



# Joint Submission to the Committee on Economic, Social and Cultural Rights

On the occasion of the review of Spain's 6th Periodic Report at the 63rd Session, March 2018



## Executive Summary



ASOCIACIÓN



Asociación de Usuarios de la Sanidad de la Región de Murcia



Coordinadora estatal de VIH y sida



### SUBMITTED BY:

Center for Economic and Social Rights (CESR) • Médicos del Mundo • Oxfam-Intermón • Observatori DESC • Asociación de Economía de la Salud (AES) • Federación de Asociaciones en Defensa de la Sanidad Pública (FADSP) • Federación de Planificación Familiar Estatal (FPFE) • Sociedad Española de Medicina Familiar y Comunitaria (semFYC) • Sociedad Española de Salud Pública (SESPAS) • Asociación de Enfermería Comunitaria • Comisiones Obreras (CCOO) • Sindicato Unión General de Trabajadores (UGT) • ARI-PERU • Asociación con la A • Asociación de Mujeres Integradoras para la Igualdad Psicosocial (AMILIPS) • Asociación Feminista Tiemar • Asociación de Investigación y Especialización sobre Temas Iberoamericanos (AIET) • Asociación de Planificación Familiar de Catalunya I Balear (APGCIB) • Asociación de Usuarios de la Sanidad de la Región de Murcia • Centro de Estudios e Investigación sobre Mujeres (CEIM) • Ciudadanía Contra la Exclusión Sanitaria (CESIDA) • Federación Mujeres Jóvenes • Forum de Política Feminista • Frente de Lucha Feminista (FLF) • Fundación Haurralde • Iniciativas de Cooperación Internacional para el Desarrollo (ICID) • Liga Internacional de las Mujeres por la Paz y la Libertad España (WILPF) • Medicusmundi • ODUSALUD • Oxfam-Intermón • PASUCAT • Red Transnacional de Mujeres/Networkwoman • Salud por Derecho • SOS Racismo • Trabajando en Positivo • Women's Link Worldwide (WLW) (February 15th, 2018)

## INTRODUCTION

1. This executive summary highlights the key concerns and recommendations contained in the joint submission to the UN Committee on Economic, Social and Cultural Rights (CESCR) by 36 civil society organizations on the occasion of Spain's review at the 63rd session in March 2018. The data presented in this report cover the period from 2012 to 2017. The submission focuses on analyzing austerity measures and their impacts on the right to an adequate standard of living, the right to health, sexual and reproductive health rights (SRHR) and the right to work. It does not intend to provide an exhaustive analysis of the policies related to ESCR in Spain, but rather to offer information supported by solid evidence, on topics of concern to the signatory organizations and included in the List of Issues by the Committee.<sup>1</sup>
2. In its review in 2012, Spain received several recommendations aimed at protecting the economic and social rights of those who have been affected worst by the crisis—including women, children and migrants. However, as will be shown in this summary, its policies have gone in a different direction. Despite signals of economic recovery, the analysis concludes that over the past four years, Spain has continued to focus on harsh austerity measures, including deep cuts to the budgets of key social sectors. Evidence makes clear that the effect of these measures on inequality and the economic and social rights of the most vulnerable has been devastating. Spain is the European country with the highest increase in inequality in the last decade. One in three people in the European Union who fall into poverty or social exclusion from 2008 to 2016 lived in Spain. In terms of fighting against child poverty, the country has truly experienced a lost decade. If resources for fulfilling social rights in Spain continue to be cut, the economic recovery is doomed to failure. Instead, viable alternatives to mobilize the maximum of its available resources, such as strengthening progressive taxation and tackling tax abuse and corruption, could offset the need for austerity while also boosting tax morale and helping to regain the public's trust by strengthening transparency, accountability and participation.
3. One of the main concerns highlighted by the Committee in 2012 was the precarious situation of many migrants, who had limited protection of their rights. Nevertheless, since then, the government's response to the economic crisis does not only increase disparities on rights enjoyment between migrants and nationals, but has actively challenged before national courts every piece of local legislation to protect undocumented migrants' free coverage by the public health system. After upholding the Royal Decree Law in 2016, which deprived undocumented adult migrants from free access to health services, the Constitutional Tribunal has nullified local legislation issued to protect them, restricting autonomous communities' authority to provide health care beyond the discriminatory standard established by the State's legislation and impeding them from adopting measures for the progressive realization of ESCR.
4. The Committee also expressed concerns about the persistence of territorial and gender inequalities, despite the efforts invested to combat them. But since then, these efforts have been weakened in certain areas, such as sexual and reproductive rights and the regional distribution of resources for the fulfilment of essential minimum obligations. Budgets for the prevention of sexist violence and for promoting gender equality on health policies have suffered major cuts. The more likely a population at risk for poverty or social exclusion is in an autonomous community, the lower its levels of social spending in key areas such as health or education, leading to further disparities in the enjoyment of social rights.
5. A third concern was labor rights, which continue to be undermined by ineffective austerity policies that have hindered sustainable economic recovery and prevented the population to reach the levels of rights enjoyment prevailing before the crisis. In 2015, almost half of the working population suffered wage precariousness (living with less than €1,000 per month). Youth unemployment remains at 44%, the second highest in Europe, which means that a whole generation has to emigrate or live in precarious situations. In addition, women earned on average just 76% of male wages in 2015 and they are largely concentrated in precarious part-time work, representing 73.4% of part-time contracts and only 40.5% % of permanent contracts.
6. The 36 civil society organizations which compiled the joint report call on the Committee to urge the Spanish authorities to take in account their human rights obligations under the ICESCR when it comes to designing, implementing and evaluating strategies aimed at the country's economic recovery. Their shared concerns regarding the ESC rights situation in Spain are summarized below under the relevant articles of the ICESCR. These findings and recommendations are substantiated further in the full report available in Spanish, and summarized in a factsheet available in English and Spanish. The review by the Committee is an opportunity to guide Spain on reforming measures that governments have adopted (which are retrogressive and discriminate against vulnerable populations such as undocumented migrants) and on incorporating a human rights framework in its economic recovery strategies. It is also an opportunity for Spain to strengthen its commitments to sexual and reproductive rights, in light of General Comment No. 22 on the right to sexual and reproductive health, recently adopted by the CESCR.

---

<sup>1</sup> Particularly issues 1, 2, 9, 21 and 26.

GENERAL  
FRAMEWORK

*Spain's normative framework does not adequately recognize ESC rights as fundamental rights. The abuse of Royal Decree Laws to face economic crisis has led to decreased protection on ESCR.*

7. Economic, social and cultural rights continue to be recognized in the Spanish Constitution as “guiding principles” (*principios rectores*) of economic and social policy, rather than as fundamental rights with the same justiciable status as civil and political rights. While these principles are meant to guide public policy, legislation and judicial practice, they cannot be invoked before the courts, preventing people deprived of their rights from accessing judicial remedies unless claims can be connected to violations of civil and political rights. In 2012 the Committee expressed concerns on this issue, urging the State Party to take the necessary legislative measures to ensure that economic, social and cultural rights enjoy the same level of protection as civil and political rights.<sup>2</sup> However, since then, serious normative and jurisprudential setbacks in relation to the protection of ESC rights occurred. Drawing on the reform of article 135 of the Constitution that introduced the principle of budgetary stability in 2011, the government has invoked this principle in various areas to adopt regressive measures against social rights or to restrict the powers of the Autonomous Communities to develop them.<sup>3</sup> On several occasions it has done so through the mechanism of the Royal Decree Law, which allows the Government to approve laws through an abbreviated procedure with a minimum of deliberation, arguing that it faces a situation of “extraordinary and urgent need” (Article 86 EC). The recurrent use of this mechanism to approve regressive structural reforms ended up making it the rule rather than the exception, with a systematic lack of explicit and reasoned justification, supported by increasingly permissible criteria adopted by the Constitutional Court.<sup>4</sup>

## Recommendations

1. **The State should adopt measures to make ESC rights enforceable and justiciable; ensure access to justice and legal assistance for all equally; and ensure the way in which policies and plans that have ESC rights impacts are designed, implemented and evaluated incorporate human rights obligations, including the principles of participation, transparency and accountability. The State must ratify the Revised European Social Charter (1996) and its collective complaints procedure.**

ARTICLE

# 2

MAXIMUM  
AVAILABLE  
RESOURCES

*Spain's economic recovery under the dogma of austerity has led to increasing inequality and has not translated into poverty reduction. Spain has available alternatives to expand fiscal space without cutting budgets on ESC rights.*

8. Despite the fact that in the first semester of 2017 Spain achieved the highest GDP levels since the crisis exploded in 2007, almost 13 million people (28% of the population) were at risk of poverty and social exclusion by the end of 2016—some 2 million more than in 2007. Spain has experienced one of the largest increases in child poverty in the EU since the onset of the crisis.<sup>5</sup> A third of children living in Spain is at risk of poverty and social exclusion.<sup>6</sup> Spain had the highest rate of foreign parents' children at risk of poverty of the EU (50%) in 2015, more than twice the rate for national parents' children (23.8%) and far above the EU average (18.4%).<sup>7</sup> The weak economic recovery has led to a significant increase in inequality. Since 2013, 29 of every 100 euros from economic growth have gone to citizens in the highest income decile, while only eight out of every 100 euros have been left to the poorest 10%.<sup>8</sup> By 2016, the top 1% in Spain owned 21% of the national wealth, or 24% when assets hold in tax havens are included.<sup>9</sup>

<sup>2</sup> UN Committee on Economic, Social and Cultural Rights. 'Concluding Observations on Spain, 2012' (UN. Doc. E/C.12/ESP/CO/5), par. 6.

<sup>3</sup> Utrilla, D (2018). "Spain" en Civitaresse, S; Haliday, S (2018). Social Rights in Europe in an age of austerity. Routledge: New York, pp. 98-121.

<sup>4</sup> Ver Majado, P (2016). "El presupuesto habilitante del decreto-ley ante la crisis económica." Revista de derecho constitucional europeo 25 (2016): 3; Carmona, A (2017). Diritto e questioni pubbliche, Palermo. XVII, 2017 / 2 (diciembre) | pp. 107-138

<sup>5</sup> UNICEF, 2014. "Los Niños de la Recesión: El Impacto de la Crisis Económica en el Bienestar Infantil en los Países Ricos."

<sup>6</sup> Eurostat, 2017. Children at risk of poverty and social exclusion (ilc\_peps01)

<sup>7</sup> Eurostat, 2017b. Children at risk of poverty rate, by country of birth of their parents (ilc\_li34)

<sup>8</sup> Oxfam Intermón, 2018. ¿Realidad o ficción? La recuperación económica, en manos de una minoría, p.3.

<sup>9</sup> Martínez-Toledano, 2017. "Housing bubbles, offshore assets and wealth inequality in Spain (1984-2013)".

9. While the economy is growing, budget cuts to social programs continue. Despite the fact that Spain's social spending per capita is only 63% of the Euro Zone's average, it fell by 6% between 2009-2014, whereas similar spending in the Euro Zone increased by 2.5%. Allocation to housing, unemployment protection and employment promotion have seen the most sizable reductions. Meanwhile, the State budget for non-pension benefits for immigrants was cut by 56% between 2011-2015, while social protection allocations to the elderly, people with disabilities and dependents have all seen declines to historic levels—falling 43%, 40%, and 17%, respectively, between 2011 and 2016.<sup>10</sup> Austerity has led to an extended crisis on ESCR rights. According to the European Commission, Spain faces critical or troublesome situations in eight of fourteen dimensions on the social scoreboard, a tool to monitor progress on the European Pillar of Social Rights agreed on by States in November 2017.<sup>11</sup> Inequality, early leavers from school, unemployment and unmet healthcare needs are Spain's most critical areas of performance.<sup>12</sup>
10. There are several policy alternatives to austerity measures that Spain could take, in line with its obligation to dedicate maximum available resources to rights realization, which could serve to increase the State's fiscal space in an equitable manner. The Spanish tax system's contribution to reducing inequality is negligible and it places disproportionate burdens on the poor.<sup>13</sup> If Spain were to increase its tax-to-GDP ratio to the average EU levels through progressive taxation schemes, it would raise €93 billion in additional tax revenue, exceeding almost twice its fiscal deficit.<sup>14</sup> According to the GESTHA National Union of Tax Inspectors, Spain could implement a medium term plan to raise up to €40 billion in tax revenue loss to tax evasion.<sup>15</sup> GESTHA further estimates that only 8.4% of estimated tax fraud was detected by the tax authority between 2012-2015.<sup>16</sup> However, the Enforcement Tax Plan 2018 does not adopt measures to overcome the deficit of more than 26,000 workers in its tax authority to reach Europe's average ratio on employees per tax payers.<sup>17</sup> It is also estimated that tax avoidance via the biggest 15 tax havens accounts for losses around €1.5 billion in Spain, 58% of the estimated deficit of the pension reserve fund in 2017 and nearly equivalent to the budget for international development assistance.<sup>18</sup> According to a study conducted by the European Parliament in 2016, corruption involves annual losses of between 0.08% and 9.58% of the GDP depending on the methodology used, but higher than the European average in most cases.<sup>19</sup> Considering that it is expected that the public deficit reached levels of 3.1% of GDP by the end of 2017,<sup>20</sup> these figures show that there are readily available alternatives to significantly improve Spain's fiscal balance without deepening the budget cuts to social programs. Austerity is unreasonable and completely unnecessary from a human rights perspective.

## Recommendations

- 2. Economic policies, including measures to reduce the public deficit must not lead to retrogressions or discrimination in the enjoyment of human rights. The State should conduct human rights impact assessments before adopting plans and strategies aimed at fiscal austerity and economic recovery, in order to ensure that disadvantaged groups are not discriminated against by these policies. The State must consider all possible alternatives at its disposal to provide the maximum of available and potential resources for the realization of ESC rights, including through its fiscal policy.**

<sup>10</sup> Authors' calculations using World Bank GDP Deflators and Budget Information from Ministerio de Hacienda y Administraciones Públicas, 2017

<sup>11</sup> Comisión Europea, 2017. Draft Joint Employment Report 2018, Text proposed by the European Commission on 22 November 2017 for adoption by the EPSCO Council, available at: <http://ec.europa.eu/social/BlobServlet?docId=18624&langId=en>

<sup>12</sup> European Commission, 2018, Social Scoreboard Statistics, Available at: <https://composite-indicators.jrc.ec.europa.eu/social-scoreboard/#>

<sup>13</sup> FEDEA. Observatorio sobre el reparto de los impuestos entre los hogares españoles. Segundo informe, Febrero 2017, p. 20.

<sup>14</sup> Muñoz, Violeta, 2017. "España podría saldar dos veces su déficit si recaudara como el resto de países del euro". El Boletín (24 de octubre de 2017), available at: <https://www.elboletin.com/noticia/154958/economia/espana-podria-saldar-dos-veces-su-deficit-si-recaudara-como-el-resto-de-paises-del-euro.html>

<sup>15</sup> GESTHA, 2017. "Ghesta denuncia que más del 90% de la evasión fiscal no fue detectada por Hacienda en 2015", available at:

<http://www.gestha.es/index.php?seccion=actualidad&num=464>

<sup>16</sup> GESTHA, 2017 "Ghesta denuncia que más del 90% de la evasión fiscal no fue detectada por Hacienda en 2015", available at:

<http://www.gestha.es/index.php?seccion=actualidad&num=464>

<sup>17</sup> GESTHA, 2018. "Gestha lamenta el continuismo del nuevo Plan de Control Tributario" available at: <http://www.gestha.es/index.php?seccion=actualidad&num=504>

<sup>18</sup> Oxfam, 2017. Oxfam Intermon, 2017. España, un crecimiento económico que deja fuera a las personas vulnerables, pp. 25-26.

<sup>19</sup> European Parliament. 2016. The Cost of Non-Europe in the Area of Organized Crime and Corruption. Annex II. Corruption, available at:

[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/579319/EPRS\\_STU%282016%29579319\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/579319/EPRS_STU%282016%29579319_EN.pdf)

<sup>20</sup> Autoridad Independiente de Responsabilidad Fiscal, 2018. Seguimiento mensual del objetivo de estabilidad. Noviembre 2017, available at:

[http://www.airef.es/documents/10181/720606/2018+02+02+A++Seguimiento+mensual+2017\\_11+AAPP/c6efdfda-6f2c-4aa0-962e-4a4e119d59fb](http://www.airef.es/documents/10181/720606/2018+02+02+A++Seguimiento+mensual+2017_11+AAPP/c6efdfda-6f2c-4aa0-962e-4a4e119d59fb)

ARTICLE

6

THE RIGHT TO  
WORK AND  
RIGHTS AT  
WORK

*Despite the labor market showing signs of recovery, the right to work in Spain continues to be undermined. Economic recovery does not translate into ESC rights enjoyment, partly due to the lack of decent jobs.*

11. One of the most severe impacts of the economic crisis on human rights in Spain is the profound retrogression in enjoyment of the right to work. Spain has the second highest unemployment rate in the European Union: six out of ten people who became unemployed in the last decade reside in Spain.<sup>21</sup> At the end of 2017, 3.8 million people in Spain were unemployed and more than 1.2 million households had all of their members unemployed.<sup>22</sup> The youth unemployment rate reached the explosive level of 44%,<sup>23</sup> and seven in every ten people younger than 25 have temporary employments, a record in the last 20 years<sup>24</sup>. Additionally, in 2016, 14.6% of the youth population in Spain had neither employment, education or training (NEET), a figure higher than the Euro Zone average (11.6%).<sup>25</sup> This figure rises to 77% in the case of Roma youth, compared to an average of 63% in the European Union as a whole.<sup>26</sup>
12. Economic recovery is neither creating decent jobs nor serving the purpose of progressive realization of labor rights. Workers struggle to escape from poverty through the labor market: Spain has the third highest rate of workers at risk of poverty or social exclusion (13.1%).<sup>27</sup> The percentage of foreign workers at risk of poverty or social exclusion in Spain is the highest of the EU (31.5%).<sup>28</sup> Since 2009, the share of wages on national income has fallen by 4 points of GDP.<sup>29</sup> In 2015, more than 47% of the population live in households with earnings less than €1,000 per month.<sup>30</sup> Since 2012, productivity per working hour has grown ten times faster than the median wage. Migrant women earn 47% less on average than men who are Spanish citizens.<sup>31</sup>

## Recommendations

3. **The State must prioritize an economic recovery based on the promotion of decent work; stop retrogression in the right to work; and propose a national strategy to fight against unemployment, job precarity, and temporary and informal employment. The State must adopt well-funded programs to close gaps in the enjoyment of rights at work between nationals/non-nationals and different age and gender groups, including the provision of free public education from zero to three years, strategies for the reconciliation of work and family life, and the incorporation of a gender approach to labor inspection.**

ARTICLE

12

RIGHT TO THE  
HIGHEST  
ATTAINABLE  
STANDARD OF  
PHYSICAL &  
MENTAL  
HEALTH

*The Royal Decree Law 16/2012 is discriminatory and disproportionate, which amounts to a retrogressive measure that is in breach of Spain's human rights obligations.*

13. In 2012, the CESCR raised concerns about the Royal Decree Law 16/2012, which curtailed the rights of adult immigrants in an irregular situation and other populations to have access to public health services.<sup>32</sup> Several regional and international human rights mechanisms have also expressed concern

<sup>21</sup> Eurostat, 2018. <http://appsso.eurostat.ec.europa.eu/hui/submitViewTableAction.do>

<sup>22</sup> Instituto Nacional de Estadística, 2018. Encuesta de Población Activa, cuarto trimestre de 2017, available at: <http://www.ine.es/daco/daco42/daco4211/epa0417.pdf>

<sup>23</sup> Eurostat, 2017. Unemployment by sex and age - annual average (une\_rt\_a). <http://appsso.eurostat.ec.europa.eu/hui/submitViewTableAction.do>

<sup>24</sup> Oxfam Intermón, 2018. ¿Realidad o ficción? La recuperación económica, en manos de una minoría, p.21.

<sup>25</sup> Eurostat, 2017. [http://appsso.eurostat.ec.europa.eu/hui/show.do?dataset=ifsi\\_neet\\_a&lang=en](http://appsso.eurostat.ec.europa.eu/hui/show.do?dataset=ifsi_neet_a&lang=en)

<sup>26</sup> El Periódico, 2017. '77% de gitanos jóvenes en España ni estudia ni trabaja, más que media de UE' (30 de agosto), available at: <http://www.elperiodico.com/es/sociedad/20170830/77-de-gitanos-jovenes-en-espana-ni-estudia-ni-trabaja-mas-que-media-de-ue-6254745>

<sup>27</sup> Eurostat, 2017. In-work at risk of poverty rate. <http://appsso.eurostat.ec.europa.eu/hui/submitViewTableAction.do>, consultado el 1 de febrero de 2018.

<sup>28</sup> Eurostat, 2017. In-work at-risk-of-poverty rate by broad group of country of birth (population aged 18 and over),

[http://appsso.eurostat.ec.europa.eu/hui/show.do?dataset=ilc\\_iw16&lang=en](http://appsso.eurostat.ec.europa.eu/hui/show.do?dataset=ilc_iw16&lang=en) [ilc\_iw16]

<sup>29</sup> Datos de la Contabilidad Nacional Trimestral, base 2010 del INE, available at:

[http://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica\\_C&cid=1254736164439&menu=resultados&idp=1254735576581](http://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica_C&cid=1254736164439&menu=resultados&idp=1254735576581), consultado el 1 de febrero de 2018

<sup>30</sup> Sindicato de Técnicos del Ministerio de Hacienda (GHESTA), 2017. "Solo dos de cada cien autónomos admiten que ganan más de 1.000 euros mensuales"

<http://www.gestha.es/index.php?seccion=actualidad&num=498>

<sup>31</sup> Instituto Nacional de Estadística, Encuesta Anual de Estructura Salarial, 2015, <http://www.ine.es/jaxi/Datos.htm?path=/t22/p133/cno11/serie/10/&file=03005.px>

<sup>32</sup> UN Committee on Economic, Social and Cultural Rights. 'Concluding Observations on Spain, 2012' (UN. Doc. E/C.12/ESP/CO/5), par. 19-20.

about the incompatibility of Royal Decree Law 16/2012 with international human rights law.<sup>33</sup> Indeed, as the CESCR established on its General Comment (GC) No. 14, the ICESCR explicitly proscribes any discrimination in access to health care by national or social origin.<sup>34</sup> The GC 14 also includes the duty to ensure access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups, as part of the minimum essential obligations in regard to the right to health.<sup>35</sup> Furthermore, the CESCR explicitly states that “the adoption of any retrogressive measures incompatible with the core obligations under the right to health [...] constitutes a violation of the right to health,” including “the formal repeal or suspension of legislation necessary for the continued enjoyment of the right”.<sup>36</sup> Since 2012, however, the Constitutional Court of Spain not only upheld the RDL 16/2012<sup>37</sup> but also nullified autonomous communities’ *ad hoc* legislation challenged by the national government to secure undocumented migrants’ access to the public health system, turning a blind eye to international human rights obligations.

14. The consequences of the RDL 16/2012 on the right to health have been catastrophic. Between January 2014 and August 2017, REDER documented more than 3,784 cases of people who were unable to access health care services despite having the right to receive such services (either within the RDL 16/2012 or covered by the Autonomous Communities regulations). The vast majority of these were undocumented migrants, including 158 pregnant women, 270 children and 364 cases of denial of services or erroneous billing of emergency services.<sup>38</sup> Recent research has shown that the RDL 16/2012 had a negative impact on general population’s access to primary care, particularly on undocumented migrants’ access,<sup>39</sup> as well as on the latter’s mortality rates.<sup>40</sup> The RDL 16/2012 is extremely unfair but also unnecessary. There is no evidence to prove that this measure was required to improve the financial sustainability of the health system; on the contrary, evidence shows that undocumented migrants’ coverage is low cost intensive for health systems.<sup>41</sup> In addition, the fact remains that while one of the most vulnerable populations was deprived of public healthcare coverage due to an allegedly financially challenged health system, fifteen days earlier a generous tax amnesty was granted to the most privileged sectors of society (Royal Decree Law 12/2012), in such a controversial way that the Constitutional Court annulled it on the grounds that it was in breach of the general duty to contribute to the public purse, according to art. 31.1 CE.<sup>42</sup>

***Budget cuts to reduce the deficit have exacerbated existing territorial differences in the quality of public health services and private spending has crowded out public investments in health.***

15. Spain is one of the EU-15 countries with the lowest rate of public spending on health as a percentage of its GDP.<sup>43</sup> Public per capita investment in health has remained below regional trends, representing only 74% of the average in the Euro Zone.<sup>44</sup> In the five-year period 2011-2015, private health expenditure grew at an average of 2.8% per year, while public expenditure fell at a rate of -0.8% per year.<sup>45</sup> Per capita investment in health varies markedly among the autonomous communities: the

<sup>33</sup> See, Human Rights Committee, ‘Concluding Observations on the Sixth periodic report of Spain’, UN Doc. CCPR/C/ESP/CO/6, at para. 9; Committee on the Elimination of Discrimination against Women, ‘Concluding observations on the combined seventh and eighth periodic reports of Spain’, UN Doc. CEDAW/C/ESP/CO/7-8, at para. 31; European Committee on Social Rights, ‘Conclusions XX-2. Spain’. See also, statement made by the United Nations Special Rapporteur on Extreme Poverty and Human Rights, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14545&LangID=E>

<sup>34</sup> CESCR (2000) General Comment No. 14: The right to the highest attainable standard of health (Article 12), 11 August 2000 (UN. Doc. E/C.12/2000/4), par. 18

<sup>35</sup> *Ibid.*, par. 43.a

<sup>36</sup> *Ibid.*, par. 48

<sup>37</sup> STC 139/2016, July 21 2016, Navarra Autonomous Community’s Parliament vs. Spanish National Government

<sup>38</sup> REDER, 2017. ‘Defending our healthcare. Civil Society faced with healthcare exclusion’, available at: <https://www.reder162012.org/imagenes/InformeOct2017/REDERsept17ENG.pdf>

<sup>39</sup> Jiménez-Rubio D, Vall Castelló J. Evaluating the effects of restricted access to health care for the immigrant population: the Spanish case. *Jornadas de Economía de la Salud*, Barcelona, Septiembre 2017.

<sup>40</sup> Juanmartí A, López G, Vall Castelló J. Effect of a restriction in the access to public health insurance on mortality: The case of the 2012 Spanish health reform. *Jornadas de Economía de la Salud*, Barcelona, Septiembre 2017. *Gaceta sanitaria*, Vol. 31 - Especial Congreso - Septiembre 2017

<sup>41</sup> Nielsen, S., Krasnik, A. and Rosano, A. (2009) Registry data for cross-country comparisons of migrants’ healthcare utilization in the EU: a survey study of availability and content. *BMC Health Services Research*, 9: 210; Uiters, E., Devillé, W., Foets, M., Spreuuewenberg, P. and Groenewegen, P. (2009) Differences between immigrant and non-immigrant groups in the use of primary medical care: a systematic review. *BMC Health Services Research*, 9: 76; Nørredam, M., Nielsen, S. and Krasnik, A. (2010) Migrants’ utilization of somatic healthcare services in Europe – a systematic review. *European Journal of Public Health*, 20(5): 555–63.

<sup>42</sup> Sentencia del Tribunal Constitucional. Recurso de inconstitucionalidad núm. 3856-2012, available at:

[https://www.tribunalconstitucional.es/NotasDePrensaDocumentos/NP\\_2017\\_038/2012-3856STC.pdf](https://www.tribunalconstitucional.es/NotasDePrensaDocumentos/NP_2017_038/2012-3856STC.pdf)

<sup>43</sup> Eurostat. ‘Health - General government expenditure by function (COFOG) as a % of GDP [gov\_a\_exp]’ Indicators of the health and long term care strand. 209 figures.

<sup>44</sup> OECD Health Expenditure and Financing Statistics, [http://stats.oecd.org/index.aspx?DataSetCode=HEALTH\\_STAT#](http://stats.oecd.org/index.aspx?DataSetCode=HEALTH_STAT#)

<sup>45</sup> Ministerio de Sanidad, Servicios Sociales e Igualdad, 2017. *Sistemas de Cuentas de Salud*, 2015, available at:

<https://www.msssi.gob.es/estadEstudios/estadisticas/sisInfSanSNS/pdf/SCSPrincipalesResultados.pdf>, p. 3

higher the risk of poverty or social exclusion in an autonomous community is the lower its per capita investment in health, causing further inequalities in access to health goods and services.<sup>46</sup>

***Spain is not complying with its obligations regarding sexual and reproductive rights, in light of the General Comment No. 22. Spain remains one of the European countries with the highest rates of undesired pregnancies among adolescents, and insufficient access to education and contraception.***

16. Despite positive normative developments such as the Organic Law 2/2010 on sexual and reproductive health and voluntary interruption of birth, many practical challenges persist. Austerity has also negatively impacted sexual and reproductive rights: within the Ministry of Health's budget, programs to fight against gender violence and promote gender equality were reduced by 21.6% and 18% from 2009 to 2016, respectively. There are also significant territorial inequities in areas such as access to contraception, particularly emergency oral contraception, voluntary termination of pregnancy, and training of health personnel. Significant barriers to accessing these services persist, particularly for low-income women and undocumented migrants: less than 12% of the Voluntary Interruptions of Pregnancy (IVE) interventions were conducted in public health facilities in 2015.<sup>47</sup> The lack of financial resources and the absence of follow-up mechanisms have seriously eroded HIV prevention policy efforts and access to sexual and reproductive education remains being a pending subject in Spain.<sup>48</sup>

## Recommendations

- 4. The State must eradicate the systematic discrimination experienced by the immigrant population in their enjoyment of ESC rights—particularly the right to health—including immigrants with irregular status, refugees and asylum seekers. The State should repeal the Royal Decree Law 16/2012 and take steps to restore universal access to the public health system without discrimination of any kind.**
- 5. The State should adopt an integrated framework across autonomous communities on sexual and reproductive health, coherent with human rights principles and standards, and ensure equitable access to information education, adequate services on sexual and reproductive health, and contraception. The State must improve efforts for the prevention of and access to treatment for HIV/AIDS and to prevent gender violence and sexual trafficking, eliminating territorial inequalities and prioritizing vulnerable groups.**

<sup>46</sup> Federación de Asociaciones para la Defensa de la Sanidad Pública (FADSP) "Los presupuestos sanitarios de las CCAA para 2018", available at: <http://www.fadsp.org/index.php/sample-sites/notas-de-prensa/1587-los-presupuestos-sanitarios-de-las-ccaa-para-2018><http://www.fadsp.org/index.php/sample-sites/notas-de-prensa/1587-los-presupuestos-sanitarios-de-las-ccaa-para-2018>; Comisión para Reducir las Desigualdades Sociales en Salud en España. Avanzando hacia la equidad. Propuesta de Políticas de Intervenciones para Reducir las Desigualdades Sociales en Salud en España. Comisionado por la Dirección General de Salud Pública y Sanidad Exterior. Ministerio de Sanidad y Política Social. Mayo 2010.

<sup>47</sup> [http://www.mspes.es/gi/profesionales/saludPublica/prevPromocion/promocion/desigualdadSalud/docs/Propuesta\\_Politicas\\_Reducir\\_Desigualdades.pdf](http://www.mspes.es/gi/profesionales/saludPublica/prevPromocion/promocion/desigualdadSalud/docs/Propuesta_Politicas_Reducir_Desigualdades.pdf)

<sup>48</sup> [https://www.msssi.gob.es/profesionales/saludPublica/prevPromocion/embarazo/tablas\\_figuras.htm#Tabla1](https://www.msssi.gob.es/profesionales/saludPublica/prevPromocion/embarazo/tablas_figuras.htm#Tabla1)

<sup>48</sup> Barómetro del acceso de las mujeres a la libre elección de anticonceptivos modernos en 16 países Europeos de la UE. Federación de Planificación Familiar de España e IPPF: [http://www.fpfe.org/wp-content/uploads/2015/09/Baro\\_leaflet\\_ES\\_web\\_v3.pdf](http://www.fpfe.org/wp-content/uploads/2015/09/Baro_leaflet_ES_web_v3.pdf)