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About International Center for Advocates Against Discrimination (ICAAD):

ICAAD uses a systems approach to combat structural discrimination against women and minorities globally. We identify gaps in the societal structures that marginalize vulnerable communities using a transdisciplinary approach that combines law, technology and art. Our evidence based research utilizes teams of experts to identify specific structural discrimination policies, marshal resources and key partnerships, and provide strategic support of local NGOs with the aim of systematically uprooting discrimination within different societal sectors (e.g., legislative, judicial, law enforcement, health, faith, etc.).

Executive Summary

(1) The report examines Spain's compliance with its international human rights obligations, covering: gender based violence, treatment of ethnic and religious minorities, treatment of immigrants, unlawful detention, and law enforcement abuse.

(I) Women's Rights Issues

(A) Gender Based Violence/ Reproductive Rights

(1) Systematic Discrimination:

(2) Domestic violence remains an issue, according to a 2012 survey conducted by the Spanish government; an estimated 2 million plus women had suffered gender violence by partners or ex-partners at least once.¹ Eight years have passed since the introduction of Organic Act 1/2004 of 28 December on Integrated Protection Measures against Gender Violence, but women continue to lack access to effective remedies, including access to medical and legal services.² Since 2005, when specialized tribunals were set up to address violence against women, no comprehensive analysis has been undertaken on effective protection of women during judicial proceedings.³

(3) There has been a failure to identify an adequate system for identifying victims of sex trafficking or referring them for assistance. The Spanish government accepted Recommendation No. 95 from New Zealand, regarding bringing the definition of trafficking in its legislation into line with international law - establishing better processes to identify victims - and addressing the special needs of child victims.

(4) According to recent reports, the government plans to introduce a bill in 2014 that would ban abortion with only severely limited exceptions, including rape, incest, and life threatening situations.⁴ The preliminary draft bill providing for new regulations on abortion was approved by the Spanish Council of Ministers on 20 December 2013.⁵

¹ AMNESTY INTERNATIONAL, *Annual Report: Spain 2013*, <http://www.amnestyusa.org/research/reports/annual-report-spain-2013?page=2>.

² Organic Act 1/2004 of 28 December on Integrated Protection Measures against Gender Violence, http://www.isotita.gr/var/uploads/NOMOTHESIA/VIOLENCE/SPANISH%20LAW%20Organic%20Act%201_28-12-04%20on%20Violence.pdf.

³ AMNESTY INTERNATIONAL, *Annual Report: Spain 2013*, <http://www.amnestyusa.org/research/reports/annual-report-spain-2013?page=2>; FUNDAMENTAL RIGHTS AGENCY, *Violence Against Women: EU-Wide Survey (Spain)*, http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-at-a-glance_en_0.pdf; Last official statistics in Spain on gender based violence (dates until 31 January 2014), http://www.msssi.gob.es/ssi/violenciaGenero/portalEstadistico/docs/Ultimos_Datos_31012014.pdf.

⁴ HUMAN RIGHTS WATCH, *Spain: Abortion Bill Violates Rights* (May 12, 2014), <https://www.hrw.org/news/2014/05/12/spain-abortion-bill-violates-rights>. Several Spanish groups including Alianza por la Solidaridad, Center for Reproductive Rights, European NGOs for Sexual and Reproductive Health and Rights, Population and Development (EuroNGOs), Federación de Planificación Familiar Estatal, Human Rights Watch, and Rights International Spain noted that the proposed changes to Spain's abortion law would make the country an outlier in relation to the vast majority of EU countries and expose Spain to criticism from international and European human rights organizations. *Id.*

⁵ As an organic law it will require the vote in favor of more than 50% of the total votes i.e. an absolute majority (Article 81 of the Spanish Constitution). It is expected that, after some required reports of advisory bodies such as the Spanish

(2) State Response(s):

(5) In Spain's UPR mid-term follow-up report, the Spanish government responded by amending legislation Organic Law 4/2000 on Rights and Freedoms of Foreigners and their Social Integration (the "**Spanish Immigration Act**") to address issues of trafficking. This includes extending residence and work permits for exceptional circumstances to victims of human trafficking.⁶

(6) Additionally, Spain amended the Criminal Law in 2010 by virtue of organic law 5/2010, dated 22 June, to include as a new crime, the trafficking in human beings related to sexual exploitation ("*trata de seres humanos*"), thus treating it separately the trafficking of human beings related to employment law in general terms ("*tráfico de personas*").

(7) Further, in line with Recommendation No. 42 from Canada, regarding strengthening work with the European Union and international partners to combat human trafficking, the Spanish government responded by: Adopting a Comprehensive Plan to Combat Trafficking in Human Beings for Sexual Exploitation, sought international judicial cooperation in trafficking cases, ratified Council of Europe Convention on trafficking, and played a role in adoption of EU Directive on trafficking.

(8) Finally, in line with Recommendation No. 47 from Costa Rica, regarding access to asylum procedures for victims of trafficking, Act 12/2009, dated 30 October, was approved, regulating the Right of Asylum and Subsidiary Protection. Additionally, the Office of Refugees adopted a mechanism to strengthen the guarantees of applicants for international protection in 2011.

(3) Remaining Challenges:

(9) It is a major concern that Spain is seeking the passage of legislation that would restrict a woman's right to an abortion. Passing such legislation would make Spain an outlier among EU states. 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 and the right to be free from cruel, inhumane and degrading treatment as found by the The European Court of Human Rights.⁷

(10) Moreover, access to medical and legal services must be provided to victims of sexual and gender based violence as well as monitoring of the new measures that seek to protect sexual exploitation of women from trafficking.

State Council ("*Consejo de Estado*") are provided, a project of law will be approved. This project of law will be subject to parliamentary consideration. It is expected that the project of law will be delivered to the Parliament in early July. This may result in amendments on the project and, finally it will be voted for approval.

⁶ Royal Decree 557/2011 of 20 April approves the Regulation of Basic Law 4/2000 on the rights and freedoms and social integration of foreigners in Spain pursuant to the amendments introduced by Basic Law 2/2009, http://www.uria.com/documentos/circulares/304/documento/2739/laboral_April_2011_ing.htm?id=2739#1.

⁷ HUMAN RIGHTS WATCH, *Spain: Abortion Bill Violates Rights* (May 12, 2014), <https://www.hrw.org/news/2014/05/12/spain-abortion-bill-violates-rights>.

(4) Recommendations:

(11) Spain had rejected Denmark's recommendation of a national plan of action to combat violence against women; this should seriously be revisited by Spain during its next review. Spain must align its policies towards gender violence with international law and also ensure that future legislation does not make Spain an outlier in terms of women's rights to have an abortion.

(II) Minority Rights Issues

(A) Rights of ethnic and religious minorities

(1) Systematic Discrimination:

(12) Muslims and other religious minorities struggle to establish public places of worship. In some instances local authorities, political parties and neighborhood associations oppose the establishment of Muslim prayer rooms.⁸ Local governments have made it difficult for religious minorities to obtain permits to worship publicly. For example, local municipalities in Catalonia imposed a local moratorium on new places of worship, making it difficult for religious minorities to obtain permits to open places of worship.

(13) Similar restrictions have been imposed with regard to wearing religious symbols. Restrictions relating to the wearing of religious symbols in schools continue to have a disproportionate impact on Muslim students.⁹ On 25 January 2013, a Madrid court upheld the decision of a state-funded school in Madrid to exclude a Muslim pupil from class because she was wearing a headscarf.¹⁰

(14) Ethnic and religious minorities also face issues with racial profiling by the authorities. On 21 May 2013, the Head of Police issued a circular that prohibited the use of quotas and police raids for detaining foreign nationals with irregular status. However, this measure has failed to restrain police from conducting identity checks on the basis of racial or ethnic characteristics as noted by several local NGOs.¹¹

(2) State Response:

(15) Spain in its mid-year follow-up report identified progress on two fronts: Draft Comprehensive Law on Equal Treatment and Non-Discrimination in January 2011; The Second Strategic Plan for Citizenship and Integration (PECI) 2011-2014 ("Second Strategic Plan").

(3) Remaining Challenges:

(16) Unfortunately, the Draft Comprehensive Law on Equal Treatment and Non-Discrimination has since been tabled and information on the implementation of the Second Strategic Plan is limited.

⁸ AMNESTY INTERNATIONAL, *Annual Report: Spain 2013*, <http://www.amnestyusa.org/research/reports/annual-report-spain-2013?page=2>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

Despite positive changes such as the issuance of a circular on May 2013 restricting detaining foreign nationals, additional steps to ensure positive measures are not circumvented by targeting individuals on the basis of their racial or ethnic characteristics are necessary.¹² Furthermore, the lack of documentation around the level of violence and profiling against religious and ethnic minorities is a major gap that does not allow both government and local NGOs to understand the full scale of the problem.

(4) Recommendations:

(17) Given that Spain is a signatory to the ICCPR, Spain should ensure that treatment of ethnic and religious minorities aligns with their obligations under international human rights treaties to which they are a signatory, specifically Articles 18 and 27. Furthermore, reviving the Draft Law on Non-Discrimination and implementing PECEI will be imperative to following through on recommendations it accepted during its last review.

(IV) Treatment of Immigrants

(A) Discrimination against Migrants

(1) Systematic Discrimination:

(18) Moroccan migrants seeking to enter Spanish territory are often met with summary expulsion, arbitrary detention and use of excessive force. In Melilla, Guardia Civil agents take migrants who have entered Spanish territory, take them back to the fence separating the Spanish and Moroccan border and expel them summarily to the Moroccan Auxiliary Force. These actions fail to undertake formal deportation procedures required by national law. On 4 September 2013, Spain expelled seventy migrants from Isla de Tierra back to Morocco without providing any of the migrants with access to individual asylum procedures.¹³ By taking this course of action, Spanish authorities failed to consider whether asylum seekers require the opportunity to seek refuge.¹⁴

(19) In August 2013, the UN Working Group on Arbitrary Detention found that Spain arbitrarily detained a Moroccan citizen at an immigration detention center in Madrid. The UN Working Group also found that his treatment amounted to the use of torture. He was allegedly hit several times and the detention center's medical center found multiple bruises on his body.¹⁵ Migrants have reported that they were beaten after they were already in custody although Spanish authorities state they were resisting arrest.¹⁶

¹² *Id.*

¹³ *Id.*

¹⁴ HUMAN RIGHTS WATCH, *Living in Fear at the Morocco-Spain Border* (March 26, 2014), <https://www.hrw.org/news/2014/03/26/living-fear-morocco-spain-border>.

¹⁵ AMNESTY INTERNATIONAL, *Annual Report 2013: Spain*, <http://www.amnestyusa.org/research/reports/annual-report-spain-2013?page=2>.

¹⁶ HUMAN RIGHTS WATCH, *Living in Fear at the Morocco-Spain Border* (March 26, 2014), <https://www.hrw.org/news/2014/03/26/living-fear-morocco-spain-border>.

(2) State Response:

(20) The applicable legislation on this issue is: (i) the Spanish Immigration Act; (ii) the regulation developing the Spanish Immigration Act approved by virtue of Royal Decree 557/2011 (the “**Regulation**”); (iii) the Act 12/2009, dated 30 October, regulating the Right of Asylum and Subsidiary Protection.

(21) Under Spanish law, there are currently four different procedures for formal deportation: 1) Refoulement (urgent reform being considered for Spanish Immigration Law for 2014), Border rejection (provides access to lawyer and interpreter), Expulsion (the Supreme Court has established its position¹⁷ that if the lack of permission is the only irregular circumstance, a financial penalty shall be imposed but expulsion must be reserved for those cases in which it is observed an extra hazard or a reluctance by the foreigner to regularize his situation.), and Readmission (regulated by an agreement between Spain and Morocco from 2013.).

(3) Remaining Challenges:

(22) The Spanish government must take the findings of the UN Working Group on Arbitrary Detention under serious consideration and take steps to rectify offenses that are being committed in relation to policing of Spanish borders and treatment of migrants. Moreover, the “Aliens Law” must begin to enshrine rights to migrants who are in an “irregular” situation.

(4) Recommendations:

(23) While the Spanish state has a sovereign right to protect their border, policies should be developed that ensures migrants are not abused. By failing to undertake formal deportation procedures, Spanish authorities are not abiding by due process requirements for deportations as required under international and national law.

(24) By failing to consider potential claims for asylum among migrant populations, Spanish authorities violate international law and European Union law prohibiting countries from forcibly returning individuals to their home country where they may face the risk of being subjected to inhuman or degrading treatment.¹⁸

(25) Spanish authorities should investigate allegations of the Guardia Civil agents’ use of excessive force and draft written protocols that operate at the border to prevent injury and loss of life.¹⁹

¹⁷ Supreme Court decisions 128/2006 dated 27 January 2006:

<http://www.poderjudicial.es/search/doAction?action=contentpdf&database=TS&reference=955073&links=&optimize=20060216&publicinterface=true>; and 139/2006 de 27/01/2006.

¹⁸ *Id.*

¹⁹ *Id.*

(B) Discrimination against migrants on the right to work and health

(1) Systematic Discrimination:

(26) In August 2012, 150,000 immigrants living in Spain lost their right to public health services. The move was introduced by Mariano Rajoy's conservative People's party government.²⁰ On April 20, 2012, the Spanish government approved a law calling for the transition from a National Healthcare System to an insurance model by virtue of the Royal Decree-Law 16/2012, which made the need for parliamentary discussion unnecessary. As a result, the principle of universal health-care access was abolished with the consequence that hundreds of thousands of non-citizen residents lost their right to health care, with exceptions for emergency services and maternal health.²¹ Specifically, foreigners of legal age (at least, 18 years old) that are not citizens of Spain, a country of the European Union, a country of the European Economic Area or Switzerland that are not registered nor authorized as Spanish residents will be restricted to health-care access as previously indicated.²²

(27) Further, migrants face discrimination in seeking employment. Spain accepted Recommendation No. 3 from Algeria regarding reinforcing measures aimed at ensuring, during period of crisis, effective protection of the human rights of migrants and taking steps to guarantee access to economic, social and cultural rights for migrants who are the primary victims of high levels of unemployment in Spain. However, despite this acceptance, Spanish migrants continue to face discriminatory treatment in obtaining access to work.²³

(2) State Response:

(28) In April 2012, the adoption of the Royal Decree-Law No. 16/2012 reformed the Aliens Act that had the effect of limiting irregular migrants' access to public health services.²⁴ The European Committee on Social Rights has pointed out that this reform is not compatible with International Conventions that Spain is a party to.²⁵

(29) It was reported in Spain's mid-term follow-up report that the Second Strategic Plan was approved by the Council of Ministers. This plan includes, amongst other measures, the development

²⁰ THE GUARDIAN, *Immigrants in Spain to lose right to public healthcare* (August 31, 2012), <http://www.theguardian.com/world/2012/aug/31/immigrants-spain-lose-public-healthcare>.

²¹ The Lancet, *Health-care Access for Migrants in Europe: The case of Spain* (August 3, 2013), [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(13\)61667-0/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(13)61667-0/fulltext).

²² When Mariano Rajoy's conservative People's party government introduced an imitative to deny healthcare to thousands of migrants, six of Spain's 17 regional governments pledged to ignore Rajoy's orders. THE GUARDIAN, *Immigrants in Spain to lose right to public healthcare* (August 31, 2012), <http://www.theguardian.com/world/2012/aug/31/immigrants-spain-lose-public-healthcare>.

²³ UNIVERSAL PERIODIC REVIEW (UPR), *Database of UPR Recommendations: Spain*, http://www.upr-info.org/database/index.php?limit=0&f_SUR=160&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=25&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly.

²⁴ AMNESTY INTERNATIONAL, *Annual Report 2013: Spain*, <http://www.amnestyusa.org/research/reports/annual-report-spain-2013?page=2>.

²⁵ EL MUNDO, *Europe warn Spain that exclusion of immigrants of health-care access is breaching the law* (January 21, 2014) <http://www.elmundo.es/salud/2014/01/29/52e90265ca4741bf208b4577.html>.

of efforts to integrate migrants in the labor market, as part of a holistic integration process in Spanish society.²⁶

(3) Remaining Challenges:

(30) Royal-Decree 576/2013, dated 26 July, in force since 1 September 2013, provides for a special agreement (a form of insurance) for individuals who are not beneficiaries of the National Health System. Specifically, this regulation establishes that illegal immigrants may have access to public health by paying 60 euros a month if aged between 18 and 64, or 157 euros if they exceed that age.

(4) Recommendations:

(31) When Spain passed a law in 2012 limiting access for migrants to healthcare, Amnesty International and NGOs accused the government of breaking international obligations by excluding immigrants without proper residence permits from public healthcare. Spain should bring its policies in line with its international obligations.²⁷

(C) Racism, racial discrimination and xenophobia

(1) Systematic Discrimination:

(32) Minorities and immigrants face racism, racial discrimination and xenophobia in many spheres of public life. For example, in July 2013, the European Court of Human Rights found that Spain failed to effectively investigate allegations of potentially racially biased police treatment against Nigerian national, Beauty Solomon. She reported that she was verbally abused and beaten by the police in Palma de Mallorca in July 2005.²⁸

(2) State Response:

(33) In response to Recommendation No. 27 from Belgium, amongst others, regarding pursuing efforts related to the fight against racism and xenophobia, the Spanish government established the Second Strategic Plan on Citizenship and Integration.²⁹

(34) Moreover, the following measures related to the prosecutor's office have been adopted:

(i) A specific area for preventing crimes based on hatred and discrimination was created in the public prosecutor's offices of Barcelona and Málaga; (ii) a specialized public prosecutor was appointed in the National High-Court for detecting and prosecuting international neo-Nazi groups based in Spain.

²⁶ UNIVERSAL PERIODIC REVIEW (UPR), *UPR Mid-term Implementation Assessment: Spain* (May 2010), http://upr-info.org/sites/default/files/document/spain/session_08_-_may_2010/mia-spain.pdf.

²⁷ THE GUARDIAN, *Immigrants in Spain to lose right to public healthcare* (August 31, 2012), <http://www.theguardian.com/world/2012/aug/31/immigrants-spain-lose-public-healthcare>

²⁸ AMNESTY INTERNATIONAL, Annual Report 2013: Spain, <http://www.amnestyusa.org/research/reports/annual-report-spain-2013?page=2>

²⁹ UNIVERSAL PERIODIC REVIEW (UPR), *UPR Mid-term Implementation Assessment: Spain* (May 2010), http://upr-info.org/sites/default/files/document/spain/session_08_-_may_2010/mia-spain.pdf

(35) Measures relating to education and information on the issue:

(i) the General Directorate for Employment, Equality and Discrimination launched a number of actions intended to provide specific training and information for affected individuals and to coordinate all individuals and organs involved in the fight against discrimination; (ii) the specialized public prosecutor for computer crimes together with the Centre for Legal Studies provides basic education for public prosecutors on crimes related to discrimination and the use of internet; and (iii) improvement of the statistical system related to the racially motivated crimes.³⁰

(3) Remaining Challenges:

(36) Although the previous Government initiated a strategic plan, there is no evidence that this plan is being moved forward by the current Government.³¹

(4) Recommendations:

(37) Given that Spain has ratified ICERD, it is imperative that the Second Strategic Plan initiated by the previous government be carried forward as it will determine whether Spain will uphold its international obligations.

(V) Law Enforcement Issues

(A) Use of torture and other cruel, inhuman, or degrading treatment or punishment.

(1) Systematic Discrimination:

(38) Despite, prohibitions against torture under Spanish domestic laws, several domestic, European and international judicial organs and human rights committees have condemned Spain for torture complaints or failure to investigate torture complaints.

(39) In May 2013, the Council of Europe's Committee for the Prevention of Torture released a report covering its assessment of trips during 2011 and 2012. The results of the report included complaints from 10 inmates who were held incommunicado, under Criminal Procedure Act, Articles 509, 520 bis, 527. The inmates accused the Civil Guard of using physical abuse and engaging in practices such as covering inmates with bags or hoods. In June 2013, the Barcelona provincial court sentenced six prison officials to prison for offenses including torture and assault at the Quatre Camins detention facility in 2004 during a prison revolt. In May 2013, the UN Human Rights Committee found that Spain had violated the International Covenant on Civil and Political Rights as a result of a failure to effectively investigate Maria Cruz Achable Puertas' allegations of torture and mistreatment during her detention in 1996.³²

³⁰ The aim is to consider as a racially motivated crime any incident that is perceived as such by the victim or any other witness.

³¹ A project of law for an equal treatment and protection of human rights was approved by the Government of the PSOE on 7 January 2011 but it never came into force as the relevant parliamentary procedure was suspended on 20 November 2011, by the calling of elections in Spain. The new government declined a proposal to reinstate the parliamentary procedure for approval of this project of law.

³² U.S. State Department, *Spain 2013 Human Rights Report*, <http://www.state.gov/documents/organization/220546.pdf>.

(2) State Response:

(40) The Spanish Council of Ministers approved on 21 March 2014 a Project of Law intended to regulate and update the rules for members of Spanish Military police (“*Guardia Civil*”) in order to adapt them to the new legislative developments and making this regulation consistent to the European Code of Police Ethics. It is also foreseen to approve a project of law for members of the Spanish National Police (“*Policía Nacional*”).

(3) Remaining Challenges:

(41) The incommunicado detention provisions in the Criminal Procedure Act still persist. The Basque Behatokia Human-Rights Observatory has documented that during the year 2010, there have been at least 48 allegations of torture, while the data collected in 2011 indicate 10 cases of torture.

(4) Recommendations:

(42) Given that Spain is a signatory to the Convention Against Torture (CAT), the Spanish government must ensure that the use of torture is abolished in order to align their policies with the requirements of their national and international human rights legal obligations. As noted by Judith Sunderland, a senior researcher for Human Rights Watch, the Strasbourg Court’s ruling on prolonged detention “should serve as notice to Spain to correct continuing aberrations of justice in the name of fighting terrorism, such as incommunicado detention and limited rights of defense for terrorism suspects.”³³

³³ THE NEW YORK TIMES, *European Court Rules Spain Must Free Terrorist* (October 21, 2013) http://www.nytimes.com/2013/10/22/world/europe/european-court-rules-against-spain-on-terror-sentences.html?_r=0.