



rights
international
Spain
defendiendo los derechos y libertades civiles



Conrado Escobar Las Heras
Spokesperson, Popular Parliamentary Group (“Grupo Parlamentario Popular”)
Interior Committee
Congress of Deputies

Dear Sir:

The undersigned organizations are writing to urge you 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.

As you are aware, 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:

*“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.”*

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.

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*).ⁱ 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.ⁱⁱ 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.

National and international human rights organizations have 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.ⁱⁱⁱ

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.^{iv} 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.^v

It is important to emphasize that the proposed procedure would constitute a clear breach of European law. In the explanatory note, the Popular Party parliamentary group argues that the procedure is justified by the "special treatment in community law" of Ceuta and Melilla. However, the only specificities that affect these cities (and its borders) are related to the customs regime and the exemption from the visa requirement to legal residents in Tetuán and Nador.^{vi} None of these special provisions constitute an exception to the Asylum Procedure or Return Directives, the Schengen Borders Code, or the EU Charter on Fundamental Rights, which recognize the right of individuals to seek asylum within the EU territory and prohibit summary and collective expulsions.^{vii}

In response to a question by a Member of the European Parliament about current practices in Ceuta and Melilla, former Commissioner for Home Affairs Cecilia Malmström recently reaffirmed that "border surveillance must be carried out without prejudice to the rights of

persons requesting international protection, in particular as regards the principle of *non-refoulement* and effective access to the asylum procedure”, and States must “ensure the respect of minimum guarantees based on the Return Directive notwithstanding their choice, as in the case of Spain, not to apply that directive to third-country nationals apprehended at the border.” These include respecting the principle of *non-refoulement* and ensuring appropriate attention to the special needs of vulnerable persons.^{viii}

If approved, the amendment would expose Spain to the risk of international condemnation for violating its obligations under international and European law. Those whose rights are affected could seek redress against Spain in the European Court of Human Rights or United Nations treaty mechanisms such as the Human Rights Committee or the Committee against Torture. The European Commission could open infringement proceedings against Spain, on the basis of article 258 of the Treaty on the Functioning of the European Union, and potential litigation before the Court of Justice of the European Union. The undersigned organizations have already written the Council of Europe Commissioner for Human Rights and the United Nations Special Rapporteur on the Rights of Migrants to express our concerns about the proposed amendment.

Finally, we would like to raise our concerns about the timing and manner in which this crucial reform has been pursued. The Popular Party parliamentary group tabled the amendment on the last day of the deadline for amendments to the unrelated 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.

In a statement published in reaction to a video filmed on October 15 showing ill-treatment at the Melilla border, Council of Europe Commissioner for Human Rights Nils Muižnieks 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.”^{ix} In an open letter on EU border management, UN Special Rapporteur on the Rights of Migrants François Crépeau insisted that “Europe needs less repression of survival migration and more harm-reduction policies taking as a central concern the well-being of migrants” and that “return procedures, particularly when facilitated through readmissions agreements, [have] failed to provide the necessary human rights safeguards.”^x

We urge the popular parliamentary group to withdraw the proposed amendment, and to ensure that Spain’s border enforcement laws and procedures are in full compliance with European and international human rights law.

Best regards,

Human Rights Watch
Rights International Spain
Amnesty International

Andalucía Acoge
Asociación Pro Derechos Humanos de Andalucía
Comisión Española de Ayuda al Refugiado
Federación Acción en Red
Federación de Asociaciones de S.O.S Racismo del Estado español
Fundación Abogacía Española
Fundación PRODEIN (Pro Derechos de la Infancia de Melilla)
Red Acoge

ⁱ Law 4/2000, article 22, <https://www.boe.es/buscar/act.php?id=BOE-A-2000-544>. In accordance with articles 22.2 and 58 of Law 4/2000, expulsion, devolution, and refusal of entry are all subject to the same administrative procedure with the assistance of a lawyer, and are all the exclusive competence of the National Police (and not the Guardia Civil).

ⁱⁱ Law 12/2009, article 16.1 (guaranteeing the right to apply for international protection to all persons “present on Spanish territory), <https://www.boe.es/buscar/act.php?id=BOE-A-2009-17242>.

ⁱⁱⁱ 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. See also videos filmed by Prodein showing abuses at the Melilla border: <http://vimeo.com/109091397>, <http://vimeo.com/98687161>, <http://vimeo.com/103407413> y <http://vimeo.com/93511041> (among many others).

^{iv} 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.

^v 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/>;

^{vi} See agreement on the Accession of the Kingdom of Spain to the Convention implementing the Schengen Agreement of 14 June 1985 [http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:42000A0922\(04\)&from=ES](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:42000A0922(04)&from=ES) and Protocol 2 to the Treaty on the accession of the Kingdom of Spain and the Portuguese Republic to the European Communities, on the Canary Islands, Ceuta and Melilla <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:1985:302:FULL&from=ES>.

^{vii} 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), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0032>. This Directive applies “to all applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of the Member States” (article 3.1) and requires the member states to guarantee, inter alia, the access to the asylum procedure (article 6), to receive information and counselling in detention facilities and at border crossing point (article 8), to remain in the Member State pending the examination of the application (article 9), and to enjoy a series of procedural guarantees such as the right to be informed in a language the person understands, to have access to an interpreter or to be assisted by a representative of the UN High Commissioner for Refugees (article 10); 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, http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/jl0014_en.htm. 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), <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006R0562&from=EN>. Article 13 establishes that a refusal of entry of third countries nationals “shall be without prejudice to the application of special provisions concerning the right of asylum”, that “entry may only be refused by a substantiated decision stating the precise reasons for the refusal”, and that “persons refused entry shall have the right to appeal.” In addition, article 6 establishes that “Border guards shall, in the performance of their duties, fully respect human dignity” and that “any measures taken in the performance of their duties shall be proportionate to the objectives pursued by such measures,”; and the EU Charter of Fundamental Rights, which is binding on the Member States when they act in the scope of EU law, establish the prohibition of torture and inhuman or degrading treatment or punishment (article 4), right to asylum (article 18), protection in the event of removal, expulsion or extradition (article 19) and the right to an effective remedy and to a fair trial (article 47), http://www.europarl.europa.eu/charter/pdf/text_en.pdf

^{viii} Doc. N° E-006912/2014, answer to the question for written answer to the Commission by Iosu Juaristi Abaunz (GUE/NGL), 20 October 2012, <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2014-006912&format=XML&language=EN>.

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

^x <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15119&LangID=E>.