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HRW.org

RE: Rule of law and human rights during Spain's Presidency of the EU

26 June 2023

Dear President Sánchez,

Ahead of Spain's forthcoming Presidency of the Council of the European Union (EU), we write to call on your government to use its six-month tenure to translate into concrete and bold actions its commitment to protect fundamental rights and the rule of law.

Spain's Presidency comes at a crucial juncture for human rights in the EU's foreign and domestic policy. The EU has shown unprecedented resolve in its response to Russia's invasion of Ukraine and in its pursuit of accountability for crimes committed during the conflict. At the same time, human rights and democratic values, on which the EU is founded are under threat in many regions of the world, including in certain EU member states.

Spain also holds the presidency as the world marks the 75th anniversary of the Universal Declaration of Human Rights (UDHR) on 10 December 2023. In anticipation of this pivotal moment Spain should make every effort to uphold the rights and values enshrined in this historic document.

We hope its vision will be reflected to the fullest in Spain's Presidency program. We call upon you and your government to consider the following priority issues and recommendations:

I. Fundamental Rights and Rule of Law in EU member states

Two EU member states – Hungary and Poland – currently face scrutiny under Article 7 of the Treaty on European Union (TEU)¹ in response to their governments' persistent disregard for the norms and principles on which the Union is founded, enshrined in Article 2 TEU.² After years of democratic backsliding, both governments continue to flout rulings of the European Court of

¹ Consolidated version of the Treaty on European Union - TITLE I COMMON PROVISIONS - Article 7 (ex Article 7 TEU) *OJ C 326, 26.10.2012, p. 19–20, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M007>* (accessed 23 June 2023).

² Consolidated version of the Treaty on European Union - TITLE I COMMON PROVISIONS - Article 2 *OJ C 236, 7.8.2012, p. 17–17, https://eur-lex.europa.eu/eli/treaty/teu/2012/art_2/oj* (accessed 23 June 2023).

Justice (CJEU) and the European Court on Human Rights (ECtHR); they have captured judicial and other levels of power and destroyed crucial checks and balances on executive authority; suppressed independent media and curtailed gender equality, women's and LGBT rights; and criminalized activities by civil society organizations and prosecuted human rights activists. The European Commission has launched numerous infringement proceedings against both member states.³

The freezing of EU recovery and cohesion funds under the conditionality mechanism represents a welcome step but it is insufficient to address the gravity of the erosion of rule of law and human rights. While Hungary and Poland have adopted some limited measures in response to requirements under the mechanism, these have failed to address fundamental and long-standing concerns.⁴ Member states' prolonged failure to take firm action under Article 7.1 TEU threatens to undermine the procedure and its significance in guarding against abuse of the EU treaties and founding principles.

We urge the Council to hold the Polish and Hungarian governments to account by using the powers conferred to it under the Treaties and to fulfil the strong mandate to act given to it by the European Commission and Parliament. The urgency of Spain's leadership and responsibility cannot be overstated as it is one of only two remaining presidencies before Hungary and Poland in turn assume leadership of the Council. It is highly likely that during that time progress on rule of law will at best stall, and at worst Article 7 scrutiny will come to an end altogether.

We call on you during your presidency of the EU Council to:

- Plan **Article 7 hearings on Hungary and Poland** prominently on the General Affairs Council (GAC) agenda, in keeping with the practice to hold Article 7 hearings at the GAC during each presidency since 2022. A hearing should, among other things, send a clear message that Article 7 remains the primary and critical path for addressing serious breaches of EU treaty values and supersedes all other procedures. Hungary's continued attempts to end the Article 7 procedure and replace it with the budget conditionality mechanism should be firmly rejected. These attempts further demonstrate the urgency of action during Spain's Presidency and the growing threat that Hungary and Poland would use their presidencies of the Council in 2024-2025 to seriously undermine or fully terminate the Article 7 procedure.
- Put on the agenda the adoption of **clear, concrete and time-bound recommendations** on the issues raised in the European Commission's reasoned opinion on Poland and the European Parliament's reasoned opinion on Hungary and other issues that have emerged since in connection with **Article 2 TEU**.
- Propose the holding of a **four-fifths vote under Article 7.1 TEU** that would enable the EU to further examine and determine the existence of a serious and persistent breach of EU values under article 7.2 TEU.

³ For more information, please see HRW's latest reporting: *Poland: New Law to Bar People from Public Office*, 7 June 2023, Online: <https://www.hrw.org/news/2023/06/07/poland-new-law-bar-people-public-office> (accessed 23 June 2023). *Poland: Proposed Law Threatens Children's Rights*, 25 May 2023, <https://www.hrw.org/news/2023/05/23/poland-proposed-law-threatens-childrens-rights> (accessed 23 June 2023). *Poland: Rule of Law Erosion Harms Women, LGBT People*, 15 December 2022, <https://www.hrw.org/news/2022/12/15/poland-rule-law-erosion-harms-women-lgbt-people> (accessed 23 June 2023). *Pope Francis Should Stress Equal Treatment of Refugees During Hungary Visit*, 26 April 2023, <https://www.hrw.org/news/2023/04/26/pope-francis-should-stress-equal-treatment-refugees-during-hungary-visit> (accessed 23 June 2023). *Hungary Court Closes Door on Transgender Legal Recognition*, 9 February 2023, <https://www.hrw.org/news/2023/02/09/hungary-court-closes-door-transgender-legal-recognition> (accessed 23 June 2023).

⁴ With regard to *Hungary*, we draw your attention to the latest assessment by Hungarian civil society organisations of recent reforms by the Hungarian government in a bid to access EU money (https://helsinki.hu/wp-content/uploads/2023/05/Assessment_of_the_Judicial_Reform_052023.pdf) and to their proposed recommendations that the EU Council could adopt under Article 7.1 TEU (https://helsinki.hu/en/wp-content/uploads/sites/2/2023/05/HU_Article7_CS_O_recs_May2023.pdf) (accessed 23 June 2023).

With regard to *Poland*, we draw your attention to a recent letter signed by a number of international human rights organisations, including Human Rights Watch, detailing the continued deterioration of rule of law and fundamental rights in Poland (<https://www.icj.org/eu-ngo-letter-to-eu-ministers-on-continue-d-rule-of-law-backsliding-in-poland-and-hungary/>) (accessed 23 June 2023).

- Refrain from supporting any decisions to release **EU funds** under the conditionality mechanism until all reform requirements are fully and genuinely implemented.
- As an expression of **Spain's commitment to rule of law and fundamental rights**, use the moment of Spain's Council Presidency to join the Friends of the Rule of Law group of EU member states.

II. Rights-Respecting and Principled EU Migration Policy

Spain's EU Council presidency comes at a critical time for the EU's migration policy after the Council agreed on 8 June on a negotiating position on an EU-wide reform of its asylum and migration system. Given its mandate to lead on behalf of member states the negotiations with the European Parliament on a final agreement, Spain has an opportunity to broaden the scope for a rights-respecting approach.

Sadly, member states agreed on a reform that reduces protection standards and is built on deterrence and systematic detention at EU borders that could incentivize more pushbacks and deaths at sea. Abuses at borders are likely to worsen with the increased use of "border procedures" instead of regular asylum procedures, especially given the continuing problems with the few existing border monitoring mechanisms that are neither independent nor effective.⁵ This happens as some member states have drastically reduced search-and-rescue (SAR) capacities at sea, obstructed NGO rescue activity and relied on opaque deals with abusive third countries to stem migration.⁶ Even without the horrific death toll of the 14 June shipwreck off the coast of Greece – ranging between 400-750 fatalities – the first quarter of this year is estimated as the deadliest in the central Mediterranean in six years.⁷

We call on your government to:

- Support the establishment of **proactive, state-led SAR operations in the Mediterranean Sea** that could involve expanding the mandates and capacity of existing initiatives like EUNAVFOR MED and Frontex, funding professional rescue NGOs and ensuring predictable disembarkation.
- Promote a discussion on the **critical role of NGOs** to ensure that they are fully able to carry out their lifesaving SAR activities, instead of facing obstruction and criminal and administrative penalties; and provide platforms for discussion of cooperation between member state rescue coordination centers and NGOs.
- Advocate for **independent and effective border monitoring mechanisms** to document human rights violations at EU external borders, such as unlawful pushbacks, to ensure accountability for those responsible for human rights abuses and access to justice for victims.
- Ensure that **migration cooperation with third countries**, and all provision of financial, technical, and material assistance, are contingent on clear and verifiable human rights commitments.

⁵ European Council on Refugees and Exiles (ECRE): *Editorial: Migration Pact Agreement Point by Point*, 9 June 2023, <https://ecre.org/editorial-migration-pact-agreement-point-by-point/> (accessed 23 June 2023). Human Rights Watch: *New EU Migration Deal Will Increase Suffering at Borders*, 9 June 2023, <https://www.hrw.org/news/2023/06/09/new-eu-migration-deal-will-increase-suffering-borders> (accessed 23 June 2023). Human Rights Watch: *Croatia: Ongoing, Violent Border Pushbacks*, 3 May 2023, <https://www.hrw.org/news/2023/05/03/croatia-ongoing-violent-border-pushbacks> (accessed 23 June 2023).

⁶ Human Rights Watch: *The EU Must Not Be Complicit in the Loss of Lives at Sea*, 16 June 2023, https://www.hrw.org/news/2023/06/16/eu-must-not-be-complicit-loss-lives-sea#_ftn3 (accessed 23 June 2023).

⁷ United Nations: *Central Mediterranean: Deadliest first quarter for migrant deaths in six years*, 12 April 2023, <https://news.un.org/en/story/2023/04/1135577> (accessed 23 June 2023).

- Enable a **constructive dialogue on the asylum procedures regulation and the asylum and migration management regulation** with a view to limiting the use of accelerated border procedures, the detention of asylum seekers including families with children, and discretionary use of the “safe third country” concept.
- Promote a discussion on establishing more **safe and legal pathways for migration** as called for by EU Justice and Home Affairs Commissioner Johansson.⁸

III. Human Rights as a Pillar of EU’s Foreign Policy

The EU is equipped with solid instruments to ensure that human rights protection remains at the centre of its external action. The EU has shown resolve in its response to Russia’s invasion of Ukraine and has led at the United Nations to address key human rights crises.

However, Spain’s Presidency comes at a time of emboldened autocratic leaderships and eroding human rights protection globally. This worrying trend underlines why it is critical for the EU to use its strategic ties with powerful countries including China, India, the Gulf and North Africa to consistently and persistently raise human rights issues and the importance of protecting the overall human rights framework.

During its Presidency, we call on your government to:

- Continue to **combat impunity for crimes committed in Ukraine**, including by providing adequate resources to the International Criminal Court’s (ICC) regular budget, advocating and supporting the implementation of ICC arrest warrants, pressing Ukraine to ratify the Rome Statute and supporting independent investigations and prosecutions under universal jurisdiction.
- Continue to **support Human Rights Defenders (HRDs) at risk** and share your experience with other EU member states. Encourage other EU member states to learn from and replicate Spain’s forward-leaning approach with the Program for Support and Protection of Human Rights Defenders at Risk that provides dedicated one-year residential visas for HRDs. Advocate with EU member states to use their discretion and facilitate access by HRDs to multi-year multi-entry Schengen visas in line with EU guidelines.
- In the context of the **EU-CELAC Summit** (17-18 July 2023), promote multilateral action to address the main human rights crises in Latin America and the Caribbean, including those in Venezuela, Haiti, Nicaragua, and Cuba, and reflect in the proceedings and outcome declaration commitments to human rights and democratic principles, including the integrity and independence of electoral processes and the right to vote; the protection of human rights defenders, civil society groups, journalists and prosecutors from threats and attacks; and the need to increase efforts to address insecurity, poverty and inequality and to protect people on the move.
- Recalibrate EU’s engagement with **China** to address the government of China’s human rights record through measurable deliverables; counter the government of China’s flawed narratives on its own human rights record; reject efforts to undermine international human rights institutions; lead the creation of a UN investigative and monitoring mechanism for

⁸ For a 20-point Action Plan proposed by Human Rights Watch (HRW), Amnesty International (AI) and European Council on Refugees and Exiles (ECRE), see *PLAN OF ACTION: TWENTY STEPS TO PROTECT PEOPLE ON THE MOVE ALONG THE CENTRAL MEDITERRANEAN ROUTE*, June 2021, <https://ecre.org/wp-content/uploads/2021/06/Central-Med-Plan-of-Action-June-2021.pdf> (accessed 23 June 2023).

crimes against humanity committed in Xinjiang; sanction or hold accountable those responsible for such crimes; and make plans to reduce dependency on a government that assaults human rights both domestically and in its foreign policy.

- Strengthen the **EU's engagement with key international partners**, including India, countries in the Gulf and around the Mediterranean, towards the implementation of their international human rights obligations.
- Prioritise negotiations amongst EU Member States with the goal of agreeing on a General Approach on the proposed **Forced Labour Regulation** that robustly protects workers from exploitation; ensure progress for the adoption of an EU legislation on **human rights and environmental due diligence** for companies; and ensure that a reformed EU **Generalized Scheme of Preferences** is more transparent and is not used to unduly pressure third countries on policies unrelated to their Sustainable Development Goals.

We look forward to closely cooperating with your government during the rotating Presidency of the Council on these and other issues. We are relying on your support to hold governments in breach of the EU's core human rights values to account and assure every person in the EU that their rights - as well as the independence of the institutions critical to hold power to account - will be protected.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tirana Hassan', with a stylized, flowing script.

Tirana Hassan
Executive Director
Human Rights Watch