CENTER FOR REPRODUCTIVE RIGHTS

Written Comments on the Proposed Legislation on Voluntary Interruption of Pregnancy before the Spanish Government

April 2009

I. INTRODUCTION

The Center for Reproductive Rights respectfully submits the following comments on the "Proposition of Organic Law on the Voluntary Interruption of Pregnancy" (*Proposición de Ley Orgánica sobre interrupción voluntaria del embarazo. Presentado el 17/04/2008, calificado el 22/04/2008*) for the consideration of the distinguished representatives of the Spanish government. The Center for Reproductive Rights (the Center) is a non-profit, non-governmental legal advocacy organization dedicated to defending and promoting women's reproductive health and rights worldwide.[1] The Center works at the national, regional, and international levels, including at the Council of Europe and the European Union.

The Center commends the Spanish government for seeking to liberalize the country's abortion legislation and was pleased to learn that the Parliamentary Sub-Committee on the Legislation of Voluntary Interruption of Pregnancy recently presented recommendations to legalize abortion in the first trimester and up to 22 weeks of gestation with a medical certification confirming that the pregnancy poses serious threat to the pregnant woman's health or fetal malformation. Through this submission, the Center aims to inform the Spanish government's current deliberations regarding the proposed legislation by providing an overview of Spain's international and regional human rights obligations regarding the decriminalization of abortion and the trend toward liberalization of abortion legislation throughout Europe, as well as provide a few examples of "best practices" and progressive abortion reform within the region. In providing the above-referenced information, the Center hopes to encourage the Spanish government to pass abortion legislation that embodies respect for the health and human rights of Spanish women, in-line with Spain's international and regional human rights commitments.

To provide further insight and support in this regard, included with these written comments are copies of the Center's publications *Gaining Ground: A Tool for Advancing Reproductive Rights Law, the Twelve Key Human Rights to Reproductive Rights, the Reproductive Rights of Adolescents: A Tool for Health and Empowerment* and *Bringing Rights to Bear* (documenting TMB interpretations and concluding observations regarding reproductive rights).

[1] *See* http://www.reproductiverights.org.

II. SPAIN'S INTERNATIONAL HUMAN RIGHTS COMMITMENTS REGARDING ABORTION

Spain is a party to various international human rights treaties that guarantee a myriad of fundamental human rights supporting women's right to abortion. Specifically, Spain has ratified the International Covenant on Economic, Social and Cultural Rights (CESCR),[2] the International Covenant on Civil and Political Rights (CCPR),[3] the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),[4] the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),[5] the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),[6] and the Convention on the Rights of the Child (CRC);[7] as well as optional protocols to those treaties. By ratifying these international agreements, the Spanish government has undertaken the obligation to comply with their provisions.

In an attempt to clarify and further explain states parties' obligations, treaty-monitoring bodies (TMBs), tasked with interpreting the human rights treaties set forth above, have issued General Recommendations and Concluding Observations regarding the treaty provisions; in some cases regarding abortion and related rights. Set forth below, is an overview of the TMB interpretations and jurisprudence most relevant to the Spanish government's legal deliberations regarding liberalization of abortion legislation.

a. The Spanish Government has an Obligation to Provide Access to Safe and Legal Abortion

The international human rights treaties, to which Spain is a party, require the government to respect, protect and fulfill various rights that support women's access to abortion including the right to life, health, nondiscrimination, privacy and to decide the number and spacing of children.

One of the first steps to ensuring access to safe abortion services is to decriminalize the procedure under the law. Failing to decriminalize abortion often leads women to seek

---

[2] *See* International Covenant on Economic, Social and Cultural Rights, opened for signature Dec. 16, 1966, 993 U.N.T.S. 3 (*entered into force* January 23, 1976) [hereinafter ICESCR].

[3] *See* International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316, (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976). [hereinafter ICCPR]

[4] *See* Convention on the Elimination of All Forms of Racial Discrimination, *adopted* Dec. 21, 1965, G.A. Res. 2106 (XX), 660 U.N.T.S. 195 *(entered into force* Jan. 4, 1969).

[5] *See* Convention on the Elimination of All Forms of Discrimination against Women, *adopted* Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/34/46 (1979). [hereinafter CEDAW]

[6] *See* Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 39 U.N. GAOR Supp. No. 51, U.N. Doc. A/39/51 (1984).

[7] *See* Convention on the Rights of the Child, *adopted* Nov. 20, 1989, G.A. Res. 44/25, UN GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989), *reprinted in* 28 I.L.M. 1448 (*entered into force* Sept. 2, 1990). [hereinafter CRC]

unsafe, clandestine abortions, which in turn leads to increased maternal mortality rates. Maternal mortality has been recognized as an immense global public health problem, as confirmed by its placement in the Millennium Development Agenda under MDG 5 (improve maternal health).[8] The CEDAW Committee has explicitly noted in its Concluding Observations the link between the criminalization of unsafe abortion and high rates of maternal mortality[9] and has framed restrictive abortion laws as a violation of the rights to life and health.[10] This Committee has also explicitly recommended in its General Recommendation 24 (Article 12 - Women and Health), that whenever possible, "legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion."[11]

The Committee on Economic, Social and Cultural Rights (the CESCR Committee) has also explicitly recognized that restrictive abortion laws contribute to the problems of unsafe abortion[12] and, in turn, to unnecessarily high levels of maternal mortality.[13] On numerous occasions the CESCR Committee has called upon states parties to legalize and decriminalize abortion, particularly for pregnancies that threaten the life or health of the pregnant woman, or in cases of rape or incest.[14] The Human Rights Committee (HRC) has further clarified that criminalization of abortion deters medical professionals from providing the procedure, even when they are legally permitted to do, and expressed concern regarding the discriminatory impact that such laws have on poor and rural women, who disproportionately resort to illegal, unsafe abortions.[15]

---

[8] *See* UNITED NATIONS, ROAD MAP TOWARDS THE IMPLEMENTATION OF THE UNITED NATIONS MILLENNIUM DEVELOPMENT DECLARATION: REPORT OF THE SECRETARY-GENERAL, U.N. Doc. A/56/326 (2001), MDG 5, *available at* http://www.un.org/documents/ga/docs/56/a56326.pdf. Under each of the eight MDGs, 18 time-bound targets and 48 indicators were developed to measure progress towards attainment of the Goals. With respect to MDG 5 (improve maternal health), Targets 5.A and 5.B called for the reduction of the maternal mortality ratio by three quarters, between 1990 and 2015, and to achieve universal access to reproductive health by 2015, respectively.

[9] *See, e.g.*, CEDAW, *Concluding Observations*: *Azerbaijan*, para. 73, U.N. Doc. A/53/38 (1998); *Belize*, 21st Sess., para. 56, U.N. Doc. A/54/38 (1999); *Burundi*, 24th Sess., para. 61, U.N. Doc. A/56/38 (2001); *Colombia*, 20th Sess., para. 393, U.N. Doc. A/54/38, (1999); *Georgia*, 21st sess., para. 111, U.N. Doc. A/54/38 (1999); *Kyrgyzstan*, 20th Sess., para. 136, U.N. Doc. A/54/38 (1999); *Mongolia*, 24th Sess., para. 273, U.N. Doc. A/56/38, (2001); *Myanmar*, 22nd Sess., para. 129, U.N. Doc. A/55/38 (2000); *Nepal*, 21st Sess., para. 147, U.N. Doc. A/54/38 (1999); *Nicaragua*, 25th Sess., paras. 300-301, U.N. Doc. A/56/38 (2001); *Peru*, 19th Sess., paras. 200, 339, U.N. Doc. A/53/38 (1998); *Romania*, 23rd Sess., para. 314, U.N. Doc. A/55/38 (2000); *Zimbabwe*, para. 159, U.N. Doc. A/53/38 (1998).

[10] *See, e.g.*, CEDAW, *Concluding Observations*: *Belize***,** para. 56, U.N. Doc. A/54/38 (1999); *Chile***,** para. 228, U.N. Doc A/54/38 (1999); *Columbia***,** para. 393, U.N. Doc. A/54/38 (1998); *Dominican Republic*, para. 337, U.N. Doc. A/53/38 (1998); *Paraguay***,** para. 131, U.N. doc. A/51/38 (1996).

[11] CEDAW Committee, General Recommendation 24: *Women and Health*, para. 31(c), U.N. Doc. A/54/38 (1999). [hereinafter CEDAW – General Recommendation 24]

[12] *See, e.g.*, CESCR, *Concluding Observations: Brazil*, para. 51, U.N. Doc. E/C12/1/Add.87 (2003); *Poland***,** para.12, U.N. Doc. E/C.12/1/Add.26 (1998); *Poland*, para. 50, U.N. Doc. E/C.12/1/Add.82 (2002).

[13] *See, e.g.*, CESCR, *Concluding Observations: Nepal***,** paras. 32-33, 55, U.N. Doc. E/C.12/1/Add.66 (2001); *Poland***,** para. 12, U.N. Doc. E/C.12/1/Add.26 (1998); *Poland*, para. 29, U.N. Doc. E/C.12/1/Add.82 (2002).

[14] *See, e.g.*, CESCR, *Concluding Observations***:** *Bolivia*, para. 43, U.N. Doc. E/C.12/1/Add.60/(2001); *Chile*, para. 26, U.N. Doc. E/C.12/1/Add.105 (2004); *Mauritius*; para. 15, U.N. Doc. E/C.12/1994/8 (1994); *Nepal*, paras. 32-33, 55, U.N. Doc. E/C.12/1/Add.66 (2001).

[15] *See* HRC, *Concluding Observations: Argentina*, para. 14, U.N. Doc. CCPR/CO/70/ARG (2000).

Along similar lines, the Committee against Torture (CAT Committee) has expressed concern regarding the practice of conditioning the provision of life-saving post-abortion care for women who have obtained illegal abortions on the disclosure of "information on those performing such abortions [, and that such] confessions are reportedly used subsequently in legal proceedings against the women and against third parties, in contravention of the provisions of the Convention."[16] In that context, the CAT Committee called for the elimination of the "practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of illegal abortion;" investigation and review of "convictions where statements obtained by coercion in such cases have been admitted into evidence," and remedial measures such as nullifying convictions that were not in conformity with the CAT.[17] This Committee also called for the State Party at issue to provide unconditional treatment for people seeking emergency medical care, in accordance with World Health Organization guidelines.[18] Finally, the CAT Committee has specifically observed that state medical personnel must provide the "medical treatment required to ensure that pregnant women do not resort to illegal abortions that put their lives at risk."[19]

The sum of the above-referenced TMB interpretive jurisprudence confirms that to fully respect women's rights to life and health, states parties have the obligation to ensure effective access to safe and legal abortion services so that women are not compelled to risk their lives by seeking unsafe clandestine abortion procedures.

b. Providing Access to Safe and Legal Abortion Services is part of Spain's Obligation to Prevent Discrimination against Women

The CEDAW Committee has recognized that refusal to provide health services which only women need constitutes discrimination.[20] Reproductive health services, and specifically abortion, clearly fall within the realm of gender-specific reproductive health services. The CEDAW Committee has also recognized that restrictive abortion laws that compel women to travel abroad to obtain abortion services creates great hardships for vulnerable groups of women.[21] Along those lines, the Committee has called upon states parties to repeal all national penal provisions which constitute discrimination against women,[22] specifically in matters of reproductive health services for women.[23] Notably, the CERD Committee has also recognized that restricting necessary reproductive health services affects vulnerable and poor women the most.[24]

---

[16] CAT Committee, *Concluding Observations: Chile*, para. 6(j) U.N. Doc. CAT/C/CR/32/5 (2004).
[17] *Id.* at para. 7(m).
[18] *See id.*
[19] CAT Committee, *Concluding Observations: Peru*, para. 23, U.N. Doc. CAT/C/PER/4 (2006).
[20] *See* CEDAW - General Recommendation 24, *supra* note 11, at para. 11.
[21] *See* CEDAW, *Concluding Observations: Ireland,* para. 185, U.N. Doc. A/54/38 (1999).
[22] *See* CEDAW *supra* note 5, Article 2(g).
[23] *See* CEDAW - General Recommendation 24, *supra* note 11, at para. 11.
[24] *See* CERD, *Concluding Observations*: *India*, para. 24, U.N. Doc. CERD/C/IND/CO/19 (2007); *United States*, para. 33, U.N. Doc. CERD/C/USA/CO/6 (2008).

The link between denial of reproductive health services and discrimination is significant as the right to equality and non-discrimination has not only been guaranteed under CEDAW, but under a myriad of international human rights treaties to which Spain is a party.[25]

c. Providing Access to Safe and Legal Abortion Services enables Spanish Women to Exercise their Right to Reproductive Autonomy

Access to safe and legal abortion services is fundamental to the full exercise of reproductive autonomy. Fundamental human rights that support the concept of reproductive autonomy include the rights to privacy and to decide the number and spacing of one's children, both of which are recognized and protected under numerous human rights treaties and international consensus documents.[26] The criminalization of abortion and excessive regulation of sexual and reproductive health services chills women's ability to exercise these rights due to a legitimate fear of prosecution. Thus, to guarantee the full exercise of these fundamental human rights, the Spanish government has an obligation to liberalize abortion policy and to ensure access to safe and legal abortion services for all Spanish women.

d. Ensuring Adolescents' Access to Safe Abortion Services without Parental Consent respects Spanish Adolescents' Rights to Life, Health and Privacy

Access to safe abortion services is particularly important for adolescents as worldwide 4.4 million adolescent girls aged 15 to 19 undergo unsafe abortions annually.[27] To ensure that adolescents do not face unwanted pregnancies and resort to unsafe abortion, it is essential that they have access to adolescent-friendly reproductive health care services provided by specially trained providers who offer confidentiality. In fact, adolescents' rights to life, health and privacy entitle them to such services.[28]

---

[25] *See* Universal Declaration of Human Rights, *adopted* Dec. 10, 1948, G.A. Res. 217A (III), art. 2, U.N. Doc. A/810 (1948); ICCPR, *supra* note 3, at art. 2(1); ICESCR, *supra* note 2, at art. 2(1); CRC, *supra* note 7, at art. 2(1)-(2); Convention on the Rights of Persons with Disabilities, *adopted* Dec. 13, 2006, G.A. Res. 61/106, art 6(1), U.N. Doc. A/RES/61/106 (2006), 1249 U.N.T.S. 13 (e*ntered into force* May 3, 2008).

[26] The right to privacy is protected under the ICCPR, *supra* note 3, at art.17.1; European Convention for the Protection of Human Rights and Fundamental Freedoms, *signed* Nov. 4, 1950, art. 8, 213 U.N.T.S. 222 (*entry into force* Sept. 3, 1953) [hereinafter European Convention]; and *The Beijing Declaration and the Platform for Action,* Fourth World Conference on Women, Beijing, China, 4-15 September 1995, paras. 106, 107, U.N. Doc. A/CONF.177/20 (1995). The right to decide the number and spacing of one's children is protected under CEDAW, *supra* note 5, at art. 16.1; *Programme of Action of the International Conference on Population and Development*, Cairo, Egypt, 5-13 September 1994, Prin. 8, U.N. Doc. A/CONF.171/13/Rev.1 (1995) and the Beijing Platform for Action, at ¶ 223.

[27] *See* WORLD HEALTH ORGANIZATION (WHO), THE SECOND DECADE: IMPROVING ADOLESCENT HEALTH AND DEVELOPMENT 6 (1998), *available at* http://www.who.int/child-adolescent-health/New_Publications/ADH/WHO_FRH_ADH_98.18.pdf. According to the United Nations Population Fund (UNFPA), "adolescents" include people between the ages of 10 and 19. *See* UNFPA, ADOLESCENTS FACT SHEET: STATE OF THE WORLD POPULATION (2005), *available at* http://www.unfpa.org/swp/2005/presskit/factsheets/facts_factsheets.htm.

[28] *See* Children's Rights Convention, *supra* note 7, arts. 6, 24; ICCPR, *supra*

As many adolescents are concerned about stigma or shame culturally associated with sexual activity, pregnancy, and STIs, it is essential that adolescent reproductive health care is nonjudgmental. Stigma not only makes it difficult for adolescents to find nonjudgmental medical advice and guidance, but it also makes them less willing to seek counseling and care and impedes their development of confidence in the health care system. In that regard, providers should be specially trained to work directly with adolescents and provide information about how to protect adolescents' health without judging their choices.[29]

TMBs routinely comment on the importance of access to confidential reproductive health services.[30] The Children's Rights Committee (CRC Committee),[31] the CEDAW Committee,[32] and the HRC,[33] all agree that access to services is critical.[34] The CRC Committee, in particular, has asserted that adolescents must have access to confidential health care.[35] That Committee recently interpreted Article 16 of the CRC, which protects adolescent privacy, as follows:

> In order to promote the health and development of adolescents, States parties are also encouraged to respect strictly their right to privacy and confidentiality, including with respect to advice and counselling on health matters. Health care providers have an obligation to keep confidential medical information concerning

---

note 3, at art. 6; *See generally* R .J. Cook *et al*., *Respecting Adolescents' Confidentiality and Reproductive and Sexual Choices*, 98 INT'L JOUR NAL OF OBSTET. & GYN. 182-187 (2007).

[29] *See* CENTER FOR REPRODUCTIVE RIGHTS, STATE OF DENIAL: ADOLESCENT REPRODUCTIVE RIGHTS IN ZIMBABW*e* 56-58 (2002) [hereinafter STATE OF DENIAL; *see also* Douglas Kirby, *et al*., HEALTHY TEEN NETWORK, TOOL TO ASSESS THE CHARACTERISTICS OF EFFECTIVE SEX AND STD/HIV EDUCATION PROGRAMS 47 (2007), *available at* http://www.healthyteennetwork.org/vertical/Sites/%7BB4D0CC76-CF78-4784-BA7C-5D0436F6040C%7D/uploads/%7BAC34F932-ACF3-4AF7-AAC3-4C12A676B6E7%7D.PDF. *See generally* EC/UNFPA, INITIATIVE FOR REPRODUCTIVE HEALTH IN ASIA: FOCUS ON CONFIDENTIAL COUNSELLING ON SEXUAL AND REPRODUCTIVE HEALTH, *available at* http://www.asia-initiative.org/pdfs/RHI_Focus%20on_Councelling.pdf [sic].

[30] *See* CEDAW, *supra* note 5, arts. 10, 12, 14; *see also* CEDAW Committee, *Concluding Observations: Chile*, para. 227, U.N. Doc. A/54/38 (1999); *Greece*, paras. 207-8, U.N. Doc. A/54/38 (1999); *Ireland*, para. 186, U.N. Doc. A/54/38 (1999); *Mauritius*, para. 211, U.N. Doc. A/50/38 (1995); *Mexico*, para. 394, U.N. Doc. A/53/38 (1998); *Nigeria*, para. 171, U.N. Doc. A/53/38/Rev.1 (1998); *Paraguay*, para. 123, U.N. Doc. A/51/38 (1996); *Peru*, para. 341, U.N. Doc. A/53/38/Rev.1 (1998); *Venezuela*, para. 236, U.N. Doc. A/52/38/Rev.1 (1997); *Zimbabwe*, para. 148, U.N. Doc. A/53/38 (1998).

[31] *See* CRC Committee, *Concluding Observations: Djibouti*, para. 46, U.N. Doc. CRC/C/15/Add.131 (2000).

[32] *See* CEDAW Committee - *General Recommendation 24*, *supra* note 11, at 14.

[33] *See* HRC, *Concluding Observations: Chile*, para. 15, U.N. Doc. CCPR/C/79/Add.104 (1999).

[34] *See* HRC, *Concluding Observations*: *Ecuador*, para. 11, U.N. Doc. CCPR/C/79/Add.92 (1998).

[35] *See* CRC Committee, *Concluding Observations: Armenia*, para. 39, U.N. Doc. CRC/C/15/Add.119 (2000); *Cambodia*, para. 52, U.N. Doc. CRC/C/15/Add.128 (2000); *Chad*, para. 30, U.N. Doc. CRC/C/15/Add.107 (1999); *Colombia*, para. 48, U.N. Doc. CRC/C/15/Add.137 (2000); *Costa Rica*, para. 22, U.N. Doc. CRC/C/15/Add.117 (2000); *Cote d'Ivorie*, para. 40, U.N. Doc. CRC/C/15/Add.155 (2001); *Democratic Republic of Congo*, para. 54, U.N. Doc. CRC/C/15/Add.153 (2001); *Dominican Republic*, para. 37, U.N. Doc. CRC/C/15/Add.150 (2001); *Ecuador*, para. 23, U.N. Doc. CRC/C/15/Add.93 (1998); *Ethiopia*, para. 60, U.N. Doc. CRC/C/15/Add.144 (2001).

adolescents, bearing in mind the basic principles of the Convention.

> Such information may only be disclosed with the consent of the adolescent, or in the same situations applying to the violation of an adult's confidentiality. Adolescents deemed mature enough to receive counselling without the presence of a parent or other person are entitled to privacy and may request confidential services, including treatment.[36]

In 2004, the United Kingdom's Department of Health issued updated guidance entitled *Best Practices for Doctors and Other Health Professionals on the Provision of Advice and Treatment to Young People under 16 on Contraception, Sexual and Reproductive Health*, that clarifies the duty of confidentiality, care, and good practice in providing advice to young people under the age of 16.[37] As part of a national strategy to reduce teenage pregnancy, the guidance recommends that "[a]ll services providing advice and treatment on contraception, sexual and reproductive health should produce an explicit confidentiality policy which reflects . . . [the] guidance and makes clear that young people under 16 have the same right to confidentiality as adults."[38] Among other things, the guidance confirms that doctors and health professional can provide contraception and sexual and reproductive health advice and treatment, including abortion, without parental consent to a young person under 16, provided that: "[s]he/he understands the advice provided and its implications [;] and [h]er/his physical or mental health would otherwise be likely to suffer and so provision of advice and treatment is in their best interest."[39]

When the Spanish government considers the issue of parental consent regulations it should take note that adolescents may be deterred from seeking sexual and reproductive health care if they believe that their parents may learn that they are—or are considering becoming—sexually active.[40] Moreover, the CRC Committee has commented that the requirement of parental consent for abortion has led to increased numbers of illegal abortions among adolescents.[41] In that regard, the CRC Committee has strongly advocated that adolescent reproductive health services be available without parental consent,[42] as well as called for adolescents' access to reproductive health and family

---

[36] CRC Committee, *General Comment 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, para. 11, U.N. Doc. CRC/GC/2003/4 (2003). [hereinafter CRC – General Comment 4]

[37] *See* DEPARTMENT OF HEALTH (UK), BEST PRACTICES FOR DOCTORS AND OTHER HEALTH PROFESSIONALS ON THE PROVISION OF ADVICE AND TREATMENT TO YOUNG PEOPLE UNDER 16 ON CONTRACEPTION, SEXUAL AND REPRODUCTIVE HEALTH, Gateway Reference Number 3382, *available at* http://www.erpho.org.uk/Download/Public/15145/1/04086914[1].pdf.

[38] *Id.* at 2.

[39] *Id.* at 3. (The guidance also requires that the "personal beliefs of a practitioner should not prejudice the care offered to a young person[, and a]ny health professional who is not prepared to offer a confidential contraceptive service to young people must make alternative arrangements for them to be seen, as matter of urgency, by another professional.") *Id.* at 3-4.

[40] *See State of Denial*, *supra* note 29, at 54-58.

[41] *See* CRC Committee, *Concluding Observations: Kyrgyzstan*, para. 45, U.N. Doc. CRC/15/Add.127 (2000).

[42] *See* CRC Committee, *Concluding Observations: Austria*, para. 15, U.N. Doc. CRC/C/SR/507-509 (1999); *Barbados*, para. 25, U.N. Doc. CRC/C/15/Add.103 (1999); *Benin*, para. 25, U.N. Doc.

planning information.[43] Along similar lines, the CEDAW Committee has asked states parties to eliminate parental consent for contraception.[44]

To promote the health of Spanish adolescents, the Spanish government should recognize adolescents' evolving capacities[45] and enable them to exercise their rights to life, health and privacy to obtain sexual and reproductive health services, including safe abortions services, without parental consent.

III. SPAIN'S REGIONAL HUMAN RIGHTS OBLIGATIONS AND A CALL FOR LIBERALIZATION OF ABORTION LEGISLATION AND POLICY THROUGHOUT EUROPE

In addition to Spain's international human rights obligations, regional human rights standards and jurisprudence support decriminalization of abortion in Spain and liberalization of Spanish abortion legislation and policy. Specifically, as a state party to the European Convention on Human Rights and Fundamental Freedoms (European Convention)[46] and the European Social Charter,[47] Spain has the commitment to uphold and promote the rights and freedoms guaranteed by those regional agreements, including the rights to life,[48] liberty and security of person,[49] health,[50] private life,[51] equality and non-discrimination,[52] and to be free from torture and inhuman and degrading treatment.[53]

a. The Council of Europe Parliamentary Assembly Resolution on Access to Safe and Legal Abortion Encourages States Parties to Decriminalize Abortion

---

CRC/C/15/Add.106 (1999).

[43] *See* CRC Committee, *Concluding Observations*: *Mali*, para. 27, U.N. Doc. CRC/C/15/Add.113 (2000); *Seychelles*, para. 47, U.N. Doc. CRC/C/15/Add.189 (2002).

[44] *See* CEDAW, *Concluding Observations: Australia*, para. 404, U.N. Doc. A/49/38 (1994).

[45] *See* CRC, *supra* note 7, at art. 5; *see also* CRC – General Comment 4, *supra* note 36, at para. 1. The concept of "evolving capacities" recognizes that adolescents grow and mature at differing rates and thus should be permitted to progressively exercise their rights according to their level of development. Seeking medical advice in cases of unwanted pregnancies should be seen as a positive and mature step that an adolescent has taken and hence the need for parental involvement may be limited or unnecessary. To that end, the World Health Organization is guiding states that "[i]n health care law, there is generally no 'age of consent' but only a condition of consent, which is reached when a person, of whatever age, is capable of sufficient comprehension to give adequately informed consent." *See* WHO, CONSIDERATIONS FOR FORMULATING REPRODUCTIVE HEALTH LAWS 17 (Second Edition, 2000), *available at*: http://www.who.int/reproductive-health/publications/rhr_00_1/considerations_for_formulating_reproductive_health_laws.pdf.

[46] *See* European Convention, *supra* note 26.

[47] *See* Council of Europe, European Social Charter (revised) *signed* May 3, 1996, E.T.S. No. 163 (*entered into force* July 1, 1999). [hereinafter European Social Charter]

[48] *See* European Convention, *supra* note 26, at art. 2.

[49] *See id*. at art. 5(1).

[50] *See European Social Charter, supra note* 47, at art. 11.

[51] *See* European Convention, *supra* note 26, at art. 8(1).

[52] *See id. at* art. 14; European Social Charter, *supra* note 47, at arts. E, 8.

[53] *See* European Convention, *supra* note 26, at art. 3.

Building upon Spain's regional human rights obligations, is a recent call for liberalization of abortion legislation and policy by the Council of Europe Parliamentary Assembly. In 2008, a majority of parliamentarians for the Council of Europe adopted a resolution entitled *Access to Safe and Legal Abortion in Europe* which explicitly calls upon Member States to decriminalize abortion.[54] The report specifically notes that "a ban on abortions does not result in fewer abortions but mainly leads to clandestine abortions, which are more traumatic and increase maternal mortality . . . . The lawfulness of abortion does not have an effect on a woman's need for an abortion, but only on her access to a safe abortion."[55] Thus, through adopting this resolution, the Parliamentary Assembly has recognized the link between criminalization and increased maternal mortality.

The report also calls upon Member States to guarantee women's effective exercise of their right to safe and legal abortion, remove legal and other restrictions that hinder access to abortion, and adopt evidence-based sexual and reproductive health strategies and policies, such as access to contraception at a reasonable cost and of appropriate nature, and obligatory age appropriate and gender-sensitive sex and relationship education for young people.[56]

b. Abortion Legislation Challenges before the European Court of Human Rights

Advocates have started challenging the substance and application of abortion legislation before the European Court of Human Rights. For example, Ireland's highly restrictive and punitive abortion law is currently being challenged in the case of *A, B and C v. Ireland*.[57] Additionally, the European Court recently confirmed in *Tysiąc v. Poland*, that the Polish government is obligated to ensure effective access to abortion where it is legal.[58]

Tysiąc involved a visually impaired Polish woman who was not able to attain a legal abortion, despite being told by her doctors that she had the requisite legal authorization for the procedure. While numerous doctors had told Tysiąc that carrying the pregnancy to term and delivering the baby would jeopardize her eyesight, public health officials refused to provide the service. After unsuccessfully obtaining criminal redress against the Polish government, Tysiąc filed a complaint before the European Convention based the Polish authorities' failure to comply with the country's abortion law, by denying her access to legal abortion services.[59]

---

[54] *See* Council of Europe Parliamentary Assembly, Resolution 1607 on access to safe and legal abortion in Europe, para. 7.1, 15th sitting, 16 April 2008, *available at* http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1607.htm.
[55] *Id.* at para. 4.
[56] *See generally id.*
[57] *A, B and C v. Ireland*, Application no. 25579/05, ECHR (pending).
[58] *See Tysiąc v. Poland*, App. No. 5410/03, Eur. Court H.R., para. 80 (2007).
[59] *See id.* at para. 3.

The European Court found the Polish government in violation of its procedural obligations under Article 8 (private life) of the European Convention by failing to provide an effective procedure through which Tysiąc could have appealed her doctors' refusal to grant her abortion request and capable of determining whether the conditions for obtaining a lawful abortion had been met in her case.[60] In other words, where Polish law accords women the right to legal abortion, the government must establish procedures enabling women to exercise that right.

IV. PROGRESSIVE ABORTION REFORM IN EUROPE

In addition to Spain's international and regional human rights obligations, expansion of the grounds for abortion in Spain would bring the country in-line with the modern European trend toward liberalization of abortion law and policies. In recent years a number of countries have decriminalized abortion, bringing them into compliance with their international and regional commitments.

Many European nations have legislation that permits abortion on request up to 12 weeks of pregnancy, a significant body of comparative law that strongly supports similar liberalization of Spanish abortion legislation. For example, legislation in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Macedonia, Greece, Hungary, Latvia, Lithuania, Moldova, Mongolia, Montenegro, Russia, Serbia, the Slovak Republic, Slovenia, Switzerland, and the Ukraine, permits abortion on demand up to the 12th week of gestation. Moreover, legislation in Austria, Belgium, France, Germany, the Netherlands, Romania and Sweden provides for even longer gestational limits for abortion upon request.

Set forth below, is a short discussion of progressive abortion legislation and policies in France that respect women's reproductive rights, failed challenges to the United Kingdom's liberal abortion law, and notable legal developments in Portugal, expanding Portuguese women's ability to access legal abortion. These examples may be relied upon when considering changes to the current legislative framework in Spain.

a. Progressive Abortion Legislation and Policies in France

For many years France has had liberal and effective sexual and reproductive health policies. For example, France was the first country to legalize the use of the drug RU-486 for medical abortion. At present, abortion is currently legal and available upon request up to the twelfth week of gestation, and throughout pregnancy in cases where a pregnant woman's life or physical or mental health is at risk or for fetal impairment.[61] Moreover, related public health codes are holistic, to include broad coverage for

[60] *See id.* at paras. 125–130. The Court prescribed some of the key components of such a procedure: It should guarantee to a pregnant woman the right to be heard in person and have her views considered; the body reviewing her appeal should issue written grounds for its decision; and, recognizing "the time factor is of critical importance" in decisions involving abortion, the procedure should ensure that such decisions are timely. *Id.* at para. 118.

[61] *See* France. Law No. 2001-588 of 4 July 2001 on voluntary termination of pregnancy and contraception. *(Journal officiel de la République française, Lois et Décrets, 7 july 2001, No. 156, pp. 10823-10827).*

contraception,[62] special measures for the sexual and reproductive health of adolescents,[63] and regulations for conscientious objection.[64]

France's abortion law is particularly significant as it represents a gradual progression toward recognizing women's rights. At one point, abortion was criminalized in all circumstances and became a capitol crime when France was under Nazi occupation during World War II. After the War, the capital character was removed, but abortion remained a crime until 1975, when it was legalized up to 10 weeks of gestation.[65] In July 2001, further legislation extended that time period to 12 weeks of gestation.[66] The legal abortion framework in France honors women's human rights including the right to reproductive autonomy and the right to decide the number and spacing of their children.

b. Notable Legal Developments in Portugal, Expanding Women's Access to Legal Abortion

In July 2007, the Portuguese Parliament decriminalized abortion upon request through the 10th week of gestation.[67] Specifically, the government amended the law to remove the penal character of abortion during the first 10 weeks of gestation, regulate conscientious objection as an individual position, as opposed to an institutional one, and guarantee access to services within the public health system.

Prior to the legislative change, abortion was highly restricted in Portugal, on par with only a handful of Council of Europe countries. Abortion was only permitted when there was a threat to women's lives or health, in cases of rape, and if the fetus would be born with an incurable disease or deformity. Moreover, women who underwent abortions, and those who assisted the women or performed abortions, were actively persecuted by the Portuguese government under the restrictive law.

It has been estimated that 20,000 clandestine abortions occurred annually in Portugal, under the country's restrictive abortion law. By contrast, according to the Minister of Health (*Director Geral da Saúde*), the number of complications related to unsafe abortions, infection and perforation of organs associated with clandestine abortion, has fallen by more than half, in just one year after Portugal liberalized its abortion law. This positive change directly aligns with and reaffirms recommendations made by various TMBs, as referenced above, which urge states parties to decriminalize abortion as a means to reducing maternal morality.

---

[62] French Public Health Code *(Code de la Santé Publique)* article L2212 regulates abortion during the first 12 weeks of gestation. Contraception is regulated by article L2214.
[63] *See id.* at art. L 2123-8.
[64] *See id.*
[65] *See* L'interruption volontaire de la grossesse (Voluntary Interruption of Pregnancy) French Law n°75-17, January 17, 1975.
[66] *See* French Law n° 2001-588, July 4, 2001.
[67] *See* Lei N.° 16/2007; de 17 de Abril; Exclusão da ilicitude nos casos de interrupção valuntária da gravidez. Published in the *Diário da República, 1.ª série – N.°75 – 17 de Abril de 2007.*

Notably, the Portuguese government was cognizant of its international and regional human rights commitments when amending the country's abortion law, as these commitments were explicitly recognized in the normative circular on the law released to all personnel by the Ministry of Health (*Direcção-Geral da Saúde*). This noteworthy publication mentioned the UN Millennium Development Goal of halving maternal mortality by 2015 and recognized the link between clandestine abortion and maternal mortality,[68] directly tying the law to Portugal's international obligations. Along those lines, the Portuguese Prime Minister José Sócrates, posits that the government's recent decriminalization of abortion represents a move toward joining the most modern, developed and open European societies.

c. Failed Challenges to the United Kingdom's Liberal Abortion Law

The United Kingdom allows abortion up to the 24th week of gestation based on broad social and economic grounds. The UK's expansive abortion legislation was recently scrutinized and challenged by religious conservatives in the country. Specifically, in late 2008, Parliament was called upon to reduce the legal limit from 24 weeks, to 22, 20, 16 or 12 weeks, despite medical organizations' vocal support for the existing legal abortion framework. Nevertheless, the Parliament voted by majority to defeat each of the measures to reduce the gestational limit for legal abortion, upholding women's reproductive autonomy.

Notably, while the gestational limit for legal abortion in the UK is the longest in Europe, the vast majority of abortions take place early in the gestational period. According to British Department of Health statistics, 89% of abortions take place during the first 12 weeks.[69] As such, it appears that the UK's current legislative framework for abortion is practical, effective and good for women; a fact that was highlighted by human rights advocates and medical professionals in the UK during the recent debate regarding proposed abortion restrictions.

V. FINAL COMMENTS

By presenting an overview of Spain's international and regional human rights obligations regarding the access to safe and legal of abortion, the trend toward liberalization of abortion legislation throughout Europe, and a few examples of strong national legal abortion frameworks, the Center hopes to provide support to the Spanish government when determining the liberalization of abortion law and policy in Spain. It is the Center's sincerest hope that the government passes the proposed amendment to decriminalize abortion up to the first 12 weeks of gestation.

Along similar lines, the Center hopes that in drafting the amended law, the Spanish government will place a special emphasis on reproductive health, particularly the

[68] *See* Ministry of Health Normative Circular No. 11/SR on the Organization of Services for the Implementation of Law 16/2007 of April 17 *(Direcção-Geral da Saúde, Circlar Normativa No. 11/SR; Organização dos Serviços para implementação de Lei 16/2007 de 17 de Abril).*

[69] *See* DEPARTMENT OF HEALTH (UK), ABORTION STATISTICS, ENGLAND AND WALES: 2005 (2006).

prevention of unwanted pregnancies and access to sexual and reproductive health information and services, and ensure that adolescents have access to confidential, adolescent-friendly reproductive health services that account for their evolving capacities.

Should the government desire additional information to facilitate its deliberations of this matter, please contact the Center for Reproductive Rights with such a request.

Sincerely.