



**Human Rights Watch**  
**Concerns and Recommendations on Spain**  
Submitted to the Human Rights Committee  
in advance of its Pre-Sessional Review of Spain  
July 2014

Human Rights Watch welcomes the upcoming review of Spain by the Human Rights Committee. This briefing provides an overview of our main concerns with regard to Spain's compliance with the International Covenant on Civil and Political Rights (ICCPR). We hope it will inform the Committee's pre-sessional review of Spain and that the areas of concern highlighted here will be reflected in the list of issues submitted to the Spanish government ahead of the review.

**Rights of migrants and asylum seekers (Articles 6, 7, and 13)**

Human Rights Watch and other nongovernmental organizations have documented continuing unlawful summary returns of migrants to Morocco from the Spanish enclaves of Ceuta and Melilla. Migrants who make it across razor wire fences onto Spanish territory have told Human Rights Watch that Spanish *Guardia Civil* turn them over to Moroccan forces without due process or access to legal counsel and translators, as required by Spanish immigration law.<sup>1</sup> Unaccompanied migrant children were also summarily expelled without the opportunity to seek international protection.<sup>2</sup> These summary returns place migrants at risk of abuse by Moroccan security forces and deny them the right to seek asylum, a binding obligation on Spain under article 18 of the Charter of Fundamental Rights of the European Union as amended by the 2007 Treaty of Lisbon.<sup>3</sup>

The Committee has previously stated in General Comment 20 that state parties “must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or

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<sup>1</sup> Human Rights Watch, *Abused and Expelled: Ill-Treatment of Sub-Saharan African Migrants in Morocco*, February 2014, <http://www.hrw.org/reports/2014/02/10/abused-and-expelled>, p. 42-46.

<sup>2</sup> *Abused and Expelled*, p. 45.

<sup>3</sup> European Union, Charter of Fundamental Rights of the European Union, October 26, 2012, 2012/C 326/02.

punishment upon return to another country by way of their extradition, expulsion or refoulement.”<sup>4</sup>

Human Rights Watch has serious concerns about excessive use of force at the enclave borders. Human Rights Watch research has documented cases of Spanish *Guardia Civil* violence against migrants who succeeded in crossing the Melilla border, including kicking with boots and beatings with batons. In one case a 12-year-old boy was shocked with an electronic device.<sup>5</sup>

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 five of the migrants whose bodies were located in Spanish waters, and as of early July 2014 was seeking to identify the border guards present on the evening in question.<sup>6</sup> In March, the ruling Popular Party blocked the Opposition from conducting a parliamentary investigation into the incident.<sup>7</sup> In another recent incident on June 3, 2014, that was reported in the media, Moroccan gendarmerie are reported to have beaten 13 migrants in the presence of Spanish *Guardia Civil* on the uninhabited Spanish island of Perejil before removing them.<sup>8</sup>

In General Comment 15, the Committee has reiterated that “even in relation to entry” aliens enjoy covenant protections when it comes to the prohibition of inhuman treatment.<sup>9</sup>

### Reproductive rights (Articles 3, 6, 7, and 17)

In December 2013, the government endorsed draft legislation to restrict access to safe and legal abortions to circumscribed cases. At this writing the bill was expected to be sent to parliament in September 2014. The proposed reforms pose a serious threat to a wide range of human rights under the Covenant for women and girls in Spain, including the right to

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<sup>4</sup> UN Human Rights Committee, General Comment No. 20, Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment, HRI/GEN/1/Rev.9, para. 9.

<sup>5</sup> *Abused and Expelled*, p. 43.

<sup>6</sup> Nicolas Castellano, “El juzgado de Ceuta obligado a identificar a todos los Guardias Civiles de la tragedia del Tarajel,” *Cadena Ser*, July 2, 2014, [http://www.cadenaser.com/sociedad/articulo/juzgado-ceuta-obligado-identificar-todos-guardias-civiles-tragedia-tarajal/csrsrpor/20140702csrsoc\\_2/Tes](http://www.cadenaser.com/sociedad/articulo/juzgado-ceuta-obligado-identificar-todos-guardias-civiles-tragedia-tarajal/csrsrpor/20140702csrsoc_2/Tes) (accessed July 2014).

<sup>7</sup> Anabel Diez and Rebeca Carranco, “PP blocks calls for investigation into Ceuta immigrant tragedy,” *El País*, March 4, 2014, [http://elpais.com/elpais/2014/03/04/inenglish/1393931221\\_472262.html](http://elpais.com/elpais/2014/03/04/inenglish/1393931221_472262.html) (accessed July 2014).

<sup>8</sup> Gabriela Sanchez, “Qué pasó con los inmigrantes de Perejil cuando la abdicación del rey acaparaba tu atención,” *El Diario*, June 5, 2014, [http://www.eldiario.es/desalambre/inmigrantes-Perejil-abdicacion-acaparaba-atencion\\_o\\_267724188.html](http://www.eldiario.es/desalambre/inmigrantes-Perejil-abdicacion-acaparaba-atencion_o_267724188.html) (accessed July 2014).

<sup>9</sup> UN Human Rights Committee, General Comment No. 15, The Position of Aliens Under the Covenant, U.N. Doc. HRI/GEN/1/Rev.1, para. 5.

freedom from interference with privacy and family, the right to non-discrimination and equality, freedom from cruel and degrading treatment, and the right to life.<sup>10</sup>

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 significant barriers to access legal abortions. For example, the draft bill includes the requirement that two specialist doctors testify to the threat to physical or mental health, which could pose an unjustified barrier that is neither medically necessary nor proportionate to any legitimate regulatory aim. It also places women in rural areas at a disadvantage, contributing to unequal access to timely, legal, and safe abortions. In addition, the draft legislation does not provide for any mechanism to resolve conflicts of opinion among medical professionals or between the woman and medical professionals. Furthermore, the bill would allow medical providers to refuse to provide abortion care as a matter of conscience without adequate regulation and monitoring in these cases to ensure women have access to life-saving medical care.

The draft bill also includes an obligation that victims of sexual violence have to report the violence to the police in order to access a legal abortion. The reporting requirement imposes an undue burden on women and girls who have suffered the trauma of sexual violence. The World Health Organization (WHO) recommends that "prompt, safe abortion services ... be provided on the basis of a woman's complaint rather than requiring forensic evidence or police examination."<sup>11</sup>

In addition, the draft bill includes mandatory counseling and waiting periods, which international human rights bodies and WHO consider to be unnecessary barriers to safe abortions.<sup>12</sup>

The Committee has repeatedly expressed concern about the relationship between restrictive abortion laws, clandestine abortions, and threats to women's and girls' lives, health, and well-being as has the Committee on the Elimination of Discrimination against Women.<sup>13</sup> The

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<sup>10</sup> "Spain Abortion Bill Violates Rights," Human Rights Watch news release, May 12, 2014, <http://www.hrw.org/news/2014/05/12/spain-abortion-bill-violates-rights>.

<sup>11</sup> World Health Organization, *Safe abortion: technical and policy guidance for health systems*, second edition, 2012, [http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf?ua=1) (accessed July 25, 2014), pp. 92-93.

<sup>12</sup> Ibid, p. 94 and pp. 96-97; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Committee, "Concluding Observations: Hungary," UN Doc. CEDAW/C/HUN/CO/7-8, March 1, 2013, paras. 30-31.

<sup>13</sup> UN Human Rights Committee, "Concluding observations of the Human Rights Committee on the Dominican Republic," UN Doc. CCPR/C/DOM/CO/5 (2012), para. 15; Guatemala, UN Doc. CCPR/C/GTM/CO/3 (2012), para. 20; Jamaica, UN Doc. CCPR/C/JAM/CO/3 (2011), para. 14; El Salvador, UN Doc. CCPR/C/SLV/CO/6 (2010), para. 10; Poland, UN Doc.

Committee against Torture has found that restrictive abortion laws can constitute inhuman and degrading treatment.<sup>14</sup>

### **Freedom of expression and association, right to peaceful assembly (Articles 19, 21, and 22)**

A new draft law on public safety, if enacted, would negatively impact the rights to freedom of speech and freedom of assembly in Spain. The bill, which was sent to Congress in July, would create three tiers of breaches subject to administrative fines. Serious breaches, subject to fines up to €30,000, would include planning or participating in spontaneous protests in front of national and regional parliaments, or insulting the institutions, symbols, or hymns of Spain or any of its autonomous regions “through any medium.” Obstructing authorities carrying out administrative or court orders could lead to the same fine. The commission of three serious breaches within two years constitutes a “very serious breach” in the draft legislation, punishable by a fine of up to €600,000.<sup>15</sup>

Under the proposed legislation, organizers, de facto leaders, and vaguely-defined “inspirers” of protests would be held jointly responsible for any unlawful acts committed by participants.

The bill also provides for fines up to €1,000 for insulting law enforcement officers during a demonstration or distributing images that offend their honor, as well as for insulting or disrespecting, by any medium, public officials and institutions, when these actions are not liable to criminal prosecution.

Offences for actions that constitute “insult,” “offence to honor,” or “disrespect” in particular as they relate to public figures, officials, or state institutions are not compatible with respect for free speech. The law as formulated risks also having a chilling effect on Covenant protected rights to freedom of assembly and freedom of association.<sup>16</sup>

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CCPR/C/POL/CO/6 (2010), para. 12; Colombia, UN Doc. CCPR/CO/80/COL (2004), para. 13; Morocco, UN Doc. CCPR/CO/82/MAR(2004), para. 29; Sri Lanka, UN Doc. CCPR/CO/79/LKA (2003), para. 12; and Venezuela, UN Doc. CCPR/CO/71/VEN (2001), para. 19. CEDAW, General Comment No. 19, Violence Against Women, HRI/GEN/1/Rev.6, para. 24. CEDAW Committee’s concluding observations on Belize, UN Doc. A/54/38, Part II (1999), para. 56; Colombia, UN Doc. A/54/38/Rev.1, Part I (1999), para. 393; Dominican Republic, UN Doc. A/53/38/Rev.1, Part I (1998), para. 337.

<sup>14</sup> See, for example, United Nations Committee against Torture, “Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Conclusions and recommendations of the Committee against Torture, Ireland,” CAT/C/IRL/CO/1, June 17, 2011, <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.IRL.CO.1.pdf> (accessed July 2014), para. 26.

<sup>15</sup> Judith Sunderland (Human Rights Watch), “Spain: You Protest You Pay” commentary, *El Huffington Post*, December 23, 2013, <http://www.hrw.org/news/2013/12/23/spain-you-protest-you-pay>.

<sup>16</sup> Judith Sunderland (Human Rights Watch), “Spain: No Excuse for Muzzling Protests” dispatch, March 28, 2014, <http://www.hrw.org/news/2014/03/28/dispatches-spain-no-excuse-muzzling-protests>.

The proposed law comes amid increasing official intolerance toward public protests, with the ruling Popular Party seeking to discredit the Platform for Mortgage Victims, a grass-roots movement that advocates on behalf of victims of Spain's housing crisis.<sup>17</sup> At the same time, there has been an increase in the use of administrative fines and criminal prosecution to punish participants in non-violent protests. Statistics from the Interior Ministry show that the use of administrative fines against protestors in 2012 increased by 350 percent over the previous year, though the number of demonstrations decreased.<sup>18</sup>

### **Incommunicado detention (Articles 7, 10, and 14)**

Spain continues to violate the prohibition against incommunicado detention. The Human Rights Committee has indicated that compliance with Article 7 of the Covenant includes a requirement to make provisions against incommunicado detention.<sup>19</sup> Severely curtailed rights for certain suspects, including terrorism suspects, remain in place despite repeated concerns expressed by UN Bodies, including the Human Rights Committee.<sup>20</sup> The Human Rights Committee has previously 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.<sup>21</sup>

The Spanish Code of Criminal Procedure permits incommunicado detention for up to 13 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 the 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,

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<sup>17</sup> Judith Sunderland (Human Rights Watch), "Spain's Attacks on Fighting Back" commentary, *Open Democracy*, May 17, 2013, <http://www.hrw.org/news/2013/05/17/spain-s-attacks-fighting-back>.

<sup>18</sup> Judith Sunderland (Human Rights Watch), "Spain: You Protest You Pay" commentary, *El Huffington Post*, December 23, 2013, <http://www.hrw.org/news/2013/12/23/spain-you-protest-you-pay>.

<sup>19</sup> UN Human Rights Committee, CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), March 10, 1992, at 11.

<sup>20</sup> UN Human Rights Committee, "Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Concluding observations of the Human Rights Committee, Spain," CCPR/C/ESP/CO/5, January 5, 2009, para. 14.

<sup>21</sup> UN Human Rights Committee, *María Cruz Achabal Puertas v. Spain*, Communication No. 1945/2010, U.N. Doc. CCPR/C/107/D/1945/2010.

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.

### **Deprivation of legal capacity (Articles 2, 3, 7, 9, and 25)**

Human Rights Watch is concerned about the growing number of people with disabilities in Spain who are being deprived of their legal capacity, stripping them of the right to make their own decisions, such as voting or making medical choices. Information from the Spanish General Council of the Judiciary indicates that an increasing number of people with disabilities are being stripped of their legal capacity, with some 9,783 cases in 2005 jumping to 26,609 cases in 2013, an increase of 172% percent.

Human Rights Watch's research has shown that deprivation of legal capacity profoundly impacts the rights of people with disabilities, for example, when it comes to the right to health, political participation, access to justice, and freedom from arbitrary detention.<sup>22</sup> The Committee on the Rights of Persons with Disabilities has expressed concern that deprivation of legal capacity can lead to the forced institutionalization and involuntary treatment, including sterilization without consent, of persons with disabilities in Spain.<sup>23</sup> The mandate of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment has previously stated that forced medical treatment without the person's free and informed consent can amount to prohibited ill-treatment.<sup>24</sup> The Committee also noted

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<sup>22</sup> Human Rights Watch, *World Report 2012* (New York: Human Rights Watch, 2012), "From Paternalism to Dignity: Respecting the Rights of Persons with Disabilities," <http://www.hrw.org/world-report-2012/paternalism-dignity>.

<sup>23</sup> Committee on the Rights of Persons with Disabilities, "Consideration of reports submitted by States parties under article 35 of the Convention, Concluding observations of the Committee on the Rights of Persons with Disabilities: Spain," CRPD/C/ESP/CO/1, September 19-23, 2011, paras. 29, 30, 35, 37, and 38.

<sup>24</sup> Report of the special rapporteur on torture and other cruel, inhuman and degrading treatment, Manfred Nowak, A/63/175, July 28, 2008.

that persons deprived of legal capacity may even face a risk to their right to life, as guardians are able to consent to termination of medical treatment in their place.<sup>25</sup>

**Human Rights Watch encourages the Committee to ask the state party questions about and recommend that the state party fully implement the following:**

*Regarding rights of migrants and asylum seekers, Spain should:*

- 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 reproductive rights, Spain should:*

- Abandon proposed changes to Spain's existing abortion law and ensure access to safe and legal abortion for all women and girls in the country.

*Regarding freedom of expression and association and right to peaceful assembly, Spain should:*

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

*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 at all stages of detention.

*Regarding deprivation of legal capacity, Spain should:*

- Recognize the legal capacity of all persons with disabilities on an equal basis with others and the right to exercise it. Provide accommodations and access to support, where necessary, for persons with disabilities to exercise their legal capacity; and

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<sup>25</sup> Committee on the Rights of Persons with Disabilities, "Consideration of reports submitted by States parties under article 35 of the Convention, Concluding observations of the Committee on the Rights of Persons with Disabilities: Spain," CRPD/C/ESP/CO/1, September 19-23, 2011, para. 29.

- Replace regimes of guardianship and substitute decision-making by a system of supported decision-making which respects the person's autonomy, will, and preferences.