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Andalucía **acoge**



Fundación
ABOGACÍA ESPAÑOLA

Mr. Nils Muižnieks

Commissioner for Human Rights of the Council of Europe

The undersigned organizations are writing to urge you to use your mandate to make an urgent appeal to the Spanish government to withdraw proposed changes to Spanish immigration law that would facilitate summary returns from Spain's enclaves in North Africa in violation of European and international human rights law.

On October 22, 2014, the Popular Party Parliamentary Group (Grupo Parlamentario Popular) tabled an amendment to the draft Law on Public Security currently being debated in Congress that would modify Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their integration. The proposed change reads (the amendment in Spanish is attached):

*“Additional Disposition 10. Special regime for Ceuta and Melilla
Foreigners detected on the boundary line of the demarcation of Ceuta and Melilla attempting an unauthorized crossing of the border in a clandestine, flagrant or violent way, shall be rejected in order to prevent their illegal entry into Spain”.¹*

We are deeply concerned that the amendment would lead to indiscriminate summary and collective expulsions of migrants without an effective remedy. The amendment would allow rejecting individuals at the borders of Ceuta and Melilla without detailing how these would be carried out or providing for any procedural safeguards. The failure to clearly define the “rejection” procedure and lack of any human rights guarantees will deprive asylum seekers of access to the asylum procedure in Spain and could result in *refoulement*. It could expose both migrants and asylum seekers to the risk of torture or cruel, inhuman or degrading treatment in Morocco.

It is crucial to emphasize that the government intends to apply this procedure to migrants and asylum seekers who have already entered Spanish territory, based

on its aberrant interpretation of where Spanish territory begins. The government of Spain has repeatedly asserted that the area between the triple-fence in Melilla is not Spanish territory in order to justify ongoing, continuous summary returns from this enclave to Morocco.ⁱⁱ It has gone so far as to allege that migrants should not be considered to have entered Spanish territory until they have crossed the “police line.”ⁱⁱⁱ The proposed amendment would enshrine this interpretation in law, by affirming that “illegal entry into Spain will be considered ‘achieved’ when migrants have passed the security perimeter in its entirety.”^{iv}

A Spanish court has affirmed that the Spanish border begins at the outside fence and that all areas between the fences are on Spanish territory. The independent national human rights institute, the Defensor del Pueblo, supports this view.

The proposed amendment would carve out further exceptions to national immigration law applicable to Ceuta and Melilla. Organic Law 4/2000 prohibits summary returns and guarantees irregular migrants the right to legal counsel and an interpreter during expulsion proceedings, including entry refusals (*denegación de entrada*) and expulsions which take place at the border following an irregular entry (*devolución*).^v Law 12/2009, on the right of asylum and subsidiary protection, guarantees the right to all those present on Spanish territory to apply for international protection.^{vi} Rejection at the border as envisioned in the proposed amendment would deprive migrants and asylum seekers at the Ceuta and Melilla borders of these legal safeguards.

We are also concerned that the proposal increases the risk of excessive use of force by the Spanish Civil Guards patrolling Spain’s external borders in Ceuta and Melilla as the practice of summary expulsions will prevent individuals from reporting such human rights violations they may suffer on Spanish territory.

The Ministry of Interior announced on 23 October a protocol on “integrated action in Ceuta and Melilla perimeters.” According to a press release published on the Ministry’s website, this protocol would enter into force once the legal reform is approved by the Parliament, and would allow the use of force and riot control weapons by law enforcement agents when rejecting individuals at the border.^{vii} Although the protocol would explicitly require that riot control methods be used only when necessary and proportionate, we are nonetheless concerned about the use of such methods in border control operations.

On February 6, 2014, at least fifteen migrants drowned in waters off Ceuta after the Spanish Guardia Civil fired rubber projectiles and tear gas in their direction. A judicial investigation into those tragic deaths is ongoing at the time of writing this letter.

National and international human rights organizations have additionally documented numerous instances where the Spanish Civil Guards have used excessive force when summarily expelling irregular migrants to Morocco or in their attempts to prevent entry of irregular migrants to Melilla. Reports have also documented use of excessive force by Moroccan security forces upon migrants’ unlawful expulsion from Spain.^{viii}

The implementation of the proposal aimed at rejecting individuals at the border would constitute a clear breach of EU law and international human rights and refugee law obligations undertaken by Spain. In particular, it would lead to violations of the right to asylum, the prohibition of torture and other ill-treatment, the *non-refoulement* obligation, the right to an effective remedy and reparation for victims of human rights violations, as well as the prohibition of collective expulsions.^{ix} Italy's practice of summary returns from Italy to Greece depriving individuals of access to the asylum procedure or any other remedy in the port of Ancona was recently condemned by the European Court of Human Rights. In the case of *Sharifi and Others v. Italy and Greece*, the Court held that the automatic removal to Greece of four Afghan nationals by Italy particularly violated their rights to freedom from inhuman or degrading treatment, to protection against collective expulsion and to an effective remedy.^x

Finally, we would like to raise our concerns about the timing and manner in which this crucial reform has been pursued. The governing Popular Party, which has an absolute majority in both chambers of Parliament (Congress and Senate), tabled the amendment on the last day of the deadline for amendments to the draft bill on Public Security (Ley Orgánica para la Protección de la Seguridad Ciudadana). The introduction of the amendment at this stage prevents civil society from participating meaningfully in the debate and impedes any human rights impact assessment of the legislative reform. This draft bill is fast-tracked and may be adopted by January 2015.

As you recently reaffirmed, "State authorities have the duty to examine their [migrants'] situations individually and allow them to seek asylum. It is illegal for a state to simply push them back."^{xi}

We are calling on the Spanish government to withdraw the proposed amendment. We kindly request you to address an appeal to the Government of Spain concerning the proposed "rejection at the border" procedure as soon as possible, recalling Spain's obligations under European and international human rights law.

Please do not hesitate to contact us if you need further information or clarification.

Best regards,

Human Rights Watch
Rights International Spain
Alianza por la Solidaridad
Amnesty International
Andalucía Acoge
Asociación Pro Derechos Humanos de Andalucía
Comisión Española de Ayuda al Refugiado
European Council on Refugees and Exiles
Federación de Asociaciones de S.O.S Racismo del Estado español
Fundación Abogacía Española
Jueces para la Democracia

Red Acoge
Fundación PRODEIN (Pro Derechos de la Infancia de Melilla)

Cc. Senior Advisor on Migration, Directorate of Human Rights,
Directorate General Human Rights and Rule of Law (DGI)

Cc: Ms Anne Brasseur
President of the Parliamentary Assembly of the Council of Europe

Cc. Members of the Committee on Migration, Refugees and Displaced Persons
Parliamentary Assembly of the Council of Europe

Cc. Members of the Committee on Legal Affairs and Human Rights
Parliamentary Assembly of the Council of Europe

ⁱ <http://www.europapress.es/epsocial/politica-social/noticia-pp-propone-reformar-ley-extranjeria-incluir-rechazo-frontera-inmigrantes-ceuta-melilla-20141022101745.html> . We are attaching the amendment to this letter.

ⁱⁱ <http://elfarodigital.es/melilla/politica/151492-el-entrevallado-no-es-espana-segun-interior-para-justificar-la-presencia-de-mejanis-alli.html#>

ⁱⁱⁱ http://politica.elpais.com/politica/2014/02/21/actualidad/1392978609_302648.html

^{iv} See the official press release concerning the new protocol:
http://www.interior.gob.es/es/web/interior/noticias/detalle/-/journal_content/56_INSTANCE_1YSSI3xiWuPH/10180/2687323/?redirect=http%3A%2F%2Fwww.interior.gob.es%2Fes%2Fweb%2Finterior%2Fportada%3Bjseccionid%3D48E0E5F483B0B97D95E2E4AE75CE9A11%3Fp_p_id%3D101_INSTANCE_pNZsk80xKI0x%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-2%26p_p_col_pos%3D2%26p_p_col_count%3D4

^v Law 4/2000, article 22, <https://www.boe.es/buscar/act.php?id=BOE-A-2000-544>.

^{vi} Law 12/2009, article 16.1. <https://www.boe.es/buscar/act.php?id=BOE-A-2009-17242>

^{vii} See endnote (iv), above.

^{viii} Human Rights Watch report, 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>; Human Rights Watch press release, "Halt Summary Push-backs to Morocco," August 18, 2014, <http://www.hrw.org/news/2014/08/18/spain-halt-summary-pushbacks-morocco>; Human Rights Watch press release, "Excessive Use of Force," October 21, 2014, <http://www.hrw.org/news/2014/10/21/spain-excessive-force-melilla>;

Asociación Pro Derechos Humanos de Andalucía report, March 2014, "Derechos Humanos en la Frontera Sur,"

http://www.apdha.org/media/frontera_sur_2014_web.pdf;

La Comisión de Derechos Humanos (CODH), "Vulneraciones de derechos Humanos

en la Frontera Sur- Melilla,” July 2014,

http://www.sosracismomadrid.es/web/wp-content/uploads/2014/07/Informe-MelillaDDHH_difusion.pdf.

^{ix} Articles 3 and 13 of the European Convention on Fundamental Rights and Freedoms, article 4 of Protocol 4 to the Convention, articles 2.3, 7, 13 and 14 of the International Covenant on Civil and Political Rights, Articles 16, 25, 31, 32 and 33 of the Geneva Convention relating to the Status of Refugees, articles 4, 18, 19 and 47 of the Charter of Fundamental Rights of the European Union. See also the UN Office of the High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights at International Borders; Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code); Council Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on minimum standards on procedures in Member States for granting and withdrawing international protection (recast); Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

^x European Court of Human Rights, *Sharifi and Others v. Italy and Greece*, judgment of 21 October 2014,

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-147287>. See also Amnesty International public statement, “European Court ruling condemns automatic and indiscriminate returns from Italy to Greece”, 23 October 2014, <http://www.amnesty.eu/en/news/press-releases/council-of-europe/european-court-ruling-condemns-automatic-and-indiscriminate-returns-from-italy-to-greece-0798/>;

^{xi} <https://www.facebook.com/pages/Council-of-Europe-Commissioner-for-Human-Rights/118705514972034>