from walking for six months and continued to receive serious threats and aggressions during more than four years after the last the court cases.

Denouncing these facts, but without any results, caused her to flee her place of residence. Maria held onto the hope that in court she would be able to tell her story and that, by this she would finally find justice and be protected.

However, her expectations were frustrated and her aggressor was absolved. Today, two and a half years after the hearing, she continues to be threatened by her aggressor and remains in hiding in a town where she is not even registered in order not to leave a trail. During her interview with Amnesty International, she described the oral hearing:

"I came here to tell everything, how he mistreated me and made my life impossible. And, how I had to leave everything, and that he is living his life in liberty... And, I found that they question if I am crazy, because I went to see a psychologist at one point in my life, because I decided to abort his child, because his is an abuser... and all of this is important. And, when I want to speak, 'but me... they throw into the street, and follow me', the answer is 'do not proceed, refer to the court decision, Miss, the 2nd of August?' And they change the dates, the district attorney asks me about things that happened on different dates... And I said, that is not true, it is true that that happened, but not on those dates nor in that way... And, the judge says 'ah, then it did not happen?'."

My lawyer, they did not let him ask questions, they cut him off. With him they spent a few minutes and with the defense attorney, more than a quarter of an hour. They asked me everything, bringing up things about my private life, in front of everyone, and I thought: I am not here for them to judge me! I came here to tell them that this man has mistreated me and continues to mistreat me day by day, and you are not doing anything. And they did not let me. I left destroyed, destroyed (...). In the hearing they talked about everything minus abuse."

"I can proof it, but they won't let me. I could, but they have to listen to me (...). I remember that I had wanted to tell them what happened with my own words, but the judge would not let me, it was only: yes or no".

Reflections of a woman interviewed by
Amnesty International whose complaints did not end up in condemnation against her aggressor.

There are many documented cases in which these women cannot express themselves in their own word, which in many cases represent a large part of their lives; testimonies and examination of the facts are always restricted to a punctual episode of violence.

In some interviews women **remembered having been treated with little respect by the people who should be guaranteeing their rights in the judicial hearings: the presiding judge of the JVM.**

"The judge, looking at me with a tone of reproach, said 'Oh I see that he hits you and enters the home.... This is incredible! You do not know if you have a protection order or not, and he enters your home?...' they were not at all interested; the fact that the judge was a woman, makes her attitude even more horrible ... (noting that the judge spoke to the plaintiff using the informal you form 'tu')."

In the moment of the declaration, I answered in the informal 'tu' and she scolded me: Use usted when you are speaking to me! It frightened me. I thought, I am suppose to have respect for her. And, her for me? He tried to kill me and I have come to do something about it... it left me really bad. I left and I broke down crying."

CONSEQUENCES OF ACTIONS AND OBSTACLES IN ACCESSING PROTECTION AND JUSTICE

The documented cases represent serious lack of diligence by the administration of justice. All of these women and children have encountered judicial procedures that are not adapted to their necessities, with obstacles that prevent them from obtaining justice and have not facilitated the just resolution of their cases. The acquittal or absolution for lack of proof has had a serious impact on the lives of the victims and in the behaviour of the aggressor. Amnesty International want to call attention to:

- **Adverse impact in the process of recuperation for these women**

The limited investigation by the courts, the lack of believing the testimonies, the treatment received and the impunity of the aggressor are experiences that generate frustration in the plaintiffs. Some have returned to psychological therapy in order to cope with the emotional impact of the traumatic experience in the criminal process. Two women that went to the JVM described that their frustration increased because when they filed the complaint they had believed that the attention would be better coming from a “specialized” court.

- **Losing confidence and seeking protection from the justice system**

A traumatic experience under enormous fragility, and having to go through a judicial process means that these women **lose confidence in the justice system which dissuades them to file another complaint**. Amnesty International has documented cases of women who, after not having obtained justice, nor protection, have ended up living in hiding in other cities fleeing the threats and abuse of their aggressors. These women exemplify, with their lack of liberty and security, the inadequate responses of the administration of justice and the lack of confidence that these responses generate.

- **More power for the aggressor and repetition of abuse**

The aggressor due to the lack of reprimand for his violent behavior from the courts, feels empowered to repeat his abuse. In all documented cases, the dismissal or the absolution has caused the aggressions to reproduce.

- **Consolidation of professional malpractice**

The organization regrets that even in face of the creation of the JVM's, they have not developed a system of following the lack of good practices, nor detected and corrected the cases of the lack of diligence. The lack of effective mechanisms to assure accountability of professionals when they fail to comply with the duty to act with due diligence, can consolidate this type of actions. **Noting that in Preliminar 859-13*

(7/2013) the Bar Association of Madrid claims that the violation of the rights of a victim of domestic violence and discrimination against women by her own lawyers “exclusively affect fundamental rights recognized in the Spanish Constitution (CE) and norms in international agreements, and not in any way norms under ordinary laws” AND THEREBY PROTECTS LAWYERS FROM ANY WRONG-DOING. (Demonstrating a lack of recognition of the hierarchy of judicial norms.) And, that the malpractice and negligence of implicated lawyers are “decisions by lawyers [that] fall under their independence, prerogative that assist in the execution of their function as provided for under article 542.2 of the Ley Orgánica del Poder Judicial, 33 of the Estatuto General de la Abogacía and 2 of the Código Deontológico de la Abogacía Española, [and] THAT IMMUNIZES THEM FROM ALL INTERFERENCE AND IS THE EXCLUSIVE TERRITORY OF THE DEFENSE, WITHOUT ANY POSSIBILITY OF A DEONTOLOGICAL REVISION” (Showing lack of recognition of art 1, 9, & 10 of the Spanish Constitution, inter alia by the Colegio de Abogados.) See Preliminar 859-13 <http://worldpulse.com/node/80671>

RECOMENDATIONS

Amnesty International urges the Spanish State to examine its compliance with their international obligations concerning a victim of domestic violence's access and attainment of justice and protection. Specifically, the organization recommends:

To the Spanish Parliament:

- Guarantee the real specialization, not only nominal, of the judicial organs charged with judging cases domestic violence. For this it is necessary to revise old legislation and modify the requirements of accessing the courts of violence of women and the criminal courts, specifically regional courts. Concretely, equip the specialized JVM and other types of courts with more guarantees of specialization, like the courts for minors, whose access (art. 329. 3 bis de la LOPJ) requires a specific training from the judicial school and, once finalized, it requires a determined for the courts to comply.

To the Minister of Justice and the autonomous communities with judicial competence:

- Guarantee the disposition, accessibility, and quality of legal assistance to victims of gender violence, including the sexual violence and the treatment of persons, since the interposition of the complaint and during all of the judicial process, fixing the number of lawyers and court-appointed lawyers, in function of the number of people in the corresponding territories.
- Assure that the functioning and the different professionals who intervene in the specialized courts of gender violence, including interpreters, receive adequate training about gender violence and training about information, attention and treatment of victims.
- Assure that the district attorney assigned to the JVM's receive previous training and count with professional merit that included specialization in gender violence.

To the Consejo General del Poder Judicial (Judicial Review Board):

- Improve the initial training programs and continuing training for judges regarding human rights and violence against women, from a gender perspective.
- Develop a system of verification that encourages good practices and detect and correct the cases of lack of diligence, with effective mechanisms of accountability with the purpose of preventing the consolidation of practices that review the incompilance of their duty to investigate and administer justice with due diligence.
- Perform a in-depth study regarding the guarantee of the rights of victims within the courts on the violence of women and collect information about the explicit factors that follow the numbers and tendencies since the implantation of the JVM: decrease in the filing of complaints; increase in the "renouncements"; decrease of the number of concession of protection orders, increase in the dismissals, and increase in the number of women charged with a counter-complaint for her complaint for gender violence.

To the District Attorneys (Fiscalía General del Estado y a la Fiscal de Sala de Violencia sobre la Mujer):

- **Improve the mechanisms of initial and continuing training in matters of human rights and violence against women, from a gender perspective.**
- **Verify the compliance** of the circular and presiding regional district attorneys by the Fiscalía General del Estado since 2004 in the matter of violence against women and girls, including the Circular 8/2005 of attention and protection of victims of crime and the 3/2009 on the protection of minor victims.

To the bar associations (colegios de abogados):

- **Revise the mechanisms of training and accountability of lawyers** and the lawyers in order to deepen their capacity in the defense of the victims of gender violence, **correcting the malpractice and verify their effectiveness.** *Once again noting the decision of the *Colegio de Abogados de Madrid* (July 2013) which contends that legal counsel of victims of domestic abuse enjoy impunity from malpractice and violation of the rights of their clients under the pretext of “judicial independence” in *Preliminar 859-13* <http://worldpulse.com/node/80671>

To the judges and district attorney’s association:

- Carry out courses and conferences with national and international experts that concentrate in a judicial response to gender violence, **developing good practices and promote mechanisms that correct cases where the lack of diligence has been detected.**
- **Identify the lack of human resources, materials and legislative deficiencies in the interest of bettering the performance of those who respond to the prosecution of these crimes, and ask the executive and legislative powers how to proceed in consequence**

“After being absolved things got worse and he literally littered the neighborhood with posters with my name... “She is a slut, she screws a...” In all of the places where I would go, at medical center, including the school and the park where I would take the child....

*I told my lawyer: I am not going to file any more complaints because **each absolution just feeds the fire**”.*

A woman victim that was continual harassment and death threats after having received the second absolutory sentence of JVM.

Family Courts in Crisis Newsletters are prepared by **Quenby Wilcox**, Founder of Global Expats (www.global-xpats.com), and [Safe Child International](http://www.safechildinternational.org).

Quenby Wilcox, is a career Expat Mom and activist whose work focuses on domestic violence as a human rights violation, the advancement of women/homemaker's rights, and promoting the interests of expatriated citizens around the world. Her research, and lobbying efforts on Capitol Hill and with the US Department of State, as well as her analysis of the issues and challenges involved in cases of international divorce and custody battles are posted on www.worldpulse.com/user/2759/journal.

Her Huffington Post blogs are posted on <http://www.huffingtonpost.com/quenby-wilcox/> and *Memoirs of a Trailing Spouse* blogs are posted on www.globalxpatsblog.wordpress.com.

Free, downloadable copies of *Family in Crisis* (May–present) Newsletters are posted on <http://worldpulse.com/node/71182> and are as follows:

- December's newsletter featured the United Nations Secretary General's report *Advancement of Women: In-depth Study on All Forms of Violence Against Women*
- November's newsletter featured Save the Children report - *The Spanish Justice System Confronted with Sexual Abuse Within the Family*
- October's newsletter featured *The Emperor's New Clothes* – Domestic Violence, International Divorce, and a State's Obligation to Protect under International Law
- September's newsletter [Hague Convention Domestic Violence Project](http://www.safechildinternational.org)
- August's Newsletter featured important works by Barry Goldstein, Dr. Mo Hannah and Elizabeth Liu
- July's Newsletter featured the documentary *Now Way Out But One* by Garland Waller and Barry Nolan
- June's Newsletter featured [Safe Kids International](http://www.safechildinternational.org) & [Damon's List](http://www.damonlist.com)
- May's Newsletter covering the *Battered Mother's Custody Conference* (BMCC), *Mothers of Lost Children* (MOLC) White House Demonstration, and *National Safe Child Coalition* (NSCC) lobbying efforts on Capitol Hill.

If you should have any questions about these issues or my on-going lobbying work (all posted on my [World Pulse Journal](http://www.worldpulse.com))

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Kind Regards,
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