

March 18, 2015

Dear Members of the UN Working Group on Discrimination against Women in Law and Practice

We, the undersigned organizations are writing to urge your mandates to address an appeal to the Spanish government regarding the draft legislation “*To increase protection for minors and women with reduced legal capacity in the termination of pregnancies*” (*Proposición de Ley Orgánica para reforzar la protección de las menores y mujeres con capacidad modificada judicialmente en la interrupción del embarazo*). The draft legislation represents a serious threat to the sexual and reproductive health and rights of girls and would create unjustified barriers to accessing safe, legal abortions for 16- and 17-year-olds.

The draft bill requires the explicit consent of legal guardians for all 16- and 17-year-olds who wish to terminate an unwanted pregnancy. Disputes that arise in relation to the granting of consent would be resolved in accordance with the provisions of the Civil Code, which means that the final decision would be in the hands of a judge.

Under current law in Spain, 16- and 17-year-olds are obliged to *inform* their legal representatives, parents, those holding parental responsibility or guardians, *but their consent is not legally required*.ⁱ Furthermore, the current legislation establishes an important exception: 16- and 17-year-olds are not required to share information about their decision “*when the minor claims that this will cause a serious conflict that could result in a real danger of domestic violence, threats, coercion, abuse, or may lead to alienation or hardship*”. The proposed draft legislation eliminates this protection for girls whose situations are especially vulnerable.

In 2014, 3.6% of all abortions in Spain involved girls of between 16 and 17 years of age. Of these, 12.38% (400 girls) did not inform their parents for the following reasons: lack of parental support, broken families, parents in prison, risk of abuse, girls whose parents reside outside the country, a disabling parental illness, or parents openly against abortion.ⁱⁱ

The elimination of the protection afforded by current legislation, which allows 16- and 17-year-old girls not to inform their parents where this could result in serious conflict, hardship or abuse, will carry clear risks to their physical and mental health. It will disproportionately affect girls who are already in vulnerable situations and may be forced to carry to term an unwanted pregnancy or risk an unsafe abortion. In December 2014, following your mission to Spain, your Working Group raised concerns that this proposed measure “would further restrict girls’ access to safe and legal abortion” and would expose them to risk.ⁱⁱⁱ

If adopted the draft bill will undermine Spain’s progress towards respect and protection for the human rights of women and girls in relation to the termination

of pregnancy. It jeopardises the rights of young women under 18 to bodily autonomy, privacy and confidentiality, denying 16- and 17-year olds in Spain the right to make independent decisions about their sexual and reproductive health, and posing a serious threat to their enjoyment of other fundamental rights. International human rights law and standards recognise that access to safe and legal abortion is crucial to women's and girls' effective enjoyment and exercise of their human rights, including the rights to life, non-discrimination and equality, health and privacy.

The European Court of Human Rights held, in *P. and S. v. Poland*, that "guardianship cannot be considered to automatically confer on the parents of a minor the right to take decisions concerning the minor's reproductive choices, because proper regard must be had to the minor's personal autonomy in this sphere."^{iv} Similarly, the UN Committee on the Rights of the Child stated in General Comment No. 4 and General Comment No. 15 that children must be able to access sexual and reproductive health services without parental consent in line with their evolving capacities. Specifically the Committee urged states to allow "children to consent to certain medical treatments and interventions without the permission of a parent, caregiver, or guardian, such as ... sexual and reproductive health services, including ... safe abortion."^v The Committee has underlined the "increasing importance in accordance with growing capacity and maturity" for children of "the right to control one's health and body, including sexual and reproductive freedom to make responsible choices."^{vi}

Additionally the European Court of Human Rights has underscored that because the time factor is particularly critical in decisions regarding access to abortion, the relevant domestic procedures must ensure that decisions are taken quickly.^{vii}

However, as noted above, the draft legislation refers to "the provisions of the Civil Code" as a means to resolve potential conflicts concerning abortion between legal guardians and minors, in effect placing the final decision in the hands of a judge. Given the lack of resources and overwhelming workload of courts in Spain, as well as the fact that judges are not bound by deadlines, there is reasonable cause for concern that cases of this type will not be resolved expeditiously.^{viii}

Finally, we would also like to emphasise our concerns regarding the unusual manner in which the proposed reform has been introduced. The submission of a draft bill to Congress by the Popular Party Parliamentary Group rather than by the Popular Party Government, impedes meaningful civil society participation in the debate, prevents the gathering of required reports and prevents assessment of the human rights impact of the proposed reform.

Rather than adopting measures that would restrict access to abortion, in order to give effect to the human rights of women and girls the government of Spain should take effective measures to ensure free and informed access to safe and legal abortion services, without discrimination. It should also ensure access to affordable birth control and support services.

We are deeply concerned that the bill will be adopted in the very near future. We therefore kindly request your mandate to address an appeal to the Government concerning the draft legislation as soon as possible.

Please do not hesitate to contact us if you need more information or clarifications.

Yours sincerely,

Alianza por la Solidaridad
Centro de Derechos Reproductivos
Human Rights Watch
Rights International Spain
Associació de Dones de les Illes Balears per a la Salut (ADIBS)
Asociación de Investigación y Especialización sobre Temas Iberoamericanos (AIETI)
Asociación Profesional de Agentes de Igualdad de Oportunidades entre Mujeres y Hombres de la Comunidad de Madrid (AMPLIA)
Associació de Planificació Familiar de Catalunya i Balears
Calala Fondo de Mujeres
Campanya pel Dret a l'Avortament
Centro de Estudios e Investigación sobre Mujeres
Confederación CERES
Creación Positiva
Federación de Planificación Familiar Estatal
Federación Mujeres Jóvenes
Forum de Política Feminista
Fundación Mujeres
Haurralde Fundazioa
Iniciativas de Cooperación Internacional para el Desarrollo (ICID)
Puntos Subversivos
Tertulia Feminista Alternativas Insólitas
Tertulia Feminista Les Comadres

ⁱ Organic Law 2/2010, of 3 March, on Sexual and Reproductive Health and Voluntary Termination of Pregnancy.

ⁱⁱ ACAI, *Mujeres de 16 y 17 años que no han Podido comunicar a sus padres o tutores la interrupción de su Embarazo*, Noviembre 2014. <http://www.acaive.com/pdf/Investigacion-ACAI-menores-16-y-17-anos-noviembre-2014.pdf>

ⁱⁱⁱ UN Working Group on the issue of discrimination against women in law and in practice finalizes country mission to Spain, press release, December 19, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15444&LangID=E#sthash.Go9HCbO4.dpuf>.

^{iv} P and S v. Poland, ECtHR No. 57375/08, para. 109.

^v Committee on the Rights of the Child (CRC), General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), UN Doc. CRC/C/GC/15, para. 31.

^{vi} CRC, General Comment No. 15, para. 24.

^{vii} R.R. v. Poland, ECtHR No. 27617/04, para. 203; P and S v. Poland, ECtHR No. 57375/08, para. 111.

^{viii} Inspection Service of the General Council of the Judiciary found in September 2014 that 75% of the courts of Spain take on more than 100% of the maximum recommended workload,

<http://www.poderjudicial.es/cgpj/es/Poder-Judicial/Consejo-General-del-Poder-Judicial/Actividad-del-CGPJ/Estudios/Informe-organos-que-sobrepasan-el-150--de-la-carga-de-trabajo--Datos-a-31-12-2013>