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**Spanish Legislation on Violence against Women:
Challenges and Facts**

Expert Paper prepared by:

Carmen de la Fuente Méndez*
Pueblos Unidos
Madrid, Spain

* *The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.*

I. INTRODUCTION

The increasing social, political and legal sensitivity regarding violence against women has been manifested in terms of legislation in the Organic Act 1/2004 on Integrated Protection Measures against Gender Violence (hereafter referred as Integral Act), which has meant a great development for Spanish society since it came into force on June 28th 2005.

The Integral Act aims to focus on the awareness, prevention and early detection of acts of gender-violence. Thus, the Organic Act establishes comprehensive and multi-disciplinary measures to fight against this reality from a holistic approach that includes not only judicial and penal measures, but a wide range of educational, healthcare, social and assistance measures that should guarantee a new concept of relationships based on the equality between women and men.

The Integral Act was written in a short time, as a result of the great concern of political and social groups about the increase of violent acts against women, as well as the work of feminist activists and women's groups, who had been developing a new legal framework for addressing violence against women for years. This effort started in 1989 with the review of the Criminal Code and achieved some important legal reforms especially in 2003¹, which acted as a foundation for the current legislation:

- a. Organic Act 38/2002, on important reviews of the Code of Criminal Procedure to introduce the fast trials for specific offences and minor offences, enabling cases of domestic violence to be judged within 15 days from the offence².
- b. Organic Act 11/2003, on concrete Measures of Public Security, Domestic Violence and Social Integration of Foreigners, which formerly considered minor injury offences within the family environment as criminal offences in

¹ The Organic Act 3/1989, on Criminal Code Review, punished the physical violence perpetrated on a regular basis on the spouse or on the common law relationship, on daughters and sons under parental custody, pupils, minors or disabled individuals under guardianship or custody (section 153). This legal regulation excluded most forms of domestic violence, especially psychological violence, which tends to be the initial manifestation of physical violence.

As well, the Organic Act 14/1999, on Criminal Code Review included regular psychological violence in typical conduct, as well as conducts exercised against persons who have been involved in an intimate relationship, and the Organic Act 11/1999, introduced the possibility to include in the sentence as ancillary punishment, according to the seriousness and danger of the offence, restrictions on approaching and communicating with the victim or the family, prohibition to return to the place of the offence or to approach the residence of the victim (section 57)

² When the police surprise the criminal committing the crime, they must detain him and summon the victim and witnesses before the Examining Magistrate's Court in the shortest term. If the defendant pleads guilty, the Examining Magistrate may judge and sentence him. If not, the trial must be held within fifteen days before the Criminal Court.

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the new section 153 of the Criminal Law, including in the latter any psychological effect or undefined injury as an offence (that is, an injury, in the opinion of the medical authorities, not requiring medical or surgical treatment after the initial medical assistance) as well as blows or forms of abuse that do not cause injuries and minor threats with arms and other dangerous instruments. The new section 153 of the Criminal Code envisages the possibility of imposing a prison sentence of three months to one year, although, alternatively, doing community work for a period of 31 to 80 days. Furthermore, these cases were subject to a sentence of prohibition of possessing firearms and, if considered adequate in the interest of the minor or the disabled individual, the barring from exercising authority, guardianship, custody or fosterage for a period of six months to three years. The active and passive parties could be either men or women, within the aforementioned family circle, it therefore continued to target domestic violence. The sentence had to be imposed from within those punishments comprising the more severe half of the punishment scale in clearly defined instances, specifically, when the offence was perpetrated in the presence of minors, using arms, whether in the common residence or in the residence of the victim or on failure to comply with the terms of a sentence, precautionary or safety measures included in section 48 of the Criminal Code (prohibition to approach, reside or communicate). The previous offence of regular physical or psychological violence in the sphere of domestic violence, established in section 153 of the Criminal Code, now came to be systematically considered an offence against moral integrity in the new section 173.2 of the Criminal Code.

- c. Organic Act 13/2003, on Reforms of the Code of Criminal Procedure on the subject of pre-trial detention, allowed the adoption of the precautionary pre-trial detention measure in this kind of crime, even if the criminal offence is punished with less than two years of prison, when the aim is to prevent the risk of new actions against the legal rights of the victim.
- d. Organic Act 15/2003, on Reforms of the Criminal Code, introduced the obligatory imposition of the additional penalty of a protection order in any case of domestic violence (sections 49, 57 and 153).
- e. Act 27/2003 on regulation of Protection Order of Victims of Domestic Violence which, for the first time in our legislation alludes, although only in the Act's Statement of Motives, to the difference between gender violence in the sphere of an intimate relationship and other forms of intra-family violence, issues the so called "integral status of protection of the victim", enabling the adoption of precautionary measures by the Examining Magistrate's Court, which could include criminal, civil and assistance measures.

This legal framework was issued to tackle not only the increase in domestic violence in Spain, but also to reveal a hidden reality, which had been invisible for centuries.

II. SOCIAL, HEALTHCARE, EDUCATIONAL AND LEGAL MEASURES TO PREVENT VIOLENCE AGAINST WOMEN IN THE SPANISH LEGISLATION

i. Organic Act 1/2004 on Integral Protection Measures against Gender Violence

In June 2005 the Integral Act went into effect to guarantee the prevention of violence against women and their adequate protection.

One of the main targets of the law is that it treats violence against women as a form of gender-based discrimination, a political and structural problem requiring commitment from all public institutions.

Nevertheless there is a strong doctrinal resistance to the concept gender violence in some areas of society, especially since this interpretation has resulted in specific legislation that criminalizes forms of violence against women, particularly domestic violence, and punishes those violence acts in terms different from other crimes.

On the other hand, a relevant point of the Act is that it defines gender based violence as all forms of violence exercised in a current or former partner relationship, but it excludes other violent phenomena against women, such as sexist abuse in the work place, social violence against women, forced marriages, prostitution... on the grounds that violence in a partnership is more frequent in our social context.

The Integral Act aims to focus on the awareness, prevention and early detection of gender-violence acts. For this reason, the Organic Act establishes comprehensive and multi-disciplinary measures to fight against this reality with a holistic approach that includes not only judicial and penal measures, but a wide range of educational, healthcare, social and assistance measures that guarantees a new concept of relationships based on equality between women and men. However the implementation of the Act corresponds to different public authorities, including Autonomous Communities, which means that development has been uneven in the different communities leading to difficulties in implementing the Act and reaching its main purpose, the eradication of gender violence.

Awareness and educational measures

Among the positive actions, the Integral Act develops awareness-raising and educational measures, which include the following:

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a) In the **education environment**: the Act recognizes the main role of education in defending fundamental rights and freedoms and equality between men and women. Education is the main tool to change the stereotyped, patriarchal domination-subjugation relationships into equal relationships, rooted in democratic values and new emotional and rational models, where both men and women can coexist as equals and together eradicate every form of gender based violence.

To reach this aim, chapter one of the Integral Act defines the principles of non-violent education at all educational levels, from Infant School to University, and specifies the need to apply them in child education and on going teacher education (elaborating specific curricular materials and pilot programmes to promote non-violent conflict resolution, coeducation and equality between women and men).

b) **Awareness raising measures in the media**: The Integral Act recognizes that the main problem in the media is the use images of women as objects of sexual consumption for men, which contributes to their discrimination, domination and submission. These servile images are used in every kind of media; video games, music videos, entertainment shows, TV programs...

Although the Integral Act provides that media must *“foster the protection and defence of equality among men and women, avoiding all forms of discrimination”*, three years after the Act’s enforcement these representations of women continue

Regarding this issue, the implementation of the Integral Act is taking place at the State and autonomous community level. At the State level, the Integral Act, to prevent the diffusion through media of stereotyped images, messages and contents, establishes that this kind of publicity is considered illicit and allows the public authorities, such as the Public Prosecutor, to take official actions against them. In practice, there have been some actions in this direction. With this end, at the State level mention must be made of the creation of a public commission to monitor sexist publicity at the Institute of Women. In autonomous communities different measures have been developed, such as: campaigns to avoid the use of sexist language in the media, the creation of publicity observatories, publicity control agencies... with the purpose of not only controlling the use of discriminatory and sexist images, but also acting as instruments of public awareness-raising regarding sexist content in advertising. Media campaigns to promote the equality among women and men and the responsibility of the media in the eradication of gender violence have been developed as well. Some communities have distributed publications on best practice in dealing with gender violence in the media, in order to define media self-regulation.

c) In **healthcare environment**: the Integral Act established the responsibility of the healthcare system: *“to foster the early detection of gender violence, develop awareness-raising measures and on-going training for healthcare personnel (...), promote the*

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application, continuous update and the dissemination of protocols containing uniform guidelines (...) and the issue to include gender violence in health plans”.

The main problem is that each Autonomous Community has a different level of competence in the healthcare system, owing to it there are different initiatives to establish a common healthcare assistance protocol, awareness-raising training for healthcare professionals and research/knowledge on the problem.

For this reason the interregional Council has developed some measures for the National Health System, such as: inclusion of Gender Violence in the List of Services provided by the National Health System, the elaboration of a common healthcare assistance protocol, awareness-raising training and the elaboration of minimum common indicators for the epidemiological vigilance of gender violence in the healthcare system.

Rights of the victims of violence

The Title II of the law includes a list of rights of the victims of gender based violence, to protect and recover their rights as citizens, recognising that the situation of violence they are experiencing should affect to diverse aspects of their lives and should need of some supports, no matter the social status of the victim (employee or self-employed women, civil servants, unemployed women or women, that due to their social, personal or economic circumstances are not able to participate in employment integration programmes):

a) **Labour rights:** to adapt the situation of the working women to the situation that they are living, with measures such as justification of absenteeism or unpunctuality, reduction or rearrangement of working hours, possibility to geographic mobility or change of work centre, leave/suspension with reservation of job position or without termination of employment contract,... In the legal framework this regulations have reviewed the Worker's Statute, the Social Offences and Sanctions Act and some collective bargaining agreements which include provisions of the Integral Act.

b) **Social Security rights:** associated to the previous measures, the Act includes Social Security rights, such as unemployment benefits, the consideration of the suspension period as an effective contribution, the suspension of the contribution obligation for self-employment female workers or an employment and professional training policy (to promote the self-employment, employment trainings and a supporting for employment)... with the consequent reviews of the General Social Security Act and the additional provisions of the National Budget Act.

c) **Economic support measures:** for those women who cannot participate in labour integration programmes and do not become incomes, there are economic supports equivalent to six months of unemployment benefit during a maximum of 24 months. These programs are developed by the autonomous communities, which are responsible of the

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social services area and the budget economic prevision. This kind of aid is compatible which any other received as a result of the Act 35/95 on Aid and Assistance to Victims of Violence and Offences against Gender Freedom.

The accreditation of the situation of gender violence is through the protection order, the report issued by the Public Prosecutor's Office and the sentence of the procedure related to gender based violence.

Women victims of violence become another economic supports, such as grants, economic supports and credits to promoting persons with dependant family members and victims of gender violence. Likewise, the National Housing Plan has included provisions to promote the priority access of women with dependant family members, especially mother care, and victims of violence to housing.

d) **Civil rights**, which have focused in the amendment of the Civil Code, facilitating the separation and divorce procedure, and introducing "the obligation of each spouse to share domestic responsibilities and the care of children and grandparents as well as other persons included under their care. Likewise, another amendment was to include the exemption of the aggressor from getting the shared custody in cases of gender violence.

e) **Right to full social assistance**: Every woman victim of gender violence counts with a multiple social assistance, no matter the stage of the victimisation process. In concrete with social aids such as: emergency resources for victims of abuse (legal support, healthcare and psychological support, economic support, emergency accommodation, support for dependent sons and daughters, social infrastructure for independence...), shelter resources for victims of abuse with multidisciplinary assistance, assistance resources in criminal and civil court action associated with gender violence (specialised legal aid and specialised forensic-medical and psychological assistance). Likewise, every autonomous community has developed its own assistance system through public or private resources, such as: Advice and Information Centres, Emergency Centres, Shelter Homes, Protected flats and Mobile Tele-assistance service.

In the practice it is to consider the degree to which the professionals are really prepare to attend the particular needs of women in acute situations of vulnerability and dependence, as well those of special risky groups such as immigrants (especially those in illegal situation), disabled, ethnic minorities...

f) **Specialised legal aid to victims**. The Integral Act recognises the right of all victims to count with specialised and immediate legal assistance, including free legal aid to litigate in all administrative processes and procedures directly and indirectly associated with the violence suffered.

Despite of this legal prevision, it has not been fully effective, due to the absence of the lawyers on duty under legal aid scheme in the detention points, the non sufficient number

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of lawyers on duty under legal aid scheme specialised in gender violence and the non sufficient training, that guarantees the homogeneous and adequate treatment and support to the victim.

III. JUDICIAL AND PENAL MEASURES IN THE SPANISH LEGAL FRAMEWORK

The current Spanish legal framework presents two main characteristics:

1. The Integral Act develops the sociological and political concept of “positive discrimination” in criminal law. The Act places the issue of gender violence into the framework of discrimination and the principle of equality, thus it attempts to fight against the unequal distribution of power among men and women, enabling a different legal response to the same conduct. In practice after the review of the Criminal Code operated by the Integral Act, the same criminal offence might be punished with different jail terms depending on the sex of the offender, when they are exercised in an intimate relationship³. Several Courts questioned the constitutionality of this differing punishment. Nevertheless, the Constitutional Court recently dismissed all the appeals on the grounds that they were manifestly unfounded, through Rulings dated May 14th 2008, which considered, among other opinions, the envisaged sanctions as appropriate.
2. The Spanish legal framework includes no definition of the term “gender violence”, and this has generated many problems due to the development of the laws by the different autonomous communities, and the fact that they have included different concepts and terms like “sexist violence”, “violence against the woman”. This has made data comparison between different territories and our data with that of other countries difficult.

i. Protection Order of Victims of Violence

One of the most important measures adopted to prevent violence against women has been to introduce the protection order into the Code of Criminal Procedure. Although it has been extremely difficult to apply, it has successfully demonstrated the concern the State determination to prevent violence and to increase awareness. As the Statement of Motives says:

³ For example, when a husband hits his wife, he might be punished with six months to one year in jail, while the woman might be punished with three months to one year in jail.

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«Violence exercised in the family environment, and, in particular, gender violence, constitutes a serious problem for our society that requires a global co-ordinated response on the part of all public authorities. The situation generated by these forms of violence transcends the domestic sphere to become a scourge that affects and involves all citizens».

Different from other legal systems, the Spanish Protection Order is a court order, which protects the victim from further abuses and includes a multi-disciplinary (criminal, civil and assistance) response.

Every victim of gender based violence (including spouses, common-law relationships, boyfriends and former relationships of the above types) or intra-family violence can go to any Police station, Examining Magistrate's Court, Public Prosecutor's Office or State Women's Services Centres to ask for protection. The state-wide Protection Order form is immediately sent with all pieces of evidence (such as victim's evidence, witnesses' testimony, police reports and medical reports...) to the Examining Magistrate's Court, where a full hearing, in which the defendant, the victim and the witnesses are summoned, is scheduled within 72 hours. The jurisdictional authority to issue the protection order corresponds to the court where the complaint is filed, regardless of the couples' or victims' place of residence or the location where the violent act took place.

The protection order can include, as previously mentioned, criminal, civil and assistance measures:

a) Criminal Measures

2. Forbidding the offender to approach the victim, her family, her residence, her job or any other place she might visit, requiring him to remain at a distance established by the Examining Magistrate to guarantee the protection and security of the victim.
When the victim and offender live together, this means evicting the violent offender from the family home, prioritising the victim's right over the property right.
3. Forbidding the offender to contact the victim by telephone, sms, e-mail, post or through another persons
4. Prohibiting the possession of firearms by violent offenders. When the risk of threat with firearms exists, the Examining Magistrate may authorize law officers to seize any weapons belonging to the violent offender or order him to surrender them.
5. Prohibiting residence in the same town as the victim, in the case of high level of danger for the victim.

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6. In case of great risk or great harm to the victim –due to the nature of the offence-, the Examining Magistrate is allowed to take precautionary pre-trial detention measures, when the aim is to prevent the risk of new violent acts against the legal rights of the victim.

The duration of the Protection Order is not predetermined by law. Examining Magistrates may issue the criminal measures as precautionary measures as long as the need to protect and prevent a new violent act exists and the procedure has not been sentenced or stayed.

b) Civil Measures

Victims of violence may ask for civil measures parallel to criminal ones, such as temporary child custody and vacation determinations, payment for child support and basic living expenses. In the full hearing both parts should defend their positions and present their evidence to demonstrate which one should protect the best interest of the children⁴.

Urgent civil measures last only 30 days, within this term the victim should file for separation or divorce. In case she does not do so within 30 days, civil measures fail. The jurisdictional authority corresponds to the same Examining Magistrate's Court.

c) Assistance Measures

The act recognises to every women that becomes a protection order the so called “integral status of protection of the victim”, that includes labour, social security and economic rights, as well as the right to full social assistance, previously mentioned in the Organic Act on Integral Protection Measures.

In practice, although the Act mentions the specialised legal advice as one of the victim's rights, it has not been implemented. Only when the Protection Order hearing and the fast trial take place in the same procedure, the victim gets free legal advice. On the contrary, the defendant gets in every case free legal advice by court .

ii. Judicial and penal measures of the Organic Act 1/2004, on Integral Protection Measures against Gender Violence

⁴ To facilitate the implementation of the protection order, the right of visitation might take place in the so called *Family Meeting Points*, where the victim may deliver the children and the father collect them, just to avoid that the security's distance is violated. These centres are provided with social workers and psychologies, which advice the family, when it is necessary.

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a) Judicial measures: The main target of the Integral Act is the creation of specialised courts for matters related to violence against women in every territory. On 28th June 2005 with the enforcement of the Integral Act, 17 new specialist Courts of Violence against Women were established. These Courts respond to a specialisation formula to create examining magistrates with criminal jurisdiction for matters related to gender violence offences and civil jurisdiction for family issues related to violent acts.

Actually, 83 Examining Magistrate's Courts are exclusively specialised for matters – criminal and civil- related to gender violence in the whole country. Another 375 Examining Magistrate's Courts deal with matters related to gender violence, but not exclusively. Their jurisdiction authority extends as well to general criminal matters in 18 Courts and to general criminal and civil matters in 357 Courts. In every case, due to the number of reports -126.293 new reports in 2007⁵- these Courts have difficulties to judge and execute their sentences with the necessary diligence to guarantee the integral protection of the victims.

Every exclusive Examining Magistrate's Court specialised for matters related to gender violence has a Psycho-social team (psychologist and social worker) and a Victim Assistance Office, which inform victims of their rights –previously mentioned- and assess the risk and need for support. Regretfully, in the Courts that have to share their agenda with other criminal and civil issues, the lack of specialised resources such as a psychosocial team is common.

On the other hand, the specialisation of the jurisdiction and the increase of specialised Courts should be followed by gender-sensitivity training of the professionals of the sector - law enforcement officials, prosecutors and judges-. A quite significant part of the budget has been used to achieve this target, although in practice, few of the professionals who work in the specialised courts have received extensive and qualified training to be able to understand the special circumstances of the cycle of violence and the psychological consequences for the victim and her family, especially in groups such as immigrants, disabled women or other cases of high risk or special vulnerability of the victim.

b) Penal measures: The Integral Act includes a legal framework of criminal offences considered “gender violence” through the amendment of the Criminal Code in those sections which include the main and typical conducts related to this forms of violence, such as:

1. Offences against physical and psychological integrity, broadly defined in typical conducts such as assault and battery, no matter the intensive of the physical or psychological damage.

⁵ General Council of the Spanish Judiciary. The reports follow an ascending evolution. In 2005, the first year of the Integral Act's implementation, the rate of complaints was 73.785. Since then, it has only increased. This rates includes the reports of all kinds of criminal acts: minor,

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2. Offences against freedom, such as stalking, any kind of threat, coercion, humiliation...
3. Offences against property, such as property damage

Our Criminal Code includes, in every case, forced prostitution or sexual mutilation as criminal offences, but the Integral Act has excluded them as forms of gender violence, requiring a special punishment and a special response of the authorities to guarantee the protection of women victims of this phenomena. Likewise, our Criminal Code excludes the punishment of other conducts, such as forced marriages, which in the international framework, especially in some countries, has been revealed as one of the main offences against women's freedom.

In all these criminal offences the Integral Act includes amendments directed to include new obligatory, additional and alternative penalties.

1. Imprisonment, or as an alternative, community work.
2. Protection order: forbidding the defendant to approach the victim, her family, her residence, her job or any other place she might visit and forbidding the defendant to communicate with the victim. Both additional and obligatory penalties have resulted in discussion due to the difficulties in their application –many women do not want to be separated from their partners after a violent act- and due to the obligatory nature of an additional penalty focused on preventing new acts of violence, but implemented in many cases without an objective risk for the victim. Therefore, multiple sectors have defended the abolition of this imperative penalty, enabling the judicial assessment of the risk in every specific case⁶.
3. Prohibition of possession of firearms by violent offenders.

It is also mentioned that the Integral Act and the Criminal Code establish the possibility of the suspension or substitution of the penalty in cases of violence against women, when the jail penalty is under two years, but in all cases the aggressor is obliged to follow some conditions during the period of suspension: protection order and the obligation to

⁶ As it was considered in the last Organic Act 11/1999, on Criminal Code Review which introduced the possibility to include in the sentence, not as imperative but as ancillary punishment, according to the seriousness and danger of the offence, restrictions on approaching and communicating with the victim or the family, prohibition to return to the place of the offence or to approach the residence of the victim (section 57). This regulation was amended by the Organic Act 15/2003, which introduced it as obligatory punishment, based on the presumption that the judicial system failed to protect women from every form of violence and that women victims of violence were "unable" to distance themselves from a violent relationship because of their psychological, social and economic dependence on their partner, therefore they needed the support of public authorities.

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participate in psychological treatment for aggressors. In practice those training programs for aggressors have not been developed in most of the autonomous communities, with important consequences for victims and aggressors. Only some prisons have established psychological treatment as part of the therapies offered in the penitentiary system for inmates who enter prison for gender violence offences. Despite the legal provision, only 33 of the 77 penitentiary institutions offer re-education programs for gender violence offenders, 319 inmates participate in such programs and 3067 attend them in open prison interventions, which sharply contrasts with the 37521 tried and the 26313 found guilty⁷.

Finally, it must be pointed out that the main problem in the judicial procedure against gender violence is the persistent tendency of women to refuse to testify against their spouse or ex-partner in court. The dispensation provided in section 416 of the Code of Criminal Procedure recognises that relatives of the accused may not testify as witnesses in the procedure against him, in order to protect the family unit. This provision has meant that a high number of procedures ended in acquittals because the victim went back on her word or exercised her right of dispensation. In Madrid alone, according to the annual report of the Public Prosecutor's Office of the High Court, in 2006 62,86% of the proceedings ended with a non guilty verdict because of lack of proof due to the victim's refusal to testify against the aggressor, particularly in cases of occasional offences.

IV. CONCLUSIONS

To conclude it is evident that the Integral Act, as part of the Spanish legal framework against gender violence, involves a major reinforcement of the protection of women against all forms of violence, especially domestic violence, as well as a great effort to implement awareness-raising measures that guarantee integral protection for women.

In practice the deeply stereotyped, subjugated and dependant models of relationships among women and men have made total development of the legal framework difficult. Therefore only continuous work in the educational environment and the conscious awareness of the whole society will be able to bring about real equality among men and women and the non violent resolution of social conflicts.

Meanwhile, the rates of filed complaints and homicides increase continuously, as part of the wake-up of women's consciousness of their right to defend themselves against any form of gender discrimination and the difficulties of men to accept an equal model for relationships.

Women's empowerment will take generations. Therefore, this responsibility depends not only on the solidarity and support of organized women's groups, but of the whole society, especially the public authorities, trusted to establish the measures that will allow every woman in a vulnerable position to reach and exercise her status as fully entitled citizen.

⁷ General Council of the Spanish Judiciary. Press Release June 16th 2007.

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