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**For further information, please contact:**

In Madrid, Jude Sunderland (Spanish) : + 34-61-805-3326  
In London, Ben Ward: + 44 20 7713 2778

## **Spain: Counterterrorism Measures Infringe Basic Rights** *Leadership in Confronting Terrorism Requires Better Rights Protection for Suspects*

(Madrid, January 27, 2005) – Spain is right to fight terrorism through the criminal justice system, but its counterterrorism measures still infringe basic rights of suspects charged with terrorist acts, Human Rights Watch said in a report released today.

The 65-page report, “Setting an Example?: Counter-Terrorism Measures in Spain,” analyzes aspects of Spain’s criminal law and procedures that fall short of its commitments under international human rights law. Problematic practices include the use of incommunicado detention and secret legal proceedings, limitations on the right to a lawyer during the initial period of detention, and lengthy periods of pre-trial detention.

The report focuses on a complex judicial case against members of an alleged al-Qaeda cell and the ongoing investigation into the devastating Madrid bombings of March 11, 2004. Unlike the United States and the United Kingdom, where terrorism suspects have been subject to indefinite detention without trial, Spain addresses the threat from terrorism almost exclusively through the criminal justice system. Spain regards itself as a leader on countering terrorism while respecting human rights.

“Spain is right to tackle terrorism through the criminal courts,” said Rachel Denber, acting executive director of the Europe and Central Asia division of Human Rights Watch, “But the government needs to ensure that terrorism suspects have the due process rights necessary for an effective defense. Only then will Spain be a real leader.”

The March 11 train bombings in Madrid underscore the threat from terrorism in Europe. Acts of terrorism are gross human rights abuses. Spain's prosecution of March 11 and al-Qaeda suspects highlights a further threat: the erosion of fundamental rights in the fight against terrorism.

Spain’s counterterrorism measures, initially developed in response to separatist Basque violence, significantly limit the rights of terrorism suspects upon arrest. Suspects can be held incommunicado—without access to a lawyer of their choice or the ability to contact family members—for up to 13 days. Prior to November 2003, the maximum was 5 days. Suspects are assigned legal aid attorneys during this period, but cannot confer with them in private. This makes the lawyers little more than silent witnesses, and effective challenges to the grounds of detention extremely difficult.

Safeguards against abuse—which include regular visits by state forensic doctors—fall short of international standards, despite a November 2003 reform allowing detainees to request a visit from a second state doctor. Suspects can be held for five days before they are seen by a judge. International human rights bodies have concluded that incommunicado detention gives rise to a greater risk of ill-treatment in detention. Moreover, the Spanish authorities sometimes fail to conduct proper investigations into reports of ill-treatment.

The limitations on access to legal advice during incommunicado detention, together with the imposition of secrecy on legal proceedings, compromise the right to an effective defense for some terrorism suspects. Court documents in terrorism cases are often subject to such secrecy that some defense lawyers do not know the exact reasons for their client's remand to pre-trial detention.

The duration of permissible pre-trial detention is also a cause for concern: terrorism suspects can be held in prison for up to four years before being brought to trial. They are generally subject to a highly restrictive regime that entails very limited contact with other prisoners and time outside the cell.

At the time of the March 11 attacks, Human Rights Watch condemned the bombings as an “assault on the fundamental principle of respect for civilian life” and expressed its condolences to the victims and their loved ones and to the people of Spain.

“The victims of the horrific March 11th bombings, and all victims of terrorism, have the right to see the perpetrators brought to justice,” said Denber, “Spain has an obligation to protect its citizens from such acts, but it also has a duty to respect fundamental rights while doing so, including the due process rights of those charged with acts of terrorism.”

The report contains concrete recommendations to the Spanish government to bring its criminal law and practice fully into compliance with its obligations under international human rights law, including:

- ensuring that all detainees have access to an attorney from the outset of detention and the right to speak to the attorney in private;
- ensuring that legal aid attorneys are fully empowered to intervene on their client's behalf during all police and court proceedings;
- limiting the use of secret legal proceedings;
- exercising diligence necessary to ensure cases are brought to trial within the normal two-year period, particularly where the accused is in pre-trial detention, and;
- ensuring that conditions in police custody and pre-trial detention conform to international standards.

During the embargoed period, the report, *Setting an Example?: Counter-Terrorism Measures in Spain*, can be found at <http://embargo.hrw.org/reports/english/spain0105/> using the username: example and the password: measures.

Beginning January 27, 2005, the report can be found at <http://hrw.org/reports/2005/spain0105/>

To read Human Rights Watch's March 11 statement:  
<http://hrw.org/english/docs/2004/03/11/spain8111.htm>

To read the Human Rights Watch report on indefinite detention, *Neither Just Nor Effective*:  
<http://hrw.org/backgrounder/eca/uk/index.htm>

To read the Human Rights Watch briefing paper on U.S. military commissions:

<http://hrw.org/backgrounder/usa/2004/1.htm>