

LIST OF ISSUES AND QUESTIONS IN RELATION TO THE COMBINED SEVENTH AND EIGHTH PERIODIC REPORTS OF SPAIN AND STATE RESPONSE

Sixty-first session (July 6-24, 2015)

**Committee on the Elimination of Discrimination against Women
Spain**

Objective of report

1. Women's Link Worldwide is an international human rights organization that uses legal action and strategies to bring about social change that promotes the rights of women and girls, particularly those who face multiple forms of inequality.
2. Women's Link is legal counsel for Ms. Ángela González Carreño and submitted Communication number 47/2012 to the Committee on the Elimination of Discrimination against Women ("Committee") on her behalf and on behalf of her deceased daughter, Andrea Rascón González. In its fifty-eight session, the Committee adopted its views on Communication number 47/2012, *González Carreño v. Spain* ("Views"), finding that the State party had violated the rights of the author and her deceased daughter and issuing recommendations to the State party.
3. In the framework of the follow-up to views of the Committee on individual communications, Women's Link has drafted comments in relation to the January 23, 2015 Note by Spain, concluding that the State party has not adopted appropriate and effective measures to implement any of the Committee's recommendations. The State party has even stated that it will not implement some recommendations in the Views for

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lack of legal basis,¹ because of the time elapsed,² and because it does not believe that implementation of the Decision is binding on Spain.³

4. Women's Link submits this report in response to the request for information in the Committee's list of issues and questions in relation to the combined seventh and eighth periodic reports of Spain ("List"). The organization is concerned with the State party's apparent unwillingness to adopt measures to implement the recommendations in the Views.

Violence against women

5. In paragraph 8 of the List, the Committee asks the State party to indicate, in light of the Views, whether violence exercised by a father is taken into consideration in legal proceedings concerning the custody of children and visitation rights, whether training is being conducted for court and administrative personnel dealing with those cases, and whether the legal framework has been reinforced.

State party's response

6. Spain indicates, firstly, that the **Penal Code** reform will specifically provide that care and custody of children, whether individual or joint, shall not be granted to a parent who has been convicted by a final judgment for a crime of gender violence or domestic violence, or against whom criminal proceedings are pending in which there are well-founded and rational bases showing the commission of such crimes. Secondly, it points to **current applicable law**, noting that the **Crime Victims Statute** identifies children in an environment of gender violence as victims and guarantees access to assistance and support services as well as the adoption of protective measures for them. The State

¹ "In this context, it must be reiterated that the administration is bound by law and by final legal decisions, and that there is no legal basis for reparation to the author." January 23, 2015 Note by Spain on Communication number 47/2012, section b.1), p. 2.

² "Given the time elapsed since the regrettable events occurred, it is not possible to launch a new exhaustive investigation of the case as requested by the Committee." Note by Spain, *Op. Cit.*, Note 1, section b.2), p. 3.

³ "In the instant case, the cited recommendation is not a document with evidentiary value, but a decision that is legal in nature and whose implementation is not binding on Spain...." Ministry of Justice. Division of Appeals and Court Relations. Extraordinary Appeal for Review. ER/24/2014. 141/2014. This appeal was presented by Ángela's representatives to request reparation and compensation as indicated in the Views. Due the failure of the State to respond, and after a 12-year struggle to achieve justice and prevent more cases like that of Andrea, Ángela has had to initiate new proceedings at the national level, likely of long duration, which have major consequences for her life and physical and mental health and are causing her to be revictimized.

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party goes on to note that there are **two ongoing initiatives that address the issue**, as follows: (1) The Draft Bill of the Organic Law supplementing the Draft Bill of the Child Protection Law (*Anteproyecto de Ley Orgánica complementaria al Anteproyecto de Ley de Protección a la Infancia*). The provisions of this bill would include amending Organic Law 1/2004 to recognize the status of minor children of women victims of gender violence, or minors under their guardianship or care and custody, as victims of gender violence as well. It would also amend the Organic Law on the Legal Protection of Children and Young People to reinforce their right to be heard. (2) The Draft Bill for the Organic Law amending the Organic Law on the Judiciary (*Anteproyecto de Ley Orgánica por la que se modifica la Ley Orgánica del Poder Judicial*), which would provide for the Institutes of Legal Medicine and Forensic Sciences to train other psychosocial personnel who serve the administration of justice, including technical personnel working with minors, who would receive specialized training on issues related to families, young people, disabled persons, gender violence, and gender and domestic violence. Finally, regarding **training for judges**, the State party again mentions the Crime Victims Statute, which provides for training on working with victims for judicial officers and administrative personnel; that the Organic Law on the Judiciary also has provisions for some training; and that the General Council of the Judiciary has set up a link to the computer application VIOGEN and encourages judicial personnel to use it.

Counter Response

7. Women's Link wishes to make the following observations regarding the State party's response, particularly as regards violence against women:
8. Regarding the **Penal Code** reform, the State offers no information on visitation rights. Where it does offer information (care and custody), it does not indicate what measures it will take to ensure effective enforcement, free of gender prejudice and stereotypes.
9. The State party makes no mention of the Draft Bill on coparenting and other measures in cases of nullity, separation, and divorce (*Anteproyecto de Ley sobre el ejercicio de la corresponsabilidad parental y otras medidas en los casos de nulidad, separación y divorcio*). This draft bill would allow visitation to be legally authorized for abusers who have been convicted by a final judgment for a crime of gender violence when it is

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considered “appropriate” for the child. When the bill, which would in many cases impose joint custody, was published, forty-eight women’s organizations in Spain demanded that the Ministry of Justice withdraw it.⁴ AGAMME (Asociación Galega contra o Maltrato a Menores) has come out against it as well.⁵ Women’s Link issued a press release indicating that this draft bill by the Ministry of Justice was contrary to the Views.⁶

10. Regarding **current applicable law**, the State party does not indicate what measures are in place for its effective implementation. It offers no information or statistics broken down by sex, age, and region to show how often violence exercised by a father has been taken into consideration in legal proceedings concerning the custody of children and visitation rights. This lack of official information is an obstacle to making an adequate assessment of the exposure and risk faced by children in such cases.⁷ Alarminglly,

⁴ *Position paper requesting withdrawal of the Draft Bill on coparenting and other measures in cases of nullity, separation, and divorce.* Federación de Mujeres Progresistas; Federación de Mujeres Separadas y Divorciadas; Asociación de Mujeres Juristas Themis; Fundación Mujeres; Comisión Investigación Malos Tratos a Mujeres; Spanish Coordinator for the European Women's Lobby; Asociación Universitaria contra la Violencia Machista; Unión de Asociaciones Familiares; Federación de Asociación de Madres Solteras; Asociación de Mujeres para la Salud; Asociación Custodia en Positivo; Asociación Clásicas y Modernas; Asociación de Mujeres Opañel; Asociación de Mujeres por Envejecimiento Saludable; Federación de Asociaciones de Mujeres Rurales; Asociación de Mujeres Violadas; Enclave Feminista; Plataforma Stop; Asociación Consuelo Berges de Mujeres Separadas y Divorciadas de Cantabria; Asociación de Mujeres Separadas y Divorciadas de Asturias, Asociación de Mujeres Separadas y Divorciadas de Valencia, Asociación de Mujeres Separadas y Divorciadas de Ourense; Asociación Comarcal de Mujeres Separadas y Divorciadas Minerva Mirabal; Asociación Mujeres Valdés Siglo XXI; Tertulia Feminista Les Comadres de Asturias; Asociación de Mujeres Inmigrantes; Asociació de Dones de les Illes Balears per a la Salut; Colectivo por la Diversidad Rosa Luxemburgo; Asociación E-Mujeres; Associació Veu de la Dona Lliure; La Asociación con la A; Clínica DATOR; Asociación de Clínicas acreditadas para la interrupción del embarazo de Asturias; Asociación por el desarrollo y la integración de pedagogías musicales; Asociación de Mujeres Malvaluna; Asociación de Mujeres Feministas tomando partido de Málaga; Coordinadora del Área de la Mujer de Intersindical Valenciana; Secretaria de Dona CS CC OO PV; Asociación de mujeres supervivientes de la violencia de género de Málaga; Red Feminista de Derecho Constitucional; Marea Violeta; Red Ecofeminista; Asociación Regional de Apoyo a Familias Monomarentales y/o Mujeres en Riesgo de Exclusión Social SOLAS; Feminista Marea; Mujeres de Paz en el Mundo; Asociación de Madres Solas.-AMASOL, and Asociación Generando Arte. Accessed February 13, 2015, at www.mujeresjuristasthemis.org/images/Themis/Noticias/Documentos/Informes_completo.pdf

⁵ AGAMME (Asociación Galega contra o Maltrato a Menores). *Objections to the Draft Bill on coparenting and other measures in cases of nullity, separation, and divorce.* Accessed February 13, 2015, at vps53885.ovh.net/wp-content/uploads/2015/02/Alega.-APL-Correspons.-Parental.pdf

⁶ Women’s Link Worldwide. *Draft bill by the Ministry of Justice is contrary to United Nations recommendations in its ruling against Spain.* Accessed February 13, 2015, at www.womenslinkworldwide.org/wlw/new.php?modo=detalle_prensa&dc=472

⁷ Spanish media report that **97% of men who have domestic violence protection orders** prohibiting them from contacting their partners **do have legally authorized visitation with their children**. Further, between 2008 and 2014, 31 minor children were murdered by their fathers, 20 of these during authorized visitation granted by a legal authority. Moreover, 2011 data from the General Council of the Judiciary indicate that visitation was suspended only 49 of the 791 times (3.4%) suspension was requested. In 2012,

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Andrea (daughter of Ángela, murdered by her abusive father during an unsupervised visit) is not an isolated case, and similar cases continue to occur in Spain today.⁸

11. Moreover, the **Crime Victims Statute** is a social policy measure and is not a measure taken to give effect to the Views.
12. Regarding the **initiatives addressing the issue**, the recognition of the status of minor children of women victims of gender violence, or minors under their guardianship or care and custody, as victims of gender violence as well is a positive step. However, it is of concern that, due to the presence of customs and practices constituting discrimination against women and the application of gender stereotypes that affect the right of women and their children to an impartial legal process, many victims of gender violence are not recognized as such, notwithstanding the evidence. Amnesty International has documented a serious lack of diligence by the Spanish administration of justice in cases of women who report gender violence and points to barriers to justice that they face.⁹ Similarly, several organizations and experts have found that the testimony of children is seen as less credible due to their age and because their mothers have reported gender violence. When mothers report that their children are suffering abuse and violence at their fathers' hands, the same legal authorities they turn to often suggest that the mother may be manipulating the children in order to harm the father.¹⁰

57 of 653 (3.1%) requests for suspension were granted, and in 2013, 23 of 590 (3.0%). It is very rare for visitation to be suspended due to violence, which places children at risk. Rafael J. Álvarez. "El maltrato de las visitas," *El Mundo*, November 29, 2014. Accessed March 2, 2015, at www.elmundo.es/espana/2014/11/29/5478e158ca47415a6d8b4578.html

⁸ For example, in November 2014, a man who had visitation with his 7- and 9-year-old daughters killed them both then took his own life. Javier Cuartas. "Un hombre mata en Asturias a sus hijas de 7 y 9 años y luego se suicida," *El País*, November 28, 2014. Accessed February 14, 2015, at politica.elpais.com/politica/2014/11/27/actualidad/1417122559_904359.html Similarly, the UN Working Group on the issue of discrimination against women in law and in practice indicated, after its mission to Spain in 2014, that although it appreciates the impressive legal and institutional framework for equality, **these legislative instruments and various plans and policies have not succeeded in making inroads into the culture of 'machismo,' nor have they reduced the level of violence against women, in all its forms**, which remains a matter of grave concern to all stakeholders. It further noted that numerous stakeholders reported that fathers are frequently granted visitation rights and custody, in spite of having committed acts of domestic violence. United Nations (2014). *UN Working Group on the issue of discrimination against women in law and in practice finalizes country mission to Spain*, December 19, 2014: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15444&LangID=E

⁹ Amnesty International (2012). *¿Qué justicia especializada? A siete años de la Ley integral contra la Violencia de Género: Obstáculos al acceso y obtención de justicia y protección*. Accessed February 13, 2015, at www.es.amnesty.org/uploads/media/Que_justicia_especializada.informe_2012.pdf

¹⁰ In its research of sexual abuse within the family, *Save the Children* has found that the main barriers to access to justice and appropriate response from the state in such cases consist of the age of victims, the context of a family in distress as a barrier to credibility (in contexts in which the parents are divorced,

13. Regarding the provision for the Institutes of Legal Medicine and Forensic Sciences to train other psychosocial personnel who serve the administration of justice, including technical personnel working with minors, who would receive specialized training on issues related to families, young people, disabled persons, gender violence, and domestic violence, the State party does not indicate whether this training will be mandatory and ongoing, how many instruction hours it will entail, how many people will receive the training, or whether it will be subject to evaluation. The specialized training does not address gender stereotypes, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), its Optional Protocol, or the Committee's general recommendations, particularly general recommendation number 19, as indicated in the Views.
14. As regards training for judges on equality and gender violence, this training is not given as indicated by the Committee, because it does not address gender stereotypes, the CEDAW, its Optional Protocol, or the Committee's general recommendations, particularly general recommendation number 19, as indicated in the Views. It should also be noted that the courses in Spain's State Continuing Education Plan are not mandatory or ongoing, despite the name. Furthermore, each course can accommodate only 15 to 30 attendees, and a small number of courses are offered each year. Considering that the General Council of the Judiciary's 2014 annual report indicated that there are a total of 5,219 active judges and magistrates (2,661 women and 2,558 men),¹¹ even the course with the largest number of seats (40) cannot accommodate even 1% of active judicial officers in Spain (0.76%).¹²

separated, or getting divorced or separated, and the mothers of abused children are accused of manipulating them), failure to take into account the context of gender violence, and the identity of the defendant. *Save the Children* (2012). *La justicia española frente al abuso sexual infantil en el entorno familiar. Un análisis de casos a la luz de los estándares internacionales de derechos humanos*. Accessed February 14, 2015, at [www.savethechildren.es/docs/Ficheros/553/Informe JUSTICIA ESP ABUSO SEXUAL INFANTIL vOK-2.pdf](http://www.savethechildren.es/docs/Ficheros/553/Informe_JUSTICIA_ESP_ABUSO_SEXUAL_INFANTIL_vOK-2.pdf)

¹¹ General Council of the Judiciary (2014). *Annual report 2014*. Third part: Panorámica de la Justicia, p. 385. Accessed February 14, 2015, at www.poderjudicial.es/cgpj/es/Poder-Judicial/Consejo-General-del-Poder-Judicial/Actividad-del-CGPJ/Memorias/Memoria-Anual/Memoria-anual-2014

¹² The January 23, 2015 Note by Spain on Communication number 47/2012 mentions the 2014 State Continuing Education Plan, which, according to the government, included three courses, two with 40 seats and one with 30, and two seminars with 15 seats each. The 2015 State Continuing Education Plan includes two courses, with 40 and 30 seats, respectively; a seminar with 15 seats; a meeting with 25 seats; and an online training for 30 attendees. Regarding the activities of the External and Institutional Relations Area of the Judicial School of the General Council of the Judiciary in partnership with the European

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Conclusions

15. It is clear from the State party's response that appropriate and effective measures are not being adopted to take into consideration violence exercised by a father in legal proceedings concerning the custody of children and visitation rights; appropriate training is not being given to court and administrative personnel dealing with these cases; and the reinforcement of the legal framework does not include measures for enforcement free of sociocultural patterns of behavior for men and women, all of which leads to a failure to provide protection for children and women victims of gender violence in Spain, many of whom have lost their lives.

16. Many of the measures cited by the State party are social policy measures, which, while positive, are unrelated to the information requested by the Committee in light of its Views. The failure to implement the recommendations in the Views is linked to preventable incidents of gender violence and murders of women and children that continue to occur in Spain today. Existing laws on these issues are certainly positive; however, there is a failure to enforce them, and the necessary training is not being provided to judicial officers and administrative personnel involved in these cases.

17. If Spain is to be an "exemplary, unique nation" on issues related to gender violence and a world leader in this struggle, as stated by Secretary of State for Social Services and Equality Susana Camarero, the State party must show real political will to implement the recommendations included in the first decision issued by an international body finding Spain responsible in a gender violence case. The Decision creates a roadmap that has the potential to save the lives of women and children in Spain.¹³

18. In light of the responses by State party representatives and the failure to adopt specific, effective measures to implement the recommendations included in the Committee's Views, in Women's Link's judgment, the Views have yet to be implemented. Therefore, we respectfully request the Committee not to take a decision to put the follow-up

Judicial Training Network, two activities for Spanish and European judges and magistrates were held in 2014, one with 20 seats and one with three.

¹³ EFE – Naciones Unidas. "España trae a la ONU su experiencia en la lucha contra la violencia de género," *El Diario*, March 10, 2015. Available at: www.eldiario.es/sociedad/Espana-ONU-experiencia-violencia-genero_0_365014740.html

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dialogue to an end but continues setting follow-up activities instead, such as: arrange a meeting with the Permanent Mission of Spain relating to the follow-up to the views of the Committee on communication No. 47/2012 (*González Carreño v. Spain*); designate rapporteurs on follow-up to the Committee's Views on the case; request the State party to present satisfactory follow-up information, data and figures on the effective application of measures addressed to protect children from violent fathers; request further information to the State, including whether advice had been given on the amount of compensation to be given to the author, the reasons why she has not yet received it and when is the State planning to provide her with compensation (generally, take further follow-up actions to ensure that compensation is granted to Ms. González, as successfully undertaken by the Committee on cases such as *A.S. v Hungary* and *A.T. v Hungary*).

Proposed questions

- When is the State planning to provide the victim with compensation?
- What measures will be taken for effective implementation of the Penal Code reform? Will the reform include visitation rights?
- What measures are being taken to ensure that the best interests of the child will be prioritized in these cases?
- What measures will be taken to ensure that the Draft Bill on coparenting and other measures in cases of nullity, separation, and divorce will not legally authorize visitation for abusers who have been convicted by a final judgment for a crime of gender violence when it is considered appropriate for the child?
- How many times has violence exercised by a father been taken into consideration in legal proceedings concerning the custody of children and visitation rights, broken down by age, sex, and region?
- How many judges and administrative personnel in Spain receive specific training on gender stereotypes, the CEDAW, its Optional Protocol, and the Committee's general recommendations, particularly general recommendation number 19?