



Minister Alberto Ruiz-Gallardón
Minister of Justice
Spain

May 9, 2014

Dear Minister Gallardón,

We, the undersigned organizations, are writing to express our deep concern with the draft **legislation “for the protection of the life of the fetus and of the rights of pregnant women”** (*Anteproyecto de ley orgánica para la protección de la vida del concebido y de los derechos de la mujer embarazada*). Under current law in Spain, women and girls have the right to choose to terminate a pregnancy up until the fourteenth week, representing over 90 percent of all abortions carried out in Spain (the remaining involve medical grounds).ⁱ The draft legislation represents a serious threat to women's sexual and reproductive health and rights by eliminating this right to choose and restricting access to safe and legal **abortion only to cases in which the woman's** physical or mental health is endangered (up to 22 weeks) and in which the pregnancy is the result of sexual violence (up to 12 weeks). The draft legislation would also create unjustified medical, practical, and other barriers to access to legal abortions that would violate human rights.

With reference to established jurisprudence of the European Court of Human Rights (ECtHR) and the findings and recommendations of UN treaty monitoring bodies and experts, we detail in this **letter how the proposed changes to Spain's current legislation on abortion would constitute unreasonable interference with women's exercise of a wide range of rights. We respectfully urge you to withdraw the draft legislation.**

General Principles

International human rights law recognizes 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, nondiscrimination and equality, health, privacy, to decide on the number and spacing of children, and to be free from cruel, inhuman, and degrading treatment. International treaty

monitoring bodies have frequently expressed concern about the relationship between restrictive abortion laws, clandestine abortions, and threats to **women and girls'** lives, health, and well-being.

Evidence suggests that restrictive abortion laws have little impact on the number of abortions carried out, but rather drive women to unsafe abortion services. According to the World Health Organization (WHO), approximately 13 percent of maternal deaths worldwide are attributable to unsafe abortions.ⁱⁱ The United Nations Human Rights Committee (HRC) and the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) have repeatedly expressed concern about the relationship between restrictive abortion laws, clandestine abortions, and **threats to women's and girls' lives.**ⁱⁱⁱ The treaty bodies and the ECtHR have also found that **restrictions on women's access to abortion services can constitute inhuman and degrading treatment.**^{iv}

Access to legal and safe abortion services is essential to the protection of women's rights to nondiscrimination and equality. Abortion is a medical procedure that only women and girls need. The CEDAW Committee has asserted that the denial of medical procedures only women need is a form of discrimination against women and girls. Therefore, restrictive abortion laws may amount to discrimination against women and girls in and of themselves. Restrictive abortion laws have a disproportionate impact on the poor and the marginalized by increasing the costs and risks associated with terminating an unwanted pregnancy outside the parameters of the law.

Restrictive abortion laws directly impact the right to health. In a February 2014 statement, the CEDAW Committee clarified that the right to health includes the right to bodily autonomy and the right to sexual and reproductive autonomy.^v The United Nations special rapporteur on the Right to Health describes criminal laws penalizing and restricting abortion as **“the paradigmatic examples of impermissible barriers to the realization of women's right to health”** and calls for their elimination.^{vi} Restrictive laws, the special rapporteur confirms, **“consistently generate poor physical health outcomes, resulting in deaths that could have been prevented, morbidity and ill-health, as well as negative mental health outcomes.”**^{vii}

Key concerns related to the draft legislation

The draft legislation introduces procedures for determining entitlement and access to legal abortion that place an unnecessary burden on women and girls. International human rights bodies and mechanisms have criticized **barriers to women's access to abortion services such as** inadequate regulation and monitoring of the invocation of conscientious objection by medical providers, requirements that abortions be approved by more than one doctor, and requirements of

counseling and mandatory waiting periods for women seeking to terminate a pregnancy. We are deeply concerned that the draft legislation includes all of these measures.

In *RR v. Poland*, the ECtHR reiterated its view that “once the State ... adopts statutory regulations allowing abortion in some situations, it must not structure its legal framework in a way which would limit real possibilities to obtain it.”^{viii}

The broadening of the scope of conscientious objection in Spain under the draft legislation, with weaker safeguards to prevent the exercise of conscientious objection from undermining access to quality care, raise concerns that women may face significant obstacles finding health care providers who will facilitate their access to safe, legal abortions. According to the jurisprudence of the ECtHR, governments must ensure that “effective exercise of freedom of conscience by health professionals in a professional context does not prevent patients from obtaining access to services to which they are entitled under the applicable legislation.”^{ix}

The requirement to obtain medical reports from two different specialist doctors—excluding the doctor carrying out the abortion—affirming that the pregnancy poses a serious threat to her life or physical or mental health could pose an unjustified barrier, that is neither medically necessary nor proportionate to any legitimate regulatory aim, and 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. In *Tysiąg v. Poland*, the ECtHR ruled that the lack of an effective mechanism to address and resolve promptly such disagreements had violated the applicant’s right to private and family life, causing her “a situation of prolonged uncertainty” and “severe distress and anguish when contemplating the possible negative consequences of her pregnancy and upcoming delivery for her health.”^x

The proposed law reform also includes a seven day mandatory waiting period for women wanting to legally access safe abortion services. International human rights bodies and the WHO consider mandatory counseling and waiting periods to be unnecessary barriers to safe abortions.^{xi} The CEDAW Committee has expressed concern about the biased nature of information provided during mandatory counseling sessions and about subjecting women to medically unnecessary waiting periods.^{xii}

As drafted, the law would interfere with the rights of girls under the age of 18 and of women under legal guardianship to bodily autonomy and to privacy and confidentiality. The vaguely-worded text gives judges wide discretion to decide whether to authorize an abortion where the consent of the woman’s or girl’s parents or legal guardians cannot be obtained, with a bias towards the views and wishes of parents and legal guardians. The ECtHR held in *P. and S. v. Poland* that “legal

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.**"^{xiii}

The UN Committee on the Rights of the Child has stated that governments should set minimum ages with respect to the rights of adolescents to health and development, including with regard **"to the possibility of medical treatment without parental consent" taking into account children's** evolving capacity, age, and maturity.^{xiv} Finally, the UN Committee on the Rights of Persons with Disabilities has called on states to **"develop laws and policies to replace regimes of substitute decision-making by supported decision-making, which respects the person's autonomy, will and preferences."**^{xv}

The ban envisioned in the draft law on all advertising by centers, establishments, or medical services and any publicity about means, techniques, or procedures for interrupting pregnancies violates the right to freedom of information and principles of non-discrimination and equality. The ECtHR has found a ban on all information related to foreign abortion services to violate the right to access to information. The Court acknowledged the potentially discriminatory effect of the law, in that it **"may have had more adverse effects on women who were not sufficiently resourceful or had not the necessary level of education to have access to alternative sources of information."**^{xvi}

Finally, we are deeply concerned that victims of sexual violence would be required to have reported 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. WHO has noted that reporting requirements can lead to delays resulting in women and girls being denied services because they have exceeded the time-frame established by law, and the risk that victims of rape who fear being stigmatized upon reporting will not have access to legal abortion. **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."**^{xvii}

The draft legislation would deny women and girls in Spain their right to make independent decisions about their sexual and reproductive health and pose serious threats to their enjoyment of a host of other fundamental rights. Experience from other European countries demonstrate that restrictions on abortion like those proposed in the draft bill lead to significant barriers to access in practice, **which clearly violate women's human rights.** The draft legislation would affect all women's right to freely and responsibly decide over their own bodies and would disproportionately affect those without the means to access safe abortion services abroad. The proposed changes would place Spain out of step with the vast majority of EU member states that allow abortion without restriction as to reason and expose Spain to condemnation by international and European human rights bodies. Rather than restricting access to abortion, the government of

Spain should take all necessary steps to ensure that women have informed and free access to safe and legal abortion services as **an element of women's exercise of their reproductive and other human rights.**

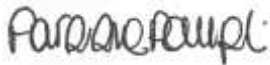
Sincerely,



Alianza por la Solidaridad
Ana Rosa Alcalde, Managing Director



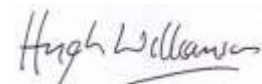
Center for Reproductive Rights
Lilian Sepúlveda, Director of the Global Legal Program



The European NGOs for Sexual and Reproductive Health and Rights,
Population and Development (EuroNGOs)
Patrizia Pompili, Coordinator



Federación de Planificación Familiar Estatal
Luis Enrique Sanchez Acero, Presidente



Human Rights Watch
Hugh Williamson, Director Europe and Central Asia



Rights International Spain
Lydia Vicente, Executive Director

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- ⁱ Ministry of Health, Social Services, and Equality, Interrupción Voluntaria del Embarazo Datos definitivos correspondientes al año 2012, <http://ep00.epimg.net/descargables/2013/12/22/458583945afbfe7b97575ef9c79f07be.pdf> (accessed April 29, 2014)
- ⁱⁱ World Health Organization, Preventing unsafe abortions, Fact Sheet No. 388, March 2014, <http://www.who.int/mediacentre/factsheets/fs388/en/> (accessed March 19, 2014)
- ⁱⁱⁱ CEDAW Committee, Statement of the Committee on the Elimination of Discrimination against Women on sexual and reproductive health and rights: Beyond 2014 ICPD review, February 2014, <http://sexualrightsinitiative.com/wp-content/uploads/CEDAW-SRHR-26Feb2014.pdf> (accessed April 3, 2014); Human Rights Committee (HRC), General Comment 6, article 6 (sixteenth session, 1982), para. 5; HRC concluding observations 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. 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; and the 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; and the Dominican Republic, UN Doc. A/53/38/Rev.1, Part I (1998), para. 337.
- ^{iv} HRC, Concluding observations on Peru, UN Doc. CCPR/C/79/Add.72 (1996), para. 15; Concluding observations on Peru, UN Doc. CCPR/CO/70/PER (2000), para. 20; and Concluding observations on Morocco, UN Doc. CCPR/CO/82/CAR (2004), para. 29. Committee against Torture, Concluding observations on Ireland, UN Doc AT/C/IRL/CO/1. (2011), para. 26; Concluding observations on Chile, UN Doc. CAT/C/CR/32/5 (2004), para. 6(j); Concluding observations on Nicaragua, UN Doc CAT/C/NIC/CO/1 (2009), para. 16; and Concluding observations on Paraguay, UN Doc. CAT/C/PRY/CO/4-6 (2011), para. 22.
- ^v CEDAW Committee, Statement of the Committee on the Elimination of Discrimination against Women on sexual and reproductive health and rights.
- ^{vi} Report of the UN Special Rapporteur on the Right to Health, UN Doc. A/66/254 (August 3, 2011), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf?OpenElement> (accessed April 3, 2014), para. 21.
- ^{vii} *Ibid.*
- ^{viii} European Court of Human Rights, *RR v. Poland*, judgment of 26 May 2011, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-104911#{"itemid":\["001-104911"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-104911#{) (accessed April 3, 2014), para. 200.
- ^{ix} European Court of Human Rights, *RR v. Poland*, judgment of 26 May 2011, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-104911#{"itemid":\["001-104911"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-104911#{) (accessed April 3, 2014), para. 206; *P. and S. v. Poland*, judgment of 30 October 2012, [http://hudoc.echr.coe.int/sites/fra/Pages/search.aspx?i=001-114098#{"itemid":\["001-114098"\]}](http://hudoc.echr.coe.int/sites/fra/Pages/search.aspx?i=001-114098#{) (accessed April 3, 2014), para. 106.
- ^x European Court of Human Rights, *Tysiac v. Poland*, judgment of March 20, 2007, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-79812#{"itemid":\["001-79812"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-79812#{), para. 124.
- ^{xi} 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 (accessed April 3, 2014), p. 94 and pp. 96-97.
- ^{xii} CEDAW Committee, Concluding Observations: Hungary, March 1, 2013, UN Doc. CEDAW/C/HUN/CO/7-8, paras. 30-31.
- ^{xiii} *P. and S. v. Poland*, para. 109.
- ^{xiv} CRC, General Comment No. 4, Adolescent Health and Development in the Context of the Convention on the Rights of the Child, July 1, 2003, UN Doc. CRC/GC/2003/4 (General Comments), [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2003.4.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2003.4.En?OpenDocument) (accessed April 3, 2014), para. 5.
- ^{xv} CRPD, General comment No 1 (2014), Article 12: Equal recognition before the law, UN Doc. CRPD/C/GC/1, para. 22.
- ^{xvi} European Court of Human Rights, *Open Door and Dublin Well Woman v. Ireland*, judgment of October 29, 1992, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57789#{"itemid":\["001-57789"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57789#{), para. 77.
- ^{xvii} 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 (accessed April 3, 2014), pp. 92-93.