



UPR Submission

Spain

June 2014

Updated version of December 2014 – Updates are in bold

Summary

This submission highlights key areas of concern regarding Spain's compliance with its international human rights obligations: migration and asylum policy, sexual and reproductive rights, the right to peaceful assembly, the right to adequate housing, incommunicado detention, and universal jurisdiction.

Migration and Asylum Policy

Human Rights Watch, other nongovernmental organizations, and Spain's independent human rights institute have documented unlawful summary returns to Morocco from the Spanish enclaves of Ceuta and Melilla. These summary returns place migrants at serious risk of abuse by Moroccan security forces and violate Spanish domestic law guaranteeing irregular migrants the right to legal counsel and an interpreter during deportation proceedings. **On December 11, the lower house of parliament voted in favor of reforming Spain's immigration law to allow explicitly for the automatic summary return to Morocco of anyone caught attempting to cross over the fences along the enclave borders in a group.**

Previously, the government had indicated that it would legalize this practice through an explicit agreement with Morocco within the framework of its bilateral readmission agreement. We note that Spain rejected the recommendation during its first UPR to review readmission agreements, arguing that domestic law includes "ample guarantees of international protection."

There are also serious concerns about excessive use of force at the enclave borders. Human Rights Watch documented cases of Spanish Civil Guard violence against migrants who succeeded in crossing the Melilla border, including kicking with boots and beatings with batons. Fifteen migrants died on February 6, 2014, as they attempted to reach Ceuta by sea. The Spanish Civil Guard had fired rubber bullets and tear gas into the water. An investigative judge in Ceuta is

leading the investigation into the deaths of only the five migrants whose corpses were located in Spanish waters; there has been no in-depth investigation by the parliament.

Sexual and reproductive rights

In the face of concerted national and international criticism, in September the government was forced to abandon efforts to restrict access to safe and legal abortions to circumscribed cases. The proposed reforms, first tabled in December 2013, posed a serious threat to a wide range of human rights of women and girls in Spain, and would likely have had a disproportionate impact on the poor, rural, and the marginalized without the resources or the opportunity to seek safe and legal abortions abroad.

The government has indicated its intention, however, to introduce a requirement for parental consent for sixteen and seventeen-year-olds via a reform of a child protection law. In late November, the Spanish Council of State, the highest consultative body to the government, issued a non-binding report that asserts that the lower status of the child protection law (an “ordinary law”) means that it does not affect the higher status abortion law (an “organic law”).

Under current law in Spain, women and girls have the right to terminate a pregnancy up until the fourteenth week. The draft legislation would allow abortions only when the woman’s physical or mental health is endangered (up to 22 weeks) and when the pregnancy is the result of sexual violence (up to 12 weeks). In addition, the changes would impose undue barriers to access to these legal abortions, including the requirement that two specialist doctors testify to the threat to physical or mental health, the obligation to have reported sexual violence to the police, and mandatory counseling and waiting periods.

International human rights law recognizes that access to safe and legal abortion is crucial to women and girls’ effective enjoyment and exercise of their human rights, including the rights to life, nondiscrimination and equality, health, privacy, to decide on the number and spacing of children, and to be free from cruel, inhuman and degrading treatment. The UN Committee on the Elimination of Discrimination against Women and the Special Rapporteur on the Right to Health have expressed concern generally about the relationship between restrictive abortion laws, clandestine abortions, and threats to women and girls’ lives, health, and well-being. The UN Committee against Torture has found that restrictive abortion laws can constitute inhuman and degrading treatment, and the European Court on Human Rights has ruled that states that allow legal abortions must ensure real and effective access to such services.

Rights to peaceful assembly and freedom of speech

The lower house of parliament is expected to approve, in December 2014, draft legislation that would negatively impact the rights to freedom of speech and freedom of assembly in Spain. The bill revises and expands on existing law covering public security, giving administrative

authorities the power to impose sanctions ranging from a minimum of €100 for minor infractions to a maximum of €600,000 for very serious infractions. The proposals come as street protests have increased amid the economic crisis in Spain, while courts have quashed government attempts to use existing powers to sanction protesters.

Significant criticism of the government's first draft, adopted in December 2013, led to a new version tabled in July that eliminated or toned down some but not all of the most problematic provisions.

Existing Spanish law does not require prior authorization for demonstrations, but it does require prior notification. Several of the infractions envisioned in the bill target demonstrations in the absence of such notification. For example, failure to provide prior notification of meetings or demonstrations in areas of public transit, even when these do not provoke any harm to people or property or disturb public order, constitutes a minor infraction punishable by fines up to €600. Lack of compliance with the itinerary approved or imposed by authorities during a demonstration, even when this produces only minor disturbances, would also constitute a minor infraction.

Serious breaches, subject to fines up to €30,000, would include serious disturbance of public safety during demonstrations in front of Congress, the Senate or regional legislative assemblies, even when not in session. The bill does not define what constitutes a "serious disturbance," except to stipulate that the provision is applicable when the disturbance does not constitute a crime liable to prosecution. The lack of legal precision raises concern the measure is intended to discourage protests that target national and regional legislative bodies.

The bill defines as a "very serious infraction," punishable by up to €600,000, holding without notice or prohibited meetings or demonstrations in or "in the proximity of" infrastructures or facilities that provide basic services, including transportation hubs, nuclear plants and refineries, utilities installations, and telecommunications infrastructure, when these have created a risk to people or a harm to the service. This broad delimitation of where such demonstrations may take place, including the lack of definition of what constitutes the proximity of relevant infrastructure and facilities, could effectively be used to bar peaceful protests.

Two provisions in the bill interfere with freedom of expression. One creates the serious infraction of "unauthorized use of images or personal or professional information about authorities or law enforcement officers that would endanger their safety or that of protected areas or place at risk the success of an operation." The broad criteria in the provision make it likely that the provision could be used against individuals who capture in photographs or video unflattering or unlawful behavior by public officials. Another provision creates the minor infraction of "lack of respect and consideration of a member of security forces during the exercise of his duties...when this behavior does not constitute a crime." This is punishable by fines from €100 to €600 (US\$125 to US\$752).

These measures could have a chilling effect on peaceful assemblies and speech. The UN special rapporteur on the rights to freedom of peaceful assembly and of association has recommended to all countries that spontaneous assemblies should be permissible in law, and that organizers and participants in any kind of demonstration, whether authorized, notified or not, should not be held responsible for other people's unlawful acts.

Right to adequate housing

The Spanish government has failed to take adequate measures to avoid and alleviate the impact of the housing and debt crisis amid economic down-turn in Spain. Since the economic crisis began in 2007, banks have foreclosed on over 500,000 properties under a procedure that leaves individuals and families saddled with significant debt and no realistic pathway towards discharging their debt. Immigrants, women heads of household, women victims of economic abuse, and children are among the vulnerable groups affected by the crisis.

Spain's social crisis around evictions and debt arise in a context of decades of government policies aggressively promoting home ownership and borrowing and inadequate efforts to ensure an appropriate and affordable stock of rental housing and sufficient investment in public housing. Irresponsible lending, unfair terms in mortgage contracts (such as exorbitant default interest rates), unscrupulous behavior by intermediaries such as real estate agencies, and the lack of oversight during the boom economic years contributed to the current situation.

The government of Prime Minister Mariano Rajoy has taken steps to address the mortgage crisis, including measures to protect temporarily certain groups against evictions; amend legal proceedings to ensure the right to contest unfair contractual obligations; and provide guidelines for debt relief and, in some circumstances, debt cancellation. The government created a Social Housing Fund, stocked by roughly 6,000 properties banks have voluntarily turned over, to offer evicted families places to live at affordable rents.

However, the criteria for benefitting from these measures are narrowly drawn, excluding many needy families and individuals. Some of the criteria are arbitrary and do not comport with international law. For example, a two-parent household with a child 3 years or younger can benefit from the moratorium on evictions, while the two-parent family with a child 4 years or older cannot. Under international law, all persons under 18 are considered children and entitled to the rights and protections laid out in the Convention on the Rights of the Child, including the right to shelter. Official data demonstrate that the measures to alleviate debt and provide affordable housing through the Social Housing Fund have benefited only a fraction of those in need.

The government has yet to reform Spain's personal insolvency laws to create an accessible, fair, and efficient mechanism for over-indebted individuals to discharge their debt. Over-

indebtedness can have a deeply negative impact on fundamental rights such as the right to an adequate standard of living.

Incommunicado Detention

Human Rights Watch regrets that Spain rejected recommendations during its 2010 UPR to review the incommunicado detention regime. Severely curtailed rights for certain suspects, including terrorism suspects, remain in place despite repeated calls from the UN Committee against Torture, UN special rapporteurs on torture and on counterterrorism and human rights, and the Council of Europe Commissioner for Human Rights and the European Committee for the Prevention of Torture (CPT).

In October, the ECtHR ruled twice against Spain for failing to investigate effectively allegations of ill-treatment during incommunicado detention and endorsed the CPT's recommendations to Spain to allow access to a lawyer from the outset of detention and medical examination by a doctor of choice.

The Code of Criminal Procedure permits incommunicado detention for up to thirteen consecutive days. Under this regime, suspects may be held for five days in incommunicado police detention. During this time, these detainees do not have the right to notify a third party about their detention or whereabouts; to receive visits from family members, spiritual advisors, or a doctor of their own choosing; or to communication or correspondence of any kind. Incommunicado detainees do not have the right to designate a lawyer, but must be assisted instead by a legal aid attorney. Furthermore, these detainees do not have the right to consult privately with their lawyer.

After maximum five days, a judge may order the individual released without charge, released on provisional liberty, or remand the individual into pre-trial detention. At this point, the judge may impose an additional five days of incommunicado status in pre-trial detention, and an additional three days at any time, either immediately or at a later stage.

Incommunicado detainees are held in isolation and have severely curtailed access to counsel at a critical stage in the legal proceedings against them. These detainees only see a lawyer for the first time when they are called to give an official police statement, an event that may occur after three or even five days in custody. Furthermore, they do not have the right to confer in private with their lawyers at any time, neither before nor after the statement to the police or to the judge. The prohibition of a direct, private attorney-client conference deprives the lawyer of any opportunity to collect detailed information relevant to the detainee's case, preventing the lawyer from challenging the lawfulness of the detention and from making an effective application for provisional release as long as incommunicado status is maintained. Numerous human rights bodies including the UN Human Rights Committee and the Committee against Torture have called on Spain to abrogate incommunicado detention because it may facilitate torture and constitute in and of itself a form of cruel, inhuman or degrading treatment.

Universal jurisdiction

In March 2014, parliament amended Spain's universal jurisdiction law to limit the ability of Spanish courts to prosecute suspects of grave international crimes committed outside of Spain. The new law introduces an extensive and complex set of requirements related to the suspect's and victims' nationality and the suspect's status in Spain that must be met before Spanish courts can assert jurisdiction. The new law places Spain in breach of certain of its international legal obligations, including under the Convention against Torture and the Convention for the Protection of All Persons from Enforced Disappearances.

The law requires courts to assess whether cases, including ongoing cases, meet the new requirements. Spanish courts have already begun applying the new standard and have dismissed charges of crimes against humanity in at least one case involving El Salvador (the case continues with respect to other charges).

Recommendations

Regarding migration and asylum policy, Spain should:

- **Abandon plans to amend national law to allow explicitly for summary returns from Ceuta and Melilla;**
- Stop all summary returns to Morocco at the Ceuta and Melilla borders, and suspend all forcible returns to Morocco until that country demonstrates they are no longer at risk of beatings and other abuses upon their return and that their rights are respected;
- Ensure respect for procedural safeguards, including access to a lawyer and an interpreter for migrants detected entering the enclaves irregularly; and
- Ensure diligent investigations of allegations of excessive use of force by its own forces, including up the chain of command.

Regarding sexual and reproductive rights, Spain should:

- **Abandon proposed changes to Spanish law to impose a requirement of parental consent for sixteen and seventeen-year-old girls to have access to safe and legal abortions.**

Regarding the right to peaceful assembly, Spain should:

- Modify the draft Law on Public Security to guarantee the right to spontaneous peaceful assemblies and the right to freedom of speech. Ensure that fines or other measures to sanction unlawful behavior are strictly necessary and proportionate.

Regarding the right to adequate housing, Spain should:

- Adopt measures to help a broader range of individuals and families avoid evictions and secure affordable housing;

- Reform the country's personal insolvency regime to create a fair and accessible means of debt discharge.

Regarding incommunicado detention, Spain should:

- Abolish incommunicado detention, and ensure that all suspects in police custody have prompt access to a lawyer at the outset of detention and the right to confer in private with their lawyers.

Regarding universal jurisdiction, Spain should:

- Repeal Organic Law 1/2014 modifying Spain's universal jurisdiction laws and ensure that Spain fully honors its international legal obligations with respect to the investigation and prosecution of genocide, crimes against humanity, war crimes, torture and enforced disappearance.